



U.S. ELECTION ASSISTANCE COMMISSION
 1225 NEW YORK AVENUE, N.W., SUITE 1100
 WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of)
)
 Submission of Maintenance of Expenditure (MOE))
 Proposed Policy "A" By Chair Donetta Davidson)
 For Public Comment)
)

CERTIFICATION

I, Donetta Davidson, Chair of the U.S. Election Assistance Commission, do hereby certify that on February 17, 2010, the Commissioners voted on the above referenced matter. This matter proposed that the Commission approve placing the Maintenance of Expenditure (MOE) proposed Policy "A" by Chair Donetta Davidson for a public comment period of 30 days. All ballots were timely submitted.

After review of the ballots, I certify that the measure fails, having not achieved the requisite three approval votes required by law. Chair Davidson and Commissioner Hillman voted affirmatively, and Commissioner Beach objected the recommendation.

NOTE: Per the tally vote policy, the matter will be moved to a public meeting agenda.

Commissioner Beach commented – I would like further discussion on the Policy.

Attest:

2/17/2010
 Date

Donetta Davidson
 Donetta Davidson
 Chair



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: February 12, 2010, 3:30p.m.

BALLOT DEADLINE: February 17, 2010, 3:30p.m.

COMMISSIONERS: BEACH, DAVIDSON, AND HILLMAN

SUBJECT: SUBMISSION OF MAINTENANCE OF EXPENDITURE (MOE)
PROPOSED POLICY "A" BY CHAIR DONETTA DAVIDSON FOR
PUBLIC COMMENT

- () I approve the recommendation.
- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: _____

DATE: _____ **SIGNATURE:** _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM DONETTA DAVIDSON, CHAIR



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

MEMORANDUM

TO: Commissioners Hillman and Beach

FROM: Chair Donetta Davidson

A handwritten signature in cursive script that reads "Donetta Davidson".

DATE: January 12, 2010

RE: Submission of Maintenance of Expenditure (MOE) Proposed Policy "A" by Chair Donetta Davidson for Public Comment

BACKGROUND

The Help America Vote Act of 2002 (HAVA) requires States to meet an annual MOE based on state expenditures for activities allowable under Title III of HAVA. Section 254 of HAVA details what must be in the state plan. An MOE description is one of the pre-conditions for receipt of a requirements payment disbursement.

EAC has refrained from providing an MOE advisory policy since April 16, 2008 while the subject has been debated. States have been without detailed guidance on the subject for that period of time and it is the Agency's obligation to move forward on this as quickly as possible.

The EAC Grants Division has been working with Commissioners and states to develop a proposed policy that will facilitate state maintenance of effort (MOE) requirements in HAVA. The attached draft proposal is the result of this collaborative effort and the EAC would now like more wide-spread public comment on the proposed policy. Therefore, I recommend that we publish this version of the MOE proposal to be placed in the federal register for 30 days to get additional input for the final development of the MOE policy.

RECOMMENDATION:

Approve placing the attached proposed MOE policy out for a public comment period of 30 days.



**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005**

Maintenance of Effort/Expenditures (MOE) Policy Proposal “A”
Chair Donetta Davidson

Policy Overview Statement:

The Help America Vote Act of 2002 (HAVA) requires States to meet an annual Maintenance of Expenditure (MOE) (also known as Maintenance of Effort) based on State expenditures for activities allowable under Title III of HAVA in the fiscal year prior to November 2000. HAVA requires that States establish a baseline spending level and then meet that spending level each year HAVA section 251 funds are spent by the State. Lower-tier (local) jurisdictions may also have to establish an MOE baseline and report annual spending contributions to the State as part of the State’s aggregate MOE contribution. The following questions and answers provide details on what is required to meet HAVA’s MOE requirement and how the U.S. Election Assistance Commission (EAC) will work with States to ensure they have a realistic, auditable plan for managing MOE requirements.

1. What is the purpose of the maintenance of expenditures (MOE) requirement mandated by HAVA?

The purpose of MOE is to ensure that recipients of Section 251 funds (requirements payments) use the payments to meet the added requirements placed on States by HAVA, while maintaining the level of non-Federal funding that was available for those activities during the fiscal year ending prior to November 2000.

