



**U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
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September 6, 2007

EAC Advisory 07-003-A – Maintenance of Effort Funding

Question 1: What is maintenance of effort (MOE)?

Response 1: MOE is a means by which Congress and thereby the Federal Government requires States to share in the expense of funding a particular endeavor. Specifically, MOE requirements are used to assure that the Federal funding actually **increases** the amount of funding to a particular program or task.

Section 254(a)(7) of the Help America Vote Act of 2002 (HAVA) creates a requirement that States maintain the effort or level of funding that each State expended in the fiscal year preceding November 2000:

(7) 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.

HAVA ties the MOE requirement to the State's fiscal year. Because State funding is allocated on an annual or in some cases biennial basis, the State must continue to commit annually or biennially the same amount of funding to the effort that it committed prior to the availability of Federal funding. Furthermore, HAVA requires that these funds be expended, not just appropriated. Because the intent of the MOE requirement is to prevent a State from replacing its own funding with Federal funding, expenditures at the State, county, and, where appropriate, the local level must be considered. In other words, a State, county or local government **may not** replace or supplant its prior level of funding with Federal dollars.

However, the MOE provision in Section 254(a)(7) of HAVA is limited. The MOE requirement is only related to activities that the State, county or local government spent money on that are consistent with the requirements of Title

III of HAVA. Activities that State, county and local governments may have funded in the past include:

- Purchasing voting equipment;
- Developing, operating 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;
- Verifying voter registration information using other Federal, State, county or local data;
- Other activities that improve the administration of elections for Federal office.

The expenditures are also limited to those made in the State fiscal year that ended prior to November 2000.

Question 2: How does MOE relate to the State's matching fund requirement?

Response 2: Both MOE and matching funds requirements are considered cost sharing methods, ways by which Congress and thereby the Federal Government get States to share in the expense of funding a particular endeavor. MOE requirements are considered different from matching fund requirements in that the intent, generally, is to assure that the Federal funding actually increases the amount of funding to a particular program or task.

While there is no legislative history on this particular issue, a plain reading of HAVA results in an understanding that Congress included two separate and distinct cost sharing requirements, matching funds and MOE. Congress did not intend for one of these cost sharing methods to cancel the other. Rather, it is apparent that Congress intended that the state both contribute to the improvement of election systems through the 5% match requirement and use the Federal and state (matching) funding to increase the prior level of State funding for Federal election administration efforts.

Question 3: What is the impact of the MOE requirement?

Response 3: In order to receive a requirements payment under Title II of HAVA, each State was required to certify that it would maintain its effort at the same level that it expended money for HAVA funded activities in the fiscal year preceding November 2000. Each State has made such a certification and has been distributed requirements payments under HAVA. Thus, the State is obligated to keep that promise and continue to spend the same amount that it spent in the fiscal year preceding November 2000 on HAVA funded activities.

Question 4: How should States document that they have maintained their effort?

Response 4: The first step in documenting MOE is to determine the base level of expenditure in the state fiscal year preceding November 2000 (base year). This number should be derived by examining the State and county or local government spending on HAVA funded activities during the base year. These activities include:

- Purchasing voting equipment;
- Developing, operating and/or maintaining a list of registered voters who are eligible to vote in Federal elections;
- Providing information to voters at the polling place on Federal elections;
- Implementing and/or operating a system of provisional voting during Federal elections;
- Verifying voter registration information using other Federal, State, county or local data;
- Other activities that improve the administration of elections for Federal office.

Once a base level of expenditure is obtained, the State can demonstrate that it has maintained its effort by providing documentation that shows that the State spent the same amount of money (base level of expenditures) on any election-related activities during any Federal fiscal year in which the State had and used requirements payments distributed under Title II of HAVA.

A State can also demonstrate that they have maintained their effort by documenting the same or greater level of expenditures as the base level of expenditure in each year that the State had and used requirements payments.

Question 5: To what years does the MOE requirement apply?

Response 5: In order to receive HAVA funds, each State certified its compliance with the MOE requirement, which obligates the State to maintain its effort for each year that it has and uses HAVA funds:

- (7) 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.

Thus, if a State received HAVA funds on August 31, 2004, then the State and its political subdivisions (counties or local governments) would be responsible for maintaining their effort during the state or local fiscal year encompassing

August 31, 2004 and for every year thereafter as long as the State has and used HAVA funds.

Question 6: Which “fiscal year” must the State use to demonstrate it has met the MOE requirement?

Response 6: It is preferred that the State choose a single fiscal year for itself and all of its political subdivisions. However, if this is not feasible, the State and political subdivisions may document their compliance in their respective fiscal years.

Question 7: Are counties responsible for proving their own compliance?

Response 7: Ultimately, documentation should be available for audit from each of the counties showing that the MOE requirement has been met. However, EAC will work through its grantee, the State, to determine whether the counties have met the requirement.

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