

November 16, 2011

The Honorable Peter Bragdon  
President of the Senate  
107 North Main Street  
Concord, NH 03301

Dear Senator Bragdon,

Thank you for the work you, your staff, and your colleagues in the New Hampshire General Court have done to support military and overseas voters. As you know, the Federal Voting Assistance Program (FVAP) is the Department of Defense office charged with implementing the *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), as amended by the 2009 *Military and Overseas Voter Empowerment Act* (MOVE Act). Since the passage of the MOVE Act, State lawmakers and election officials have gone to great lengths to improve voting rules and procedures for military and overseas voters. To date,

- At least 23 States have codified the MOVE Act's 45-day prior transmission requirement into State law, with others pending.
- For the 2010 General Election, 31 States tested web-based tools designed to help military and overseas voters fill out registration and ballot request forms online, and for some States, to access a blank ballot through a secure, online download.
- Six States have adopted the Uniform Law Commission's model legislation.
- All but four States have eliminated witness and notary requirements for military and overseas voters.

These developments will help expand opportunity for military and overseas voters to participate in U.S. elections. There is, however, still more that can be done. With that in mind, I want to discuss the FVAP Legislative Initiatives. Each year, FVAP contacts the Chief Election Officer and the legislative leadership in each State to recommend Legislative Initiatives that, once enacted, will expand opportunity for military and overseas voters to participate in U.S. elections.

As you know, this year, the New Hampshire General Court enacted HB 251, which clarified that election officials must email a ballot to any military or overseas voter who requests it, so long as the request is received by 5:00 pm the day before the election. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends New Hampshire adopt the following measures in statute or regulation:

- **Expand Electronic Transmission Options for Ballot Access.** New Hampshire currently employs email and fax to provide, or "push," election materials to voters. FVAP recommends New Hampshire also adopt a method that would allow voters to obtain, or

“pull,” election materials at their own convenience. For example, “pull” methods allow voters to go to an election website and “pull” or download their ballot. Having both “push” and “pull” electronic transmission is important because some military information systems automatically block emails from non-military third parties or block access to non-governmental email systems. Further, many military voters do not know their overseas military email address before deploying. *This Legislative Initiative has been revised for 2012.*

- **Expand the Use of the Federal Write-In Absentee Ballot (FWAB).** New Hampshire permits military and overseas voters to use the FWAB only for voting for federal offices. Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return. FVAP, therefore, recommends New Hampshire accept the FWAB for all elections and as a simultaneous voter registration.
- **Enact the Uniform Law Commission (ULC) model legislation.** The ULC, an interstate commission made up of State legal experts, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States.
- **Extend the registration and absentee ballot request validity.** Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by military and overseas voters, should be valid for all elections from the date the application is submitted through the next federal general election. While the MOVE Act repealed the prior federal requirement that States send absentee ballots for two general election cycles after the application was made, limiting validity to a single calendar year produces significant problems for military and overseas voters, especially in States with early Presidential Preference Primaries and for special elections. FVAP, therefore, recommends States move to a one general election rule for ballot application FPCA validity. *This Legislative Initiative is new for 2012.*

These recommendations are more thoroughly outlined in the attachment below. I have also included a chart of each State’s adoption of FVAP’s recommendations.

Please do not hesitate to contact my staff or me. We will be happy to provide research, sample language, or testimony—anything that will assist you in serving military and overseas voters.

Sincerely,

Bob Carey  
Director, Federal Voting Assistance Program

Enclosures:

1. 2012 Legislative Initiatives and Sample Language
2. Chart: 2012 Legislative Initiatives by State

cc:

The Honorable William "Bill" O'Brien  
The Honorable Sylvia Larsen  
The Honorable Terie Norelli  
The Honorable William Gardner

## **2012 FVAP Legislative Initiatives for New Hampshire**

In addition to the explanation of need for each of the Legislative Initiatives detailed below, draft legislative language is provided. This language is derived from the legislative language provided in the Uniform Military and Overseas Voters Act (UMOVA), drafted by the Uniform Law Commission in June 2010. A complete copy of the model legislation can be found at [www.umova.org](http://www.umova.org). A copy of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as amended by the Military and Overseas Voter Empowerment (MOVE) Act is available at: <http://www.fvap.gov/resources/media/uocavalaw.pdf>.

Note: An updated 55-State /Territory Legislative Initiative comparison chart is available at: (Website address TBD by 15 November 2011).

