

FEDERAL ELECTION GRANTS AND POST-COVID-19 ELECTION COSTS

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FAST FACTS

- The CARES Act allocated \$11.2 million to Michigan for election costs related to the COVID-19 pandemic.
- The federal government has authorized use of funds from prior election grants for pandemic response.
- Michigan has two years to meet the state match requirements for federal election grants.
- Only a portion of Michigan's required match has been appropriated.
- Additional election funding for pandemic response may be available from prior grants or new federal funding.

INTRODUCTION

In response to the COVID-19 pandemic, the federal government enacted the stimulus package H.R. 748, known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act, on March 27, 2020. Included in the approximately \$2.0 trillion appropriated for state and local grant programs was \$400.0 million to the Election Assistance Commission (EAC) to provide Election Security Grants to states “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” The CARES Act Election Security Grants are subject to provisions for Election Security Grant appropriations made in 2018 and earlier in 2020. The EAC has also authorized funds from those earlier grants to be used to respond to the pandemic. This brief describes the CARES Act Election Security Grants and other past and proposed federal grants that are, or may become, available to Michigan for election costs related to COVID-19.

CARES ACT ELECTION SECURITY GRANT APPROPRIATION

From the \$400.0 million appropriated under the CARES Act for Election Security Grants, the EAC allocated grants to each state based on the proportion of the state's voting age population to the national voting age population. Michigan's allocation was \$11.3 million. The Michigan Department of State (DOS) requested and received \$11.2 million of this amount on the condition that it make available a state or local funding match of 20% (\$2.2 million) of the requested grant amount.

The CARES Act contains few details on how Election Security Grants must be administered or how the funds may be used. These provisions are instead found in the Consolidated Appropriations Act (CAA) of 2020, to which the CARES Act is a supplemental extension, and the Help America Vote Act of 2002 (HAVA). As a supplemental appropriation, CARES Act Election Security Grants must comply with restrictions found in the CAA of 2020.

The CAA of 2020, enacted in December 2019, appropriated \$425.0 million for a separate allocation of Election Security Grants and provided that administration of the grants was authorized under HAVA. Election Security Grants issued under both the CAA of 2020 and the CARES Act are thus considered HAVA funding. The CAA of 2020 also required states to match 20% of their funding as a condition of receiving the grant. Authorized uses and requirements for Michigan's Election Security Grants under the CARES Act, the CAA of 2020, and HAVA are discussed in greater detail below.

STATE MATCH REQUIREMENTS AND CARES ACT APPROPRIATIONS

On March 30, 2020, Governor Whitmer signed a supplemental appropriations act, 2020 PA 67, to provide state funds for costs related to COVID-19. Section 302 of the act also provided for a general appropriation of all revenue “authorized by and available from the federal government” for the COVID-19 public health emergency. This general appropriation was in effect until June 28, 2020 (90 days after the effective date of the act).¹ Any federal funds available for pandemic response after that date require a specific state appropriation. The CARES Act Election Security Grants were appropriated under section 302, and DOS received the funds on April 27, 2020.

Under the CAA of 2020, states receiving an Election Security Grant must make funding available, from either state or local sources, equal to 20% of the grant amount for use toward activities authorized for the grant. The grantee has two years after receiving a grant payment to make this funding match available.² If a state cannot provide the full match amount within that time, it must return to the federal government the amount of the grant corresponding to the amount it failed to match. Michigan’s grant amount of \$11,247,800 therefore requires a funding match of \$2,249,560 by April 27, 2022.

The CAA of 2020 requires state expenditures used for the match contribution to be spent on activities authorized for the grant. For CARES Act grants, this means that matching funds must be spent “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” State expenditures in response to the pandemic that do not improve the administration of elections for federal office in the 2020 election cycle cannot be used toward a match. While the CARES Act requires all Election Security Grants to be expended for federal elections in 2020, states still have two years to make the match funds available.

