



# **GHSA FAST Act Section 405 Maintenance of Effort (MOE) Advisory**

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With the assistance of the GHSA Federal Relations Committee

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## INTRODUCTION

This Maintenance of Effort (MOE) Advisory was originally developed by GHSA in November 2014 to provide guidance to the State Highway Safety Offices (SHSOs) for compliance with the MOE requirements contained in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), (Public Law 112-141 of 2012) federal highway safety program reauthorization.

Significant changes were made to the MOE requirement by the Fixing America's Surface Transportation Act, the FAST Act (Public Law No. 114-94), reauthorization which took effect in December 2015. This Advisory was revised to include those changes and distinguish them from the requirements which previously existed for funds obtained under MAP-21.

Under MAP-21 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 were 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. Annually on March 31, States were required to submit to their NHTSA Region the MAP-21 MOE information outlined in this Advisory. NHTSA has determined that FY2017 is the last year of submitting MOE requirements using the MAP-21 process. NHTSA is satisfied that the MAP-21 MOE requirement is met when the initial calculation for a given year is submitted.

Under the FAST Act for the same three Section 405 grant programs, beginning with FY2018 the SHSO designates the lead State agency for each program and certifies in Appendix B of the annual Highway Safety Plan (HSP) that the lead State agency responsible for each of the three programs is maintaining its aggregate expenditures for that program at or above the average level of such expenditures in fiscal years 2014 and 2015 (baseline years).

This revised MOE Advisory is presented in two sections. The first section provides the changes made to the MOE requirements under the FAST Act. The second section contains the MOE requirements and process originally developed for compliance with MAP-21. Although a MOE report for FAST Act expenditures is no longer required to be submitted by the SHSO to the Regional Office, the SHSO must document in writing its calculations annually (by March 31) in a similar manner for their records and monitoring by NHTSA and State officials. A calculation process similar to that used for the MAP-21 MOE can be used by the SHSO with adjustments for the changes in the MOE requirement made by the FAST Act.

When the NHTSA Final Rule was issued on January 25, 2018, the previous Interim Final Rule requirement to provide *project-level* MOE information in the HSP was eliminated. The Advisory was revised accordingly in September 2018. In January 2019 updated State sample MOE reports were added. On August 13, 2019, NHTSA issued revised [NHTSA MOE Guidance](#) which is reflected in the September 2019 revision to the Advisory.

**GHSA**  
**Section 405 Maintenance of Effort (MOE)**  
**Advisory**

**A. BACKGROUND**

**1. FAST ACT MOE REQUIREMENTS**

- This Advisory is a collection of advice gleaned from NHTSA guidance and the experiences of the States who 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.
- Effective August 13, 2019, NHTSA issued revised [NHTSA MOE Guidance](#) which allows the SHSO to submit a change in lead state agency to their Regional Office based on the revisions to that Guidance but no later than October 1, 2019. If an SHSO can show that it has made a reasonable attempt to identify direct State-level expenditures in the program and cannot identify a lead State agency with substantial expenditures, the SHSO can select a different lead State agency based on other reasonable criteria and report an MOE baseline of \$0.
- Beginning with FY2018, for Section 405 funds obtained under the FAST Act for Occupant Protection (405b), State Traffic Safety Information System Improvement (405c) and Impaired Driving Countermeasures (405d) grants, the SHSO shall submit an assurance only (e.g. certify) in Appendix B of the annual Highway Safety Plan (HSP) that the lead State agency responsible for each of the programs shall maintain its aggregate expenditures for that program at or above the average level of such expenditures in fiscal years **2014** and **2015** (the baseline years).
- Beginning with the FY2018 HSP the State Highway Safety Office (SHSO) will have the Governor’s Representative (GR) sign the certification in Appendix B and submit it with the HSP.
- NHTSA has determined that the “lead state agency” for each of the three programs will be determined by the GR. The GR will use three criteria to make these determinations: the amount of State expenditures for the program, the level of program involvement and the level of leadership (authority or control) over the program.
- For the FY2018 HSP, the SHSO documented in writing and submitted to the NHTSA Regional office for review the lead State agency determinations made for each Section 405 program. The lead State agency determinations will remain the same for the duration of the reauthorization.
- After selecting the lead State agencies and receiving NHTSA approval, the SHSO may undertake a process similar to that used for the MAP-21 MOE calculation, as outlined in this Advisory, to make the annual MOE calculations. The calculations report should be completed no later than March 31 each year.
- Beginning with FY18, the SHSO no longer must submit a MOE report to NHTSA. Instead NHTSA will review the MOE calculations at the SHSO annually as part of their regular monitoring activities. The SHSO may also be requested to provide the MOE calculations to State officials.

**2. MAP-21 MOE REQUIREMENTS**

- Under MAP-21 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 were 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.

- 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 would certify 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. This GHSA Advisory is a **secondary** source of information.

