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

EAC GRANTS GUIDANCE:
ALLOCABILITY OF CYBERSECURITY ENHANCEMENTS

In July 2023, the U.S. Election Assistance Commission (EAC) voted unanimously to consider allowable cybersecurity enhancements direct costs and allow full allocability under HAVA Section 101(b)(1)(F) when the costs are reasonable and necessary and when the cost is incurred specifically for the purpose of benefitting election administration. The vote was conducted under the Policy Regarding Authority to Issue Funding Decisions on Use of HAVA Funds and does not change the applicability of the Uniform Guidance (2 CFR Part 200) to EAC grant funding.

In accordance with the Commissioner decision, available here, the EAC Office of Grants Management, in consultation with the Office of General Counsel, has developed the following guidance on the proper application of this decision and how states may attest and document that expenditures qualify as direct costs for the purpose of allocation.

ALLOWABLE

> *The Cybersecurity and Infrastructure Security Agency (CISA) defines cybersecurity as: "the art of protecting networks, devices, and data from unauthorized access or criminal use and the practice of ensuring confidentiality, integrity, and availability of information."*

The EAC has previously determined that cybersecurity enhancements are allowable under HAVA Section 101(b)(1)(F) which identifies allowable costs for "improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes". To be allowable under a grant, costs must be necessary, reasonable, and allocable to the grant. An allowable cost is one that is necessary and reasonable for the proper and efficient performance and administration of the activities funded under the grant.

The Commissioner decision specifically addresses the allocability of allowable cybersecurity enhancement costs. Past guidance provided by the EAC regarding whether specific cybersecurity activities are allowable continues to apply.

ALLOCABLE

An allocable expense is one that is directly related to the objectives and activities planned under the grant and included in the approved budget for the grant. Under this decision, cybersecurity enhancements must be reasonable, necessary, and incurred specifically for the purpose of benefitting election administration to be fully allocated to HAVA funding. The decision impacts how the EAC determines the allocability of specific cybersecurity costs.

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When a direct cost benefits two or more projects or activities, the EAC must apply the direct allocation cost principles described in the Uniform Guidance (2 CFR 200.405) which requires grantees to allocate costs based on the proportional benefit.

Due to the nature of cybersecurity enhancements, the proportional benefit to two or more projects typically cannot be determined because of the interrelationship of the work involved. Per the Uniform Guidance, those costs may be allocated to benefitted projects on any reasonable basis. When cybersecurity enhancement costs are incurred specifically for election purposes, it is reasonable to consider the benefit as entirely election related and therefore, fully allocable to HAVA. However, this is not a blanket rule that covers all cybersecurity enhancement costs. The EAC has discretion to determine if an allowable cost may be fully allocated to HAVA.

States must seek approval from the EAC when the allocability of an allowable cost is in question. The following parameters apply in determining when agency approval is required.

1. Allowable cybersecurity costs that solely benefit election administration are 100% allocable to HAVA and do not require additional consideration from the EAC. The EAC has previously determined that costs that are allowable under HAVA Section 101(b)(1)(F) do not need to be allocated based on the benefit to federal versus local election administration.

2. Allowable cybersecurity costs that benefit election administration as well as non-election activities (e.g. a firewall for a network that houses both the statewide voter registration system and databases for the Department of Motor Vehicles) may be 100% allocable to HAVA if the state can attest that the costs have been incurred specifically for election purposes. When a cost has an identifiable non-election benefit, states must email the EAC Office of Grants Management (grants@eac.gov) for clearance and approval to allocate the full cost to their HAVA grant (See Appendix A).

Additional instructions for completing and submitting a request for the EAC to consider the allocability of a cybersecurity enhancement are provided in the attached appendices. The approval process is applicable to planned future expenditures as well as past expenditures.

REASONABLE and NECESSARY

State recipients who are considering expenses related to cybersecurity enhancements must document any existing security measures available, an assessment of cost of various options to establish reasonableness, and a description of the primary benefits to election administration as well as any secondary benefits to non-election activities.

Although an activity may achieve the end goal of improving the administration of federal elections, the necessity for that activity could be questioned when a less expensive but equally effective activity is available for use. An expense would likely not be considered reasonable if a less expensive but equally effective alternative was available. There may be other cybersecurity options that are more reasonable

cost solutions and/or options that provide protection that allows for the improved administration of elections. States must document how they determined that their cybersecurity strategy is the most reasonable solution. 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. Expenditure towards cybersecurity enhancements would be analyzed similarly to other expenditures for reasonableness. See 2 CFR 200.404.

SUPPLANTING

In general, funding for any activity must not supplant state funds. Allowable costs would not include cybersecurity enhancements that are currently paid for with state or local election jurisdiction funds, such as state or local antivirus software.

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APPENDIX A: JUSTIFICATION AND REQUEST FOR APPROVAL

All states and territories that plan to fully allocate cybersecurity costs for elections must contact the EAC Office of Grants Management at grants@eac.gov to determine next steps and eligibility.

HAVA Grantees who wish to fully allocate cybersecurity enhancements that provide secondary benefits to non-election activities should provide in writing a request to the EAC that includes the following:

1. Description of the cybersecurity enhancements including:
   - Date(s) expenses were/will be incurred
   - A description of the product deliverables

2. Explanation of the primary benefit to election administration and any secondary benefits to non-election activities.

3. Justification for costs. Please explain why these enhancements are reasonable and necessary for the security of elections in your jurisdiction(s).

Upon receipt of written approval from the EAC, grantees will be required to complete and submit an attestation that the allocated costs were incurred with the objective of improving elections administration and technology (APPENDIX B). Grantees should maintain all communications and written approvals in their records to ensure the appropriate documentation is available in case of an audit.

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APPENDIX B: SAMPLE ATTESTATION

August 8, 2023

This letter is to confirm that the cybersecurity enhancements described below and first incurred on DATE by STATE or TERRITORY were undertaken with the objective of improving voting systems and/or technology and for the benefit of elections security. These costs and their justification have been approved in writing by the Election Assistance Commission (EAC).

Cybersecurity enhancements referenced in this attestation include:

Description of cybersecurity enhancements and benefits.

I certify that the above statements are true and accurate to the best of my knowledge and information.

Signature

Name

Title