

2020 CARES Act Grant Frequently Asked Questions

Are legal expenses for litigation necessitated by changes to the election due to coronavirus eligible CARES expenses?

HAVA, in Section 101(b)(2), specifically states that 101 *funds cannot be used to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a payment under this section.* Therefore, they cannot be used to cover the costs of a lawsuit brought against an action the state takes such as moving a primary or changing voting processes. However, if the litigation pertained to a state's actions to mitigate the effects of the pandemic on federal elections and the litigation resulted in a judgement or order requiring the state to implement certain changes in their administration of those elections, the funds could be used to carry out those required changes.

If the CARES Act is a supplement to the December funds under 101, why can't we use these funds also for improving the administration of elections? Also, the supplemental is very specific on use but makes no mention of HAVA or the 20%. Why would we be held to the specific limitations on use, but be forced to pay a 20% that is not mentioned in the language? It seems like that is two very different legal interpretations.

When the CARES Act was passed, EAC sought guidance from OMB and reviewed applicable law related to supplemental appropriations. EAC confirmed that requirements set forth in the original appropriations apply to supplemental appropriations along with all requirements set forth in the supplemental appropriation. As a result, the 20% match requirement still applies along with the much more specific use of the funds described in the CARES Act.

How can states use the funds?

The CARES Act is very specific about the use of the funds. They must be used “*to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.*” The award instructions and EAC’s Guidance on Use of HAVA Funds for Expenses Related to COVID-19 provide many examples and answer questions about the use of CARES Act and other HAVA funds to address the pandemic. See the EAC website for the guidance at: <https://www.eac.gov/election-officials/guidance-use-hava-funds-expenses-related-covid-19>.

We usually place state matching funds in the same fund with the federal grant. Is that required for CARES Act matching funds?

States are not required to place Section 101 state matching funds in the same fund with the federal funds. As a result, states can meet their matching requirements with funds within their existing budget authority.

Are these funds only to be used for the fall election or can the CARES Act funds be used for the Presidential Preference Primary?

The funds can be used for any 2020 federal election which includes Presidential primaries, Congressional primaries and the November general election.

Are states required to request and accept the funds?

No, states are not required to accept the funds. States that choose not to do so, should notify EAC with the reason via email to the CARESFunding@eac.gov email address.

What is supplanting?

Generally, supplanting occurs when a state or local government reduces state or local funds for an activity specifically because federal funds are available or expected to be available to fund that same activity. Supplanting of state funds with HAVA funds is not permitted. Federal funds must be used to supplement existing state or local funds and may not replace state or local funding that has been appropriated or allocated for the same purpose or that is required by law.

Can pre-award costs be federal expenditures, or only used as state match?

Any allowable costs you incur prior to March 28, 2020 and after January 20, 2020, the date the Public Health Emergency was declared, can be claimed as either federal or state match expenditures.

We currently do not pay for county outbound postage for mailed ballots, but may do so for 2020 because counties are strapped for funds. Can I pay for postage this year with the CARES money?

Yes, you are providing the funds this year as a response to the pandemic. One caution, if you plan to continue the practice for all future elections, it is not a one-time response to the pandemic.

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the state takes such as moving a primary or changing voting processes. However, if the litigation pertained to a state's actions to mitigate the effects of the pandemic on federal elections and the litigation resulted in a judgement or order requiring the state to implement certain changes in their administration of those elections, the funds could be used to carry out those required changes.

Our state plans to expand mail voting and absentee ballot services for the 2020 presidential election as a result of the pandemic. Are we required to make this process accessible for voters with disabilities?

Yes. HAVA requirements related to equal access to voting for individuals with disabilities do not change because of the pandemic. Voters with disabilities must be able to vote privately and independently. Any improvements to systems, equipment and election processes must address accessibility for voters with disabilities. The EAC - CISA working group document on eballot delivery is a good source for more information. EAC will be hosting a virtual discussion in the coming weeks to discuss best practices and proven successes to further assist voters with disabilities and the election officials who serve them.

Are we able to utilize CARES Act funds to assist voters with disabilities during the COVID crisis?

Yes, you may use CARES grant funds to cover increased costs that result from the pandemic needed to ensure voting by persons with disabilities. The costs must be in response to the effects of the pandemic on accessibility related to the 2020 elections. You may use funds available under the 2018 and 2020 Election Security grants for more general costs associated with ensuring voters with disabilities have secure ways to vote privately and independently.

