



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

MEMORANDUM

**TO:** Chairman Rodriguez, Commissioner Davidson, Commissioner Hillman,  
Executive Director Wilkey, Office of General Counsel

**FROM:** Commissioner Hunter and Sharmili Edwards

**DATE:** April 29, 2008

**RE:** Proposed MOE Policy Change

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On April 14, 2008, Office of General Counsel (OGC) responded to a request for staff comments to a proposal submitted by Commissioner Hunter and discussed at an EAC public meeting on April 16, 2008, to modify the Election Assistance Commission's (EAC) present policy on Maintenance of Effort (MOE), also known as Advisory 07-003-A. This memorandum responds to General Counsel's comments.

**SPECIFIC CONCERNS MENTIONED BY OGC**

**I. OGC states that the term "State" is ambiguous:** OGC contends that there is ambiguity in the use of the word state in §254(a)(7) of HAVA and therefore can be construed to also mean county and local government. The section states:

“How the State, in using the requirements payments 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.” §254(a)(7) of HAVA.

We contend that the statutory language is not ambiguous. HAVA specifically mentions State in §254(a)(7); in the HAVA section governing State plans, two other sections specifically refer to units of local government. The first section states, “How the State will distribute and monitor the distribution of the requirements payments to *units of local government* or other entities in the State” (§254(a)(2)<sup>1</sup> (emphasis added)) and the second section states, “How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of *units of local government* in

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<sup>1</sup> The relevant portion of the section implies that the State is a separate entity from the local and government entities which may geographically be within the boundaries of the State.

the State in carrying out the plan” (§254(a)(8)). Had Congress intended to specify MOE was applicable at the county level, it would have specifically required units of local government to comply with the MOE requirements of §254(a)(7). Section 901 of HAVA actually defines “State.”<sup>2</sup> The definition clearly does not include units of local government. HAVA relies on the states to file a State plan,<sup>3</sup> monitor use of funds distributed to the counties<sup>4</sup>, and determine the success of the units of local government.<sup>5</sup> Congress intended that the State monitor the inner workings of the State, including local governments when necessary, and HAVA leaves these powers to the State.

OGC argues that States do not agree on the meaning of “State” because approximately half of the States included county and local expenditures in the section of the State plan that requires a description of MOE:

“Perhaps the most compelling information regarding the question of ambiguity is based on the plans submitted by the States to obtain HAVA funding. According to State plans filed with the EAC, it appears that approximately half (23) of the States read the term at issue consisted with EAC’s present policy, including county and local expenditures as part of a States’s MOE.” OGC memo, Proposed MOE Policy Change, Section I.a. (April 14, 2008).

Appendix A to this memorandum is a list of excerpts from 53 State plans that were published in the Federal Register on March 1, 2004 shows. However, many, if not most, of the states included in the list of 23 do not clearly state that they read §254(a)(7) to require counties to maintain the effort. In fact, this list of 23 States includes Colorado, which states, “Colorado’s HAVA enabling legislation (H.B. 03-1356) contains a number of provisions that, taken together, require maintenance of effort that meets *and* exceeds the requirements of HAVA 2002<sup>6</sup>”(emphasis added). Colorado acknowledges that its implementation of HAVA reaches beyond what the federal law required. Delaware’s State plan section complying with §254(a)(7) of HAVA, also included in these 23 State plans, simply states, “The state will fund the Commissioner’s Office and the Departments of Elections for the counties for expenditures at or above 2000 levels for activities consistent with HAVA.<sup>7</sup>” Delaware does not specify that its MOE included county

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<sup>2</sup> HAVA §901 reads in its entirety: ‘In this Act, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.’ 42 U.S.C. 15541.

<sup>3</sup> HAVA §253(b)(1): “The State has filed with the Commission a State plan covering the fiscal year which the State certifies” and §254(a) describes what must be included in the State plan.

<sup>4</sup> §254(a)(2): “How the State will distribute and monitor the distribution of the requirements payments to units of local government or other entities in the State for carrying out the activities described in paragraph (1)...”

<sup>5</sup> §254(a)(8): “How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan...”

<sup>6</sup> See Colorado, from Appendix A.

