



U.S. ELECTION ASSISTANCE COMMISSION
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EAC ADVISORY 09-001

MAINTENANCE OF EFFORT FUNDING

Date Issued: DRAFT

I. General

This advisory supersedes Advisories 07-003 and 07-003A and fulfills the Election Assistance Commission's (EAC) ongoing responsibility to provide information on the management of Federal funds provided under the Help America Vote Act (HAVA). For recipients of HAVA Title II Requirements Payments, this advisory specifies the entities to which the Maintenance of Effort (MOE) requirement applies, explains how to calculate the MOE base level amount, and describes how to satisfy the continuing requirement for MOE.

MOE is a means by which Congress, and thereby the Federal Government, requires a recipient to share in the funding of a particular endeavor by requiring that the Federal funding actually increases the amount of financial support to a particular program or task. Specifically, MOE requirements are used to ensure that the recipient is not replacing or supplanting its prior level of spending on a particular program or task with Federal dollars.

II. Applicability to HAVA

Section 254(a)(7) of HAVA establishes the requirement for MOE, as follows:

How 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 (hereinafter referred to as state fiscal year 2000).

The MOE requirement is defined by a pre-determined "base level of expenditure" expended in state fiscal year 2000 for election administration costs funded by HAVA Requirements Payments.¹ Recipients of HAVA Requirements Payments are required to maintain this expenditure level, in addition to spending of HAVA dollars, as a condition of receipt of funds.

III. Applicability to Recipients of Title II, Section 251 Requirements Payments

Per HAVA Sections 253 and 254(a)(7), MOE is applicable to recipients of HAVA Requirements Payments. State election offices in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa ("States") are the grant recipients of

¹ Activities funded by HAVA Title II Requirements Payments include: 1) procuring voting systems that comply with the requirements of HAVA Title III, Section 301, 2) developing, operating, and/or maintaining a computerized statewide voter registration list, 3) providing required information to voters at the polling place for Federal elections, 4) implementing and/or operating a system of provisional voting during Federal elections; 5) implementing identification requirements for first-time voters who register to vote by mail, and 6) improving the administration of elections for Federal office. Therefore, if a State was spending money on any of these types of activities in the state fiscal year 2000, it will be subject to the MOE requirement.

Requirements Payments. As the grant recipients, State election offices are required to meet the MOE requirements and maintain appropriate supporting documentation.

IV. Calculation of Base Level of Expenditure

Per HAVA Section 254(a)(7), each State's State Plan must include a description of how the State intends to meet the MOE requirements. Although not required, the EAC encourages that State Plans specify whether the State had expenditures in state fiscal year 2000 that triggered MOE, identify the amount expended in state fiscal year 2000, and explain how the State intends to meet the MOE requirements. That notwithstanding, if a State had expenditures that triggered MOE, it must maintain documentation to support the determination of the base level of expenditure for state fiscal year 2000 for audit purposes.

States may calculate the base level of expenditure for state fiscal year 2000 in either of two manners:

1. Identify the total expended by the State on all election administration activities in state fiscal year 2000.²

Or

2. Identify the total expended by the State for each Title III-related activity in state fiscal year 2000.³

Note: If no funds were expended by the State in state fiscal year 2000 for activities related to Title III, the State shall maintain a record of such determination.

V. Satisfaction of MOE

Per HAVA Section 254(a)(7), a State must meet the MOE requirement in each applicable fiscal year in which it expended Title II Requirements Payments. If no Requirements Payments are used in a fiscal year, there is no applicable MOE requirement for that year.

A State may determine that it has met the MOE requirement in an applicable Federal fiscal year by expending the same or greater amount of State funds⁴ than the base year level of expenditure on either:

1. All election administration activities.⁵

Or

2. Each HAVA activity (or activities) on which the state expends funds as the corresponding base year activity (or activities).⁶

² With this method, a State may use its entire budget for election-related activity in state fiscal year 2000 to establish the base level of expenditure. It is not necessary to break out activities related to Title III.

³ With this method, a State needs to identify separately the amount spent on any of the following activities in state fiscal year 2000: voting equipment, voter registration database, ID requirements, provisional voting, and voter information.

⁴ State funds used to meet an MOE requirement may not include funds provided as the State's 5 percent match.

⁵ If the total State dollars expended on election-related activities for a given fiscal year is the same or greater than the total base level for state fiscal year 2000, the State will have met the MOE requirement for that year.

⁶ The State, for example, would need to document that the State expended in a given fiscal year the same or more on each activity on which Requirements Payments are expended than the amount spent in each allowable area in state fiscal year 2000: voting equipment, voter registration database, ID requirements, provisional voting, and voter information. If the State does not spend any Requirements Payments on an activity (say, voting equipment) in a particular fiscal year, then the MOE requirement for that activity (voting equipment) would not apply.

VI. Sub-award of HAVA Title II Requirements Payments and MOE

State election offices may sub-award HAVA funds to counties or local units of government per HAVA Section 254(a)(2). However, if a State sub-awards Requirements Payments to counties or local units of government, than the county or local unit of government is also subject to the requirements of MOE. In accordance with the “Common Rule,” which requires States to ensure sub-recipients comply with the requirements of Federal statutes, the State election office is responsible for ensuring that a sub-recipient is not replacing or supplanting its prior level of spending on a particular program or task with Federal dollars.

