



U.S. ELECTION ASSISTANCE COMMISSION
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EAC Advisory 07-003-B – Maintenance of Effort Funding

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This advisory supersedes and replaces EAC Advisory 07-003 and EAC Advisory 07-003-A.

Question 1: What is maintenance of effort (MOE)?

Response 1: MOE is a means by which Congress and thereby the Federal Government requires States to share in the expense of funding a particular endeavor. Specifically, MOE requirements are used to assure that the Federal funding actually *increases* the amount of funding to a particular program or task.

Section 254(a)(7) of the Help America Vote Act of 2002 (HAVA) creates a requirement for the receipt and use of funding under Section 251 that States maintain the effort or level of funding that each State expended in the fiscal year preceding November 2000:

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

HAVA ties the MOE requirement to the State’s fiscal year. Because State funding is allocated on an annual or in some cases biennial basis, the State must continue to commit annually or biennially the same amount of funding to the effort that it committed prior to the availability of Federal funding. Furthermore, HAVA requires that these funds be expended, not just appropriated. In other words, a State *may not* replace or supplant its prior level of funding with Federal dollars.

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However, the MOE provision in Section 254(a)(7) of HAVA is limited. The MOE requirement is only related to activities that the State spent money on that are consistent with the requirements of Title III of HAVA. Activities that the State may have funded in the past include:

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- Purchasing voting equipment;
- Developing, operating and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- Providing information to voters at the polling place for Federal elections;
- Implementing and/or operating a system of provisional voting during Federal elections;
- Verifying voter registration information using other Federal, State, county or local data;
- Other activities that improve the administration of elections for Federal office.

The expenditures are also limited to those made in the State fiscal year that ended prior to November 2000.

Question 2: How does MOE relate to the State’s matching fund requirement?

Response 2: Both MOE and matching funds requirements are considered cost sharing methods, ways by which Congress and thereby the Federal Government get States to share in the expense of funding a particular endeavor. MOE requirements are considered different from matching fund requirements in that the intent, generally, is to assure that the Federal funding actually increases the amount of funding to a particular program or task.

While there is no legislative history on this particular issue, a plain reading of HAVA results in an understanding that Congress included two separate and distinct cost sharing requirements, matching funds and MOE. Congress did not intend for one of these cost sharing methods to cancel the other. Rather, it is apparent that Congress intended that the State both contribute to the improvement of election systems through the 5% match requirement and use the Federal and State (matching) funding to increase the prior level of State funding for Federal election administration efforts.

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Question 3: What is the impact of the MOE requirement?

Response 3: In order to receive a requirements payment under Title II of HAVA, each State was required to certify that it would maintain its effort at the same level that it expended money for HAVA funded activities in the fiscal year preceding November 2000. Each State has made such a certification and has been distributed requirements payments under HAVA. Thus, the State is obligated to keep that promise and continue to spend the same amount that it spent in the fiscal year preceding November 2000 on HAVA funded activities.

Question 4: How should States document that they have maintained their effort?

Response 4: The first step in documenting MOE is to determine the base level of expenditure in the state fiscal year preceding November 2000 (base year). This number should be derived by examining the State spending on HAVA funded activities during the base year. These activities include:

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- o Purchasing voting equipment;
- o Developing, operating and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- o Providing information to voters at the polling place on Federal elections;
- o Implementing and/or operating a system of provisional voting during Federal elections;
- o Verifying voter registration information using other Federal, State, county or local data;
- o Other activities that improve the administration of elections for Federal office.

Once a base level of expenditure is obtained, the State can demonstrate that it has maintained its effort by providing documentation that shows that the State spent the same amount of money (base level of expenditures) on any election-related activities during any Federal fiscal year in which the State had and used requirements payments distributed under Title II of HAVA.

A State can also demonstrate that they have maintained their effort by documenting the same or greater level of expenditures as the base level of expenditure in each year that the State had and used requirements payments.

Question 5: To what years does the MOE requirement apply?

Response 5: In order to receive HAVA funds, each State certified its compliance with the MOE requirement, which obligates the State to maintain its effort for each year that it has and uses HAVA Section 251 funds:

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Thus, if a State received HAVA Section 251 funds on August 31, 2004, then the State would be responsible for maintaining its effort during the state fiscal year encompassing August 31, 2004 and for every year thereafter as long as the State has and uses HAVA funds.

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Question 6: Does MOE apply to subawards of funding to the counties or units of local government of the State?

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Response 6: MOE applies to counties or units of local government of a State when the State distributes HAVA Section 251 funds to them. Generally, States distribute funds or make subawards to units of local government through grants, subgrants, contracts, or other means of disbursement for the purchase of goods and services related to Title III of HAVA. In regard to this matter, HAVA state plans are required to describe how a state “will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the state . . .” and how a state “will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan . . .”

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State distribution of Section 251 funds to counties or units of local government does not diminish the State’s MOE requirement. However, it does make individual counties or units of local government responsible for the MOE requirement. Thus, the State and the county or unit of local government would both have an MOE requirement.

The State is responsible for ensuring that both the State and the county or unit of local government meets the MOE requirement. A State may not allow a county or local government to supplant expenditures that were previously made by the county or local government by purchasing the item(s) for and vesting title to the item with them. For example, if a county purchased voting equipment in the base year (see Question 4), that expenditure would be a part of the county’s MOE requirement.

MOE for the county or unit of local government can be calculated and documented using the same factors as are outlined in response to question 4. The county or unit of local government MOE requirement covers a period beginning with the fiscal year when the county or unit of local government receives the cash award and ending with the fiscal year when the county or local government expends all of the money it received under the subaward or returns unused funds to the State.

Any subsequent subaward by the county or unit of local government will result in the MOE requirement being applicable to the subawardee.

Question 7: Which “fiscal year” must the State use to demonstrate it has met the MOE requirement?

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Response 7: It is preferred that the State choose a single fiscal year for itself and any of its political subdivisions to which subawards were made. However, if this is

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not feasible, the State and political subdivisions may document their compliance in their respective fiscal years.

Question 8: Are counties responsible for proving their own compliance?

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Response 8: Counties are responsible to the State and must document their compliance with the MOE requirement to the State, EAC will look to its grantee, the State, to determine whether the State and any subawardees have met the MOE requirement. Ultimately, documentation of a subawardee's compliance with MOE should be available at the State level for audit by the EAC.

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Question 9: Can the MOE requirement be waived by EAC?

Response 9: MOE is required by HAVA to apply to States. EAC cannot waive the provisions of a statute. Similarly, EAC cannot unilaterally waive the MOE requirement as it applies to units of local government. The MOE requirement passes to units of local government with the subaward of funds because of the provisions of Office of Management and Budget Circular A-102 (the Common Rule). EAC cannot waive the provisions of OMB Circular A-102 without the express permission of OMB. As such, EAC must seek OMB approval for any waiver or exemption.

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