



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

**U.S. Election Assistance Commission**  
**Funding Advisory Opinion**  
**FAO-08-001**

**Requestor:**

Kentucky (AOR-08-001)

**Question:**

Does the maintenance of effort (MOE) requirement apply in the same manner to States that (a) had a voter registration database that subsequently met the requirements of Help America Vote Act (HAVA) and (b) do not use HAVA funds to operate and maintain the database?

**Determination:**

In using requirements payments authorized by Section 251 of HAVA, states are required by Section 254(a)(7) to “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.” The MOE requirement covers the same classes of activities for which the requirements payments can be used. These activities include:

- Purchasing, leasing, maintaining, repairing, and storing voting system;
- Developing, operating, verifying, and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- Providing information to voters at the polling place for Federal elections;
- Implementing and/or operating a system of provisional voting during Federal elections;
- Other activities that improve the administration of elections for Federal office.

The type of expenditure identified in the question is precisely the type of expenditure that the State would be required to maintain under the MOE requirement. The fact that the State uses State funds to continue to support any of the identified activities is evidence that the State is working to maintain its previous expenditures in keeping with the MOE requirement.

Therefore, the cost of a State-funded HAVA-compliant voter registration system purchased with State funds in the State fiscal year ending June 30, 1999 and/or the costs of maintaining such a system must be factored into a determination as to whether a State is maintaining its effort after receiving Section 251 funds. Likewise, the expenditures that the State is making annually toward the development, maintenance and operation of its voter registration system should be considered in determining whether the State has met the MOE requirement.



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For example, if the only Title III-related activity that a State funded in fiscal year 1999 was \$500,000 to support a voter registration system that subsequently met the requirements of HAVA; the State must spend at least \$500,000 of State funds in each year that it has Section 251 funds available for expenditure to satisfy the MOE requirement.