



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1201 New York Ave. NW - Suite 300
Washington, DC 20005

June 22, 2010

The Honorable Donetta Davidson
Chair
U.S. Election Assistance Commission
1201 New York Avenue, NW
Suite 300
Washington, DC 20005

RE: Revised Draft MOE Policy

Dear Chair Davidson:

On June 15, 2010, the U.S. Election Assistance Commissions' (EAC) Director of Grants provided the Office of Inspector General (OIG) with a draft version of the Maintenance of Effort/Expenditure (MOE) policy. My understanding is that the draft provided contained comments from the Commissioners and was a representative draft of what the EAC may consider and vote on at its upcoming public meeting on June 28, 2010.

I have provided the OIG's comments to the Director of Grants, but wanted to ensure that the OIG was on record and provided the Commissioners with our assessment of the changes that were made to the proposed policy vis a vis the original comments that we made and submitted for the record. You may consider this letter as supplemental testimony to that provided for the public meeting in response to your invitation for the OIG to appear and present testimony at the public meeting.

The current draft addresses some of the comments made by the OIG in its April 19, 2010 comments. There are, however, two issues which were not addressed and which we believe leave the EAC program vulnerable to exploitation and potential fraud, waste or abuse. The first issue is the application of this policy. The language of the proposed policy leaves the application of this MOE requirement to lower tier entities and recipients discretionary on the part of the state except where the state has appropriated funds to the lower tier entity in the base year. The revised language goes further to exclude appropriation or redistribution of tax revenues from the state to the lower tier entity as a means of "appropriation" covered by the policy.

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 (sic) counties to finance county operations, would not constitute a state expenditure for purposes of calculating the MOE baseline.

EAC Maintenance of Expenditure -- PROPOSED Policy As Amended February, 22, 2010 As Revised after Public, Commissioner and IG input June 4, 2010, question 8.

As was stated in our April 19, 2010 comments and in the testimony that we previously submitted for the public meeting, we believe that this application of the MOE policy leaves the program open to supplantation of local expenditures with federal funds. In other words, the language of the EAC policy allows the lower tier entities to replace their local dollars with federal funds and does not ensure that the Help America Vote Act grant program will increase rather than maintain election spending. Further, the revised language exempts states that engage in revenue sharing or tax income redistribution from coverage under this policy, despite the fact that state-collected tax revenues were previously used to fund, at least in part, election activities that are covered by the MOE requirement. We do not believe that this type of interpretation meets with the intention of Congress or the language of HAVA.

The second issue relates to the independence of audits and audit resolutions conducted by the EAC. The issue arises in two contexts or questions. In question 11, the EAC continues to allow the grantee to identify the back up documentation that the state will maintain and provide for audit. As we discussed in our April 19, 2010 comments, during the course of an audit, the auditors are the judges of what constitutes acceptable documentation to support costs. Regardless of what the state includes in its plan and whether the plan is approved by the EAC, if the auditors find that available documentation is insufficient to support costs related to the MOE, that finding will be reported. The issue also arises in question 16, wherein the EAC discusses the use of an approved state plan to resolve audit findings.

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.
(footnote omitted)

EAC Maintenance of Expenditure -- PROPOSED Policy As Amended February, 22, 2010 As Revised after Public, Commissioner and IG input June 4, 2010, question 16.
(emphasis added)

With respect, we believe that the language used will leave grantees with the impression that if the EAC approves its MOE plan that the EAC will resolve any audit findings in favor of the grantee. Just as an audit of a state's MOE compliance is an independent review of the state's policies, procedures, and implementation, the EAC should conduct an independent resolution of any audit finding. Such a resolution may require calling into question actions of the grantees and/or whether the EAC's approval or rejection of the state's MOE plan was supported. EAC should take care to protect the independence of its audits and audit resolutions. The current language seems to lean too heavily toward approval of grantee actions when the grantee's MOE plan was approved by the EAC.

As always, we are happy to discuss these comments or any other questions that you may have regarding our impression of the proposed MOE policy. Please contact me if you have any questions related to this letter or the comments contained therein.

Sincerely,



Curtis W. Crider
Inspector General

cc: Commissioner Bresso
Commissioner Hillman
Mark Abbott