

**EAC Maintenance of Expenditure – PROPOSED Policy**  
**As Amended February 22, 2010**  
**As Revised After Public, Commissioner and IG Input June 14, 2010**

**Policy Overview Statement:**

The Help America Vote Act of 2002 (HAVA) requires States to meet an annual Maintenance of Expenditure (MOE) (previously known as Maintenance of Effort) based on State expenditures for activities allowable under Title III of HAVA in the fiscal year prior to November 2000. HAVA requires that States establish a baseline spending level and then meet that spending level each year HAVA Section 251 funds are spent by the State. The following questions and answers provide details on what is required to meet HAVA's MOE requirement and how the U.S. Election Assistance Commission (EAC) will work with States to ensure they have a plan (See question 11) in place for managing MOE requirements.

**1. What is the purpose of the maintenance of expenditures (MOE) requirement mandated by HAVA?**

The purpose of MOE is to ensure that recipients of Section 251 funds (Requirements Payments) use the payments to meet the added requirements placed on States by HAVA, while maintaining the level of State funding that was available for those activities during the fiscal year ending prior to November 2000.

**2. Where in HAVA is the MOE requirement?**

Section 254 of HAVA provides the required elements to be included in the State plan. An MOE description is one of the required elements. Section 254(a)(7) requires States to identify in their plans:

“[H]ow 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.” 42 U.S.C. § 15404(a)(7)  
(Emphasis added).

**3. What does this MOE policy do?**

The purpose of this policy is to facilitate State compliance with the maintenance of expenditure (MOE) requirement in HAVA. This policy supersedes EAC Advisory drafts 07-003 and 07-003A.

This policy provides guidelines and assistance for States to identify their baseline MOE and maintaining that level in subsequent years. This policy can also assist those states that elect to develop detailed, *voluntary plans* for identifying a baseline MOE level and maintaining that level in subsequent years.

**4. Who is covered by this policy?**

This policy applies directly to the 50 States, four U.S. Territories and the District of Columbia (referred to as States) that are eligible to receive Requirements Payments. This policy may also impact “lower-tier” entities indirectly (see below). However, States are ultimately responsible for demonstrating compliance with MOE.

### **5. What does the EAC mean by the term “lower-tier” entities and recipients?**

A lower-tier entity is a political subdivision of a State. Depending on the State, lower-tier recipients may include, but are not limited to, counties, cities, townships, and other jurisdictions. A lower-tier recipient is a lower-tier entity that receives Section 251 HAVA funds or equipment from the State.

### **6. What is a baseline MOE?**

The baseline MOE is a dollar amount that captures the level of State spending for a particular program or activity in the base year. In the case of HAVA, the baseline is the State spending level for a set of election activities pursuant to Title III that were in place in the fiscal year ending prior to November 2000. States may choose the Federal fiscal year, which runs from October 1, 1999 through September 30, 2000; or the State fiscal year, if it is different from the Federal fiscal year.

### **7. Do States need to account for lower-tier (local) spending during the base year in calculating MOE?**

Maybe. A State will need to account for lower-tier spending during the base year in calculating MOE when the lower-tier spending derives from funds appropriated by the State for that purpose. If the funds used are not derived from a State appropriation provided or awarded to a lower-tier entity for a specific purpose allowable under Section 251 of HAVA, a State MAY choose to exclude the lower-tier spending from the baseline MOE calculation.

### **8. What types of expenditures must be used to calculate the MOE baseline amount and are eligible to count towards our annual MOE contribution?**

States must use all election expenditures that are allowable under Section 251 of HAVA and that were funded directly by the State, or through a State appropriation to a lower-tier entity in the base year, to calculate the baseline MOE. EAC does not consider the re-distribution of State revenue from States to lower-tier entities, where the lower-tier entities have discretion on how the funds are spent, to be an eligible State expenditure that would require inclusion in the baseline MOE calculation. For example, sales tax that is collected by State, but distributed back to counties to finance county operations, would not constitute a State expenditure for purposes of calculating the MOE baseline.

All allowable uses under Section 251 of HAVA, including: 1) purchase of voting equipment; 2) development and operation of a statewide voter registration list; 3) development and implementation of provisional voting for Federal elections; 4) provision of information to voters at the polling place on election day; 5) verification of information provided by persons seeking to register to vote; and, 6) improvement of the administration of elections for Federal office should be included in the baseline MOE.

For example, State X appropriates \$10 million for election activities eligible for funding under Section 251 of HAVA. Two million dollars of the \$10 million appropriation went to county Y to provide provisional ballots on Election Day. The State's MOE is \$10 million because it includes all funds appropriated to counties for specific HAVA-allowable activities that year as part of its aggregate MOE.

