



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense  
Rosslyn Plaza North  
1777 North Kent Street  
14<sup>th</sup> Floor, Suite 14003  
Arlington, VA 22209-2162

**WAIVER COVER SHEET**

1. State Name **Massachusetts** and postal abbreviation **MA**

2. Chief State Election Official (CSEO)

First Name: **William** Last Name: **Galvin**

Title: **Secretary of the Commonwealth**

Address: [Redacted]

Address: [Redacted]

City: **Boston**

State: **MA** Zip: [Redacted]

Email: [Redacted]

Phone: [Redacted]

Fax: [Redacted]

**William F. Galvin**

Signature (digital signature accepted):

Date:

3. Preferred State Election Contact:

First Name: **Michelle** Last Name: **Tassinari**

Title: **Director/Legal Counsel, Elections Division**

Address: [Redacted]

Address: [Redacted]

City: **Boston**

State: **MA** Zip: [Redacted]

Email: [Redacted]

Phone: [Redacted]

Fax: [Redacted]

4. Acknowledgement of UOCAVA voters' right to vote

**Massachusetts** recognizes that the purpose of 42 USC 1973ff-1(a)(8)(A) is to allow absent uniformed services voters and overseas voters sufficient time to vote in an election for federal office.

Type initials: **WFG/MKT**

Date: **August 2, 2010**

5. Type of hardship claimed (check one)

- 2(b)i. Undue hardship due to a late primary.
- 2(b)ii. Undue hardship due to a legal challenge
- 2(b)iii. Undue hardship caused by a state constitutional prohibition.

Please indicate location in package that identifies your plan to resolve the problem: **Pages 2-4**

6. Please indicate the location in the package that contains the section in the comprehensive plan identifying the State's explanation for the necessity of the waiver request. **Pages 1-2**

7. On what date(s) will the State require ballots to be available and sent? **No later than 10/8**

8. Please indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to provide sufficient time for UOCAVA voters, who have timely submitted an absentee ballot request, to receive, mark, and submit their ballots in time to have those ballots counted? **Pages 2-4**

9. If included, indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to resolve the underlying issue prior to the next election for federal office, including steps already taken, to be taken, timelines, and supporting documentation? **The next election for federal office for which this may be an issue will be November 2012. To change the date of the state primary would require legislative action.**



# The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

August 2, 2010

Bob Carey, Director  
Federal Voting Assistance Program



**VIA E-MAIL**

Dear Director Carey:

In accordance with 42 USC 1973FF-1(g), I am writing to request a hardship waiver from the requirement of issuing absentee ballots at least 45 days before the November 2, 2010 election, as set forth in the Military and Overseas Voter Empowerment Act (MOVE).

### **Acknowledgement**

As the Chief Election Official for the Commonwealth of Massachusetts, I recognize that the purpose of 42 USC 1973FF-1 and MOVE is to allow absent uniformed services voters and overseas voters enough time to vote in a federal election. This Office is committed to ensuring that all UOCAVA voters have the ability to vote in all elections and in furtherance thereof has established comprehensive and effective procedures to accomplish this result.

### **Hardship**

The Commonwealth of Massachusetts is unable to comply with issuance of absentee ballots 45 days before the election because of the statutory period of time between the state primary and the general election and other state laws relating to the primary and election. Massachusetts General Laws chapter 53, section 28, requires that the state primary be held on the 7<sup>th</sup> Tuesday (or 49 days) prior to the election. Pursuant to Massachusetts General Laws chapter 53, section 52, local election officials have four (4) days to make the primary returns to the Secretary of the Commonwealth's Office (hereinafter "this Office"). Additionally, Massachusetts General Laws chapter 54, section 135, provides that a state primary candidate may request a recount within six (6) days following the primary and the recount would need to be conducted within six (6) days after the deadline for petitioning for a recount. Further, pursuant to Massachusetts



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General Laws chapter 53, section 53A and chapter 55B, section 5, a candidate who won at the state primary may withdraw his or her name or any voter can object to a candidate nominated at the state primary within six (6) days following the primary. In accordance with Massachusetts General Laws chapter 53, section 14, a vacancy caused by withdrawal may be filled within seventy-two (72) weekday hours. Also, Massachusetts General Laws chapter 53, section 3, provides that any candidate who wins a party nomination at a state primary by a write-in or sticker campaign has thirteen (13) days to file their written acceptance with this Office to qualify to have their name printed on the November ballot. Accordingly, if there is a recount or withdrawal, there will be further delays in preparing ballots for the municipalities affected.