<sup>7</sup> See Delaware, from Appendix A.

expenditure in its MOE baseline, nor does it specify that it was required to do so by federal law. Tennessee does not specify if county expenditures are included in the State's MOE baseline, but does state, "[t]here will be a Maintenance of Effort requirement for each county receiving direct funds from HAVA.<sup>8</sup>" It is not apparent from this excerpt that the State plan actually includes any county expenditure in its MOE, nor does it make clear that the State believes that counties must provide this information because HAVA requires it. These 23 State plans which are cited as evidence that "State" is an ambiguous term are actually uninformative on this issue. Information found in Appendix A is not evidence that States included county expenditures in their MOE baseline because it was an obligation included in HAVA. Furthermore, the majority of states did not include any reference to counties or units of local government in the relevant portion of the State plan. It is also important to note that the current proposed policy does not preclude States from including county and local government expenditures in the MOE requirement. A State's inclusion of county and local government expenditures in the State plan may simply reflect the State's exercise of choice in including this information, which is consistent with federal law as stated in HAVA.

**II. OGC argues that HAVA explicitly requires that MOE requirements include the expenditures of local governments:** HAVA §254 does not explicitly require States to include the expenditures of its local government in determining MOE. This is not explicitly stated anywhere, which means that a State has the option of doing so – by choosing what is best for the State. The MOE section states:

“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 2008.” HAVA §254(a)(7)

Units of local government or other such entities are not mentioned anywhere in §254(a)(7), so to construe a requirement of determining a maintenance of effort to include local governments or other entities is overreaching and adds a requirement not included by Congress. The States are requested in other sections of the State Plan portion of HAVA (§254) to determine the best way to monitor activities at the local level; by excluding any mention of the local level in §254(a)(7) Congress has refrained from forcing States to include that information in the MOE.

**III. OGC contends that interpretation of the meaning of “State” must account for the purpose of MOE:** As several States have pointed out in their comments supporting this proposal, the requirements of HAVA have ensured that State spending will be increased across the board, be it a State level or at a local level. The types of changes

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<sup>8</sup> See Tennessee, from Appendix A, which reads in whole: “The Secretary of State will work with the Commissioner of Finance and Administration and legislative leaders to ensure that the expenditures of the State for the activities funded by the payments remain at a level not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. There will be a Maintenance of Effort requirement for each county requiring direct funds from HAVA.”

created in HAVA force States to spend money on activities that may not have existed pre-HAVA. Congress did not intend HAVA to take power away from the States in determining how to run elections; the intention was to improve the administration of federal elections. Furthermore, OGC provides no evidence that Congress intended to include units of local government. Of course, Congress may amend HAVA to include local government if it so desires.

**IV. OGC believes that the proposal would treat States unequally:** OGC makes a fairness argument, that to allow States to leave out local and county government expenditures from the MOE will somehow change the way money is distributed or spent. This is irrelevant as over half of the States did not include local and county government expenditures in their MOE. The remaining States that did may have chosen to do so. This proposal will give the choice back where it belongs: in the decision of the State. Some States may choose to keep their State plans as is, and some may choose to change it. However, that change will be a reflection of the State’s determination of the best way to approach HAVA and elections. It takes the determination away from the EAC, which was never intended to have that kind of broad statutory authority; otherwise Congress would have explicitly written that power into the statute.

Additionally, as South Dakota pointed out in comments submitted on the proposed policy, “An after-the-fact interpretation that MOE must apply to county and local governments is a new burden placed on local election officials that is contrary to the language of HAVA and an unfair addition to everyone’s understanding of the requirements for local governments under HAVA.”<sup>9</sup> This post-facto interpretation actually creates inequality for the States by creating requirements that did not exist before and retroactively forcing States to comply.

**V. OMB Circular A-102 (Common Rule) requires that statutory requirements are made a part of any subgrant of funds:** OGC contends that Circular A-102 requires local government to conform to the MOE requirement of HAVA when a State makes a payment to a local jurisdiction. But, MOE is not a grant of money to the States. MOE requires each State to determine how much was spent in the fiscal year ending prior to November 2000. This creates a baseline/benchmark to compare future spending by the State, which is one of many items to be included in a State Plan. HAVA does place restrictions on the use of HAVA funds; however the MOE requirement is not such a restriction:

Sec. 251. REQUIREMENTS PAYMENTS.

