

2020

A Primer on Maintenance of Effort Requirements

for

Substance Abuse Prevention and Treatment Block Grant
Community Mental Health Services Block Grant

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INTRODUCTION

The Substance Abuse and Mental Health Services Administration (SAMHSA) administers two block grant programs that are vital to state substance use disorder prevention, treatment, and recovery services and state mental health services. These two programs are as follows:

1. Substance Abuse Prevention and Treatment Block Grant (SABG)
2. Community Mental Health Services Block Grant (MHBG)

Authorizing legislation for SAMHSA's block grants can be found at [42 U.S. Code Part B – Block Grants Regarding Mental Health and Substance Abuse](#). The implementing regulation for the SABG is found in [Title 45—Public Welfare, Subtitle A—Department of Health and Human Services, Subchapter A, Part 96 Block Grants, Subpart L, Substance Abuse Prevention and Treatment Block Grant](#).

The Secretary of Health and Human Services (HHS) is fully authorized to administer and enforce the authorizing legislation and implementing regulations governing the block grants. The Secretary has delegated the authority to administer the block grants to the HHS Assistant Secretary for Mental Health and Substance Use, who heads SAMHSA. SAMHSA's directors, managers, team leaders, and state project officers represent the Secretary when carrying out duties related to block grant administration.

The block grants are mandated by the U.S. Congress to provide funds and technical assistance to eligible entities. These entities include each of the 50 states, the District of Columbia, five (5) territories (Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, Northern Mariana Islands) and three (3) Freely Associated States. One Tribal entity, Red Lake Band of Chippewa Indians of Minnesota, is also eligible to receive SABG funds.

The block grant programs are major sources of state behavioral health (substance use and mental health) system funding. They provide significant discretion to states to define and implement federal programs based on local needs and conditions.

At the same time, the block grant programs provide incentives to states to maintain state funding expenditure levels for certain services and populations.

MOE FUNDAMENTALS

Each year, when a state applies for its block grant awards, it must demonstrate that in the most recent state fiscal year (SFY) it has met the statutory and regulatory expenditure requirements, or maintenance of effort (MOE), for specific substance use and mental disorder services and specific populations.

Calculating the SABG and MHBG state MOE requirements can become complicated as state systems evolve organizationally and change the types of services they provide. Also, specific requirements must be followed concerning the types of activities and funds that can be included in the calculations. Nonetheless, a state MUST provide accurate MOE figures every year. Otherwise, it risks a reduction in its award following the period of noncompliance.

This MOE primer is for personnel who play a role in their state's MOE calculations. Such personnel include:

- ▶ Single state agency (SSA) directors
- ▶ State mental health authority (SMHA) commissioners
- ▶ Staff members (e.g., block grant planners, fiscal staff) who calculate, track, or manage block grant fiscal requirements

This resource will be particularly useful to personnel who are new to their positions, are unfamiliar with the block grant programs, have inherited calculation methodologies that lack documentation, or work in states that need to improve the consistency of their calculations from year to year. In this primer, we emphasize the three “C’s” for successfully providing MOE documentation. These are:

- ▶ **C**onsistency in calculations from year to year
- ▶ **C**ollaboration with others who supply essential MOE data
- ▶ **C**ommunication with SAMHSA state project officers (SPOs) on a regular basis

That last “C” is particularly important. As the federal agency tasked with administering block grant programs, SAMHSA ensures that states maintain adequate levels of state and federal funding to support behavioral health systems that meet the needs of individuals within the states.

SAMHSA’s SPOs in the Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and Center for Substance Abuse Treatment (CSAT) are available to help personnel calculate their states’ MOE requirements. SAMHSA also assists states to improve understanding of a state’s specific issues related to block grant requirements such as MOE and to address relevant reporting requirements.

A state MUST provide accurate MOE figures every year. Otherwise, it risks a reduction in its award following the period of noncompliance.

SABG and MHBG MOE requirements ensure stability over time in a state's contribution to funding for substance use disorder prevention and treatment, mental health services, and specific populations.

The MOE requirement is found in some federal regulations governing grant programs. It stipulates that the state or locality receiving a grant must maintain or contribute a certain level of financial effort in a specified area to receive federal assistance. SABG and MHBG MOE requirements ensure stability over time in a state's contribution to funding for substance use disorder prevention and treatment, mental health services, and specific populations.

[Title XIX, Part B, Subpart II of the Public Health Service Act \(42 U.S.C. 300x-30\)](#) and the [Substance Abuse Prevention and Treatment Block Grants Interim Final Rule \(45 CFR 96.134\)](#) require the principal

agency of a state (i.e., the SSA) to ensure compliance with the MOE requirement.

The SABG and MHBG MOE Requirements

No. There are two SABG MOE requirements and one MHBG MOE requirement. The three MOE requirements are:

- ▶ **SABG State MOE** under [45 CFR §96.134 MOE Regarding State Expenditures](#) of the SABG regulations.

Requirement: The SSA must maintain expenditures of state funds for authorized activities at a level no less than the average level for the preceding 2 SFYs.

- ▶ **SABG Women's Services MOE** under [45 CFR §96.124\(c\) Certain Allocations: Special Services for Pregnant Women and Women With Dependent Children](#) of the SABG regulations.

Requirement: The SSA must demonstrate that current SFY spending on women's services is at least equal to base year (federal fiscal year [FFY] 1994) expenditures.

- ▶ **MHBG State MOE** under [§300x-4 of Section 1911 of Title XIX, Part B, Subparts I and III of the Public Health Service Act: MOE Regarding State Expenditures for Mental Health](#) regulations.

