



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

**Statement Concerning Maintenance of Effort
By Commissioner Donetta Davidson**

January 27, 2010 – This week, the U.S. Election Assistance Commission (EAC) received an update on progress towards a maintenance of effort (MOE) policy. At our public meeting, the Commissioners talked about where we have been and where we hope to be. A webcast of the meeting can be found [HERE](#).

Based on the discussion at the meeting, I was under the impression that the EAC could post a proposed policy for notice and public comment without further action. However, after the meeting, I was informed that in fact, the Commission would have to vote to release a proposed policy for notice and public comment. We continue to work toward that goal.

A lot of thought and consideration has gone into our efforts and I thank staff for all the work they have done and how far we have come. I think the Commissioners all agree that the EAC has a duty to help states in any way we can, including providing direction on MOE. We have come a long way, and as we continue exploring ways to help the states document compliance with MOE, I encourage the Commission to include the following in any proposed policy it puts out for public comment.

First, we need to keep in mind that the goal of any MOE policy has always been to facilitate states' documentation of compliance with MOE. The discussion we had at the public meeting was of a voluntary process. The purpose of the process is not to punish states that do not participate, but to aid those states that choose to participate in documenting compliance with MOE. As a former state election official, I would have welcomed the opportunity to ask questions before submitting a state plan or going through an audit. I know that states want to get it right and we should provide them with plenty of opportunities to work with us to achieve their goals. As a matter of fact, section 202(4) of HAVA *directs* the Commissioners to provide "information and training on the management" of Requirements Payments.

Second, any policy we discuss has to make it clear how states can calculate their baseline MOE. I believe that the right approach is to capture state spending on activities funded by Requirements Payments activities. This means money spent at the state level. It also means money spent at the county and local level when that money was appropriated by the state. Taking this approach is consistent with the spirit of HAVA and makes it clear to states what is included in MOE and what is not. And where records are not available to calculate the baseline MOE, the EAC should let states come up with reasonable estimations of those amounts, supported by sufficient justification.

Finally, the EAC should include in any policy it considers on MOE flexible methods for states to show that they have met MOE. In other words, we should leave it to the states to determine how they will hold recipients of state funds accountable for meeting MOE. The only thing we would ask for up front is a description of how states plan to document calculation of the baseline and compliance with future spending. We would not require these things, but simply use them as a tool to help states that choose to engage with us. States could then use what they submit to the EAC to satisfy section 254(a)(7) of HAVA if they chose to do so; but it would not be the only means, and not using the voluntary process would have no effect on a states' compliance with 254(a)(7). In other words, the EAC, in creating an MOE policy, should provide a means to facilitate compliance with the MOE requirement, but it is not the only option states can consider.

States have made significant progress to implement the requirements of HAVA. I believe states are meeting their maintenance of effort requirements and as the administrator of HAVA funds, the EAC has a duty to help states document that compliance. To continue to force the states to try and navigate HAVA's requirements without assistance from this Commission can only harm states, and ultimately, voters.

As with other important efforts, we will include as many people as we can in the process and move forward in an open and transparent way. I welcome the opportunity to continue working with my fellow Commissioners and staff to examine the issue and come up with a policy; and urge the EAC to move forward quickly.