**9. Does this policy impose a set of uniform requirements that States must comply with to establish a baseline MOE and meet annual MOE requirements?**

This policy provides minimum requirements that should be addressed when setting the baseline MOE and tracking annual MOE contributions. EAC recognizes that the financing and administration of elections includes a particularly diverse set of practices that vary from State to State. As such, this policy allows for States to develop flexible plans designed to meet each individual State's circumstances.

**10. Our State plan already acknowledges that we will meet the MOE requirements. Do we still need to submit the MOE plan discussed in this policy?**

No. Submission of the MOE plan described in this policy is voluntary and may not be the only means of satisfying Section 254(a)(7) of HAVA. However, States' adoption of detailed MOE plans will help ensure that States capture an accurate, defensible baseline MOE and are meeting annual MOE requirements. EAC's assessment of the detailed MOE plans will assist States to create an accurate, defensible baseline MOE and allow for easier determination as to whether they are meeting their annual MOE requirement.

**11. What should a State include in its MOE plan?**

A State's MOE plan should:

1. Provide the date parameters for the 'fiscal year ending prior to November 2000' as described in HAVA. This base year will be used to set the baseline MOE for the State.
2. Provide the specific cost factors and fund sources that make up the baseline MOE, or proposed alternative method(s) for determining the baseline MOE and why the alternative is adequate.
3. Establish an MOE baseline dollar level that is an aggregation of MOE expenditures: by the State and by lower-tier jurisdictions receiving appropriated funds from the State (see question 7) for the fiscal year ending prior to November 2000. If funds appropriated to a lower-tier jurisdiction were counted as part of the State expenditure, then they do not have to be counted a second time as an appropriation to the lower-tier entity.
4. A description of how the MOE will be collected, including what documentation will be provided to track receipt of funds to cover the MOE, as well as the timeline for collecting all the pertinent information.
5. Describe the back-up documentation that must be maintained and made available for inspection by EAC upon request in order to substantiate the State's calculation of its baseline and fulfillment of MOE requirement for those years when it applies. For a State plan that calls for lower-tier jurisdictions to contribute to MOE, documentation showing the MOE baseline and annual MOE contribution levels from these entities.

6. Clearly state the roles and responsibilities of the State and any applicable lower-tier entities for reporting MOE and keeping appropriate documentation to substantiate or validate yearly MOE levels. Note: All entities contributing to MOE should do an annual certification for their files of their MOE contribution to the State.

**12. How do we know if our State or lower-tier entities have an MOE requirement in a given year?**

Each State has an MOE obligation in every fiscal year that it spends HAVA Requirements Payment funds. Depending upon how a State decides to meet its annual MOE contribution, a lower-tier entity may need to meet MOE in a fiscal year during which it receives Requirements Payments through the State.

**13. What are the reporting requirements associated with MOE once a State has an MOE plan on file with the EAC?**

Pursuant to Section 254(a)(12) and Section 258(3) of HAVA, each State is required to submit as part of its annual report a description and analysis of how it has met or exceeded its baseline MOE for the preceding fiscal year. Appropriate back-up documentation, as described in the State's MOE plan, must be kept on file and made available to EAC staff during site visits or to auditors or other officials during an audit or investigation.

**14. Should our State provide a single, aggregate baseline amount for MOE, or a series of MOE baseline amounts for each eligible local jurisdiction?**

EAC requests that States provide a single baseline and report an annual aggregate MOE amount. However, tracking MOE for any lower-tier entities that are required by the State to contribute to MOE may assist States in demonstrating compliance with MOE.

**15. Do States have any flexibility in how much is spent annually in each of the cost categories identified by the plan, or do they have to maintain expenditures in each of the categories?**

Yes, States do have flexibility in how much is spent annually in each of the cost categories. A State's MOE plan should track expenditures by category to identify the MOE baseline and annual contributions. However, this policy does not require States and eligible lower-tier entities to maintain specific expenditures within the identified cost categories. It is EAC's intent that only the aggregate State MOE levels need to be met in a fiscal year during which HAVA Section 251 funds are expended.

In meeting the MOE baseline of spending, it is left to the State to determine how that baseline is met, as an aggregate. For example, a State spent HAVA 251 funds in 2008. In that fiscal year, that State may have chosen to expend more of its State funds on its voter registration database and less of its State funds on providing voting information (as defined in Section 302(b)(2) of HAVA) at the polls than it did in the fiscal year ending prior to November 2000. As long as the total baseline MOE is met by adding up all eligible spending categories, as an aggregate, spending for a single category does not have to equal the exact amount spent on that category in the base year.

