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January 6, 2009

Ms. Rosemary Rodriguez, Chairwoman
U.S. Election Assistance Commission
1225 New York Avenue NW, Suite 1100
Washington, D.C. 20005

RE: Comments on the proposed policy on Maintenance of Effort – MOE Advisory 09-001

Dear Chairwoman Rodriguez:

On December 2, 2008, U.S. Election Assistance Commission (EAC) Vice Chairwoman Donetta Davidson issued a statement and proposed policy (MOE Advisory 09-001) for the Maintenance of Effort (MOE) provisions in the Help America Vote Act of 2002 (HAVA).

California appreciates the challenges facing the EAC to develop a workable MOE policy that ensures states and local jurisdictions are not supplanting local obligations with federal funds.

However, as the EAC considers this policy, there is one fundamental challenge facing states and local jurisdictions that cannot be overlooked. In compliance with industry best practices and government mandates, most state and local government entities retain detailed fiscal and accounting records for three to five years after the close of a fiscal year. The EAC issued its first MOE policy in 2007, nearly eight years after the 1999-2000 base year established by HAVA for California. California is concerned that supporting documentation for states and local jurisdictions will not be available to establish the base year and, potentially, some subsequent year costs. This challenge to compliance exists even with the policy options provided for in Vice Chairwoman Davidson's proposal that might be chosen by states and local jurisdictions.

The current proposal by Vice Chairwoman Davidson offers states flexibility in choosing the method to comply with HAVA's MOE requirements. The proposal also goes much further in defining the elements to be included in the MOE, particularly under the option for determining costs for which the requirements payment is provided. It is critical, for instance, for states to understand that the MOE applies, as proposed MOE Advisory 09-001 notes, to "procuring voting systems that comply with the requirements of Title III, Section 301" and "developing, operating, and/or maintaining a computerized statewide voter registration list." Similar clarity should be applied to the option provided to states and local jurisdictions to report "all election administration activities."

It would be helpful to states if the necessary supporting documentation for establishing base-year costs and the term "all election administration activities" as used in the proposed MOE Advisory 09-001 are clearly defined before the final policy is adopted.

Finally, as noted in the footnote to Vice Chairwoman Davidson's Statement on the MOE policy proposal, the Commission voted on April 30, 2008, to suspend the current policy (EAC Advisory 07-003A) to the extent that it required a state to include local and county government expenditures in its MOE baseline, until such time as an amended advisory was approved. While a separate policy (EAC Advisory 007-003B) has also been proposed, there is no posting on the EAC website that appears to reflect the current policy. California respectfully requests, therefore, that the EAC post an advisory that clearly reflects the current status of these MOE policies.

Thank you for consideration of these comments.

Sincerely,



Chris Reynolds

Deputy Secretary of State, HAVA Activities