(b) USE OF FUNDS. –

(1) IN GENERAL. –Except as provided in paragraph (2), a State receiving a requirements payment shall use the payment only to meet the requirements of Title III

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<sup>9</sup> See South Dakota comments on proposed policy: [http://www.eac.gov/News/docs/2008-meetings-moe-comments-south-dakota-comments.doc/attachment\\_download/file](http://www.eac.gov/News/docs/2008-meetings-moe-comments-south-dakota-comments.doc/attachment_download/file)

(2) OTHER ACTIVITIES. –A State may use a requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the Commission that –

- (A) the State has implemented the requirements of Title III; or
- (B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 252(c).

§251(b) of HAVA

HAVA monies do not take the MOE into account at all when determining how much money is to be disbursed to a State. To require county and local governments to be included in the MOE because they *may* receive funding from the State, arguing that subgrants require the same restrictions as the original grant, is not appropriate because MOE is not a restriction on the use of funds. MOE does not dictate how a State may or may not use funds, therefore the MOE requirement cannot be construed to be a requirement of the grant of funds, flowing down to the subgrantees.

**VI. The proposal is inconsistent with EAC’s decision on matching funds:** OGC has misinterpreted the proposed policy regarding MOE. The policy will not preclude States from including county and local government entities when determining MOE, but properly leave the decision to do so with the State. This is consistent with the matching funds policy (Advisory 05-001) which *allows* a State to use funds set aside by county and local government in setting up matching funding, provided it follows certain stipulations. Additionally, Advisory 05-001 makes it clear that the State, according to HAVA’s matching fund regulations, does not include county and local government. Advisory 05-001 specifies that “[a] State *may* use funds that are set aside by county or local governments...” (emphasis added) and continues by making the following stipulations:

1. In order for the money to be under the control of the State, there must be some written agreement between the counties and the State establishing that the funds have been set aside by the counties for use by the State for this purpose and that the only purposes for which those fund may be used are those provided by HAVA for the use of matching funds. A cooperative agreement, memorandum of understanding or other contract would be sufficient to satisfy the requirement of a written agreement.
2. Maintenance of funds at the county level does not obviate in any way the State’s obligation to provide the matching funds, account for their use, report on their use, and audit those funds as required by HAVA and OMB Circulars A-87 and A-133.
3. The provision and maintenance of matching funds by the counties does not alleviate the State’s obligation to use all HAVA funding in keeping with the tenets and spirit of the Voting Rights Act and other state and federal laws and regulations prohibiting the discriminatory use of federal funds and/or discriminatory application of voting systems.

Stipulation two is most similar to the proposed policy for MOE; though funds at the county level may be included by the State's matching funds, the State is in charge of recordkeeping and reporting for those funds.

Alternatively, Advisory 05-001 also deals with a system in which funds are determined by how much the State certifies as being available. This is different from the MOE requirement, where funding is not determined by the previous levels of spending by the State.

### **VII. & VIII. Problem Language in the Proposed Policy & Implementation**

**Concerns:** As Advisory 07-003-A currently is written, changes must be instituted to accurately reflect the MOE requirement. In addressing OGC's concerns regarding the written language of the policy, the wording in the recommendation has been amended:

“EAC Advisory 07-003-A, dated September 6, 2007, shall be amended to make it clear that HAVA does not require a state to include local and county government expenditures when determining the Maintenance of Effort baseline as required by HAVA §254(a)(7).

This modification of EAC Advisory 07-003-A does not preclude States from including county and/or local government expenditures when determining the Maintenance of Effort baseline. This inclusion will be at the State's discretion, and not because it is a requirement of Federal law.”

The revised Advisory shall be brought to a vote of the Commission.

## APPENDIX A

### **A. Excerpts from State Plans Published in the Federal Register by EAC on March 1, 2004 That Indicate Maintenance of Effort Consists of State and County Activities**

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Section 254 (a) (7) of the Help America Vote Act says that State plans shall contain a description of *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.*

#### **1. Alabama**

Alabama will maintain the level of state budgeting for election requirements at the same or greater level as the state spent in the fiscal year ending before the November 2000 election. In the fiscal year ending September 30, 2000, the state spent no funds on activities related to HAVA requirements. The state election-related budget consisted of the following line items: (details excluded but total is \$9,128,389)

Any payments to local government will be conditioned on a continuing maintenance of effort to ensure that federal funds do not replace existing local expenditures on election administration.