The State Plan must include a description of the distribution and monitoring of these sub-awards, including MOE requirements. Although not required, the EAC encourages States to provide detailed and specific information in the State Plan on the manner in which the State intends to account for MOE by sub-recipient. In any event,, if a State sub-awards Requirements Payments, it must maintain documentation to support its monitoring methods, including determinations of MOE base levels of sub-recipients, for audit purposes.

VII. Calculation of Base Level of Expenditure for Sub-recipients

If a State sub-awards grants to county or local units of government for a specific activity (or activities), then the county’s or local unit government’s base level of expenditure for state fiscal year 2000 may be calculated in either of two manners:

1. Identify the total expended by the sub-recipient on all election administration activities.⁷
- Or
2. Identify the total expended by the sub-recipient on the specific activity (activities) for which Federal funds were provided.⁸

Note: If no funds were expended by the sub-recipient in state fiscal year 2000 for the activity (activities) related to Title III, the State shall maintain a record of such determination.

If a State sub-awards grants to a sub-recipient for a non-specific activity, other than all activities allowed by HAVA, then the sub-recipient’s base level of expenditure for state fiscal year 2000 may be calculated in either of two manners:

1. Identify the total expended by the sub-recipient on all election administration activities in the state fiscal year 2000.⁹
- Or
2. Identify the total expended by sub-recipient for each Title III-related activity in state fiscal year.¹⁰

⁷ With this method, a sub-recipient may use its entire budget for election-related activity in state fiscal year 2000 to establish the base level of expenditure. It is not necessary to break out activities related to Title III.

⁸ For example, if a State provides a sub-grant for the purchase of voting equipment, the base level calculation does not need to include all expenditures toward activities allowed by HAVA, but rather the calculation includes only the expenditures on voting equipment by the recipient county or local unit of government in state fiscal year 2000.

⁹ With this method, a sub-recipient may use its entire budget for election-related activity in state fiscal year 2000 to establish the base level of expenditure. It is not necessary to break out activities related to Title III.

¹⁰ With this method, a sub-recipient needs to identify separately the amount spent on any of the following activities in state fiscal year 2000: voting equipment, voter registration database, ID requirements, provisional voting, and voter information.

Note: If no funds were expended by the sub-recipient in state fiscal year 2000 for the activities related to Title III, the State shall maintain a record of such determination.

VIII. Satisfaction of MOE by Sub-recipients

As the grant recipient, the State is ultimately responsible for ensuring compliance with the MOE, including compliance by sub-recipients. The MOE requirement is applicable to sub-recipients in each fiscal year in which the sub-recipient expends Title II Requirements Payments. If no Requirements Payments are used in a fiscal year, there is no applicable MOE requirement for that year. The State may determine compliance with the MOE requirements by its sub-recipients in either of two manners:

1. The State may hold each sub-recipient individually responsible for meeting an applicable MOE requirement by determining the sub-recipient expends the same or greater local funds than the sub-recipient's base level of expenditure¹¹ on either:
 - a. All election administration activities.¹²Or
 - b. Each HAVA activity (or activities) on which the sub-recipient expends funds as the corresponding base year activity (or activities).¹³
- Or
2. The State may assume responsibility for meeting the MOE requirements of its sub-recipients by expending State dollars in an amount equal or greater than the sub-recipient's base level of expenditure, in addition to any MOE applicable to the State, in each Federal fiscal year that HAVA funds are used by the sub-recipient¹⁴ on either:
 - a. All election administration activities.¹⁵Or
 - b. Each HAVA activity (or activities) on which the sub-recipient expends funds as the corresponding base year activity (or activities).¹⁶

¹¹ In this method, the sub-recipient county or local unit of government would be responsible for the applicable MOE for the any Requirements Payments expended in a given fiscal year.

¹² If the total local dollars expended by the sub-recipient on election-related activities for a given fiscal year are the same or greater than the total base level, the sub-recipient will have met the MOE requirement for that year.

¹³ The sub-recipient, for example, would need to document that the sub-recipient expended in a given fiscal year the same or more on each activity on which Requirements Payments are expended than the amount spent in each allowable area in state fiscal year 2000: voting equipment, voter registration database, ID requirements, provisional voting, and voter information. If the sub-recipient does not spend any Requirements Payments on an activity (say, voting equipment) in a particular fiscal year, then the MOE requirement for that activity (voting equipment) would not apply.

¹⁴ In this method, the State will absorb responsibility by expending State dollars, in excess of the State's MOE requirement, to account for a sub-recipient's MOE.

¹⁵ The State, for example, must expend the same or more State dollars in each applicable fiscal year than the sub-recipient's total base level.

¹⁶ The State in each applicable fiscal year, for example, must expend the same or more in each allowable area than the amount spent by the sub-recipient in each allowable area in state fiscal year 2000: voting equipment, voter registration database, ID requirements, provisional voting, and voter information. If the sub-recipient does not spend any Requirements Payments on an activity (say, voting equipment) in a particular fiscal year, then the MOE requirement for that activity (voting equipment) would not apply.