In its Disbursement Request Letter to the EAC, DOS identified \$2.0 million to be used to purchase absentee voting counting board tabulators as its contribution toward the 20% matching requirement.³ The legislature appropriated \$1.0 million of this amount with General Fund/General Purpose (GF/GP) revenue in supplemental appropriations act 2019 PA 28. This was one of three appropriations in 2019 PA 28 intended to support implementation of section 4 of Article II of the state constitution, the constitutional amendment approved by voters in November 2018 as Proposal 3. Section 441 of 2019 PA 28 prohibited use of these appropriations for any purpose other than implementing Proposal 3 and authorized the funds to carry forward as a work project with a tentative completion date of September 30, 2020.⁴

DOS plans to collect the second \$1.0 million for the EAC matching requirement from local governments through payments toward their one-to-one cost share with DOS for tabulator purchases. Under some circumstances, locals may contribute more than a one-to-one share if their purchases exceed certain requirements. It is not yet known whether any surplus in local shares will contribute enough toward the match requirement to cover the rest of the \$2,249,560 matching amount.

By using a prior GF/GP appropriation and local revenues for the state match requirement, DOS was able to identify Michigan’s funding match without any additional appropriation of state revenues. However, approximately half of the \$1.0 million appropriation for tabulators had been spent before the January 31, 2020, U.S. Declaration of Emergency concerning the COVID-19 outbreak. Consequently, the EAC has indicated that it will not accept the full appropriated amount, but it has not yet determined what amount it will accept toward Michigan’s funding match.

¹ <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2020-PA-0067.pdf>

² <https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf>

³ <https://www.eac.gov/sites/default/files/paymentgrants/cares/CARESAwardInstructions.pdf>

⁴ <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2019-PA-0028.pdf>

PERMITTED AND NONPERMITTED USES OF CARES ACT ELECTION SECURITY GRANTS

In describing what Election Security Grants can be used for, the CARES Act simply states that grant funds must be used to “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” The 2020 federal election cycle in Michigan includes the March 10 presidential primary, the August 4 congressional primary, and the November 3 general election. The CARES Act also provides that any funding left unexpended by December 31, 2020, must be returned to the federal government. The CARES Act offers no further details on what expenditures are allowed or not allowed. Provisions in the CAA of 2020, HAVA, and the Code of Federal Regulations (CFR) together provide the legal framework for permitted uses of the grants. The EAC has incorporated these provisions into its guidance on permitted uses and other resources for the CARES Act grants, which it has issued to states and made available on its website.⁵

Under the EAC guidelines, costs are generally allowed if they are new costs that are incurred due to the coronavirus pandemic and, as provided under the CAA of 2020, that go to support “activities to improve the administration of elections for federal office, including to enhance election technology and make election security improvements,” as authorized by HAVA. The EAC provides examples in its guidance of permitted grant uses. However, the examples are not exhaustive, and states must determine, with EAC guidance, what expenditures are allowed under the authorizing federal laws. EAC examples of permitted grant uses include the following:⁶

- Printing additional materials, such as ballots and envelopes, for potentially higher levels of absentee voting.
- Upgrading statewide or local databases to allow for online absentee or mail ballot requests.
- Additional mailing and postage costs, including ballot tracking software.
- Acquiring additional voting equipment, including high-speed or central count tabulators and hardware and software associated with signature comparison of returned absentee or mail ballots.
- Payroll expenses for overtime and benefits for elections staff and temporary elections staffing.
- Public communication of changes in registration, ballot request options, or voting procedures, including information on coronavirus precautions being implemented during the voting process.
- Mailings to inform the public on changes or determination of procedures of coronavirus precautions, options in voting, and other voting information.
- Leasing new polling places when existing sites must be closed.
- Additional laptops and mobile IT equipment.
- Address confidentiality program costs that pertain to improving the administration and security of federal elections.
- Grants to local governments to respond to the pandemic.