Requirement: The state must maintain state expenditures for community mental health services for adults with a serious mental illness (SMI) and children with a serious emotional disturbance (SED) at a level that is not less than the average level for the 2-year period preceding the SFYs.

21st Century Cures Act Provisions

The 21st Century Cures Act (P.L. 114-255), enacted on December 13, 2016, brought about several amendments to subparts II and III of part B of title XIX of the Public Health Service Act.

Among those amendments were changes to Section 1930 of the Public Health Service Act (42 U.S.C. 300x-30) Maintenance of Effort, (42 U.S.C. 300x-24(d)), and (42 U.S.C. 300x-51 et seq). The changes include the following:

- ▶ (g) MAINTENANCE OF EFFORT. —Section 1930 of the Public Health Service Act (42 U.S.C. 300x-30) is amended—
 - (1) in subsection (c)(1), by striking “in the State justify the waiver” and inserting “exist in the State, or any part of the State, to justify the waiver”; and
 - (2) in subsection (d), by inserting at the end the following:
 - “(3) ALTERNATIVE. —A State that has failed to comply with this section and would otherwise be subject to a reduction in the State’s allotment under section 1921, may, upon request by the State, in lieu of having the State’s allotment under section 1921 reduced, agree to comply with a negotiated agreement that is approved by the Secretary and carried out in accordance with guidelines issued by the Secretary. If a State fails to enter into or comply with a negotiated agreement, the Secretary may take action under this paragraph or the terms of the negotiated agreement.”.

- ▶ The Requirements Regarding Tuberculosis and Human Immunodeficiency Virus provisions ([Section 1924\(d\) of Title XIX, Part B, Subpart II of the Public Health Service Act \(42 U.S.C. §300x-24\(d\), 42 CFR §96.127, 42 CFR §96.128 \)](#)) were repealed. Thus, states and jurisdictions are no longer required to demonstrate compliance with the tuberculosis and HIV MOE requirement after FY 2016.

- ▶ Section 1957. PUBLIC HEALTH EMERGENCIES.
“In case of a public health emergency (as determined under section 319), the Secretary, on a State by State basis, may, as the circumstances of the emergency reasonably require and for the period of the emergency, grant an extension, or waive application deadlines or compliance with any other requirement, of a grant authorized under section 521, 1911, or 1921 or an allotment authorized under Public Law 99-319 (42 U.S.C. 10801 et seq.). Waiver of Application Deadlines: Public Health Emergency provides that in the event of a public health emergency, the HHS Secretary may grant an extension of, or waive, application deadlines or compliance with other requirements of Block Grants.

The Difference between Supplementing and Supplanting

The MOE requirement ensures that federal grant monies are used to supplement, but not supplant, the recipient’s funding. See examples in Table 1.

- ▶ **Supplementing** consists of adding federal funds to what is available in state, local, or agency funds (e.g., to expand services).
- ▶ **Supplanting** consists of using federal funds to replace existing federal, state, local, or agency funds. This practice is prohibited.

TABLE 1. EXAMPLES OF SUPPLEMENTING VERSUS SUPPLANTING

Supplementing: The state is <i>supplementing</i> existing funds to expand or enhance services	Supplanting: The state is <i>supplanting</i> existing funds
<p>The SSA has budgeted \$500,000 in state funds to operate a 20-bed residential treatment unit. Because of increased demand, the SSA used \$100,000 of SABG funds to add 5 beds, thus increasing the bed capacity to 25. The two funding sources increased the size of the program. SABG funds have been used to effectively supplement existing funds to expand services.</p>	<p>During previous FYs, the SSA had used \$500,000 of state funds to support a substance use disorder prevention program serving 50 families. This year, the state had planned to expand the program using \$250,000 of SABG funds. However, the state instead used the SABG funds to replace state funds lost because of cuts in state appropriations. SABG funds were used to supplant the original state funding, with no increase in the number of families served.</p>
<p>As a result of a modest increase in its MHBG, the state decided to add a satellite office in a rapidly growing region of the state. This office will offer onsite therapy and medication management in a region that had not received these services before. MHBG funds were used to supplement existing funds to expand services</p>	<p>Last year, the mental health agency’s budget included \$300,000 in state funds for peer support services for older adults. The state intended to use this year’s MHBG funds to add wraparound services to the program. However, for the current FY, the state eliminated \$300,000 in state funding. The agency, therefore, replaced those lost state funds with \$300,000 of MHBG funds. MHBG funds have effectively supplanted the original state funding with no enhancement in services.</p>

Who Provides the MOE Information

The principal agency (i.e., the SSA), is the state agency responsible for planning, carrying out, and evaluating the state’s activities to prevent and treat substance use disorders, and usually prepares the SABG sections of the application. The SMHA usually prepares the MHBG sections.

Submission of MOE Information

States include MOE expenditure data in the MHBG, and SABG Reports submitted to SAMHSA each year. States submit their Reports through the web-based Block Grant Application System (WebBGAS). Many states submit this data in Reports that include both SABG and MHBG information. Some states continue to submit the data through separate SABG and MHBG Reports. Regardless of whether states submit combined or separate Plans and Reports, states must submit separate MOE reports.

Each MOE requirement is reported in specific tables of the application as outlined below:

- ▶ **SABG State MOE:** The “Maintenance of Effort for State Expenditures for SABG” is reported in Table 8a of the SABG application.

- ▶ **SABG Women’s Services MOE:** The “Expenditures for Services to Pregnant Women and Women With Dependent Children” and the base that was established in 1994 are reported in Table 8d of the SABG application.
- ▶ **MHBG State MOE:** The “Maintenance of Effort for Statewide Expenditures on Mental Health Services” is reported in Table 6 of the MHBG application.