Following the state primary, this Office is responsible for printing the ballots for the November 2, 2010 state election for all 351 municipalities throughout the Commonwealth. Because of the various districts, there are approximately 500 different ballot styles that this Office must format and proof before printing.<sup>1</sup> We have already begun formatting the layout of the ballots but cannot actually begin inserting text until after the primary. As soon as we can insert the actual text into the ballots after the primary, we will begin working extended hours to prepare all of the ballots as quickly as possible.

This Office will have official absentee ballots (hand-counted paper or optical scan paper) delivered to all 351 municipalities no later than October 8, 2010. However, we will be providing each municipality with electronic files of each ballot style for their municipality as soon as they are approved by this Office, which will be well before October 8<sup>th</sup>. We intend to instruct the local election officials to use the electronic files for UOCAVA voters. Upon receipt of the electronic files, the local election officials will be able to print the ballot and either mail or fax it to the UOCAVA voter or e-mail the electronic file to the voter, dependent on the preferred method of delivery indicated in the voter's application.

### **Comprehensive Plan**

#### **Notifying UOCAVA Voters of Application Requirement:**

As MOVE removed the requirement that the Federal Post Card Application (FPCA) serve as a request for absentee ballots for two (2) federal election cycles, the FPCA is now valid for the period provided in state law for an absentee ballot application, which is one (1) calendar year. Accordingly, a

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<sup>1</sup> The reason for the high number of ballot styles is because of overlapping districts. There are 351 municipalities, 10 congressional districts, 40 state senator districts, 160 state representative districts and 14 counties.

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UOCAVA voter is eligible to receive absentee ballots for all elections in a calendar year in Massachusetts, which includes municipal and special state elections. This Office felt it was important to remind UOCAVA voters who applied for an absentee ballot using a FPCA before the 2008 election or in 2009 that they would need to re-submit an application if they wanted to receive a ballot in 2010. Accordingly, we requested that the local election officials communicate with all UOCAVA voters whose applications were submitted in 2008 or 2009 to notify them of the need to re-apply and provide them with a FPCA (or link to the FVAP website) and provided a sample notification.

Voter Registration Waived:

In Massachusetts, voter registration is waived for UOCAVA voters and they do not need to register by the twenty (20) day deadline. Accordingly, a UOCAVA voter can simply apply for an absentee ballot by noon the day before the election.

Absentee Ballot Application by a Family Member:

In Massachusetts, a family member can apply for an absentee ballot on behalf of a voter. This is particularly useful for members of the armed services on active duty whose family members are still located locally. As we have done in the past, we will be working with our National Guard to include information in the newsletter sent to families of National Guard members on how to apply for an absentee ballot.

Ballots Requested to be Mailed:

As with past federal elections, this Office will be offering an expedited mail service to send absentee ballots to UOCAVA voters who indicate that their preferred method of delivery is mail. We are still working to determine which mail service will be used for overseas citizens, but will be using Priority Mail from the United States Postal Service for all military voters who indicate mail as their preferred method of delivery. We will also offer overseas voters the opportunity to use our account to send their marked ballot back to the local election officials using the expedited mail service. Using an expedited mail service will reduce the mailing time and can be tracked during the mailing process. An expedited mail service will be used for all UOCAVA voters who indicate mail as a preferred method of delivery even if they apply for an absentee ballot after 45 days before the election.

