



U.S. ELECTION ASSISTANCE COMMISSION  
 1225 NEW YORK AVENUE, N.W., SUITE 1100  
 WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of )  
 )  
 Submission of Maintenance of Expenditure (MOE) )  
 Proposed Policy "B" By Commissioner Gineen )  
 Bresso Beach For Public Comment )  
 )

CERTIFICATION

I, Donetta Davidson, Chair of the U.S. Election Assistance Commission, do hereby certify that on February 17, 2010, the Commissioners voted on the above referenced matter. This matter proposed that the Commission approve placing the Maintenance of Expenditure (MOE) proposed Policy "B" by Commissioner Gineen Bresso Beach for a public comment period of 30 days. All ballots were timely submitted.

After review of the ballots, I certify that the measure fails, having not achieved the requisite three approval votes required by law. Chair Davidson and Commissioner Beach voted affirmatively, and Commissioner Hillman objected the recommendation.

NOTE: Per the tally vote policy, the matter will be moved to a public meeting agenda.

Commissioner Hillman commented – There has been no briefing on this proposed Policy B. I look forward to hearing about this proposal at the February 19, 2010 meeting.

Attest:

2/17/2010  
 Date

Donetta Davidson  
 Donetta Davidson  
 Chair



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

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** February 12, 2010, 3:30p.m.

**BALLOT DEADLINE:** February 17, 2010, 3:30p.m.

**COMMISSIONERS:** BEACH, DAVIDSON, AND HILLMAN

**SUBJECT:** SUBMISSION OF MAINTENANCE OF EXPENDITURE (MOE)  
PROPOSED POLICY "B" BY COMMISSIONER GINEEN BRESSO  
BEACH FOR PUBLIC COMMENT

- ( ) I approve the recommendation.
- ( ) I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

**COMMENTS:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM GINEEN BRESSO BEACH, COMMISSIONER



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

**MEMORANDUM**

**TO:** Chair Davidson and Commissioner Hillman

**FROM:** Commissioner Bresso Beach *Anna B. Beach*

**DATE:** February 12, 2010

**RE:** Submission of Maintenance of Expenditure (MOE) Proposed Policy "B" by Commissioner Gineen Bresso Beach for Public Comment

**BACKGROUND**

The Help America Vote Act of 2002 (HAVA) requires States to meet an annual MOE based on state expenditures for activities allowable under Title III of HAVA. Section 254 of HAVA details what must be in the state plan. An MOE description is one of the pre-conditions for receipt of a requirements payment disbursement.

EAC has refrained from providing an MOE advisory policy since April 16, 2008 while the subject has been debated. States have been without detailed guidance on the subject for that period of time and it is the Agency's obligation to move forward on this as quickly as possible.

The attached draft proposal is an alternate option on which the EAC would like public comment. Publication of this proposal for 30 days in the Federal Register would allow for additional input to facilitate the development of the final MOE policy.

**RECOMMENDATION:**

Approve placing the attached proposed MOE policy out for a public comment period of 30 days.



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

**Maintenance of Effort/Expenditures (MOE) Policy Proposal “B”**  
**Commissioner Gineen Bresso Beach**

**I. PURPOSE**

The purpose of this document is to provide clarification to States regarding the Maintenance of Effort/Expenditures (MOE), as described in the State plan section (section 254) of the Help America Vote Act of 2002 (HAVA). (This requirement is sometimes called Maintenance of Effort. This Policy uses the term Maintenance of Expenditures throughout.)

**II. MAINTENANCE OF EXPENDITURE/EFFORT**

The Help America Vote Act of 2002 (HAVA) requires States to meet a Maintenance of Expenditure (MOE) (also known as Maintenance of Effort) level in each fiscal year that HAVA Section 251 funds are spent, based on State expenditures for activities funded under Section 251 of HAVA in the fiscal year ending prior to November 2000. This Policy provides guidance for States in meeting HAVA’s MOE requirement.

Before a State may receive requirements payments under section 251 of HAVA, it must certify that it has filed a State plan that includes each element described in section 254 (among other things). (Section 253(a)). The elements listed under section 254 include:

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 Section 254(a)(7) (emphasis added)

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 spent for those activities during the fiscal year ending prior to November 2000. This Policy supersedes suspended Advisory 07-003 and 07-003A affects all parties that receive Requirements Payments, i.e. the States (defined in HAVA as the 50 states, Puerto Rico, Guam, American Samoa, US Virgin Islands, and the District of Columbia).

A State’s MOE requirement is calculated using State expenditures, including a state appropriation to a county and/or local governments, to support election activities covered by

Section 251 requirements payments. For example, State X appropriates \$10 million for election activities eligible for funding under section 251 of HAVA. \$2 million of the \$10 million was appropriated to county Y to provide information to voters at a polling place on Election Day. The State's MOE is \$10 million because it includes all funds appropriated to counties for that year as part of its aggregate MOE.