MOE METHODOLOGY

Consistency

SAMHSA analyzes several key factors when deciding of whether the funds in question should be included in the MOE computation as follows:

- ▶ Have the funds been expended by the principal agency (SSA) on a consistent basis?
- ▶ Has the organizational structure and/or the placement of the principal agency within state government changed over time resulting in changes in funding?
- ▶ Have the funds in question historically been included in the computation of state MOE?
- ▶ Have the funds in question been expended for authorized activities?

States must use a consistent methodology to calculate spending in base and subsequent years so that the expenditure data reflect the same fund sources from year to year. States must use generally accepted accounting principles.

In reviewing state compliance with the MOE provision, it is necessary to:

- ▶ Determine what types of funds are included in the state's definition of MOE expenditures
- ▶ Ascertain whether that same definition has been utilized consistently over the entire 15-year period covered by the regulation
- ▶ Evaluate whether any changes in the state's definition of MOE are in accordance with the spirit and intent of the SABG regulation and the state's intent to materially comply.

The maintenance of consistent MOE definitions can be problematic due to many factors. The following paragraphs discuss some of the variables that impact the definition of MOE.

Variables that Impact the MOE Methodology

In response to the Affordable Care Act (ACA), many national and state health reform efforts that redirected some clients and state funds away from block grant-funded activities were implemented. The potential shift provides states the opportunity to use block grant funds to reconfigure (i.e., expand and/or enhance) services through adjustments such as:

- ▶ **Expanding** or introducing services (e.g., recovery support services) not covered by Medicaid
- ▶ **Initiating** demonstration/pilot projects
- ▶ **Expanding** planning, evaluation, and workforce development activities

States must use a consistent methodology to calculate spending in base and subsequent years so that the expenditure data reflect the same fund sources from year to year.

Many states are currently transitioning their health care systems, which can include reorganization to expand the provision of Medicaid services related to substance use and mental disorders. Additionally, certain states are moving funding for SUD services from the principal agency (SSA) budget or under their management to other agency budgets; for example, the Medicaid agency. The statutory language for the SABG requires the funds to flow through the principal agency (SSA) to be counted towards the MOE requirement. The regulation governing the SABG defines the principal agency (SSA) as the “single state agency responsible for planning, carrying out, and evaluating activities to prevent and treatment substance abuse and related activities.”

State Government Reorganization

SSAs have traditionally been organized as (1) independent agencies or (2) units of Health, Mental Health, Behavioral Health, Human Services or Rehabilitation services departments. Due to the frequent reorganization of state governments, a significant number of SSAs have been placed within a new and or revised organizational structure at least once during the life of the SABG.

As a result of reorganizations, the number and type of functions provided by the agency designated as the SSA and the Agency’s budget may increase or decrease significantly. The functions that were provided by the SSA in one organizational setting may be dispersed among multiple units of a larger organization or vice versa. For example, as a result of an independent SSA becoming a Division of a much larger Department, the fiscal monitoring and audit review functions may be consolidated at a departmental level. The formerly independent agency retained a fiscal oversight group that was responsible for overseeing substance use disorder awards only. The new agency issues consolidated contracts for behavioral health services (MH/DD/SA). Whereas in the former configuration the SSA could readily identify the costs of fiscal oversight of substance use disorder programs, the task becomes much more complex in the newer larger agency.

Realignment of Functional Responsibilities

Changes in the SSA’s organizational setting may not be fully representative of the restructuring of operating methods and procedures and changes in funding. When the SSA is merged into or ‘consumed’ by a larger agency, the new organization usually takes on the SSA designation. If state funding for substance use and mental disorders prevention and treatment remains at historical levels in the new larger agency, accounting for and reporting on MOE expenditures may be increasingly complex. If many of the functions of the former SSA are spread among operating units that support multiple disability areas (i.e. substance use and mental disorders, mental health promotion, Developmental Disabilities, Gambling etc.), the new entity’s ability to account for and demonstrate compliance with the MOE requirement may require new and/or additional accounting and reporting procedures. The accounting and reporting process may become increasingly difficult if there has been a conversion from a legacy accounting system used by the former SSA to another application used by the successor agency. The successor SSA must then be

able to produce comparable reports out of the new system considering the redistribution of the former SSAs functions among multiple organizational units.

Changes in the Service Delivery Model

Both SSAs that have undergone reorganizations and those that have remained within traditional organizational configurations may experience changes in their operating model including any of the following:

- ▶ Expansion/Contraction of Agency Mission (i.e. adding gambling, youth tobacco access control to agency mission)
- ▶ Implementing sub-state/regional/local care coordination approaches.
- ▶ Outsourcing state functions (Contracting with Universities for research and evaluation services. Contracting with managed behavioral health care organizations.)
- ▶ Adopting a behavioral health model of care
- ▶ Changing the funding mix for substance use disorder services
 - Revenue Funds (alcohol, tobacco and gambling taxes. asset seizures.)
 - Appropriated funds
 - Medicaid
 - Third party
 - Federal and State Grants

Any of the above changes may impact the state's definition of MOE and its ability to maintain and demonstrate compliance with SABG regulations. States need to verify the following:

- ▶ Funds in question have been expended by the principal agency (SSA) on a consistent basis
- ▶ Organizational structure and/or the placement of the principal agency within State government has not changed during the period under review
- ▶ Funds in question historically have been included in the computation of state MOE
- ▶ Funds in question were expended for authorized activities, or whether the state can make a reasonable argument for including them in the MOE computation.

