



U.S. Election Assistance Commission
633 3rd St. NW, Suite 200
Washington, DC 20001

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of:)
)
Adopting the Recommendation on the)
Allowability of Funds to Counter AI-generated)
Election Disinformation Under EAC Policy)
Regarding Authority to Issue Funding Decision)
on Use of HAVA Funds)

CERTIFICATION

I, Christy McCormick, Chairwoman of the Election Assistance Commission, do hereby certify that on February 14, 2024 the Commission decided by a vote of 4-0 the following action(s):

1.

The Commission has adopted the Recommendation on the Allowability of Funds to Counter AI-generated Election Disinformation Under EAC Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds. This vote confirms that states may use HAVA Election Security Grant Funds to counter foreign influence in elections, election disinformation, and potential manipulation of information on voting systems and/or voting procedures disseminated and amplified by AI technologies as an allowable cost under HAVA Sec. 101(b)(1)(B). Additionally, states may fund voter education and trusted information communications on correct voting procedures, voting rights, and voting technology to counter AI-generated disinformation under HAVA Sec. 101(b)(1)(C).

Commissioners McCormick, Hovland, Palmer, and Hicks approved the recommendation.

Attest:

2/14/2024

Date

Christy McCormick
Chairwoman



U.S. Election Assistance Commission
633 3rd St. NW, Suite 200
Washington, DC 20001

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: Tuesday, February 13, 2024, at 12:00 PM

BALLOT DEADLINE: Thursday, February 15, 2024, at 12:00 PM

COMMISSIONERS: McCormick, Hovland, Palmer, and Hicks

SUBJECT: Approving the Recommendation on the Allowability of Funds to Counter AI-generated Election Disinformation Under EAC Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds Confirming that Election Security Grant Funds May be Used to Counter Foreign Influence in Elections, Election Disinformation, and Potential Manipulation of Information on Voting Systems and/or Voting Procedures Disseminated and Amplified by AI Technologies

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: _____

DATE: 2/14/2024

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return **ONLY THE BALLOT** to the Office of General Counsel. Please return the ballot no later than date and time shown above.

From: Camden Kelliher, EAC Acting General Counsel



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- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: _____

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- (x) I approve the recommendation.
- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: _____

DATE: 2.13.24

SIGNATURE: 

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- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: _____

DATE: 2/13/2024

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return **ONLY THE BALLOT** to the Office of General Counsel. Please return the ballot no later than date and time shown above.

From: Camden Kelliher, EAC Acting General Counsel



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MEMORANDUM

TO: Commissioners McCormick, Hovland, Palmer, and Hicks
FROM: Camden Kelliher, EAC Acting General Counsel
DATE: February 13, 2024
RE: Allowability of Funds to Counter Election Disinformation Generated by Artificial Intelligence Under EAC Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds

BACKGROUND

In 2015 the Commission adopted the, “Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds” (Funding Decision Policy). The Funding Decision Policy replaced the Advisory Opinion Process originally adopted by the EAC on April 16, 2008. The Funding Decision Policy explains that the Commissioners may consider any request related to questions of law and factual issues related to HAVA when:

- (1) The legal issue is novel, complex and pertains to an unsettled question of law or interpretation of the HAVA statute; or
- (2) The issue relates to an expenditure of HAVA funds that has not been previously addressed by OMB, the grant provisions or the EAC and for which it is determined to have significant policy implications for the implementation of HAVA; or
- (3) There has been intervening legislation, rulemaking, or litigation since the EAC last considered the issue; or
- (4) The request is contrary to or otherwise inconsistent with prior EAC matters dealing with the same issue.

The EAC Office of General Counsel, in consultation with the Commissioners, shall determine the eligibility of questions presented under these four categories.

QUESTION PRESENTED

The EAC Office of General Counsel has concluded that there is currently a question before the agency, appropriately presented United States Senators Amy Klobuchar and Susan M. Collins, that is ripe for review under the Funding Decision Policy. That question is summarized as follows:

Can HAVA Election Security Grants be used to counter election disinformation generated by Artificial Intelligence (AI) technologies?

RECOMMENDATION

Under the Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds, the EAC Commissioners should consider whether a state may use Election Security Funds to counter election disinformation generated by AI. As documented in the supporting memorandum provided by the Office of General Counsel, there are important policy considerations involved in this determination. This is highlighted by the changing election administration landscape and the growing threat of election disinformation.

Because the EAC has discretion over what constitutes an “improvement”, I recommend that the Commission consider expenditures to counter foreign influence in elections, election disinformation, and potential manipulation of information on voting systems and/or voting procedures disseminated and amplified by AI technologies as an allowable cost under HAVA Sec. 101(b)(1)(B). Additionally, because HAVA Sec. 101(b)(1)(C) allows for voter education, I recommend that the Commission consider expenditures to fund voter education and trusted information communications on correct voting procedures, voting rights, and voting technology to counter AI-generated election disinformation as allowable.