Would expenses related to in-person candidate filing for federal offices be allowable? Something like a laptop or computer that could be set up to allow candidates to file in person, while still following social distancing guidelines between the candidate and elections staff.

Costs associated with candidate filings for federal office are defined as part of the voting system under Title III of HAVA. If the use of laptops to allow candidates to file electronically improves the administration of federal elections and makes them more secure, the costs are allowable under your 2018 and 2020 Election Security grants. If you are expending the funds to alter or modify processes to protect federal candidates and election staff from coronavirus-related concerns, they are allowable costs with CARES Act funds.

A few of our counties (subrecipients) have asked if they can use CARES funds to bring furloughed non-election employees back to work to support elections. Example is in-house printing operations staff who were furloughed. Would this be allowable?

If the staff are coming back to work on activities related to the 2020 federal elections as a result of the pandemic, the costs would be allowable. For example, if they are needed to manage printing unanticipated large numbers of ballots. If they return to work and are not providing support needed related to federal elections issues related to the pandemic, the costs would not be allowed. The state should make those determinations based on the statutory requirement that funds be used *to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.*

Can we use state-appropriated funds for COVID prevention and treatment (not election-specific) as our state match?

State match funds can come from any source, but the expenditures being claimed as match cannot be for costs that are not associated with expenditures resulting from the effect of the pandemic on federal elections. For example, if the state-appropriated funds are for cleaning and preparing schools to re-open, those funds can't be claimed as match on the grant. If the state appropriation can be used by the elections office for federal elections, then, yes, they can be used as match as long as they are for allowable costs related to the pandemic and are properly supported.

We have most employees teleworking, but some employees are required to physically work on site. They are state-funded positions. They are eligible for time-and-a-half for having to report onsite during the pandemic. Can these overtime costs apply toward state match?

Yes, the overtime costs are in response to the pandemic and allowable as match as long as the staff are working on activities related to the pandemic.

We purchased laptops to enable elections employees to telework during the pandemic. Do these become federal equipment subject to annual inventory? Is it better to use the expenditures to meet the state match?

You can claim the expenditures as either federal funds or match funds and in both cases should follow your state procedures for inventory. Keep in mind, that the definition of equipment under 2 CFR 200 is any equipment with a unit value over \$5,000. Therefore, laptop computers are not considered equipment under federal grants. Your state may have a lower threshold for defining equipment.

Is the general improvement of voting by mail (VBM) (adding mail tracking, electronic cure, etc.) a qualifying expense -given that people are relying more on VBM than in past elections?

With CARES funds you can only cover costs that you are incurring as a result of the pandemic. If there are other costs you incur that more generally improve VBM, you should use your 2018 and 2020 grant funds.

Would this grant be kept separately from the other grant that we received, or would it be combined with the previous one?

EAC issued the grant as a separate award because the funds are for a very specific project, but the funds don't have to be held in a separate account. States deposit the funds in the State Election Fund with other EAC federal funds, but must be able to report on them separately, including reporting on interest earned on these funds separately from interest earned in the State Election Fund on other HAVA funds. States must track the funds separately and report on a separate FFR from the other EAC grants.

If a state has a larger match for CARES than needed, can it use this surplus in-kind match for the 2020 Consolidated Appropriations Act Election Security grant?

Any funds used as match under a grant must be used for allowable activities under the specific grant. If you have funds in your existing state budget that you will spend on allowable activities under your 2020 Election Security grant, you may use those funds as match.

What are in-kind contributions, and can they be used to meet the matching requirement for Election Security grants?

In-kind contributions are costs covered by a third-party for eligible activities under the grant, e.g., costs for training approved as part of the grant activities and paid for by another agency. Grantees must document these kinds of contributions. They can be used to meet the match requirements for 101 grant funds (including Election Security grants) if the grant has a matching requirement.

Will activities funded with original HAVA funding (funding prior to the 2018 appropriation) that have since been absorbed by the state or local jurisdictions qualify as in-kind match?

In-kind match is always a contribution by a third party. Expenditures that the state incurs through its own budget are cash match, they are paid directly from its own accounts. Expenditures the state incurs,

regardless of whether they were formerly paid for with federal funds, can be counted as state match as long as they are expended for activities within the approved budget for the grant (allocable to the grant).

Can the state use federal stimulus dollars for the state match?