2. Where in HAVA is the MOE requirement?

Section 254 of HAVA details what must be in the State plan. An MOE description is one of the pre-conditions for receipt of a requirements payment disbursement. Section 254(a)(7) requires States to identify in their plans:

“[H]ow 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.” 42 U.S.C. § 15404(a)(7) (emphasis added).

3. What does this MOE policy do?

The purpose of this policy is to facilitate State compliance with the maintenance of effort (MOE) requirement in HAVA. This policy supersedes EAC Advisory drafts 07-003 and 07-003A.

This policy provides instructions for States to develop detailed, *voluntary plans* for identifying a baseline MOE level and maintaining that level in subsequent years.

Adherence to a State-developed MOE plan with which the Election Assistance Commission (EAC) concurs will be the basis for EAC's determination that a State has met its MOE requirements in any given year.

4. Who is covered by this policy?

This policy applies directly to the 50 States, four U.S. Territories and the District of Columbia (referred to as States) that are eligible to receive requirements payments. This policy may also impact "lower tier" recipients indirectly (see below). However, States are ultimately responsible for demonstrating compliance with MOE.

5. What does the EAC mean by the term "lower tier" recipients?

A lower tier recipient is political subdivision of a State. Depending on the State, lower tier recipients may include, but are not limited to, counties, cities, townships, and other jurisdictions.

6. Do States need to account for lower tier (local) spending during the base year in calculating MOE?

MOE tracks State expenditures on a prescribed set of Federal election activities (see question 7), which includes any funds appropriated by the State to lower tier entities to support those activities. Under this MOE policy, States may exclude lower tier spending from MOE when the funds used by the lower tier entities are not derived from a State appropriation or expenditure.

7. What types of expenditures must be used to calculate the MOE baseline amount and are eligible to count towards our annual MOE contribution?

States must use all election expenditures that are allowable under Section 251 of HAVA, and that were funded directly by the State, or through a State appropriation to a lower tier entity in the base year, to calculate the baseline MOE. This means that all Title III activities, including: 1) purchase of voting equipment; 2) development and operation of a statewide voter registration list; 3) development and implementation of provisional voting for Federal elections; 4) provision of information to voters at the polling place on election day; 5) verification of information provided by persons seeking to register to vote; and, 6) improvement of the administration of elections for Federal office should be included in the baseline MOE and tracked on an annual basis.

8. When would the EAC like to receive the voluntary State MOE plans and what is the process for submission?

EAC would like to receive MOE plans that can be submitted outside of the State plan by December 1, 2010. Once your plan is received, EAC's grants department will work with your State until EAC's Executive Director concurs with the plan. EAC's hope is to have MOE plans developed by each State that chooses to participate in the process in place by January 31, 2011. EAC will provide technical assistance, including easy to use templates and checklists for developing State MOE plans, by early summer 2010.

9. Does this policy include a set of uniform requirements that States must comply with to establish a baseline MOE and meet annual MOE requirements?

While this policy does call for a plan with specific elements for establishing, maintaining and reporting on MOE, EAC recognizes that the financing and administration of elections includes a particularly diverse set of practices that vary from State to State. As such, this policy calls for development of State-derived, flexible plans designed to meet each individual State's circumstances.

10. Our State plan already acknowledges that we will meet the MOE requirements. Do we still need to submit the MOE plan discussed in this policy?

All States have acknowledged in their State plans that they intend to meet their MOE requirements. However, these statements do not contain information sufficient enough to guide an audit of how the State is meeting its MOE requirement. States adoption of detailed MOE plans will help ensure that States capture an accurate, defensible baseline MOE and are meeting annual MOE requirements. The plans will set the basis for auditing MOE and will help ensure that EAC resolution of any State-specific audit finding associated with MOE will be consistent with how that State has proposed to meet its MOE requirement. Submission of the MOE plan described in this document is, however, voluntary and may not be the only means of satisfying section 254a(7) HAVA.

