



GHSA

MAP-21 Section 405

Maintenance of Effort (MOE)

Advisory

November 3, 2014*

****January 13, 2017: This Advisory was developed in 2014 to provide guidance for compliance with the MOE requirements contained in MAP-21. Annually on March 1, and until all MAP-21 Section 405B, C and D funds are spent, States are required to submit to their NHTSA Region the MOE information outlined in this Advisory.***

Beginning March 1, 2018, States will be required to submit new MOE calculations based on the FAST Act regulations for FY2017 FAST Act Section 405B, C and D funds. The definition of "lead state agency" included in the Act is currently under consideration by NHTSA within the new Interim Final Regulations, 23 CFR Part 1300. When the regulation is finalized, GHSA will amend this Advisory accordingly. According to NHTSA, at that time if Federal funds are expended during FY2017 from both MAP-21 and FAST Act funds, States will need to submit two MOE calculations - one using the FAST ACT criteria and one using the MAP-21 criteria.

Produced by Mercer Consulting Group LLC, East Lansing, MI 48823
With the assistance of the GHSA Federal Relations Committee

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A. BACKGROUND

- Under MAP-21 (Public Law 112-141 of 2012) in order to qualify for Section 405 grants for Occupant Protection (405b), State Traffic Safety Information System Improvement (405c) and Impaired Driving Countermeasure (405d) grants, the States are required to maintain aggregate expenditures from all State and local sources for programs described in the applicable section at or above the average level of such expenditures in fiscal years 2010 and 2011. This process is referred to as Maintenance of Effort (MOE).
- At the time of the State’s submission of its annual Highway Safety Plan to NHTSA, within Appendix D Certifications and Assurances for Section 405 grants, the State certifies that it will comply with the MOE requirement for the three program types referenced above. This is a similar requirement as was contained in the prior reauthorization, SAFETEA-LU, for some programs.
- On February 12, 2014, NHTSA’s Office of Regional Operations and Program Delivery issued [Guidance](#) to assist States in calculating MOE and understanding the related certification, documentation and waiver requirements. This Guidance clarified that the only expenditures for “local” sources to be included in the MOE are the amount of State grant funds provided to and expended by local subdivisions. The 2-12-14 NHTSA document is the regulatory guidance which should be closely read and followed by the States. This GHSA Advisory is a **secondary** source of information.
- To assist States in the computation of their MOE calculations, the GHSA Federal Relations Committee determined that an Advisory would be helpful. Since each State is undertaking these calculations using unique information and financial systems, a single template or model is not feasible. Instead the Advisory is a collection of advice gleaned from the NHTSA guidance and the experiences of the States who have voluntarily shared their MOE. Ultimately each State is responsible for calculating their own MOE in a manner which they believe meets the statutory requirement using their best available information. Additionally, the State’s MOE calculations may be examined for compliance by the State’s own inspector/auditor general.
- For those States who have computed their baseline and comparative FY2013 MOE calculations and had the submission accepted by their Region, a resubmission based on this Advisory is not necessary. The Advisory can be referenced by them in subsequent years.
- If a State has not yet submitted and/or received Regional acceptance of their MOE, the Advisory can be referenced in preparing the baseline calculations and the comparison to FY2013 which must be submitted by December 31, 2014.
- For FY2014, the State MOE calculation is to be submitted to the Regional Office no later than March 1, 2015.
- At this time, it is unknown whether the MAP-21 reauthorization will be extended (which would require that MOE calculations continue for each subsequent year) or replaced with a new reauthorization (which may eliminate the MOE requirement).

B. IDENTIFYING STATE FUNDED EXPENDITURES

- **Identifying Expenditures:** Start with taking a plain language approach to identifying which State-funded (Federal funds are not to be included in the MOE) expenditures should be included in MOE for each of the three traffic safety areas which the State has qualified for Section 405 funding (and only those programs). Potential expenditures include:

- State funded programs which are administered by the State Highway Safety Office (SHSO)
- State funded programs which are administered by the SHSO's department/oversight agency
- State funded programs which are administered by other State agencies. Begin with State (do not include **local** match) funded programs which are used for Match (see more below).
Review the State's Strategic Highway Safety Plan (SHSP) and/or SHSP Annual Report in the relevant traffic safety areas to identify additional State funded programs.

CAVEAT: In this case, keep it simple. Limit the search. There is no need to scour every line of every State budget bill. It may be helpful to document all contacts made with State agencies even those where it was determined no State funds are being expended in the relevant traffic safety areas.