#### **2. Arizona**

The secretary of state will not use the requirements money to maintain the expenditures previously incurred by the state. Funds will be appropriated in the 2004-2005 state of Arizona fiscal budget to carry out the Federal Election. The requirements payments will not be used to fund the following:

- Travel to conduct logic and accuracy tests
- Printing, labeling and postage of sample ballots
- Production and mailing of publicity pamphlets

The secretary of state and counties shall continue to provide maintenance of effort in providing election and voter education as required in the Help America Vote Act of 2002 (HAVA).

#### **3. Connecticut**

Consistent with HAVA 254 (a) (7) in using any requirements payment, Connecticut will maintain expenditures of the state for activities funded by the payment at a level equal or greater than the level of such expenditures in state FY2000.

As in many states, however, this level of funding represents only a small portion of the statewide aggregate operating budget expenditures needed to sustain elections in a given fiscal year; **election administration resources have historically been allocated to the municipal as well.** Connecticut's 169 municipality office budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration and IT support. In addition, the registers of voters and town clerks require an increase in funding for each specific election for poll workers, office staff, ballot production, mailing and Election Day support.

It is therefore important to note that the projected HAVA budget set forth above is based on the assumption that **the municipalities will maintain their election operating expenses at existing levels. As a safeguard for this assumption, the state will require proof from each municipality that they have budgeted for future elections at a level not less than the prior years budget for an election of the same type.** Without this safeguard in place, the short term infusion of funds HAVA provides would not be sufficient to maintain the new state election environment in the long term.

#### 4. Colorado

The State will maintain state expenditures for activities funded by the requirements payment at a level at or above the expenditure level that existed prior to the receipt of federal funds. No federal funds for requirements payments will be used to supplement the state budget for operation and administration of the Office of the Secretary of State, or to supplant funding historically received from state sources for election-related purposes.

Colorado's HAVA enabling legislation (H.B. 03-1356) contains a number of provisions that, taken together, require maintenance of effort that meets and exceeds the requirements of HAVA 2002. These provisions include the following:

- Every year that the State receives federal funds, the Secretary of State is required to maintain expenditures to support the statewide voter registration system from nonfederal monies at a level at or above the level for the 2001-02 fiscal year.
- Every county fiscal year that the State receives federal funds, each county is required to maintain the same level of expenditures on activities arising under Title III of HAVA 2002 that it expended in fiscal year ending prior to November 2002.

Second, HAVA 2002 only requires maintaining state expenditures at the level of State Fiscal Year 99-00 level (the first fiscal year ending prior to November 2000). The State legislation uses a later and higher base year, FY 2001-02.

#### 5. Delaware

The state will fund the Commissioner's Office and the Departments of Elections for the counties for expenditures at or above 2000 levels for activities consistent with HAVA. The total appropriation prior to 2000 was \$3,264,102.73. Currently the State exceeds this expenditure level.

## **6. Florida**

The funding provided under the Help America Vote Act of 2002 (HAVA) is intended to pay for new or enhanced election efforts and is not intended to supplant existing funding at the State or county level. The projected HAVA budget is based on the assumption that the State of Florida and counties will maintain the foundation of election operating expenditures for the fiscal year ending prior to November 2000.

The Florida Division of Elections provides statewide coordination and direction for the interpretation and enforcement of election laws. The Division's budget supports year-round staff that provides election-related assistance to Florida's 67 county supervisors of elections and their staff, municipalities, special districts, county and city attorneys, candidates, political committees, committees of continuous existence, elected officials, media, the public and other election officials throughout the United States.

In determining Florida's maintenance of effort expenditures, the Division of Elections calculated 1999-2000 fiscal year expenditures which included salaries and benefits, operating capital outlay and voter fraud programs for the Division of Elections Director's office and the portion of Bureau of Election Records' expenditures pertaining to election administration. Florida's expenditures for these activities for 1999-2000 fiscal year totaled \$3,082,224.