11. What should a State include in its MOE plan?

A State's MOE plan should:

1. Provide the date parameters for the 'fiscal year ending prior to November 2000' as described in HAVA. This base year will be used to set the baseline MOE for the State.
2. Provide the specific cost factors that make up the baseline MOE, or proposed alternative method(s) for determining the baseline MOE.
3. Establish an MOE baseline dollar level that is an aggregation of MOE from all eligible jurisdictions.
4. Require collection of annual MOE levels from all eligible jurisdictions and outline a plan and timeline for collecting this information.
5. Describe the back-up documentation that States and eligible lower tier jurisdictions must maintain and make available for inspection by EAC upon request in order to substantiate the State's MOE claim. Documentation must

include a tracking sheet that shows MOE baseline and annual MOE levels at the State and eligible lower tier recipient levels.

6. Clearly state the roles and responsibilities of both State and eligible lower tier fund recipients for reporting MOE and keeping appropriate documentation to substantiate or validate yearly MOE levels. Note that both States and eligible lower tier recipients will need to do an annual certification of their MOE contribution.

12. What is a baseline MOE?

The baseline MOE is a dollar amount that captures the level of non-Federal spending for a particular program or activity in the base year. In the case of HAVA, the baseline is the non-Federal spending level for a set of election's activities (see question 11 below) that was in place in the fiscal year ending prior to November 2000.

13. What dates should a State use to calculate MOE?

HAVA requires that States use the fiscal year ending prior to November 2000 to determine the MOE baseline. States may choose the Federal fiscal year, which runs from October 1, 1999 through September 30, 2000; or the State fiscal year, if it is different from the Federal fiscal year.

14. How do we know if our State or lower tier recipient have an MOE requirement in a given year?

Each State has an MOE obligation in every fiscal year that it spends HAVA requirements payment funds. Eligible lower tier recipients may need to meet MOE in any fiscal year in which they receive requirements payments through the State, dependent upon how the State decides it wants to meet its annual MOE contribution.

15. What are the reporting requirements associated with MOE once a State has an MOE plan on file with the EAC?

Each State is required to submit as part of its annual report, per section 258(3), a description and analysis of how it has met or exceeded its baseline MOE for the preceding fiscal year. Appropriate back-up documentation, as described in the State's MOE plan, must be kept on file and made available to EAC staff during site visits or to auditors or other officials during an audit or investigation.

16. Should our State provide a single, aggregate baseline amount for MOE, or a series of MOE baseline amounts for each eligible local jurisdiction?

EAC's requirement is that States provide a single baseline and report an annual aggregate MOE amount. However, because States will have to substantiate MOE levels, tracking MOE for all eligible lower tier entities that are required by the State to contribute to the MOE will probably be necessary.

17. Do States have any flexibility in how much is spent annually in each of the cost categories identified by the plan, or do they have to maintain expenditures in each of the categories?

A State's MOE plan should track expenditures by category to identify the MOE baseline and annual contributions. However, this policy does not require States and eligible lower tier fund recipients to maintain specific expenditures within the identified cost categories. This policy clarifies that only the aggregate State MOE level needs to be met on an annual basis.

18. What happens if our State fails to meet its MOE?

Any audit findings related to a State not meeting its MOE requirements will be dealt with through EAC's Audit Resolution Process. All current and future audits and compliance site visits that review MOE will be guided by the State's MOE plan, from the point plan is accepted by the EAC forward.

19. How can States establish the baseline MOE for lower tier recipients where those jurisdictions lack the records or detailed accounting needed to determine the level of spending on elections in the base year?

States may propose an alternative measure for estimating spending in the base year, but only after demonstrating that accurate records are not attainable. Some alternative measures might include budgeted or appropriated amounts, contract amounts, or similar means compiled from available records from the base year. States might also estimate spending based on traditional spending levels over time, but must provide adequate justification and documentation to support the estimate.