- Other relevant traffic safety programs which may not be included in the SHSP however the SHSO partners or regularly works with the responsible State agency and is aware of the program.
- **“Distinguish MOE from Match”:** MOE and Match are two different although similar principles. Both calculations are based upon State funded expenditures (although Match may also be local expenditures). But the reason for making the calculations is different. Match is defined as the direct expenditure of actual State funds or State or local funds that are expended in support of other qualifying traffic safety programs (such as, the salaries of highway safety related, State-funded employees) and have not been utilized by another Federal, State or local agency as matching funds for a separate Federal project. The State must have documentation to support an audit and Match must be updated annually. Match funds are required to be provided by the State as a **percentage**, dependent upon the Federal funding source and amount. Once the required percentage of State funds is located for Match, the calculation concludes even if there are additional State funds available. With MOE, **all** State funded expenditures in the relevant traffic safety area must be included in the computation. In fact, Match funds derived from State sources and not local sources could be used in the MOE computation and are a good starting point for the SHSO. The Match information is already readily available, as calculated during HSP development, for the relevant traffic safety areas. See the GHSA Policy Manual Ch. 4, section H and Ch. VI, section C for a discussion of Match.
- **Limitations:** For each of the three relevant traffic safety areas, the State funded activities which must be counted for MOE are limited to those which are an eligible use of funds under the MAP-21 restrictions. If the State activity is not something that could be funded with the Section 405 funding, the activity does not have to be included in the MOE. This comes into play mainly with the Impaired Driving area. See Attachment C of the GHSA Guidance for Developing Highway Safety Plans regarding Section 405 Eligible Uses of Funds.
- **State Law Enforcement/Criminal Justice Expenditures:** States use differing methods for calculating the percentage of State expenditures for State Patrol/Police and Criminal Justice occupant protection and impaired driving activities, i.e. percentage of seat belt and child restraint citations written or impaired driving arrests, percentage of salaries. Documentation must be available to support the basis of each calculation. Consistency of method from year to year is also important.
- **Points of Interest to Consider:**
 - ✓ **Reasonableness:** When drawing up the list of State funded programs, make a best effort using the reasonableness principle.

- ✓ **Traffic Information Systems Improvements:** The eligible use of funds for this area is very broadly written. In some States an investment of significant funds are made in traffic records-related technology equipment which is intended as a one-time expenditure. It may be difficult for the State to maintain that level of funding effort in future years.
- ✓ **Intent:** The general intent of MOE is to prevent supplanting (replacement) of State programs with Federal dollars in the three relevant traffic safety areas. In the MOE certification, the State is certifying that it will maintain its aggregate expenditures from all State sources for each of the relevant traffic safety areas.

When the President unveiled his proposal in 2014 for the multi-year reauthorization of surface transportation funding, it included a request to eliminate the MOE requirement. GHSA will be supporting that request.

C. OBTAINING THE MOE EXPENDITURE CALCULATIONS

- Following the identification of the State funded programs which should be included in the MOE report, the SHSO must then determine the dollar amount of the expenditures for the two baseline years and the subsequent year.
- If the SHSO has worked with the applicable State agencies, the SHSO may directly contact each of their budget offices to request the needed expenditure amounts. If the SHSO is not familiar with the applicable State agencies, the SHSO may consider enlisting the assistance of their oversight Agency's budget analyst or financial staff who regularly work with the State Budget and other agencies. If this route is taken, the SHSO can provide their budget office with the list of State Agencies and programs for making the necessary contacts to narrow their search.
- If the SHSO's financial staff has State Budget responsibilities, that individual may be able to make the necessary contacts with other State agencies to obtain the information.
- Regardless of how the information is located, it is recommended that the request(s) be made in writing to each outside State agency and that a written response be requested which can be made part of the record.
- **Documentation:** The SHSO must maintain auditable documentation to substantiate each of its calculations however NHTSA will not examine the documentation routinely. NHTSA will review the initial baseline calculation and the subsequent Fiscal Year's calculation beginning with FY2013 and compare it to the baseline in order to determine compliance. **The SHSO must comply with the five "DOCUMENTATION" requirements specified in the 2-12-14 NHTSA Guidance on MOE.**
- **Future implications:**
 - Keep in mind that the baseline list of State funded programs becomes the basis of comparison in all future years. The State must spend at least the same aggregate dollar amount that it spent on average in the Fiscal Years 2010 and 2011. This is the standard even though some or many of the State expenditures included within the MOE are outside the control of the SHSO. When working with State partners, try to ensure that only knowledgeable, accurate sources are used to avoid errors as the SHSO is ultimately responsible.
 - Another caution, which also applies to Match funds, when identifying State-funded projects for MOE, is the possibility of supplanting becoming a future issue. If the SHSO identifies an item as a State-funded expense for MOE, or Match, the prohibition against supplanting would prevent the SHSO from using Federal funds for acquiring that same item or service in

the future (unless it is an identifiable enhancement vs. a standard replacement). Example, if training motorcycles are purchased with State funds, this prohibits the SHSO from replacing those motorcycles in the future using Federal funds - it would be supplanting.