In order to comply with Section 254(a)(7) of HAVA, the Florida Department of State will maintain expenditures on similar activities at a level equal to the 1999-2000 fiscal year budget.

## **7. Iowa**

In compliance with HAVA section 254 (a)(7), in using any requirements payment, Iowa will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of Title III expenditures in State FY 2000.

The intent of funding provided under HAVA is to pay for new or enhanced efforts, not to supplant existing funding at the state and county level. The projected HAVA budget is based on a critical assumption that the state and counties will maintain this foundation of election operating expenditures at existing levels. Without this found, the short-term infusion of HAVA funds would not be sufficient to maintain a new state election and voter registration system in the long-term.

## **8. Kentucky**

The Governor's office of Policy and Management evaluated the budget of the Kentucky State Board of Elections to ensure that the Maintenance of Effort requirement has been

met. In addition, there will be a Maintenance of Effort requirement for each county receiving direct HAVA funds.

## **9. Pennsylvania**

Though the Commonwealth appreciates the commitment that the Federal government has made to election assistance both by enacting HAVA and providing funding to the States to allow them to fully realize the ultimate goals of HAVA – a free and open election process for all citizens – the Commonwealth realizes that it still has the primary responsibility to maintain the programs that it was funding prior to November 2000 and to develop new and innovative programs to make the Commonwealth a leader in election administration.

To this end, in using requirements payment, the Commonwealth plans to maintain expenditures of the State for activities funded by the payment at a level no less than the level of such expenditures in FY 1999-2000. In addition, the Commonwealth plans to ask each county to file an annual report to assure the Commonwealth that each county has complied with the requirement of HAVA that the State maintain its pre-November 2000 effort as a condition of receiving funds under title II of HAVA.

## **10. Maryland:**

Consistent with HAVA §254(a)(7), in using any requirements payment, Maryland will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of such expenditures in State FY 2000 -- a total of \$1,994,914.

As in many states, however, this level of funding represents only a small portion of the statewide aggregate operating budget expenditures needed to sustain elections in a given fiscal year, as the great majority of election administration resources have historically been allocated at the county level. Maryland's 24 local election office budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration, information services, and IT support. In addition, LBEs provide the significant increase in funding associated with each specific election -- for poll workers, temporary office staff, ballot production, mass mailings, election day support (including personnel, equipment, and supplies), etc. In some cases, key election support resources provided at the county level may not even be included within election office budgets, but are provided through other county agencies and donations.

It is therefore important to note that the projected HAVA budget set forth in Section Six of this Plan is based on the critical budget assumption that the State will maintain this foundation of county-funded election operating expenditures at existing levels. Without this foundation in place, the short-term infusion of funds HAVA provides would not be sufficient to maintain the new State election environment in the long term.

## **11. Mississippi:**

The larger portion of the funds appropriated on a yearly basis in Mississippi are on the county level. Mississippi's eighty-two (82) local election office budgets typically support year-round staff and operating expenses for continuous functions such as voter registration, information services, and IT support. In addition, local governments bear the largest cost increases associated with each specific election – poll workers, temporary office staff, mass mailings, election material production and procurement, polling place rental, and election day support (including personnel, equipment, and supplies). While county funds may be allocated within the budget specifically for elections, many costs may be “in-kind” assistance from other county agencies.

The Secretary of State's Office will work with local governments to determine their funding for the 2000 fiscal year. All local governments that receive the benefit of HAVA funding, through equipment, services, or grants, will be required to maintain funding at the level determined. Exceptions will be made for expenditures that are replaced by materials provided by the State (ex. – a county should not be expected to appropriate money for a voter registration system lease, when a new system will be provided by the State).

## **12. Montana**

The secretary of state will maintain expenditures of the state for activities funded by the payment at a level equal to or greater than the level of such expenditures in state FY 2000.

The secretary of state and counties shall continue to provide maintenance of effort, as required in the Help America Vote Act of 2002 (HAVA), in providing election and voter education.