20. Do these States have to collect MOE information every year from eligible lower tier recipients?

Each state has the ability to determine how it wants to meet its MOE obligation. Once the baseline is established by the State, by identifying all expenditures with State funds in the base year that would have been allowable costs under HAVA, the State will need to determine how it would like to meet that MOE obligation on an annual basis. If lower tier entities are enlisted by the State to help meet MOE (similar to how some counties contribute to State match obligations for requirement payments) those enlisted entities will have to have keep appropriate documentation to substantiate their MOE contributions. EAC will provide templates that allow for quick recording and roll-up of this information to the State level.

21. How should States address capital expenditures in the base year? For example, several counties purchased equipment in the base year, which appears to establish an unreasonable MOE baseline for those jurisdictions.

For purposes of establishing the baseline MOE, HAVA does not make a distinction between capital expenditures and recurring costs associated with election administration that were incurred in the base year. However, when calculating MOE baselines capital

expenditures may be expensed in a manner consistent with IRS depreciation tables, over the expected life of the equipment purchased.

22. How do States establish a baseline MOE when the year before FY 2000 was not an election year and the election administration costs in that year were lower than in an election year?

HAVA is clear that the timeframe for setting the baseline MOE is the year before November 2000.

23. Does the EAC have any suggestions for how to enforce MOE requirements with eligible lower tier fund recipients?

States should have several mechanisms available to ensure compliance with MOE requirements. Sub grant agreements should be modified to contain MOE requirements and instructions. Any agreements to buy and transfer equipment or services to lower tier jurisdictions should also contain such a requirement. Finally, States, as the legal recipient of HAVA funds have authority to enforce MOE requirements through administrative action which could include withholding future requirement payments.

24. Can you provide an example of another Federal agency that requires tracking of MOE at this detailed level?

State and local education agencies are required to go through a similar process to meet their MOE requirements for Federal funding from the U.S Department of Education.

25. What type of assistance and training can the States expect from the EAC to help implement this policy?

EAC grants staff remains available to provide guidance to States on their MOE plans and will work with States to get concurrence from EAC's Executive Director. In addition, EAC plans to use its technical assistance provider, Practical Strategies, to develop tools and templates to help capture and track MOE. EAC will also publish sample MOE plans from States willing to share their work with others as a best practices guideline.

26. What Authority in HAVA allows EAC to implement this proposed policy?

Section 254(a)(7) of HAVA requires States to include in their state plan an explanation of how they will meet their MOE obligations. Submitting a State plan and all of its required sections is a precondition for receiving a requirement payment. Section 258(3) requires states to submit a yearly report that includes an analysis and description of the activities funded with Section 251 funds, as well as how activities conform to the State Plan under Section 254. This policy defines MOE and provides States with a voluntary set of guidelines and practices for developing a baseline MOE and tracking yearly progress towards meeting that obligation. Section 202(4) of HAVA requires that EAC provide information and training on the management of payments and grants provided through HAVA.



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TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: February 12, 2010, 3:30p.m.

BALLOT DEADLINE: February 17, 2010, 3:30p.m.

COMMISSIONERS: BEACH, DAVIDSON, AND HILLMAN

SUBJECT: SUBMISSION OF MAINTENANCE OF EXPENDITURE (MOE)
PROPOSED POLICY "A" BY CHAIR DONETTA DAVIDSON FOR
PUBLIC COMMENT

- () I approve the recommendation.
() I disapprove the recommendation.
() I object to the recommendation.
() I am recused from voting.

COMMENTS: It is EAC's obligation to move forward quickly to provide states with detailed guidance on MOE. Therefore, I vote yes to putting this proposed policy out for public comment.

DATE: 2-16-2010

SIGNATURE: Donetta Davidson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM DONETTA DAVIDSON, CHAIR



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- I approve the recommendation.
 I disapprove the recommendation.
 I object to the recommendation.
 I am recused from voting.

COMMENTS: _____

DATE: 2-17-10

SIGNATURE: 

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FROM DONETTA DAVIDSON, CHAIR



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PUBLIC COMMENT

- I approve the recommendation.
 I disapprove the recommendation.
 I object to the recommendation.
 I am recused from voting.

COMMENTS: I would like further discussion
on this policy.

DATE: 2/11/10 SIGNATURE: [Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM DONETTA DAVIDSON, CHAIR