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Chairwoman Donetta Davidson
U.S. Election Assistance Commission
1201 New York Avenue N.W., Suite 300
Washington, DC 20005

Submitted via email: havacomments@eac.gov

Dear Chairwoman Davidson:

Thank you for the opportunity to comment on the Election Assistance Commission's (EAC) proposed new Maintenance of Effort (MOE) policy. The Secretary of State understands the complexity of creating a policy with nationwide implications and appreciates the efforts of you and your staff.

The California Secretary of State commends the EAC for gathering input from the states and addressing a number of concerns about implementing and adhering to the current MOE policy. There are specific areas where we want to compliment the EAC, followed by three requests for clarification.

First, California agrees with the decision to clarify that the MOE requirement shall only apply to state expenditures in the proposed policy.

By clarifying the six categories of expenditures that fall within the MOE, this proposed policy is consistent with the language of section 254(a)(7), which specifies that states "will maintain the expenditures of the State *for activities funded by the payment...*" (emphasis added). This clarification also helps states identify which specific expenditures must be included in the MOE baseline.

Second, the option for states to voluntarily submit MOE compliance plans for EAC review and acceptance is a welcome use of the authority and responsibility granted to the EAC under section 202(4), which allows the EAC to provide information and training to elections officials on the management of payments and grants. California intends to submit such a plan for EAC review by the December 1, 2010, deadline provided for in the proposed MOE policy.

There are three areas where California would recommend that the proposed MOE policy be amended and clarified:

- 1) In the response to Question #23 of the proposed policy, the EAC recommends that any subgrantee agreements between a state and local jurisdiction should be modified to contain an MOE requirement. If a state finds, through the MOE

planning process allowed for under answers to Questions #3, #8 and #11, that subgrantees did not receive state funding in the base year for qualified activities, are subgrantee agreements required to contain an MOE clause?

2) California would appreciate additional clarification of the term “improvement of the administration of elections for Federal office.” The term could still be subject to wide interpretation. California proposes that the term should be defined by the EAC as those activities for which the EAC has approved state use of Title III funding under section 251 (b) – a minimum requirements payment program – prior to Title III compliance certification by a state.

In California, the EAC approved the use of Title III funds for cell phones, forklifts, real property improvements for storing voting equipment (with preapproval), and voter education and poll worker training programs.

3) Are states allowed the same flexibility provided to local jurisdictions under the response to Question #19 to document the base year spending for MOE? The answer to the question states that “States may propose an alternative measure for estimating spending in the base year, but only after demonstrating that accurate records are not attainable.” This seems to imply that states also have some flexibility in documenting base year MOE, but Question #19 asks: “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?” (emphasis added). Does the EAC intend to provide this same latitude to states? States may be operating under similar record retention schedules as local jurisdictions. Furthermore, states may also lack discrete, programmatic funding breakdowns specified in the proposed MOE policy (i.e., not accounting for “verification of information provided by persons seeking to register to vote” separately from “development and operation of a statewide voter registration list”).

Thank you for your consideration of these questions. California greatly appreciates all of the hard work by the EAC on this issue. If you have any questions regarding these comments, please contact me at (916) 651-7837, or chris.reynolds@sos.ca.gov.

Sincerely,

Chris Reynolds
Deputy Secretary of State, HAVA Activities

Cc: Commissioner Gracia Hillman
Commissioner Gineen Bresso Beach
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