### **Email and Online Transmission of Voting Materials**

*This Legislative Initiative has been revised for 2012.* FVAP recommends States employ multiple electronic means to transmit voting materials to, and communicate with, voters. Specifically, each State should offer military and overseas voters multiple electronic means to receive their ballot, including a way to provide (“push”) ballots to voters and a way that allows voters to obtain (“pull”) ballots from specified web servers. An example of “push” means is emailing a PDF of the blank ballot. “Pull” methods allow voters to go to an election website, and after inputting an identification code, “pull” or download their ballot. States should also expand their use of email, social media and online systems to communicate with voters throughout the voting process, including the transmission of registration and ballot request materials.

Email and online capabilities are widely available eclipsing the usefulness of faxing. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials reported that “...reliance on fax machines to speed the voting process... is largely unworkable for deployed troops,” and that visited military personnel “indicated a strong preference for, and almost universal access to, email or internet based voting procedures.” Additionally, FVAP’s experience in the 2006 through 2010 election cycle indicates that email or online deliveries alone are insufficient to reach all voters; for example, different military information technology networks block user access to third-party email systems, and the voter’s deployed military email address may not have been known when the Federal Post Card Application was submitted. Conversely, some voters have access to email but not to web surfing services. Providing ballots by both systems substantially improves the likelihood that a voter will be able to receive their ballot electronically.

### **Sample Language**

*An absent uniformed services voter or overseas voter may apply for registration and an absentee ballot by electronic transmission, if otherwise qualified to apply for and vote by absentee ballot. An absent uniformed services voter or overseas voter who requests that ballots and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or if offered by the voter’s jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall*

*transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.*

## **Expanded Use of Federal Write-In Absentee Ballot**

FVAP continues to encourage and assist Uniformed Service and overseas voters to greatly increase the use of the Federal Write-in Absentee Ballot (FWAB). Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Therefore, FVAP recommends States expand the use of the FWAB to include simultaneous registration, ballot request, and voted absentee ballot for federal, State and local offices for the elections required by the MOVE Act: general, primary (including Presidential Preference primary), special, and runoff. In expanding the use of the FWAB in this manner, individually-developed State Write-In Ballots will no longer be needed, and FVAP recommends they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.

### **Sample Language**

*(1) An absent uniformed services voter or overseas voter may use a Federal Write-In Absentee Ballot, in accordance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, to vote for all offices in any general, special, primary, or runoff election for Federal, State, or local government office, or a ballot measure.*

*(2) An absent uniformed services voter or overseas voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot[, if the declaration is received by [insert this state’s voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]*

## **Adoption of Recommendations of the Uniform Law Commission**

The Uniform Law Commission (ULC), an interstate commission made up of State legal experts appointed and elected by their State governments or commissions, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States. This model legislation is endorsed by the Alliance of Military and Overseas Voting Rights, the American Bar Association, and the Council of State Governments, as well as being included in the Council’s list of Suggested State Legislation.

Some States currently have statutory provisions that go beyond the recommendations of the UMOVA, providing greater opportunities for military and overseas voters. While FVAP encourages adoption of the UMOVA language for uniformity, care must be taken to avoid regressing by adopting legislation that is less than what is already provided by State law. FVAP and the Uniform Law Commission both stand ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on UMOVA is available at [www.umova.org](http://www.umova.org).

### **Sample Language Notes**

*DOD, including FVAP and the Defense State Liaison Office staff, as well as the Uniform Law Commission, nationally and in the various states, stand ready to assist States in legislative drafting and passage of UMOVA in the various States to optimize both voter opportunity and minimum standardization.*

*UMOVA is best passed by minimal amendment to the draft act as a whole, rather than trying to lift the language and place it in various places in a State Code. This is one of those situations where “the whole is greater than the sum of the parts.” Further information on the UMOVA draft language is available at [www.umova.org](http://www.umova.org).*

### **Ballot Application FPCA Validity**

*This Legislative Initiative has been added for 2012. Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by military and overseas voters, should be valid for all elections from the date the application is submitted through the next federal general election. In 2009, the MOVE Act repealed Section 104 of UOCAVA, which had required States to treat absentee ballot applications from military and overseas voters as valid through two general election cycles. Since the repeal, some States have limited the validity of ballot applications to the calendar year in which they are submitted. This is a concern in Presidential election years, when some States hold early primaries and voters need to submit a ballot application in the previous calendar year. FVAP, therefore, recommends States move to a one general election rule for ballot application FPCA validity.*

### **Sample Language**

*A covered voter who provides an electronic-mail address may request that the voter’s application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies[, including for any runoff elections that occur as a result of such elections]. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.*