Return of Marked Ballots Electronically:

For the November 2010 election, absentee ballots transmitted to UOCAVA voters electronically can be returned to the local election officials electronically in the same manner as they were received. A UOCAVA voter who receives an

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absentee ballot via e-mail will need to print the ballot, mark it, print and complete the accompanying paperwork, including an affidavit as to their qualifications to vote, then scan those materials and e-mail back to the local election official. For a UOCAVA voter who receives their ballot via fax, upon completion of the ballot and accompanying paperwork, they can fax it back to the local election official. Absentee ballots being returned electronically must be received by the close of polls on election night, which is 8 p.m. EST. Local election officials will include detailed instructions to UOCAVA voters on these processes.

Late Counting of Ballots from UOCAVA Voters:

Under state law, UOCAVA voters who are outside the United States have an extra ten (10) days after the election for their marked ballots to be received by local election officials. Massachusetts General Laws chapter 54, section 95, requires local election officials to count ballots which are postmarked from outside the United States on or before election day and received within ten (10) days after the election.

Changes to State Law—FWAB:

In 2009, changes were made to state law to allow for use of the Federal Write-In Absentee Ballot (FWAB) for all elections and for the electronic transmission of completed FWABs. Additionally, a UOCAVA voter can submit a FWAB at any time prior to the election, regardless of whether they ever submitted an application for a state absentee ballot. These changes were in effect for the special primary for US Senate held on December 8, 2009 and the special election held on January 19, 2010.

Sufficiency of Plan

This Office has significant experience with the process of using expedited mail services for UOCAVA voters. Our first experience was in 2007 when this Office worked with the Federal Voting Assistance Program (FVAP) and the Department of Justice (DOJ) to develop a plan to ensure that UOCAVA voters had sufficient time to vote in the 5<sup>th</sup> congressional district special primary and election. We instructed local election officials to use UPS to send ballots to overseas citizens who requested ballots—regardless of when the voter applied for the ballot. We provided the local election officials with our account number for this purpose. For military voters, this Office instructed local election officials to send absentee ballots using either Express Mail or Priority Mail through the United States Postal Service as they are the only service that can deliver to military facilities.<sup>2</sup>

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<sup>2</sup> We learned that military facilities will only accept mail through USPS only after attempting UPS delivery. Although we had submitted our plan to FVAP and DOJ, neither informed us that UPS

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We followed the same procedures again for the 2008 Presidential Primary after the date of the primary was changed pursuant to an act of the state legislature and for the November 2008 Presidential Election. In 2009, a special primary and election for United States Senator were called after the passing of Senator Edward M. Kennedy. From the time the primary and election were called in accordance with state law, this Office coordinated with FVAP and DOJ on the same issues. For each of the above elections, we followed the same process for UOCAVA voters regardless of when they applied for their absentee ballot.

Additionally, because of our recent special federal election, the local election officials have been able to update mailing addresses and e-mail addresses for many UOCAVA voters, thereby enabling them to better communicate with the UOCAVA voters.

**Conclusion**

Based on the foregoing plan which includes using expedited mail, allowing for the electronic transmission and return of absentee ballots, the late-counting of ballots mailed from outside of the United States, this Office is confident that UOCAVA voters who apply for an absentee ballot more than 45 days before the November 2, 2010 election will have sufficient time to receive, vote and return their absentee ballot. While the Massachusetts election laws do not establish a 45 day availability of absentee ballots for absent uniformed services voters and overseas voters, the foregoing clearly demonstrates that as a result of recent statutory changes and by the comprehensive procedures established this Office, UOCAVA voters will receive their ballots in a timely manner allowing them to vote in all elections. This Office remains committed to ensuring UOCAVA voters have the ability to vote no matter where in the world they are located.

Please do not hesitate to contact Michelle K. Tassinari, Director and Legal Counsel for the Elections Division at [REDACTED] with any questions.

Very truly yours,



William Francis Galvin  
Secretary of the Commonwealth

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cannot deliver to a military facility. Accordingly, we had to provide new instructions to the local election officials.