Co-Designation for Purposes of MOE

As previously described in the Variables that Impact the MOE Methodology section, many SSAs and SMHAs are merging with the state Medicaid agency. As a result, states are requesting to include the state Medicaid match funds in their MOE calculations and in their service levels.

The state can accomplish this one of two ways; statutorily or administratively. Statutory change which co-designates both the SABG grantee and another state agency for purposes of calculating

MOE. SAMHSA cannot instruct a state how to frame statutory language but can supply model language or review that proposed by a state for applicability.

Administrative co-designation via authority of the state Governor, consists of both:

- ▶ A letter from the Governor delegating the authority to the SSA as the principal agency of the state for purposes of receipt of the SABG, and indicates that the principal agency and another state agency are co-designated as the principal agency for purposes of calculating the MOE, consistent with
- ▶ A signed MOU/MOA/IAA between the two agencies

At a minimum the MOU/MOA/IAA should clarify the following:

- ▶ Services provided consistent with the authorized activities under the block grant
- ▶ SABG required core data collection and reporting activities (e.g., National Outcome Measures, Treatment Episode Data Set, demographic, etc. per block grant guidance)
- ▶ Expenditures to be included in MOE calculations (as required in the block grant guidance) guidance

In addition to the requirements, SAMHSA considers the following factors when determining a state's eligibility for co-designation.

- ▶ A detailed description of the states MOE methodology
- ▶ Whether the state uses generally accepted accounting principles (45 CFR 96.134(d)) to reflect the aggregate state expenditures and can demonstrate sufficient fiscal control permitting the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant (45 C.F.R. § 96.30(a)(b))
- ▶ A sample of client level database (e.g. screenshot or excerpt from database)
- ▶ The number of individuals served

In general, co-designation can only be accepted on a forward-looking basis, not retroactively.

CALCULATING SABG STATE MOE

Requirement

45 CFR § 96.134(a)

“With respect to the principal agency of a State for carrying out authorized activities, the agency shall for each fiscal year maintain aggregate State expenditures by the principal agency for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the two year period preceding the fiscal year for which the State is applying for the grant. The Block Grant shall not be used to supplant State funding of alcohol and other drug prevention and treatment programs.”

Funds that can be included in the MOE calculations

Funds that can be included in MOE are those that flow through the SSA and are for authorized activities to prevent, treat, and evaluate substance use disorders. For activities related to co-occurring substance use and mental disorders, only expenditures related to substance use disorder services may be counted. The SAMHSA state project officer should be consulted about any questions regarding services that may be included to calculate MOE.

Expenditures for mental health services CANNOT be included in the SABG MOE calculation.

Table 2 below provides examples of funds that can be included in each MOE calculation.

Examples of state fund sources that can be included in the SABG state MOE calculations are:

- ▶ Funds appropriated by the state legislature
- ▶ Revenue funds (e.g., alcohol, tobacco, and gambling taxes; asset seizures)
- ▶ Medicaid match funds (the state’s share of covered services in state Medicaid programs; this does not include the federal share of covered services)
- ▶ Third-party reimbursement (e.g., insurance payments for services provided)

TABLE 2. FUNDS TO INCLUDE IN THE MOE CALCULATIONS		
SABG State MOE	SABG Women’s Services MOE	MHBG State MOE
Includes expenditures from state funds that flow through the SSA to plan, carry out, and evaluate state activities to prevent and treat substance use disorders.	Includes state <i>and/or</i> SABG funds that flow through the SSA.	Includes all state expenditures, including state Medicaid match, from the entire state government for community mental health services provided to: <ul style="list-style-type: none"> ▪ Adults with SMI ▪ Children with SED

Formula

In the SABG application, expenditures for the most recent SFY are compared with the average of the previous 2 SFYs. See examples in Tables 3 and 4.

In Table 3, SFY 2013 expenditures are \$12M. This is 14.3 percent HIGHER than the average of the 2 previous years' expenditures ($\$10M + \$11M / 2$). Expenditures for SFY 2014 are \$13M. This is 13 percent HIGHER than the average of the 2 previous years' expenditures ($\$11M + \$12M / 2$). In this example, the state satisfies the SABG State MOE requirement.

TABLE 3. EXAMPLE OF A STATE THAT SATISFIES THE SABG STATE MOE REQUIREMENT			
SFY	State Expenditures	MOE Requirement (Average Expenditures of Previous 2-Year)	Percentage Over (Under) MOE
2011	\$10M		
2012	\$11M		
2013	\$12M	\$10.5M	14.3
2014	\$13M	\$11.5M	13

In Table 4, SFY 2013 expenditures are \$10M. This is 5.1 percent LOWER than the average of the 2 previous years' expenditures ($\$10M + \$11M / 2$). Expenditures for SFY 2014 are \$10M. This is 5.0 percent LOWER than the average of the 2 previous years' expenditures ($\$11M + \$10M / 2$). In this example, the state does not satisfy the SABG State MOE requirement.