**16. What happens if our State fails to meet its MOE?**

Any audit findings related to a State not meeting its MOE requirements will be addressed through EAC's Audit Resolution Process. The State's MOE plan and EAC's assessment of it will be major factors in how EAC resolves any questioned costs or policies related to MOE arising from Inspector General or single State audits. For example, a State that's plan was assessed as adequate by EAC and who followed that plan in its entirety will be significantly less likely to have an adverse management decision in the Audit Resolution Process than a State whose plan was assessed as 'not adequate' by EAC. There are two remedies for violation of MOE, either a grantee's allocation of Federal funds is reduced in the same proportion as its contribution fell below the required level, or the grantee loses all grant funds for the fiscal year<sup>1</sup>.

**17. How can States establish the baseline MOE for local jurisdictions where those jurisdictions lack the records or detailed accounting needed to determine the level of spending on elections in the base year?**

In general, only State appropriated funds for HAVA-eligible activities in the base year need to be identified and counted towards the baseline MOE. States may propose an alternative measure for estimating spending in the base year, but only after demonstrating that accurate records are not attainable. Some alternative measures might include budgeted or appropriated amounts, contract amounts, or similar means compiled from available records from the base year. States might also estimate spending based on average increases over time, but must provide adequate justification and documentation to support the estimate.

**18. Do States have to collect MOE information every year from lower-tier entities?**

It would depend on how a State determines how it wants to meet its MOE obligation. Once the baseline is established by the State, by identifying all appropriations/expenditures with State funds in the base year that would have been allowable costs under HAVA, the State will need to determine how it would like to meet that MOE obligation on an annual basis. If lower-tier entities are enlisted by the State to help meet MOE (similar to how some counties contribute to State match obligations for Requirement Payments) those enlisted entities will need to make available to the State appropriate documentation to substantiate their MOE contributions. In short, any entity (State or lower-tier) contributing to the annual MOE obligation in a year during which the State expends Requirement Payments should keep appropriate documentation to demonstrate compliance with MOE.

**19. How should States address capital expenditures in the base year? For example, several counties purchased equipment in the base year, which appears to establish an unreasonable MOE baseline for those jurisdictions.**

Section 254(a)(7) of HAVA does not make a distinction between capital expenditures and other expenditures associated with election administration that were incurred in the base year with regards to establishing the baseline MOE.

**20. The year before FY 2000 was not an election year and the election administration costs in that year were lower than in an election year. Should we still use the fiscal year ending prior to November 2000?**

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<sup>1</sup> GAO Redbook at 10-103, 104.

Yes. HAVA is clear that the timeframe for setting the baseline MOE is the fiscal year ending prior to November 2000.

**21. Does the EAC have any suggestions for how to enforce MOE requirements with lower-tier entities?**

EAC can only make general suggestions since States are the legal recipient of HAVA funds. The ability to enforce MOE requirements as well as State preferences for how lower-tier entities may expend funds, rests with the State, through any administration action available to the State. States should have several mechanisms available to ensure compliance with MOE requirements, for instance: a sub grant agreement may be modified to contain MOE requirements and instructions, or including such a requirement in agreements to buy and transfer equipment or services to a lower-tier entity.

**22. What type of assistance and training can the States expect from the EAC to help implement this policy?**

EAC grants staff will be available to provide optional support and technical assistance to States on their MOE plans and in particular any deficiencies noted in EAC's assessment of each plan. In addition, EAC plans to develop tools and templates to help capture and track MOE. EAC will also publish sample MOE plans from States willing to share their work with others as an effective practices guideline.

**23. What authority in HAVA allows EAC to implement this proposed policy?**

Section 202(4) of HAVA includes as part of the EAC's duties that EAC provide information and training on the management of payments and grants provided through HAVA. This policy defines MOE and provides States with a voluntary set of guidelines and practices for developing a baseline MOE and tracking yearly progress towards meeting that obligation.

**24. When should States submit their voluntary State MOE plans to EAC and what is the process for submission?**

EAC would like to receive MOE plans, which can be submitted outside of the State plan, within 12 months of passage of this policy. Once your plan is received, EAC's grants department will offer optional technical assistance to your State to ensure that the plan provides for a reasonable, well documented basis for the MOE baseline and on-going MOE obligations. EAC's goal is to have MOE plans developed by each State that chooses to participate in this process in place within this timeframe. EAC will provide technical assistance, including easy to use templates and checklists for developing State MOE plans, by early summer 2010. Deadlines can be extended by EAC upon request by the chief election official in the State.