



Substance Abuse and Mental Health
Services Administration

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Substance Abuse and Mental Health Services Administration (SAMHSA)

Frequently Asked Questions Regarding Block Grant Maintenance of Effort Requirements for the Mental Health Block Grant (MHBG)

When a state has not met the Maintenance of Effort (MOE) requirement, the Department of Health and Human Services (“the Department”) has three courses of actions:

- Grant a waiver of the MOE requirement based on extraordinary economic conditions
- Determine that the state has materially complied with the MOE requirement; or
- Find the state out of compliance and assess a penalty.

WAIVERS

Section 1930(c)(1) of the Public Health Service Act, as amended, authorizes the Secretary of the Department of Health and Human Services (“the Secretary”) to waive all or part of the MOE requirement if the Secretary determines that extraordinary economic conditions in a state justify a waiver.

Section 1957 of the Public Health Service Act (42 U.S.C. § 300x-67) permits the Assistant Secretary of SAMHSA to consider eligibility for a waiver of MHBG MOE requirements during a federally declared public health emergency. A Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus was declared January 31, 2020 and has been renewed continually since, most recently on October 15, 2021.

1. To whom should a state submit a request for waiver of the MOE requirement?

A request for waiver should be addressed to the Assistant Secretary for Mental Health and Substance Use of the Substance Abuse and Mental Health Services Administration.

Miriam Delphin-Rittmon, Ph.D.

Assistant Secretary for Mental Health and Substance Use

Substance Abuse and Mental Health Services Administration

5600 Fishers Lane

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Please forward a copy of the state’s correspondence to the Assistant Secretary for Mental Health and Substance Use, Erica Talbert, erica.talbert@samhsa.hhs.gov, and to your designated Public Health Advisor.

2. *Who should submit a request on behalf of a state?*

A request for waiver of the MOE requirement should be submitted by a state's chief executive officer, personally, or by an individual authorized to make such a request on behalf of the chief executive officer. If a new delegation of authority has occurred, a copy of the current letter of delegation must be submitted with the request.

3. *What criteria are used by SAMHSA to make a determination of eligibility for a waiver of the MOE?*

To determine eligibility for an economic conditions waiver of the MOE requirement under the MHBG, 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 CFR § 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's Department of Revenue. Similarly, a narrative description of an increase in unemployment or a decline in employment in the state must be accompanied by economic data produced by the state's 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. With regard to measures of labor under-utilization, 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 an 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.

To determine eligibility for a Public Health Emergency waiver, a state must demonstrate that the impact of COVID-19 has been sufficient to substantially contribute to a reduction in the expenditures covered by the MOE requirement. This impact can be a combination of both economic (e.g. increased unemployment) and service delivery (e.g. closure of in-person treatment facilities, insufficient telehealth capacity for the increased demand, leading to lower expenditures for mental health services) factors. The narrative provided must clearly explain how these factors contributed to the failure to achieve MOE, and each factor cited should be supported by quantitative data, such as unemployment numbers or documentation of mental health services delivered before and after the public health emergency.

MATERIAL COMPLIANCE

4. *What criteria have been used by SAMHSA to make a determination that a state materially complied with the MOE requirement?*

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 order to make determinations of material compliance, the Assistant Secretary for Mental Health and Substance Use considers all relevant factors, such as the following: (1) state's expenditure history; (2) the number of persons served; and (3) the state's future funding commitment. 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 abuse 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 the current fiscal year, and the state's budget request for the subsequent fiscal year. Other relevant factors may also be considered, which demonstrate the state has at least maintained, if not improved, substance use disorder services. These other factors may include increased access to services or increased quality/effectiveness of services.

For states requesting a determination of material compliance, please contact your Public Health Advisor for guidance on the appropriate documentation required for consideration. Requests for a determination of material compliance should be addressed to the SAMHSA Assistant Secretary for Mental Health and Substance Use (see #1 above). Please forward a copy of the state's correspondence to the SAMHSA Assistant Secretary for Mental Health and Substance Use and to your designated Public Health Advisor.

DEADLINES/NOTIFICATIONS

5. *Is there a deadline for receipt of a state's request for waiver of the MOE?*

States are required to submit a MHBG report on or before December 1 of the fiscal year for which a state is applying for a grant and states are required to indicate in the MHBG Report whether a state plans to request any waivers or request material compliance as authorized in the legislation and implementing regulation and to include such waiver requests as an attachment to the MHBG Report.

6. *When will a state receive notification regarding whether the Secretary has determined that extraordinary economic conditions in the state justify a waiver of the MOE requirement?*

The authorizing legislation and implementing regulation require the Secretary to approve or deny a state's request for waiver not later than 120 days after the date on which the request is made. The notification will be sent from the Office of SAMHSA's Assistant Secretary for Mental Health and Substance Use to the state's chief executive officer or to the individual authorized to make the request on behalf of the chief executive officer.

7. *While the state's request for waiver of the MOE requirement is pending, can a state receive its MHBG award?*

Yes. The Secretary of the U.S. Department of Health and Human Services has delegated to the Assistant Secretary for Mental Health and Substance Use the authority to make preliminary determinations of non-compliance with section 1930 of the PHS Act. This allows the Assistant Secretary for Mental Health and Substance Use to issue a Notice of Block Grant Award with a special term and condition pending resolution of the state's MOE deficiency for the SFY involved.

8. *To whom should the state address any questions regarding the MOE requirements?*

The Center for Mental Health Services, Division of State and Community Systems Development, is responsible for making preliminary determinations of the state's compliance with the authorizing legislation and implementing regulation regarding maintenance of efforts. Any questions regarding MOE requirements should be addressed to Erica Talbert, erica.talbert@samhsa.hhs.gov and the Public Health Advisor assigned to monitor a state's compliance with the MHBG.