Because of the broad framework for determining permitted expenditures, it is perhaps more instructive to look at what expenditures are not allowed. Grants cannot be used for:

- Supplanting funds already allocated under a state or local budget. For instance, if state funding for printing absentee voter ballots is already budgeted or planned, grant funds can only be used for additional printings made in response to the pandemic. However, if state budgets have been cut due to revenue shortfalls caused by the pandemic, grant funding can be used for purposes that no longer have state funding support. EAC can

⁵ <https://www.eac.gov/>

⁶ <https://www.eac.gov/sites/default/files/paymentgrants/cares/CARESAwardInstructions.pdf>

review specific situations to determine whether a reduction in state funding occurred from budgetary necessity or because federal funds were available.

- Covering litigation costs or costs of lawsuits against a state related to actions taken in response to the pandemic. However, funds may be used to cover settlement costs if a lawsuit resulted in a judgment requiring the state to implement changes in the administration of elections to mitigate the impact of the pandemic on federal elections.
- Supporting staffing costs if the staff members are not providing needed support related to the pandemic. (Costs may partially qualify for grant funds in some situations.)
- Supporting election costs that do not improve the administration of an election for any federal office.
- Expenditures made after December 31, 2020.

OTHER HAVA ELECTION SECURITY GRANTS AND FUNDING

As indicated above, the \$400.0 million CARES Act appropriation was the second round of Election Security Grants in 2020, with the first being the \$425.0 million appropriated under the CAA of 2020. In addition to these two 2020 appropriations, the CAA of 2018 provided \$380.0 million for Election Security Grants. Including the CARES Act grants, there have thus been three appropriations to states for HAVA Election Security Grants since the last issuance of the original HAVA funding in 2011. The EAC is allowing money from each of the two earlier grants to be used for pandemic response if a state submits an amendment to its submitted spending plan and the EAC approves it. Both of the earlier HAVA appropriations required state matching dollars and state appropriation of the federal dollars. This section describes the uses, remaining balances, and state appropriation of funds for the Election Security Grants appropriated under the CAAs of 2018 and 2020.

2018 Election Security Grants

The Election Security Grants appropriated under the CAA of 2018 largely set the model for the following two appropriations. The purpose of the grants, as provided in the CAA of 2018 and repeated in the CAA of 2020, is to support “activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements.”⁷ Like HAVA grants issued under the CAA of 2020 and the CARES Act, the 2018 grants have state funding match and payment requirements, except that their matching requirement is 5%, compared to 20% for the later grants. The Michigan legislature appropriated \$10.7 million for Michigan’s full federal allocation and \$535,400 of state General Fund (GF/GP) revenue for the 5% match under 2018 PA 207. Of the \$535,400 GF/GP match, \$400,000 was transferred from a prior \$5.0 million GF/GP state appropriation from 2017 PA 158 for the purchase of voting machines, resulting in the appropriation of only \$135,400 in new funding. Unlike the CARES Act grants, grant expenditures under the CAAs of 2018 and 2020 do not have to be used for a single year’s election cycle, but remain available until they are spent. Section 901 of 2017 PA 158 authorized work project status for the 2018 HAVA grants to carry forward until September 30, 2022. As of October 6, 2020, DOS has expended \$974,900 of the federal funds.

2020 Election Security Grants

The \$425.0 million for HAVA Election Security Grants appropriated under the CAA of 2020 provide up to \$12.1 million for Michigan’s share of the grant program and require \$2.4 million for the 20% state match. The full amount of the federal funds was appropriated in the annual budget act, 2020 PA 166, under Article 14, which appropriated supplemental funding for FY 2019-20. No state dollars have been appropriated for the match requirement at the time of this writing. DOS reports that it plans to utilize local funding for voting machines, similarly to the CARES Act grant match, but matched with federal funds provided for under the CARES Act. DOS anticipates that it will be able

⁷ <https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf>

to secure sufficient local funds to meet the full match amount without needing a GF/GP appropriation. It is not yet known whether a GF/GP appropriation will eventually be needed to meet the match requirement.

