



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

January 6, 2009

The Honorable Rosemary Rodriguez
Chair, U.S. Election Assistance Commission
2525 New York Ave, N.W.
Washington, D.C 20005

Dear Chair Rodriguez:

After consulting with members of the National Association of State Election Directors' EAC Liaison Committee, I am submitting this letter commenting on Commissioner Davidson's proposal to modify EAC policy on Maintenance of Effort (MOE).

There is general agreement that the flexibility found in EAC Advisory 09-001 is a positive step forward. States have been grappling with the complexities of MOE for well over a year. While EAC may feel more confident of how the Common Rule and other circulars affect MOE, the States have only found more questions in need of answers. We seek a comprehensive policy that will inform the State Directors on how to conduct our HAVA business and pass muster in the ensuing audits.

In 2008 EAC invited NASED to participate in a work group on MOE. Our president, John Lindback, responded to the request by submitting names of NASED members who agreed to participate. Especially in light of the legal opinions expressed in the OIG comment letter, it is imperative that EAC convene such a work group to insure that MOE will be accurately and comprehensively developed and administered.

A number of the issues are in need of attention:

- Many local units of government have no financial records to substantiate MOE from fiscal year 2000.
- Odd-numbered year spending on elections since receipt of HAVA funds may be lower than the FY 2000 spending, which was in a presidential election year.
- The computation of MOE from FY 2000 needs clarification. The OIG legal opinion appears to hold that total election expenditures is not an option for computing MOE. We have a situation where EAC may adopt one policy, but the OIG may follow a different policy when auditing the States.
- "Sub-award" and "sub-recipient" require definition. It is unclear what distinction, if any, may be made for reimbursements as opposed to grants.

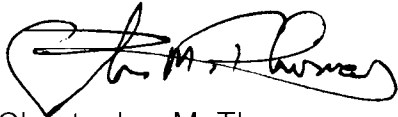
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- If the Title III categories are used to compute MOE, it is unclear whether a State has flexibility to spend less in one category as long as the total spending for the given year is equal to or greater than the total computed MOE.
- If the entire election budget is used to compute MOE, it unclear what components of State election spending are included.
- The inclusion of expenditures to “improve” federal elections in FY 2000 is extremely nebulous and subject to no discernable standard.

Thank you for the opportunity to comment on EAC Advisory 09-001. Given the OIG opinions and comments from several other States, I again urge EAC to convene the work group to consider the full range of MOE issues before adopting a new policy. NASS and NASED are meeting in Washington, D.C. on or about February 5 – 7, 2009. It may be possible to convene a work group during these conferences.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher M. Thomas". The signature is stylized and cursive, with a large initial "C" and "T".

Christopher M. Thomas
Director of Elections

pc: EAC Election Commissioners