



*Washington*  
**Secretary of State**  
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US Election Assistance Commission  
1225 New York Avenue, NW, Suite 1500  
Washington, DC 20005

**VIA Electronic Transmission**  
**HAVAfunding@EAC.gov**

RE: MOE Advisory 09-001

Dear Commissioner Davidson,

I would like to refer you back to the testimony that three representatives from Washington State made at the May 2008 EAC public meeting in Denver. During the testimony, it was explained that this proposed policy does not address the unique circumstances facing Washington State, the only state to have received a clean HAVA audit.

Under Section VII, neither option 1 nor option 2 will adequately address the situation in Washington State. Using the entire election budget method will not work because many of our counties had higher than normal budgets in the base MOE year due to preparation for the Census or other one time equipment purchases. Additionally, financial records for 1999, Washington's base year, have long been purged, so counties are not able to extract these one-time costs.

In our testimony before the EAC, Washington indicated that the only Section 251-related expenses that counties had in the baseline MOE year were provisional ballots. The costs were insignificant at best. There is no way for counties to determine a per ballot cost for provisional ballots because, nine years later, all records pertaining to how many provisional ballots were cast that year are gone. Finally, since Washington State has changed to nearly all vote-by-mail since 2004, the costs for provisional ballots has only decreased since 1999, not increased.

Although Washington State offers a grant program to counties, no HAVA money was spent on provisional ballots (or any type of ballots for that matter). Every invoice a county submits for reimbursement under a HAVA grant is reviewed and approved by the state HAVA Coordinator. This system of reimbursement was set up to ensure that HAVA funds are paid in accordance with laws and regulations and that supplanting of local dollars with HAVA funds does not take place.

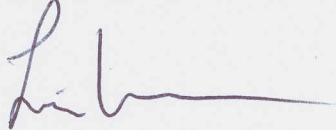
There needs to be a clause of some sort that protects Washington State and other states from unnecessary audit findings and possible sanctions.

I would like to propose a third option for states that do not fit into option 1 or 2 under Section VII of the proposed policy: A certification from the State that HAVA funds were not used to supplant Section 251 activities. This is certainly the most economical and efficient way to address the MOE issue for States that do not have access to financial records, cannot use total budget costs, and essentially had minimal Section 251 related expenses to document.

Washington State cannot meet the MOE requirements as outlined in this draft policy. The purpose of MOE is to make sure that federal HAVA dollars are not used to supplant local dollars. Our state has gone beyond the requirements that MOE intended to prevent. For example, if a state documented a baseline expenditure of \$10,000 for provisional ballots, that state would only have to document a continued state expenditure of \$10,000 for provisional ballots. Under this proposed policy, if a state's provisional ballot costs increased to \$15,000, the state could use \$5,000 of HAVA funds without being in violation. Under the policies and procedures that Washington State has in place, the \$5,000 could not be spent with HAVA funds because provisional ballots were already a regular election expense.

Clearly, the policies and procedures in place in Washington State are more protective of federal funds than the proposed policy. As such, we request that you add additional language to the proposed policy that will protect States that have successfully prevented the supplanting of local dollars with HAVA funds.

Lori Guerrero

A handwritten signature in purple ink, appearing to read 'Lori Guerrero', with a long horizontal flourish extending to the right.

HAVA Coordinator