## **13. New Jersey**

In New Jersey, the bulk of fiscal responsibility for the conduct of general and primary elections falls upon the counties. Each county pays for its voting equipment, ballot printing, administrative election offices, and a portion of the district board workers' salary. Election expenses at the State level are primarily related to the State Division of Elections, which is housed in the Department of Law and Public Safety. In light of this State/county allocation of fiscal responsibilities relating to elections, in order to satisfy the mandate of HAVA that no state appropriation for elections be less than the amount expended for fiscal year 2000, all counties and the State must maintain at a minimum the level of operating expenses for elections that was incurred in fiscal year 2000, in addition to any federal funding received.

## **14. New York**

GOAL:

Meet statutory mandate for maintenance of effort.

**PRESENT STATUS:**

The State Board does not provide funds for any activities identified in Title III. Costs for voting systems, provisional balloting, voting information requirements, voter registration lists, and registration by mail are borne by county boards of election.

**PROPOSED PLAN:**

County boards shall continue to provide maintenance of effort in providing election and voter education as required in HAVA.

**15. Oregon**

In compliance with HAVA Section 254(a)(7), in using any requirements payment, Oregon will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of Title III expenditures in State FY 2000.

The intent of funding provided under HAVA is to pay for new or enhanced efforts, not to supplant existing funding at the state and county level. It is therefore important to note that the projected HAVA budget is based on a critical assumption that the state and counties will maintain this foundation of election operating expenditures at existing levels. Without this foundation, the short-term infusion of HAVA funds would not be sufficient to maintain the new state election environment in the long-term.

**16. Pennsylvania**

Though the Commonwealth appreciates the commitment that the Federal government has made to election assistance both by enacting HAVA and providing funding to the States to allow them to fully realize the ultimate goals of HAVA – a free and open election process for all citizens – the Commonwealth realizes that it still has the primary responsibility to maintain the programs that it was funding prior to November 2000 and to develop new and innovative programs to make the Commonwealth a leader in election administration.

To this end, in using its requirements payment, the Commonwealth plans to maintain expenditures of the State for activities funded by the payment at a level no less than the level of such expenditures in FY 1999-2000. In addition, the Commonwealth plans to ask each county to file an annual report to assure the Commonwealth that each county has complied with the requirement of HAVA that the State maintain its pre-November 2000 effort as a condition of receiving funds under Title II of HAVA.

**17. South Carolina:**

Consistent with HAVA §254(a)(7), in using any requirements payment, South Carolina will maintain expenditure of the State for activities funded by the payment at a level equal or greater than the level of such expenditures in State Fiscal Year 2000.

The SEC has taken several reductions to the base budget since 2000. To absorb those reductions, operating expenses have been cut drastically by condensing office space, leaving vacant positions unfilled, and a reduction in force plan was implemented which eliminated one full time employee.

During the 2003 legislative session, the South Carolina General Assembly did not provide any funds for the 2004 Statewide Primaries. However, all HAVA funds will be maintained completely separate and no HAVA funds will be used to offset either the general fund or primary election fund shortfalls.

The State budget represents only a small portion of the statewide aggregate operating budget expenditures needed to sustain elections in a given fiscal year, since by South Carolina law the great majority of election administration resources are provided at the county level.

South Carolina's 46 local election office budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration, information services, and IT support. In addition, county registration boards and election commissions provide the significant increase in funding associated with each specific election – for Poll Managers, temporary office staff, ballot production, mass mailings, election-day support (including personnel, equipment, and supplies), etc. In some cases, key election support resources provided at the county level may not even be included within election office budgets, but are provided through other county agencies and donations.

It is therefore important to note that the projected HAVA budget set forth in *Chapter 6: Proposed State Budget* is based on the critical budget assumption that the State will mandate that this foundation of county-funded election operations be maintained at existing levels. Without this foundation in place, the short-term infusion of funds HAVA provides would not be sufficient to maintain new State election environment in the long term.

**18. Tennessee:**

The Secretary of State will work with the Commissioner of Finance and Administration and legislative leaders to ensure that the expenditures of the State for the activities funded by the payments remain at a level not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. There will be a Maintenance of Effort requirement for each county receiving direct funds from HAVA.

**19. Utah**

<b>Item</b>	<b>Amount</b>
25% of Voter Registration Coordinator=s salary	\$6,000
25% of Voter Outreach Coordinator=s salary	\$6,000
Voter Registration Forms	\$14,630
Mailings	\$2,283
Other Office Expenses (phone, etc.)	\$1750
Voter Information Pamphlet	\$305,370

<b>Total Maintenance Of Effort</b>	<b>\$336,033</b>
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The documentation on how the State arrived at this maintenance of effort is on file with the State Elections Office.