Attachment.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

MEMORANDUM

TO: EAC Commissioners McCormick, Hovland, Palmer, and Hicks
FROM: Camden Kelliher, EAC Acting General Counsel
DATE: February 13, 2024
RE: Guidance on the Use of HAVA Funds as it Relates to Countering Election
Disinformation Generated by Artificial Intelligence

The Election Assistance Commission (EAC) Office of the General Counsel (OGC) is providing this memorandum regarding the use of Election Security Grant funds to counter potential threats from artificial intelligence (AI). Specifically, this memorandum recommends that the Commission confirm that it is allowable to use Election Security Grants to fund voter education and trusted information communications on correct voting procedures, voting rights, and voting technology. Additionally, states may use Election Security Grants to counter foreign influence, disinformation, or potential manipulation of information on voting systems and/or voting procedures that may be disseminated and amplified by AI technologies.

EAC FUNDING DECISION POLICY

In 2015 the Commission adopted the, “Policy Regarding Authority to Issue Funding Decision on Use of HAVA Funds” (Funding Decision Policy). The Funding Decision Policy replaced the Advisory Opinion Process originally adopted by the EAC on April 16, 2008. The Funding Decision Policy was adopted, “to provide a means for persons and entities to have legal or factual questions related to the implementation of Help America Vote Act of 2002 (HAVA) considered by Commissioners outside of EAC's audit resolution process.” The Funding Decision Policy is not intended to replace or disrupt the role of the Office of Grants Management (OGM), which is responsible for issuing guidance, support and, when appropriate, approval/denial of certain expenditure of Federal funds under HAVA and the relevant Office of Management and Budget (OMB) Circulars found in 2 C.F.R. Parts 220, 225, 215, and 230. The approval package of the Funding Decision Policy specifically maintains that OGM will respond to day-to-day and routine HAVA questions that do not have policy implications.

To distinguish what questions are outside of the “day-to-day and routine HAVA questions,” the policy explains that the Commissioners may consider any request related to questions of law and factual issues related to HAVA when:

- (1) The legal issue is novel, complex and pertains to an unsettled question of law or interpretation of the HAVA statute; or
- (2) The issue relates to an expenditure of HAVA funds that has not been previously addressed by OMB, the grant provisions or the EAC and for which it is determined to have significant policy implications for the implementation of HAVA; or

(3) There has been intervening legislation, rulemaking, or litigation since the EAC last considered the issue; or

(4) The request is contrary to or otherwise inconsistent with prior EAC matters dealing with the same issue.

The EAC Office of General Counsel, in consultation with the Commissioners, shall determine the eligibility of questions presented under these four categories.

QUESTION PRESENTED

On January 30, 2024, the EAC received an inquiry from United States Senators Amy Klobuchar and Susan M. Collins. That inquiry expressed concerns about the use of AI-generated election disinformation and requested that the EAC take additional steps to assist election officials' response to this novel threat. Specifically, the Senators requested, "comprehensive guidance to state and local election administrators about how they can defend against AI-generated disinformation." Comprehensive guidance would include a policy on the use of HAVA funds on the topic. Therefore, the question presented on HAVA funding is as follows:

Can HAVA Election Security Grants be used to counter election disinformation generated by Artificial Intelligence (AI) technologies?

APPLICABILITY OF POLICY TO QUESTION PRESENTED

OGC has determined that this is clearly a novel interpretation and therefore fits under section one of the Funding Decision Policy. The EAC adopted this Policy with the intent that "substantive questions with policy implications from HAVA stakeholders are routed through the General Counsel's office to Commissioners for consideration and possible response." The Congressional Research Service (CRS) has highlighted that the election administration landscape has changed significantly since the passage of HAVA in 2002.¹ CRS also noted that foreign efforts to interfere with the 2016 election highlighted security as a primary consideration for elections policymaking.² Here, Senators Klobuchar and Collins, as HAVA stakeholders, have presented the EAC with a question on a new technology in the form of AI. Therefore, the Commissioners may consider the question presented under the Funding Decision Policy.

ANALYSIS

HAVA Sec. 101 sets forth the allowable use of funds for a payment made to states under that section.³ The allowable use of funds includes and is limited to: (A) Complying with the requirements under subchapter III [of HAVA]; (B) Improving the administration of elections for federal office; (C) Educating voters concerning voting procedures, voting rights, and voting technology; (D) Training election officials, poll workers, and election volunteers; (E) Developing the State plan for requirements payments to be submitted under subpart 1 of part D

¹ Congressional Research Service, "The Help America Vote Act of 2002 (HAVA): Overview and Ongoing Role in Election Administration Policy" (R46949, May 8, 2023).

² *Id.* at 20.

³ 52 U.S.C. § 20901

of subchapter II [of HAVA]; (F) Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes; (G) Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language; (H) Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.⁴

Of note, the EAC previously released guidance titled, *Allowable Use of Funds: Physical Security Services and Social Media Threat Monitoring*. That guidance determined that physical security services and online threat monitoring improved the administration of federal elections and were thus allowable under HAVA Sec. 101(b)(1)(B).⁵ The analysis in that guidance regarding the use of funds for physical security services and social media threat monitoring is applicable and analogous to using funds for AI to protect against disinformation. Additionally, countering election disinformation qualifies as allowable under HAVA Sec. 101(b)(1)(C), “[e]ducating voters concerning voting procedures, voting rights, and voting technology.”