TABLE 4. EXAMPLE OF A STATE THAT DOES NOT SATISFY THE SABG STATE MOE REQUIREMENT			
SFY	State Expenditures	MOE Requirement (Average Expenditures of Previous 2-Year Period)	Percentage Over (Under) MOE
2011	\$10M		
2012	\$11M		
2013	\$10M	\$10.5M	(5.0)
2014	\$10M	\$10.5M	(5.0)

CALCULATING WOMEN’S SERVICES MOE FOR THE SABG APPLICATION

Requirement

[45 CFR §96.124\(c\)](#)

“(c) Subject to paragraph (d) of this section, a State is required to expend the Block Grant on women services as follows:

- (1) The State for fiscal year 1993 shall expend not less than five percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs). The base for fiscal year 1993 shall be an amount equal to the fiscal year 1992 alcohol and drug services Block Grant expenditures and State expenditures for pregnant women and women with dependent children as described in paragraph (e) of this section, and to this base shall be added at least 5 percent of the 1993 Block Grant allotment. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year. States shall report the methods used to calculate their base for fiscal year 1992 expenditures on treatment for pregnant women and women with dependent children.
- (2) For fiscal year 1994, the State shall, consistent with paragraph (c)(1) of this section, expend not less than five percent of the grant to increase (relative to fiscal year 1993) the availability of such services to pregnant women and women with dependent children.
- (3) For grants beyond fiscal year 1994, the State shall expend no less than an amount equal to the amount expended by the State for fiscal year 1994.”

Formula

A state must establish the FFY 1994 base year expenditure requirement as follows:

- ▶ Determine the amount of the FFY 1992 SABG **and** state funds that were expended for special services for pregnant women and women with dependent children.
- ▶ Add at least 5 percent of the total FFY 1993 block grant award to the above amount. This is the FFY 1993 base.
- ▶ Add at least 5 percent of the total FFY 1994 block grant award to the above amount. This is the FFY 1994 base.

Once the FFY 1994 base is established, the state must maintain this level of expenditure for each year thereafter. See example in Table 5.

TABLE 5. EXAMPLE OF DETERMINATION OF BASE EXPENDITURE LEVELS FOR WOMEN’S SERVICES

FFY	Previous Year’s Expenditures	Total SABG Award	(At Least) 5% of Total SABG Award	Base for FY
1992				\$1.05M
1993	\$1.05M	\$10M	\$0.5M	\$1.55M
1994	\$1.55M	\$10M	\$0.5M	\$2.05M

Allowable Women’s MOE Services

Only expenditures for those programs that provide or arrange for **ALL** the following services should be included in the Women’s Services MOE:

- ▶ Primary medical care, including prenatal care
- ▶ Primary pediatric care for the women’s children, including immunizations
- ▶ Gender-specific substance use disorder treatment
- ▶ Other therapeutic interventions for women addressing issues such as relationships, sexual and physical abuse, and parenting
- ▶ Therapeutic interventions for children in custody of women in treatment to address, among other things, developmental needs, sexual abuse, physical abuse, and neglect of the children.
- ▶ Childcare while the women are receiving service.
- ▶ Sufficient case management and transportation to ensure that the women and their children have access to the above service.

EXAMPLE OF PROGRAMS THAT SHOULD BE EXCLUDED FROM STATE SABG WOMEN’S SERVICES MOE CALCULATION

A women’s treatment program receives \$100,000 in state funding. It provides treatment services for substance use disorders, but the program does not offer or arrange for childcare while the women are receiving services. Because these funds do not support a program that offers the full range of required services (all the bulleted services listed on page 9), the \$100,000 may NOT be included in the MOE calculation.

Expenditures may include only state funds, only SABG funds, or a combination of SABG and state funds. Expenditures by programs that provide some but not all the above services may NOT be included in the Women’s Services MOE.

CALCULATING MHBG STATE MOE

Requirement

Under §300x-4 of Section 1911 of Title XIX, Part B, Subparts I and III of the Public Health Service Act

Each state “will maintain State expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.”

Formula

In the MHBG application, expenditures for the most recent SFY are compared with the average of the previous 2 SFYs. See examples in Tables 8 and 9.

In Table 8, SFY 2013 expenditures are \$30M. This is 5.2 percent HIGHER than the average of the 2 previous years’ expenditures ($\$28M + \$29M / 2$). Expenditures for SFY 2014 are \$31M. This is 5.1 percent HIGHER than the average of the 2 previous years expenditures ($\$29M + \$30M / 2$). In this example, the state satisfies the MHBG State MOE requirement.

In Table 9, SFY 2013 expenditures are \$20M. This is 23.1 percent LOWER than the average of the 2 previous years’ expenditures ($\$28M + \$24M / 2$). Expenditures for SFY 2014 are \$18M. This is 18.2 percent LOWER than the average of the 2 previous years’ expenditures ($\$24M + \$20M / 2$). In this example, the state does not satisfy the MHBG State MOE requirement.

Included Services

Funds from MHBG must be used for services to individuals who meet the federal definitions of adults with an SMI and/or children with an SED. SAMHSA’s definitions of adults with SMI and children with SED were provided in a 1993 Federal Register notice (May 20, 1993; 58 FR 29422). The definitions of these populations can also be found on SAMHSA’s website at <http://www.samhsa.gov/grants/block-grants/mhbg>.

Excluded Services

The MHBG funds cannot be used to provide services to individuals who do not meet the federal SMI or SED criteria. The MHBG and SABG also prohibit use of the grants to provide inpatient services.

TABLE 8. EXAMPLE OF A STATE THAT SATISFIES THE MHBG STATE MOE REQUIREMENT			
SFY	State Expenditures	MOE Requirement (Average Expenditures of Previous 2-Year Period)	Percentage Over (Under) MOE
2011	\$28M		
2012	\$29M		
2013	\$30M	\$28.5M	5.2
2014	\$31M	\$29.5M	5.1

TABLE 9. EXAMPLE OF A STATE THAT DOES NOT SATISFY THE MHBG STATE MOE REQUIREMENT			
SFY	State Expenditures	MOE Requirement (Average Expenditures of Previous 2-Year Period)	Percentage Over (Under) MOE
2011	\$28M		
2012	\$24M		
2013	\$20M	\$26M	(23.1)
2014	\$18M	\$22M	(18.2)

Submitting Estimated MOE Expenditures

If actual expenditures for the most recent SFY are not available at the time the block grant annual report is due (December 1), the state may provide estimates of MOE. Calculations based on actual data must be submitted when those expenditure data are available.

