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Subject MOE Policy Comments

Comments of Kevin J. Kennedy
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Proposed MOE Policy
(Submitted to the US EAC Website)
January 6, 2009

I appreciate the opportunity to comment on proposed guidance on Maintenance of Effort requirements of the Help America Vote Act for states receiving HAVA Section 251 payments.

Unfortunately the guidance does not provide enough direction to address the varied issues presented by the unique election administration structures in individual states. The proposed policy needs to provide some specific direction with respect to pre-2000 expenditures while recognizing the differences in administrative structures and the lack of available records for pre-2000 expenditures.

The comments of the Office of Inspector General (OIG) suggest a significantly more expanded role than HAVA gives to the US EAC by recommending detailed defacto regulations for determining MOE at the state and local level. The comments also misconstrue HAVA. The OIG suggests that the EAC policy should go beyond HAVA 251 requirements to include any expenses to improve the administration of federal elections in the pre-2000 expenditures.

The reality is state and local expenditures prior to 2000 were done to conduct federal elections, not to improve them or meet specific uniform technology and administration requirements that had not been developed pre-2000. Before 2000, state and local election administrators were begging for funding to conduct elections. There was no money available for innovation or improvement. That is why HAVA was needed.

Last year, the US EAC invited NASED to participate in a working group to address MOE issues. The focus of the US EAC should be to get this working group established in order to identify and address the practical issues presented by MOE. The US EAC does itself and state election officials a disservice by attempting to craft a policy that does not recognize the differences among states, the lack of available pre-2000 financial records at this point in time and the use of broad directives to provide guidance that cannot be effectively used to address the scrutiny engendered by vague direction as part of the audit process.

The working group can assist in delineating the specific types of pre-2000 state and local (if applicable) expenses that were made to conduct federal elections and differentiate them from

HAVA 251 requirements and “improvements” to the administration of federal elections. The purpose of MOE is to avoid supplanting state and local funding with federal money. It is fair to say that state and local governments are committing significantly more funds to administer federal elections. They should not have to worry that they have not parsed pre-2000 expenses for conducting federal elections to demonstrate there was no replacement of state and local funding with federal money.

Respectfully submitted,

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