### **Elements of MOE**

As a State creates its State plan, it must address how it will maintain spending levels, by the State, for activities that are funded by the Section 251 funds, at levels at least equal to the levels in the fiscal year ending prior to November 2000. This requires the State to determine:

1. the total amount of spending on those activities in the fiscal year ending prior to November 2000 (i.e. the baseline) and
2. if a State will spend the HAVA Requirements Payment, how State spending on those activities will at least match the baseline.

#### **A. Baseline Calculation**

In determining the baseline, the State must look to what activities are funded by the payment: section 251 funds are to be spent on complying with title III of HAVA and may, with the appropriate certifications, be spent on other activities to improve the administration of elections for Federal office. (Section 251(b)).

The State must look to what State spending was on those activities in the fiscal year ending prior to November 2000. HAVA is silent as to which fiscal year a State must use, and as such, States have the flexibility to choose the federal fiscal year, which ran from October 1, 1999 through September 30, 2000, or the state's own fiscal year which ended prior to November 2000. If a State cannot determine levels of spending in that fiscal year using existing documentation, documentation from later fiscal years may be used to reconstruct or estimate prior levels of spending.

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 non-federal funds on its voter registration database and less of its non-federal funds on providing information to voters 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 the categories, as an aggregate, individual spending for a single category does not have to equal the exact amount spent on that category in the fiscal year ending prior to November 2000.

#### **B. Covered Election Administration Activities**

In order to determine the MOE baseline, a State should determine expenditures on the prescribed set of activities that are covered by the Requirements Payments.

All Title III activities are covered, including:

1. ensuring a voting system meets Section 301 standards;
2. developing and operating a statewide voter registration list;
3. developing and implementing provisional voting for Federal elections;

4. providing information to voters at the polling place on election day; and
5. verifying information provided by persons seeking to register to vote.

Additionally, the improvement of the administration of elections for Federal office must be included in the baseline MOE if that activity is funded by the Requirements Payment. State funds used to support any of the above activities must be captured in the baseline MOE.

### **III. ASSISTANCE TO STATES**

A State may request assistance and guidance from the EAC on the details and development of its MOE plan including how it determined its baseline, how it will maintain those levels of spending and reporting of MOE.

A State may, in addressing MOE within its State plan, develop a detailed voluntary MOE plan to identify the baseline MOE level and maintain that level in subsequent years. A detailed MOE plan may help guide an audit by capturing an accurate assessment of the baseline MOE. Provisions which a State may want to consider in developing an MOE plan include:

- 1) Date parameters for the “fiscal year ending prior to November 2000” as described in HAVA. A State may choose the federal fiscal year which ended September 30, 2000, but should clarify the dates included in the fiscal year chosen.
- 2) Categories of activities which are being included in the baseline MOE, including any cost factors or proposed alternative methods for determining the baseline MOE.
- 3) Aggregate dollar amount of the baseline MOE.
- 4) Description of back-up documentation used to determine the baseline MOE. For States that do not have the records for the baseline year, or subsequent years, the State may propose spending estimates using alternative measures. These may include estimated amounts based on amounts budgeted or contracted for other years, as long as there is justification or documentation to support those estimates. For example, a State may establish a baseline MOE by showing the level of spending over several years, and establishing the percentage increase over those years, and using that information to estimate an amount of spending in a year prior that may not have documentation.

A State may seek a determination, by an affirmative vote of the Commission, as to whether the calculation of its MOE baseline is based on sufficient justification. The determination will be for purposes of informing the EAC audit only and does not affect a State’s receipt of HAVA funds. Submission of an MOE plan for review by the Commission is voluntary and not required by HAVA.



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COMMISSIONERS: BEACH, DAVIDSON, AND HILLMAN

SUBJECT: SUBMISSION OF MAINTENANCE OF EXPENDITURE (MOE)  
PROPOSED POLICY "B" BY COMMISSIONER GINEEN BRESSO  
BEACH FOR PUBLIC COMMENT

- () I approve the recommendation.  
() I disapprove the recommendation.  
() I object to the recommendation.  
() I am recused from voting.

COMMENTS: It is EAC's obligation to move forward quickly to provide states with detailed guidance on MOE. Therefore, I vote yes to putting this proposed policy out for public comment.

DATE: 2-16-2010

SIGNATURE: *Sonella Davidson*

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM GINEEN BRESSO BEACH, COMMISSIONER



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- I object to the recommendation.
- I am recused from voting.

COMMENTS: There has been no briefing on this proposed  
Policy B. I look forward to hearing about this  
proposal at the February 19<sup>2010</sup> meeting.

DATE: 2-17-10 SIGNATURE: [Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM GINEEN BRESSO BEACH, COMMISSIONER





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- I am recused from voting.

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

DATE: 2/17/10

SIGNATURE: *Gineen Beach*

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chair. Please return the ballot no later than date and time shown above.

FROM GINEEN BRESSO BEACH, COMMISSIONER