Questions or Concerns about Defining, Calculating, or Meeting MOE Requirements

Each state has an assigned SPO from each SAMHSA Center: CMHS, CSAP, and CSAT. States should contact the appropriate state project officer with any questions or concerns about block grant requirements, including MOE. States are encouraged to communicate with their project officers and to request technical assistance as needed.

REMEDIES FOR NONCOMPLIANCE

Noncompliance with State MOE Requirement

If a state CANNOT demonstrate that it meets the state MOE requirement—that is, if the state’s most recent SFY expenditures do NOT equal or exceed the average of the previous 2 years—it can request a waiver of the MOE requirement based on extraordinary economic conditions; request a determination that the state materially complied with the MOE requirement; or request to enter into a negotiated agreement for the fiscal year involved.

Waivers and determinations of material compliance are long standing remedies for MOE noncompliance. Negotiated agreements were made available December 13, 2016 when the 21st Century Cures Act, Section 8002(g)(3) was enacted. Upon request, states may enter into an agreement to comply with a negotiated agreement that is approved by the Secretary and carried out in accordance with guidelines issued by the Secretary in lieu of having the State’s allotment reduced. If a State fails to comply with a negotiated agreement, the Secretary may act under this paragraph or the terms of the negotiated agreement.

The state should contact its CSAT project officer to discuss an SABG-related requests and its CMHS project officer for an MHBG-related request.

Applying for a Waiver or Determination of Material Compliance for the SABG/MHBG State MOE Requirements

A state may apply for a waiver of the state MOE for a specific SFY and, thus, retain its eligibility to receive full awards for the coming FFY, if the HHS/SAMHSA determines that the state meets one of following conditions:

- ▶ Extraordinary economic conditions
- ▶ Material compliance

Extraordinary Economic Conditions

A State must demonstrate that extraordinary economic conditions existed in the State during either of the two State fiscal years preceding the Federal fiscal year for which a State is applying for a grant. The term *extraordinary economic conditions* means a financial crisis in which the total tax revenue declines at least one and one-half percent, and either unemployment increases by at least one percentage point, or employment declines by at least one and one-half percent (45 C.F.R. 96.134(b)).

Any narrative description of extraordinary economic conditions must be supported by economic data produced by the unit of State government authorized to collect, analyze, and publish such data. For example, a narrative description of a decline in total tax revenue must be accompanied by economic data produced by the State Department of Revenue. Similarly, a narrative description of an increase in unemployment or declines in employment in the State must be accompanied by economic data produced by the State Department of Labor. This data should be

consistent with the data that has been previously reported to relevant Federal agencies, e.g., U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS), or is otherwise in the public domain. Regarding measures of labor underutilization, SAMHSA routinely uses DOL/BLS U-3 data (total employed persons as a percentage of the civilian labor force the “official unemployment rate”) in making waiver determinations. As alternative, SAMHSA will consider DOL/BLS U-6 data which includes total unemployed persons, plus all “marginally attached” workers, plus all persons employed part time for economic reasons, as a percent of the civilian labor force plus all “marginally attached” workers.

Material Compliance

The Secretary delegated the authority to the Assistant Secretary for Mental Health and Substance Use to make determinations of material compliance with the authorizing legislation and implementing regulation regarding the MOE requirement in cases where a State’s MOE deficiency is ≤ 3 percent of the amount the State is required to expend for authorized activities to prevent and treat substance use disorder for the applicable fiscal year.¹ This delegation does not include the authority to make determinations that the state has not materially complied with the MOE requirement, whether or not the shortfall is 3 percent or less.

In order to make determinations of material compliance in cases where the shortfall is ≤ 3 percent, or to make recommendations to the Secretary in all other cases, the Assistant Secretary for Mental Health and Substance Use is to consider all relevant factors, such as the following:

Whether the state has maintained client service levels

Whether the state has maintained consistent historical funding levels

The state’s future funding commitment (e.g., projected increases in state expenditures in upcoming SFYs)

States that submit a request for a determination of material compliance must submit documentation describing the State’s actual expenditures for authorized activities to prevent and treat substance use disorders for the 5-year period preceding the year for which the State is seeking a determination, the corresponding number of persons served during each fiscal year, the State’s authorized appropriation and estimated expenditures for current fiscal year, and the State’s budget request for the subsequent fiscal year.

SAMHSA will cross check expenditures and number of persons served through examination of state expenditure and population and services tables submitted by the state to SAMHSA in its annual SABG Reports for the fiscal years involved.

¹ Sebelius, K. (2013, August 20). The Secretary’s Delegation of Authority of August 20, 2013. Department of Health and Human Services, SAMHSA (072520131042). Office of the Secretary, Washington DC.