D. MOE FORMAT (also see later, State Examples)

- There is no form or standard method required by NHTSA for providing the MOE calculations. This is the SHSO's option. States have used Word documents, many use spreadsheets. It is recommended that a simple format be used which can be easily read by persons outside of the SHSO.
- The following information must be **separately** provided for **each** relevant traffic safety area for the baseline calculation: State Agency Name/Source, Brief description of expense, Dollar Amount of State Funds Expended in FY2010, Dollar Amount of State Funds Expended in FY2011, Average Dollar Amount Expended in FY2010 and FY2011.
- In each subsequent year beginning with FY2013, the SHSO will add a column to the MOE baseline calculations document to report their new calculation of the aggregate Dollar Amount of State Funds Expended for that year and for each relevant traffic safety area. The new calculations for each subsequent year must be documented in the same manner as the baseline calculations (see above). If a new State funded program has been created in a subsequent year, it should be added to the MOE.
- It is the **aggregate** amount expended, not the amount expended on individual programs, which will be compared by NHTSA to the baseline aggregate for each relevant traffic safety area.
- A **consistent** basis for comparison of expenditures must exist between the baseline period and the fiscal year of review. Checking for consistency is a key element of NHTSA's annual review of the State's MOE calculations.

TABLE 1. SAMPLE INFORMATION FOR INCLUSION IN THE MOE REPORT

Name of Relevant Traffic Safety Area: _____

A. STATE AGENCY NAME	B. PROGRAM NAME	C. BRIEF DESCRIPTION OF EXPENSE	D. DOLLAR AMOUNT OF STATE FUNDS EXPENDED IN FY2010	E. DOLLAR AMOUNT OF STATE FUNDS EXPENDED IN FY2011	F. 2010/2011 AVERAGE AGGREGATE BASELINE FOR TRAFFIC SAFETY AREA	G. DOLLAR AMOUNT OF STATE FUNDS EXPENDED IN FY2013*
XXXX	XXXX	XXXX	\$	\$		\$
XXXX	XXXX	XXXX	\$	\$		\$
XXXX	XXXX	XXXX	\$	\$		\$
XXXX	XXXX	XXXX	\$	\$		\$
H. AGGREGATE EXPENDED FOR TRAFFIC SAFETY AREA BY YEAR			\$	\$		\$
					\$	
DIFFERENCE (if any) BETWEEN AGGREGATE AVERAGE BASELINE AND AGGREGATE SUBSEQUENT YEAR (Row H minus Column F)						\$

*For each subsequent year, another column can be added to the table.

- Option: Some States have provided a graph or chart to the MOE calculations document to visually illustrate the comparison of the average baseline expenditures to the subsequent years. This is helpful information but not required.
- Annually the NHTSA Regional office will review the State MOE calculation and notify the State when it is accepted.

E. WAIVER

MAP-21 provides that in cases of exceptional or uncontrollable circumstances (i.e. natural or fiscal disaster), a State may request a waiver for not more than 1 fiscal year if the Secretary determines such a waiver would be equitable.

F. STATE MOE EXAMPLES

To assist the States, links to a sampling of State MOE reports are provided below. The format and programs included vary by State as there is no required format. It should also be noted that each of these MOE reports were accepted by the applicable NHTSA Regional Office.

Following is an example of the acceptance email from their Region which was received by one of the selected States below:

“...We have reviewed the documents submitted on August 18, 2014 by the XXXXXX Traffic Safety Division that summarizes the State's FY 2013 Maintenance of Effort (MOE) as required in 23 CFR 1200.21(d)(5); 23 CFR 1200.22(f), 23 CFR 1200.23(d)(2); Appendix D. We have determined that based upon the comparison of FY 2013 MOE to the State's MOE summary of the FY 2010-2011 baseline, the State has appropriate evidence of compliance to document the expenditures for FY 2013 are above the FYs 2010-11 baseline for Occupant Protection (405b), State Traffic Safety Information System Improvements (405c), and Impaired Driving (405d). Please retain the summaries and all back up documentation should an auditor request. We will review the FY 2014 MOE following the FY 2014 financial closeout. Should you have questions, please contact (us). Thank you.”

LINKS TO STATE SAMPLE MOE REPORTS:

[Iowa](#)
[New Mexico](#)
[Pennsylvania](#)

G. ACKNOWLEDGMENTS

Special thanks are given to the many States who assisted in this project by sharing their MOE report examples with the GHSA Federal Relations Committee.