Section 601 of Article 14 conditions the funding for both the 2020 Election Security Grants and the \$1.9 million in HAVA accrued interest, which was also appropriated under Article 14 and is described below. Section 601 authorizes the full \$13.9 million to carry forward until September 30, 2024, as a designated work project. Section 601 also provides the following:

- At least \$200,000 must be used to reimburse local and county election clerks for election drop box security for the 2020 November general election.
- No funds may be used for statewide ballot applications or absentee ballot mailings, but grants to local and county election clerks may be used for mailing-related expenses.
- Information from returned mail from previous ballot application mailings must be used for Qualified Voter File maintenance.

Accrued Interest on Original HAVA Grants

Following the 2000 presidential election, Congress passed HAVA to provide funds to help states and local election offices purchase new voting machines and to provide other resources to improve the security and reliability of federal elections. These grants were authorized under sections 101, 102, and 251 of HAVA. From 2003 to 2011, Michigan received \$104.2 million from these grants. Nearly \$8.0 million of interest accrued on the consolidated funds over the years following their issuance. Michigan appropriated \$4.0 million of the interest under 2018 PA 82 for the purchase of voting machines, and later that year the legislature approved an additional \$2.0 million as a contingency fund transfer under Legislative Transfer package 2018-8 to support ongoing Qualified Voter File contracted IT services. The remaining \$1.9 million was appropriated in the annual budget act, 2020 PA 166, under Article 14, which appropriated supplemental funding for FY 2019-20, as described above.

Amounts allocated for each of the grants discussed above and the remaining balances of each are shown below in Table 1.

Table 1: HAVA Election Grant Funding					
HAVA Grant	Federal Allocation	Requested Amount	State Match	Match Contributed	Remaining Balance *
CAA of 2018	\$10,706,992	\$10,706,992	\$535,400	\$535,400	\$9,732,143
CAA of 2020	12,053,705	11,999,001	2,399,800	0**	12,053,705
CARES Act	\$11,247,753	11,247,753	2,249,600	1,000,000**	3,007,404
Interest on Original HAVA Grants	NA	NA	NA	NA	1,855,000
Total	\$34,008,450	\$33,953,746	\$5,184,800	\$1,535,400	\$26,648,252

*As of October 6, 2020. Source: Statewide Integrated Governmental Management Applications.

** DOS plans to collect the remaining required match dollars from local match fund collections.

USES OF MICHIGAN HAVA GRANT FUNDING

States receiving federal grants are subject to financial and program audits under the Code of Federal Regulations, 2 CFR 200. To facilitate audits and to provide citizens, lawmakers, and election stakeholders with descriptions of how

states plan to use grant funding, the EAC requires states receiving HAVA grants to submit narrative summaries of their federal grant spending plan. The EAC did not require a narrative summary for CARES Act grants due to the emergent and urgent nature of those grants and their timeline. Below are the uses and planned costs for each of the three rounds of HAVA Election Security grants as provided by DOS in its EAC narrative statements and in its internal summary for the CARES Act grant.^{8,9}

CARES Act – \$11.2 million

- *Ballot Application Mailing* (\$4.2 million) – Covers costs of state/county/local absent voter ballot application mailing to reduce potential COVID-19 exposure.
- *Absent Voter Ballot Envelopes* (\$1.0 million) – Supports purchase of absent voter ballot envelopes to improve processing to reduce need for in-person interaction and potential COVID-19 exposure.
- *Disabled Voter Access* (\$1.5 million) – Provides access tools for absent voter ballots for voters with disabilities to reduce potential COVID-19 exposure.
- *Absent Voter Processing Support* (\$1.5 million) – Covers additional software and hardware support for local election officials to facilitate absent voter ballot processing, including tabulators, processing software, letter openers, and ballot drop boxes.
- *Public Information* (\$500,000) – Supports public education materials regarding access for safe voting to reduce potential COVID-19 exposure.
- *Personal Protective Equipment* (\$2.6 million) – Provides personal protective equipment (PPE) for election workers and in-person voters.