Hardship Factors for Consideration in Determining Material Compliance

According to the delegation letter, SAMHSA should consider “all relevant factors in determining material compliance” and lists three factors as examples and not the entire scope of relevant factors.¹ There are, however, unique situations where the previously mentioned criteria are simply not enough to capture the reason state is not able to meet their MOE requirements. As such, CSAT proposes that determination of material compliance decisions be expanded on an as needed basis to include a proposed fourth criterion of “hardship factors,” examples of which are provided below:

- ▶ **Population Loss-** When circumstances become unfavorable to the individuals living in a state there will inevitably be outward migration to more economically stable areas. This outward migration is not under the control of the state; however, it has the potential to impact a variety of additional factors in the state economy. These impacts can impact everything from client service levels in the state to burdens of care as the population skews older or younger, impacting state revenues from taxes and other sources of income.
- ▶ **Extreme Poverty-** Chronically high unemployment and under-employment levels in a state are not reflected in the criteria for a waiver requirement in that the levels do not change drastically from year to year. This creates a situation for individuals where they would potentially not be able to access care if there was not funding available and in place to assist this population. Penalties for non-compliance with meeting the MOE requirement would take away an amount of the funding equal to the state shortfall, which would then potentially lead to decreased services available to this population.
- ▶ **Government Financial Circumstances-** Decreases in revenue outside of the control of the state can have a significant impact on the state budget. As businesses move locations and the economy in a state decreases, individuals are going to migrate and business taxable revenue will decline significantly, which can impact budgetary considerations for future years. As less money is available, state legislatures may choose to make inevitable cuts across the board or only to specific programs but usually the result is the same in that priorities change according to state needs.

Allowing the use of ‘hardship factors’ to meet the criteria for a determination of material compliance, provides flexibility to states in citing unique circumstances impacting finances not normally considered in the determination process. The consideration of the ‘hardship factors’ does not preclude the consideration of the original MOE compliance factors.

Submission of Waiver Request or Request for a Determination of Material Compliance

Waiver requests and requests for determinations of material compliance should be submitted to the Assistant Secretary for Mental Health and Substance Use.

Review of Waiver Request or Request for a Determination of Material Compliance

SAMHSA staff reviews a state's waiver request and requests for material compliance and submits a decision memo with recommendations regarding compliance to the HHS Assistant Secretary for Mental Health and Substance Use. The HHS Secretary has delegated to the Assistant Secretary the authority to grant waiver requests; the Secretary retains authority to deny waiver requests.

A waiver is applicable only to the fiscal year in question; it does not extend to subsequent years.

Grant of Waiver or Determination of Material Compliance

If the waiver or determination of material compliance is granted, a state may receive the full SABG award it requests for the fiscal year in question. Only partial awards will be provided until such time that a final decision is reached regarding compliance.

Denial of Request for Waiver or Determination of Material Compliance

A state that does not maintain effort (i.e., meet the MOE threshold) and does not submit a request for a waiver that meets the statutory and regulatory requirements risks a reduction in its awards equal to the MOE shortfall (i.e., a dollar-for-dollar reduction).

If the process for determining material compliance extends beyond the point at which a grant for a subsequent year is to be awarded, that grant may be made contingent on the understanding that, if a subsequent determination of noncompliance is made, the state may have to repay the penalty amount, including an offset of the next fiscal year's grant.

If SAMHSA determines that a state failed to comply with the MOE requirement, the state may be penalized in an amount equal to the amount of the MOE deficiency (shortfall) for the applicable fiscal year. Any amount of federal SABG funds that are withheld from a state for noncompliance with the MOE requirement is redistributed to the other states in accordance with the formula (see 42 U.S.C. 300x- 33, Determination of Amount of Allotment, and 42 U.S.C. 300x-54(b)(4), Specification of Amounts).

The Secretary must provide the state an opportunity to have a hearing before determining noncompliance. SAMHSA published a notice in the April 10, 1995, edition of the Federal Register (see 60 FR 18137, Hearing Procedures for Certain Issues Related to the Substance Abuse Prevention and Treatment and the Community Mental Health Services Block Grant Services Block Grant Programs) that describes the procedures and timeline for determining noncompliance and penalties.

Precedents for Economic Waivers

Reflecting the economic downturn, multiple states received waivers for FFY 2010 and FFY 2011. Since then, states have applied for waivers but have not met the criteria for extraordinary economic conditions.

However, these states provided documentation that enabled them to receive determinations of material compliance.

Noncompliance with the SABG Women’s Services MOE

If a state CANNOT demonstrate that it meets the Women’s Services MOE requirement— that is, if the state’s most recent SFY expenditures do NOT equal or exceed the amount expended by the state for fiscal year 1994—it can request a waiver of the MOE requirement.

Historically, when states failed to meet the Women’s MOE requirement, SAMHSA requested a corrective action plan (CAP) that details the efforts the state intends to take to address the current shortfall and prevent future shortfalls. The CAP must include milestones and the responsible parties for these milestones. To determine next steps, the state should contact its CSAT project officer to discuss an SABG-related waiver request or submission of a CAP.

Applying for a Waiver for the SABG Women’s Services MOE Requirements

A state may apply for a waiver of the women’s services MOE requirements for a specific SFY and, thus, retain its eligibility to receive full awards for the coming FFY, if the HHS/SAMHSA determines that the state is providing an adequate level of services for this population ([45 CFR §96.124\(d\)](#)).

In determining whether an adequate level of services is being provided, SAMHSA will review the extent to which pregnant women and women with dependent children are receiving services. This determination may be supported by a combination of criminal justice data, the National Survey of Substance Abuse Treatment Services, statewide needs assessment data, waiting list data, welfare department data, including Medicaid expenditures, or other state statistical data that are systematically collected. SAMHSA will also consider the extent to which the state offers the following required minimum services ([45 CFR § 96.124\(e\)](#)) listed in the “Calculating Women’s Services MOE for the SABG Application, Included Services” section.

Submission of Waiver Request

Waiver requests for women’s services should be submitted to the Assistant Secretary for Mental Health and Substance Use.

Review of Waiver Request

SAMHSA staff reviews a state’s waiver request and submits a decision memo with recommendations regarding compliance to the HHS Assistant Secretary for Mental Health and

Substance Use. The HHS Secretary has delegated to the Assistant Secretary the authority to grant waiver requests; the Secretary retains authority to deny waiver requests.