## B. FAST ACT MOE CALCULATION PROCESS

- States may use a similar MOE calculation process to that which they developed for the MAP-21 MOE reports with a few exceptions.
- With the 2019 exception mentioned above, after receiving NHTSA approval, the lead State agency *remains the same* for the duration of the reauthorization.
- As part of the annual HSP/Section 405 and Section 1906 application, the State’s GR **signs an assurance** that the lead State agency responsible for each of the three applicable Section 405 programs will maintain its aggregate expenditures at or above the average level of such expenditures in fiscal years 2014 and 2015, see Appendix B to Part 1300, Parts 1, 2 and 3.
- The MOE calculation for each of the three Section 405 programs is limited to an examination and tracking of State fund expenditures of the **lead State agency only**.
- The MOE can then be calculated annually (not later than March 31) for the lead State agency for each of the three Section 405 programs using a similar process developed for the MAP-21 program (see Section C. MOE Calculation Process), but with the **baseline years of 2014 and 2015**.
- NHTSA will review the MOE calculations annually at the SHSO offices as part of their regular monitoring activities. No written MOE report is required to be submitted to NHTSA although States may optionally do so.

## C. MOE CALCULATION PROCESS

### 1. IDENTIFYING STATE-FUNDED EXPENDITURES

- **Identifying Expenditures:** A plain language approach identified 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.
  - The 2019 NHTSA MOE Guidance indicates that the SHSO **must** include the following:
    - ✓ Direct State expenditures, State expenditures through contract and State expenditures as a result of providing grants to a local subdivision of the State

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*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.*

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- ✓ Related indirect expenditures such as office personnel, accounting or human resources personnel, office space, supplies and utilities
  - ✓ FAST Act eligible expenditures
  - ✓ Allowable costs compliant with 2 CFR Part 200 Uniform Guidance
  - 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.
  - The 2019 NHTSA MOE Guidance states that in the MOE calculation the SHSO must **not** include the following:
    - ✓ Other Federal awards
    - ✓ Costs reimbursed with NHTSA grant funds
    - ✓ Local funds
    - ✓ Expenditures that are not FAST Act eligible
    - ✓ Expenditures based on indirect methods of inferring effort or costs, rather than direct expenditures (e.g. estimates based on the number of traffic tickets issued)
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- **“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 include local expenditures. 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. Effective with the August 13, 2019, revised [NHTSA Guidance on Non-Federal Share \(Match\)](#), States may now count any eligible State or local expenditures under the Section 402 program or any of the Section 405 programs toward the matching requirements under either the Section 402 or the Section 405 program. 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 as 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. IV, 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 FAST Act 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 A of the GHSA Guidance for Developing Highway Safety Plans regarding Section 405 Eligible Uses of Funds.

- **State Law Enforcement/Criminal Justice Expenditures:** Effective with the August 13, 2019, revised NHTSA MOE Guidance States must use only direct expenditures in their baseline calculations. It is not acceptable to estimate a percentage or amount 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 of direct expenditures 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. If expenditures by a State agency are only nominal and the agency does not fit the two other criteria, it is reasonable to select a different State agency as lead even if their expenditures are \$0.
  - ✓ **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 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.

## 2. OBTAINING THE MOE EXPENDITURE CALCULATIONS

- Following the identification of the State funded programs which should be included in the MOE report, the SHSO determines 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 should 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 routinely examine the documentation. However, the State's own inspector/auditor general's office may require more specific, auditable documentation be readily available. NHTSA will review the initial baseline calculation and the subsequent Fiscal Year's calculation and compare it to the baseline in order to determine compliance.
- **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 2014 and 2015 under the FAST Act. 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.

### 3. MOE REPORT FORMAT

- 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 should 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 FY2014, Dollar Amount of State Funds Expended in FY2015, Average Dollar Amount Expended in FY2014 and FY2015.
- In each subsequent year, the SHSO adds 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 are documented in the same manner as the baseline calculations (see above). If a new State funded program was 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 FY2014	E. DOLLAR AMOUNT OF STATE FUNDS EXPENDED IN FY2015	F. 2014/2015 AVERAGE AGGREGATE BASELINE FOR TRAFFIC SAFETY AREA	G. DOLLAR AMOUNT OF STATE FUNDS EXPENDED IN FY20__
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.

#### D. FAST ACT STATE MOE EXAMPLES

To assist the States, links to a sampling of FAST ACT State MOE reports are provided below. The format and programs included vary by State as there is no required format. These reports were accepted by their NHTSA Regional Office. In some cases, the SHSO was designated the “lead State agency” for MOE purposes.

LINKS (5) TO FAST ACT STATE SAMPLE MOE REPORTS:

[Kentucky](#), [Maine](#), [Maryland](#), [Pennsylvania](#), [South Carolina](#)

#### E. WAIVERS

MAP-21 provided 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. The FAST Act provides for a similar waiver **however** NHTSA advised in 2017 that a stricter approach is now being taken. Waivers will only be granted in *extremely* exceptional or uncontrollable circumstances, such as, a State budget not being available.

#### F. 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.