CAA of 2020 – \$12.0 million

- *Risk-Limiting Audits Support* (\$326,400) – Covers anticipated increased costs for future expansion of use of and support staff for software and assistance to implement post-election risk-limiting audits.
- *Teleworking Security Support for Local Clerks* (\$2.0 million) – Provides equipment and security upgrades to support local election clerks who will be teleworking and may have less access to local government network protections.
- *QVF Server Upgrades* (\$542,000) – Supports implementation costs and ongoing maintenance of qualified voter file server upgrades to handle increased functionality and usage of systems.
- *Voter Registration Database Security Upgrades* (\$1.5 million) – Upgrades voter registration database security to support new functionalities with automatic voter registration, online voter registration, provision of voter information, and voter registration database list maintenance.
- *Ballot Tracking Software* (\$400,000) – Supports vendor costs for implementation and support of mail ballot tracking software.
- *Local and County Security Training* (\$1.0 million) – Supports costs for staff time, training materials, and recruitment efforts for local and county security training and recruitment into Information Sharing and Analysis Centers (ISACs).
- *Local Election Security Equipment* (\$750,000) – Supports software and hardware upgrades for local and county clerks.
- *Personal Protective Equipment* (\$1.3 million) – Supports sourcing and purchasing PPE for election workers.
- *Election Night Reporting Security* (\$2.0 million) – Supports security upgrades to election night reporting systems.
- *Local and County Network Security Upgrades* (\$2.2 million) – Supports endpoint and network security for local and county government networks and websites.

⁸ https://www.eac.gov/sites/default/files/havadocuments/MI_Narrative_Budget_Final.pdf

⁹ https://www.eac.gov/sites/default/files/paymentgrants/narrative2020/MI_20ES_Program_Narrative.pdf

CAA of 2018 – \$11.2 million (includes state match)

- *Cyber Security Assessments* (\$5.5 million) – Supports costs for security assessments at the state and local levels and security-related products and dedicated resources.
- *QVF System* (\$3.1 million) – Supports security enhancements to the qualified voter file, including a security protocol with multifactor authentication, geospatial addressing structure, and data validation.
- *Communications, Training, and Auditing* (\$1.6 million) – Supports election security training, procedural reviews, post-election audits, and state-local election security, disaster recovery, and communication plans.
- *Election Night Reporting* (\$1.0 million) – Supports upgraded interactive and secure statewide election night reporting system.

REPORTING REQUIREMENTS

The CARES Act imposes reporting requirements on states that receive Election Security Grants. Each state must provide to the EAC “a report that includes a full accounting of the State’s uses of the payment and an explanation of how such uses allowed the State to prevent, prepare for, and respond to coronavirus.” This report is required for each federal election in 2020 and is due within 20 days after the date of the election. For Michigan, these reports are due August 24 for the congressional primary election and November 23 for the general election. States that conducted their presidential primary election before receiving the CARES Act grant (as did Michigan) do not have to submit a report for that election.

States must also submit two reports after the close of the grant period that are due on February 28, 2021. The first is a Federal Financial Report, for the period ending December 31, 2020, to be used by the EAC to identify any unexpended grant funds that must be returned to the U.S. Treasury. The second is a Progress Report, which is due if the state has satisfied its matching requirement by December 31, 2020.