From Section 2 of the State Plan

- A. The State Plan Committee will meet twice each calendar year to review all payments made out of the fund.
- B. A county may request monies from the fund only for the purpose of purchasing new equipment when the number of registered voters increases. Requests must be made in writing to the Lt. Governor and approved by the State Plan Committee. The State Plan Committee will oversee all payments made from the fund.
- C. Counties must do the following in order to receive equipment purchased by the State:
  - 1. Ensure the physical accessibility of polling places based on the survey provided by the Lt. Governor's Office or a comparable survey.
  - 2. Comply with title III of the Help America Vote Act.
  - 3. Appropriate at least the same amount of funding based on their budget during the 2000 general election year for each subsequent general election year. This requirement is in place until all federal monies in the election fund are spent. (Other requirements not included)

**20. Virgin Islands:**

In compliance with HAVA Section 254(a)(7), in using any requirements payment, the Virgin Islands will maintain expenditures of the territory for activities funded by the payment at a level equal to or greater than the level of Title III expenditures in the territory for FY 2000 or \$1, 401, 300.00. The intent of funding provided under HAVA is to pay for new or enhanced efforts, not to supplant existing funding at the territorial level. It is therefore important to note that the projected HAVA budget is based on a critical assumption that the state and counties will maintain this foundation of election operating expenditures at existing levels. Without this foundation, the short-term infusion of HAVA funds will not be sufficient to maintain the new territorial election environment in the long-term.

**21. Virginia**

In accordance with HAVA section 254 (a)(7), Virginia will maintain expenditures of the State for activities funded by the Requirements Payment at a level equal to or greater than the level of such expenditures in State FY00. The total spent on meeting the specific requirements of Title III in that FY was \$778,994. This amount is a fraction of the total amount spent on elections by the State.

In addition, in Virginia, much of the expense of both federal and state elections is born by the 134 localities. The cost of poll workers' pay and training, voting equipment, ballot

generation and absentee ballot processing all are costs born by local governments. Virginia will ensure that localities continue to maintain levels of expenditures sufficient to fund elections and that the localities will not use HAVA funds for routine registration- and election-related expenses. As discussed in Section 2 of this Plan, some payments to localities may occur on a reimbursement basis for the purchase of voting equipment; SBE will make no payments to cover the costs associated with the “normal” business of Virginia’s local registration and election offices.

## **22. West Virginia:**

Consistent with HAVA §254(a)(7), in using any requirements payment, West Virginia will maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of such expenditures in State FY 2000 of \$42,329, which ended June 30, 2000. These funds represent the portion of the expenditures made by the Secretary of State during fiscal year 2000 for activities carried out by the elections division that are consistent with the activities to be funded by the requirements payment.

As in many states, the majority of all election expenditures are incurred by individual county budgets. Statewide elections occur every even year in conjunction with the federal elections. In addition, the counties are responsible for special elections for county issues such as levies and bonds. West Virginia’s 55 county budgets typically support year-round core staff and operating expenses for continuous functions such as voter registration, information services, and technical support. Furthermore, the counties provide the significant increase in funding associated with each specific election such as poll workers, temporary office staff, and ballot production.

It is therefore important to note that the projected HAVA budget set forth in Section Six of this Plan is based on the assumption that the counties will also maintain election expenditures at existing levels.

## **23. Wisconsin**

Wisconsin will maintain the level of state expenditures for HAVA requirements at the same or greater level as the State spent in the fiscal year (FY 2) ending before the November 2000 election. In that fiscal year, the State Elections Board spent no funds on activities related to HAVA requirements. The agency’s election-related budget consisted of two Full Time Equivalent (FTE) elections specialists. These positions have been maintained despite a reduction in the agency staffing level as a result of the current fiscal crisis.

The positions will continue to be funded with state funds. All HAVA payments will be used to augment the preexisting level of state funding for election administration. Any payments distributed to local government will be conditioned on a continuing maintenance of effort to ensure that federal funds do not replace existing local government expenditures on election administration.