Allowable Use of HAVA Funds Under Sec. 101(b)(1)(B)

In the January 30, 2024, inquiry to the EAC, Senators Klobuchar and Collins identified concerns regarding the use of AI to spread disinformation about elections. Specifically, they cited instances of AI being used to generate robocalls using the President’s voice to tell people not to vote and other instances of AI-generated deepfakes that deceptively show candidates saying things they never said. As such, there is a significant bipartisan concern that this deceptive AI-generated content poses challenges to state and local election officials in their abilities to effectively administer elections.

The EAC is within its discretion to determine that expenditures related to countering AI disinformation are allowable under HAVA Sec. 101(b)(1)(B) for “[i]mproving the administration of elections for federal office.” The U.S. Government Accountability Office (GAO) previously determined that the EAC has discretion to determine what qualifies as an “improvement.”⁶ The EAC previously determined that funds expended under HAVA Sec. 101(b)(1)(B) for physical security services and social media threat monitoring were allowable and improved the administration of federal elections.⁷ Given that there is past precedent of the EAC finding that expenses related to social media and cybersecurity⁸ are allowable, it would be reasonable to

⁴ 52 U.S.C. § 20901(b)(1)(A-H)

⁵ See US EAC, *Allowable Use of Funds: Physical Security Services and Social Media Threat Monitoring* (2022), https://www.eac.gov/sites/default/files/paymentgrants/Allowable_Use_of_Funds_Physical_Security_Services_and_Social_Media_Threat_Monitoring_EAC.pdf

⁶ U.S. Gov’t Accountability Off., B-333826, *Election Assistance Commission—Use of Grant Funds for Security Services* 5 (April 27, 2022)

⁷ See *Allowable Use of Funds: Physical Security Services and Social Media Threat Monitoring*

⁸ See US EAC, *EAC Grants Guidance: Allocability of Cybersecurity Enhancements* (2023), https://www.eac.gov/sites/default/files/2023-08/EAC_Grants_Guidance_on_the_Allocability_of_Cybersecurity_Enhancements.pdf

conclude that expenditures related to countering AI-generated disinformation are allowable under HAVA Sec. 101(b)(1)(B).

Allowable Use of HAVA Funds Under Sec. 101(b)(1)(C)

Under HAVA Sec. 101(b)(1)(C), states may use HAVA funds for “[e]ducating voters concerning voting procedures, voting rights, and voting technology.” Notably, voting procedures, voting rights, and voting technology are not defined by HAVA, and the EAC has discretion to determine their scope under (C). As such, EAC is within its discretion to determine that expenses related to countering AI disinformation regarding elections are allowable under (C). Therefore, it would be reasonable to conclude that states may fund voter education and trusted information communications on correct voting procedures, voting rights, and voting technology to counter AI-generated disinformation.

Cost Allocation

The allocation of an expense depends on whether it is expender under Sec. 101(b)(1)(B) or Sec. 101 (b)(1)(C). In short, an expense under (B) must be properly allocated between federal and non-federal activities. An expense under (C) is fully allocable to HAVA funding if it is allowable and solely for the stated purpose of subsection (C). Unlike subsection (B), (C) does not contain the word “federal.” As such, costs under (C) are fully allocable to HAVA funding if they are solely for the stated purpose of subsection (C). However, if a cost is allowable and confers a benefit to the state/territory for an additional non-election related purpose, then the cost must be allocated based on the proportional benefit between the election and non-election related purposes. EAC OGM has discretion to determine if an allowable cost may be fully allocated to HAVA under (C).

Reasonable and Necessary

Expenses under HAVA must also be reasonable and necessary. A cost is considered reasonable if, by its nature and amount, it does not exceed what a prudent person would pay under the circumstances. This can be based on frequency of use, actual cost for the products, and other relevant factors.⁹ Generally, the necessity of a cost can be questioned when a less expensive but equally effective alternative is available for use.

RECOMMENDATION

Under the Policy Regarding Authority to Issue Funding Decision on use of HAVA Funds, the EAC Commissioners should consider whether a state may use HAVA Election Security Grants be used to defend against AI-generated disinformation. As documented in this memorandum, there are important policy considerations involved in this determination. This is highlighted by the changing election administration landscape and the growing threat of election disinformation.

Because the EAC has discretion over what constitutes an improvement, I recommend that the Commission consider expenditures to counter foreign influence, election disinformation, and potential manipulation of information on voting systems and/or voting procedures disseminated and amplified by AI technologies as an allowable cost under HAVA Sec. 101(b)(1)(B).

⁹ 2 CFR 200.404

Additionally, because HAVA Sec. 101(b)(1)(C) allows for voter education, I recommend that the Commission consider expenditures to fund voter education and trusted information communications on correct voting procedures, voting rights, and voting technology to counter AI-generated election disinformation as allowable.