No, Section 200.306 of 2 CFR stipulates that federal funds provided to a grantee under another award cannot be used to match other federal funds.

Our state's statutes require state and all local governments to pass balanced budgets each year. With revenues dropping due to COVID-19, many governments in our state will have to cut budgets to meet the balanced budget requirement. If a local election board's budget is cut due to COVID19 revenue losses, can CARES Act money be used to restore any of that funding? Or does the prohibition on supplanting local funding prevent that? For example, cuts that reduce the printing or postage budgets that impact absentee vote by mail.

In general, federal funds cannot supplant state and local funds. However, in the current pandemic, states may cut budgets out of necessity, not because there are cases in which they have identified federal funds to replace state funds. States can contact EAC to review the specifics of their situation to determine if federal funds are being used to supplant state funds.

Can we use the value of media coverage as in-kind match for the CARES and 2020 Election Security grants?

This addresses the use of airtime and other media donations as match on the grants. It covers both how to determine if the media coverage is an allowable activity under the grants and what the state must maintain to support the value of the donation. In these cases, the costs are considered an in-kind donation because they have been provided at no cost, or reduced cost, to the agency by a third party.

As always, the state must determine if the costs are reasonable, necessary, and allocable to the grant. Costs related to voter education are an allowable expenditure under HAVA grants. The items procured must provide information on voting procedures, rights, or technology. During the pandemic, states will need to communicate with voters about changes in voting procedures in the state. Therefore, costs of educating voters about those procedures would be an allowable cost. Items intended to “get out the vote” or merely encourage voting do not meet this requirement. Nor can states use the value of interviews with state staff or officials, unless the topics are about voting procedures, rights, or technology. Interviews designed to highlight partisan voting issues or political campaigns are not allowable; the interviewee should not be a candidate for public office as this would appear to involve partisan publicity. In addition, items that are not fundamentally educational may be considered advertising or public relations costs prohibited under 2 CFR § 200.421, Advertising and public relations costs. Examples of allowable costs would include:

- Development and dissemination of flyers and mailings to voters about changes in voting procedures
- Development of radio and television announcements to voters about changes in voting procedures
- Costs associated with the airtime to broadcast radio and television announcements about changes
- Costs associated with publishing voting procedure changes in print media

If the state is able to get these costs donated by printers, advertising companies and media outlets, the value of that donation is an allowable cost under the grant. You must maintain documentation that supports the value ascribed to the donation along with the date of the donation and other relevant documentation supporting the need. In many cases, the donor can provide information about what they normally charge for the activity, but the state is ultimately responsible for determining if that cost is reasonable and necessary. Media outlets can be helpful in determining the value of airtime and advertising costs in print media are readily available.

There are issues to address in using media costs as donations. As noted above, costs associated with “Get out the Vote” campaigns are not allowable, and states must also be careful about claiming interviews media conduct with state staff and officials. State staff may also be approached by a media outlet preparing a story about voting in the state and asking for interviews. In most cases, to meet the reasonable and necessary criteria for allowability, the state should request or initiate the coverage to ensure the content would be allowable under HAVA. It would be difficult to include the value of interviews in which you have no or limited control over the content. Allowable media activities that are intermixed with political or other non-HAVA messages should not be considered as cost-sharing. In addition, the value of airtime can sometimes be inflated. If the state asks stations to run their announcements as PSAs, it would be important to justify the value of the airtime.

Can CARES Act funds be used to develop or improve address confidentiality programs? There will be many more people voting by absentee or mail in our state and we want to ensure the safety of survivors of domestic violence, sexual violence, stalking, trafficking, and other unsafe circumstances by keeping their physical location private.

Yes, HAVA funds in general, including CARES Act funds, can be used to develop or improve the technology, privacy, and efficiency of address confidentiality programs. Survivors of domestic and sexual violence, stalking, and trafficking should be able to receive election mail, including absentee ballots, without disclosing their physical address to the public. State-administered address confidentiality programs help victims from being located by their perpetrator through public records by providing substitute addresses and confidential mail forwarding services. However, keep in mind that you need to allocate the funds appropriately based on the benefits of the cost to the various activities of the office. If the system to develop or improve address confidentiality is also used for activities unrelated to improving the administration of federal elections or in response to the pandemic, only the percentage of costs associated with the administration of federal elections can be charged to the CARES Act grants.