



**COMMONWEALTH OF PENNSYLVANIA
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December 26, 2008

The Honorable Rosemary Rodriguez, Chair
The Honorable Donetta Davidson, Vice Chair
The Honorable Gracia Hillman
The Honorable Gineen Beach
U.S. Election Assistance Commission
1225 New York Avenue (NW), Suite 1100
Washington, D.C. 20005

RE: MOE Advisory 09-001

Dear Commissioners:

Thank you for the opportunity to comment on the Commission's policy on Maintenance of Effort (MOE). We have been carefully following your efforts to refine this policy over the past several months. As noted by Commissioner Donetta Davidson in her December 2, 2008 statement, in an effort to achieve a consensus, the Commissioners have proffered three different advisories on MOE. At the risk of over simplification, the proposals can be summarized as follows:

- 1) There is no requirement under Section 254(a)(7) of the Help America Vote Act. (HAVA) for counties or units of local government to provide MOE information. This was proposed by then Commissioner Caroline Hunter in April 2008.
- 2) Counties or units of local government, as sub-grantees under HAVA, must comply with all MOE requirements. This was proposed by Commissioner Gracia Hillman in response to the Hunter proposal.
- 3) If counties or units of local government are sub-grantees for specific activities they must satisfy the MOE requirements; however, states may assume responsibility for meeting the requirements by expending state dollars. This is the recent proposal by Commissioner Davidson.

As you know, on April 28, 2008, I joined Secretaries Todd Rokita of Indiana and Trey Grayson of Kentucky in supporting the first proposal, which would obviate any necessity for local government responsibility in meeting MOE. This was based on a reading of Section

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254(a)(7) of HAVA that focuses the MOE requirement on the states. Although this reading is disputed by proponents of the second proposal, I submit that it is both fair and proper.

It appears that the third proposal is intended to reach a compromise. In essence it recognizes a local responsibility when funds are expended locally for activities (such as the purchase of voting systems by counties as is done in Pennsylvania), but provides a "safety valve" by permitting states to assume the responsibility of the local entities by expending state funds that are in addition to any funds that meet state-specific MOE requirements. If states do not assume this protective role, they would be required to hold each sub-grantee responsible, as contemplated in the second proposal.

Although the Pennsylvania practice has been to follow the stricter reading of proposal two, that is primarily a function of our election system, which divides responsibilities between the state and the counties. Nevertheless, this approach is not clearly set forth in HAVA and other states, whose systems of elections are different, would have a cumbersome time in complying with that approach to MOE. Therefore, because the most recent proposal from Commissioner Davidson recognizes this concern in searching for middle ground, I wish to convey my support for MOE Advisory 09-001.

Thank you again for this opportunity to share our comments on this most important issue.

Sincerely,



Pedro A. Cortés