The state also requires two reports related to the CARES Act grants. Section 302 of 2020 PA 67 requires notification when budget authorization related to federal COVID-19 revenue is approved by the State Budget Office in SIGMA, the state’s accounting system, within 10 days after the approval. The notification must be sent to the chairs of the House and Senate appropriations subcommittees that have jurisdiction over the expended funds and the House and Senate Fiscal Agencies. The second report is required by section 215 of 2020 PA 67, which states simply that the State Budget Director “shall report on the status of funds” to the chairs of the House and Senate appropriations committees on a biweekly basis through September 30, 2020.¹⁰

PROPOSED HEROES AND HEALS ACTS

On May 15, 2020, the U.S. House of Representatives passed H.R. 6800, a new round of proposed stimulus funding in response to the pandemic known as the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. The HEROES Act is a supplemental appropriations bill that contains an additional \$3.6 billion appropriation for EAC-administered election grants to states under the name “Election Resilience Grants.” Like the CARES Act Election Security Grants, the Election Resilience Grants are a supplemental to the CAA of 2020. However, the HEROES Act would amend certain administrative provisions for the Election Resilience Grants and would also revise provisions for Election Security Grants in the CARES Act and the CAAs of 2018 and 2020.

The EAC has not yet published how the \$3.6 billion would be allocated and what Michigan’s share would be. The HEROES Act also provides that 50% of all funds received by a state must be distributed to local election offices. Furthermore, the HEROES Act would eliminate the state match requirement for both Election Resilience Grants and

¹⁰ <http://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2020-PA-0067.pdf>

CARES Act Election Security Grants. Other changes include revising reporting requirements and allowing CARES Act funds to be spent beyond December 31, 2020, through September 30, 2021.

The Health, Economic Assistance, Liability Protection and Schools (HEALS) Act is the U.S. Senate counterproposal to the HEROES Act for new COVID-19 relief measures. The HEALS Act contains no additional funding for election grants and does not amend any provisions of the CARES Act or the CAA of 2020. No new federal relief package has been enacted at the time of this writing. As the November general election draws closer, it is increasingly uncertain whether an additional round of election security grants will be issued.

CONCLUSION

The COVID-19 pandemic quickly and significantly disrupted how elections are conducted in 2020 and may impact election administration for many years to come. In a field where reliability, accuracy, timeliness, and security are demanded for public trust, abrupt changes can come with heightened challenges and costs. The CARES Act Election Security Grants provided fast support to address new costs such as those for additional mailing, postage, printing, absent voter ballots, tabulators, PPE, and technology enhancements. However, some have questioned whether this funding is enough. The Brennan Center has estimated that \$4.0 billion in total is needed nationally to respond to election needs following the pandemic.¹¹ Michigan Secretary of State Jocelyn Benson, in testimony submitted on June 3, 2020, to the U.S. House of Representatives Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Civil Liberties, estimated that Michigan needs \$40.0 million in total to prepare for the August and November elections during the pandemic.¹² Secretary Benson cited PPE, voting equipment to process absentee ballots, postage, and mailing supplies among anticipated costs that are not yet funded.

In an effort to provide states with the support and flexibility they may need to respond to the pandemic while also navigating significant revenue shortfalls, the EAC has allowed states to use funds from the 2018 and 2020 HAVA Election Security Grants for pandemic-related costs. While DOS has submitted detailed plans for these funds based on election administration priorities identified before the pandemic, it can amend those plans to repurpose the funds for any new priorities identified following the pandemic. DOS has not yet determined whether it will request to amend any of its current spending plans. It is unclear whether new priorities will eventually need to be weighed against prior ones, particularly with the uncertainty over final approval of any new federal election grants.

Federal HAVA grants have supported administrative costs of state and local election offices since 2003, and states have had broad discretion on how to spend those funds. With the enactment of three new rounds of Election Security Grants under the CAAs of 2018 and 2020 and the CARES Act, and with any potential new COVID-19 relief acts, states will continue to have federal election financial support along with the responsibility to determine the needs and uses for those funds.

¹¹ <https://www.brennancenter.org/our-work/research-reports/estimated-costs-covid-19-election-resiliency-measures>

¹² https://www.michigan.gov/documents/sos/Secretary_of_State_Jocelyn_Benson_-_US_House_Judiciary_Committee_Testimony_06-03-20_692822_7.pdf