A waiver is applicable only to the fiscal year in question; it does not extend to subsequent years.

Grant of Waiver

If the waiver is granted, a state may receive the full SABG award it requests for the fiscal year in question. Only partial awards will be provided until such time that a final decision is reached regarding compliance.

Denial of Request for Waiver

A state that does not maintain effort (i.e., meet the MOE threshold) and does not submit a request for a waiver that meets the statutory and regulatory requirements risks a reduction in its awards.

EXCLUSION OF FUNDS FROM SABG/MHBG STATE MOE CALCULATIONS

EXCLUSIONS OF CERTAIN FUNDS Requirement [42 U.S.C. § 300x-30\(b\)](#), [42 U.S.C. § 300x-4\(b\)\(2\)](#), [45 CFR § 96.134](#)

“The Secretary may exclude from the aggregate State expenditures under subsection (a) funds appropriated to the principal agency for authorized activities, which are of a non-recurring nature and for a specific purpose.”

A state may EXCLUDE from the MOE calculation any one-time infusion of funds that are used for a single purpose ([42 U.S.C. 300x-30\(b\)](#); [66 FR 35658 \[July 6, 2001\]](#) and [58746 \[November 23, 2001\]](#)). This exclusion from the maintenance of effort will, among other things, offer States some latitude to try new programs without having to commit themselves to expenditures in subsequent years.

Allowable Expenditures

SAMHSA analyzes several key factors when deciding of whether the funds in question should be excluded from the MOE computation as follows:

- ▶ Whether the funds were appropriated to the principal agency (SSA);
- ▶ Whether the funds were expended for authorized activities (i.e., activities to plan, carry out, and evaluate services and initiatives to prevent and treat substance use disorders and for related activities authorized under section 1924; TB and HIV Early Intervention Services);
- ▶ Whether the activity is of a non-recurring nature (i.e., new authorized prevention and/or treatment services never implemented in prior years); and
- ▶ Whether the activity is for a specific purpose (e.g., a particular treatment intervention and/or prevention approach, 45 C.F.R. 96.134(c)).
- ▶ Supporting documentation pertaining legislative and regulatory requirements, programmatic scope, program policy, and any other program information that clearly describes the nature and purpose of funds/expenditures in question.
- ▶ The state’s documentation must support its position that the funds were appropriated by the State legislature for authorized activities that are of a nonrecurring nature and for a specific purpose, indicate the length of time the project is expected to last in years and months, and affirm that these expenditures would be in addition to funds otherwise needed to meet the state’s MOE requirement for the year that it is applying for exclusion.

With respect to documentation, the governor’s budget justification would be sufficient unless the appropriation for the principal agency is below the budget request, in which case the State should show that the legislature intended to provide funding for the activity at issue.

The length of time of the activity may be for more than one year. The longer the length of the activity, however, the more difficult it will be to determine that the expenditure is non-recurring. In addition, a State may apply for more than one exclusion in any one year or apply for additional exclusions in other years while other excluded activities are ongoing.

If during a particular year the State wishes to submit more than one project for exclusion, it should do so in a single request.

Unallowable Expenditures

The State will not be allowed to exclude from the MOE calculation any recurring expenditures appropriated to the principal agency (SSA) for authorized activities to include direct or indirect services (i.e., resource development activities to support and/or to expand state infrastructure for treatment services and/or prevention activities).

EXAMPLE OF ONE-TIME INFUSION OF FUNDS THAT MAY BE EXCLUDED FROM STATE SABG MOE CALCULATION

The legislature awards the SSA \$1 million to assist residential treatment programs in transitioning from a grant-based to a fee-for-service method of payment for services provided. The funds are available for 1 year and are not included in subsequent SSA budgets. A state may choose to exclude these funds from the calculation to avoid inflating the level of effort required for subsequent years. A formal request to exclude these funds must be submitted to and approved by SAMHSA before the state can exclude the funds from its state MOE calculation.

RECALCULATING THE SABG/MHBG STATE MOE

There may be instances when the recalculation of an MOE that has previously been reported is warranted. These include instances when:

- ▶ Funds transferred from another agency to the SSA were included in the MOE calculation.
- ▶ The calculation did not include all state funds appropriated to the SSA.
- ▶ The calculation included one-time state funding for a specific purpose.
- ▶ The costs of support services were not included in the calculation.

Historically, when SAMHSA approved a state's request for a change in MOE methodology resulting in recalculated MOE expenditures, the new methodology was applied to the five prior SFYs MOE calculations to establish a base. For example, a state realized it failed to include fees generated from Driving Under the Influence (DUI) programs for the current (SFY 2019) and past two (SFYs 2017 – 2018). If the state can provide documentation supporting its request and SAMHSA approves, the revised MOE methodology (i.e., inclusion of DUI fees in MOE calculations) is applied to SFYs 2015 – 2019.

In most cases, Medicaid co-designation will only be approved prospectively from the date of the state's initial request to co-designate for purpose of MOE calculations. For example, if a state requested co-designation in SFY 2016, the state will be able to amend expenditures from SFY 2016 and beyond to include State Medicaid match expenditures for authorized activities. However, if a state requests approval of co-designation for the purposes of calculating MOE expenditures subsequent to the actual co-designation and wants to retrospectively amend its MOE expenditures, this will not be granted. For example, if a state co-designated in SFY 2016, but did not request approval of the co-designation for purposes of calculating MOE expenditures from SAMHSA until SFY 2019, then the only expenditures that can be recalculated are those in SFY 2019 and beyond.