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FEDERAL VOTING ASSISTANCE PROGRAM

FEDERAL VOTING ASSISTANCE PROGRAM
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March 22, 2011

The Honorable Dianna Duran
Secretary of State
Capitol Annex
325 Don Gaspar, Suite 300
Santa Fe, NM 87503

Dear Secretary Duran,

Thank you for the work you and your State have done to support New Mexico's military and overseas voters through the Legislative Initiatives recommended by the Federal Voting Assistance Program (FVAP). Election officials nationwide have gone to great lengths to comply with the recently enacted Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), and our previous Legislative Initiative letters were sent before that law was enacted. We believe this letter captures your State's post-MOVE Act changes as we previously coordinated with your office. Information available to FVAP indicates that there are 9,285 Uniformed Service members and 8,900 spouses and dependents who claim New Mexico as their voting residence. Additionally, FVAP estimates there are anywhere from two to four million American citizens residing overseas who claim residency in one of the 55 covered States or Territories, and therefore a portion likely reside in your State.

Despite the improvements in military and overseas voting success brought about by the MOVE Act and State initiatives, preliminary post-2010 election data appears to confirm what we learned after the 2008 election: military and overseas voters still face greater difficulties in successfully casting a ballot than does the general population, and timely delivery and return of ballots appears to be the leading cause of that failure.

From 2008 through 2010, FVAP joined the National Association of Secretaries of State, the National Association of State Election Directors, and many other military and overseas voting stakeholders in advising the Uniform Law Commission's drafting committee on the Uniform Military and Overseas Voters Act (UMOVA). In addition to addressing many specific hurdles identified in previous legislative initiative letters FVAP has sent New Mexico, UMOVA addresses one of the overriding concerns of military and overseas voters: the confusing and complex national patchwork of laws and regulations governing absentee voting. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials stated that the sheer variety of State and local laws imposed on military and overseas voters is of its own right an impediment to their voting, because of the complexity it introduces for the voters and Voting Assistance Officers charged with helping them.

UMOVA's goal is to simplify the myriad absentee voting regulations and procedures into a uniform process common to all 55 States and territories. It also seeks to extend the MOVE Act

provisions to State and local elections, ensuring that service people and citizens overseas have the same rights to participate in electing State and local officials as they have for federal officials. FVAP strongly encourages New Mexico to adopt UMOVA.

Given that the MOVE Act requires States send ballots to voters at least 45 days before the election and to send them electronically as well as by postal mail, FVAP recommends the expanded use of email and online transmission for all election materials throughout the entire absentee voting process, thereby supplementing fax and postal mail where possible.

FVAP will continue to encourage and assist Uniformed Service and overseas voters to 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 that 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, special, and runoff.

Other initiatives remain crucial to alleviating the problems faced by citizens covered by the UOCAVA, including the elimination of witnessing requirements (notary can no longer be required after passage of the MOVE Act), the authorization for the State Chief Election Official to implement emergency measures, the establishment of late registration procedures, and the enfranchisement of U.S. citizens who have never resided in the United States.

After reviewing New Mexico's existing election code and procedures, we identified four Initiatives for your legislature to consider during this year's legislative session. These Initiatives are discussed in detail with suggested wording in the enclosed Legislative Initiatives document. Please do not hesitate to contact us for assistance. We would be happy to provide written or in-person testimony to clarify our position on any or all of these initiatives.

Sincerely,

Digitally signed by CAREY.ROBERT.HARRISON.JR.1098129452
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USN, cn=CAREY.ROBERT.HARRISON.JR.1098129452
Date: 2011.03.21 12:51:54 -04'00'

Bob Carey
Director, Federal Voting Assistance Program

Enclosure:
2011 Legislative Initiatives and Sample Language

CC: The Honorable Ben Lujan
The Honorable Timothy Jennings

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FVAP
2011 Legislative Initiatives

45-Day Ballot Transit Time

Despite the improvements in military and overseas voting success brought about by the *MOVE Act* and State initiatives, preliminary post-2010 election data appears to confirm what we learned after the 2008 election: military and overseas voters still face greater difficulties in successfully casting a ballot than does the general population, and timely delivery and return of ballots appears to be the leading cause of that failure. The Military Postal Service Agency urges military voters to send ballots back at least 21 days before an election. FVAP further recommends that citizens residing overseas return their ballots at least 28 days before an election, or earlier, depending on foreign mail service. Ballots, therefore, must be sent 45 days prior to the election, if sent through international mail and overseas military post offices, in order to provide adequate time for voters to receive, vote, and return ballots, with any likelihood that their votes will be successfully received by election officials. Accepting and counting absentee ballots that were cast up to Election Day, but were not received until after the election, would further enfranchise these voters, and FVAP's scoring provides additional points to States that provide such post-Election Day ballot return deadlines.

Sample Language

For any general, special, [presidential preference,] [runoff,]or primary election for federal office; any general, special, [recall,][runoff] or primary election for statewide or state legislative office [or state ballot measure]; any general, special, [recall,] [runoff]or primary election for local government office [or local ballot measure]conducted under [insert state law][for which absentee voting or voting by mail is available for other voters], not later than 45 days before the election the official charged with preparing and distributing ballots and balloting materials in each jurisdiction shall transmit ballots and balloting materials to all absent uniformed services voters and overseas voters who by that date have submitted a valid military-overseas ballot application. If a ballot application from an absent uniformed services voter or overseas voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit these materials to the voter not later than two business days after the application arrives.

Email and Online Transmission of Voting Materials

Realizing the *MOVE Act* requires sending ballots to voters at least 45 days before the election and the use of electronic transmission for blank ballots, FVAP recommends the expanded use of email and online transmission for all election materials throughout the entire absentee voting process, supplementing fax and postal mail where possible.

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 "the system of delivering ballots and returning them by mail is archaic compared to the pace of modern military operations" and "...reliance on fax machines to speed the voting process... is largely unworkable for deployed troops." The delegation also reported that individual service members and overseas citizens confirmed that in overseas locales, fax capabilities were not readily available and "indicated a strong preference for, and almost universal access to, email or internet based voting procedures." Additionally, FVAP's experience in the 2010 election cycle indicates that email or online deliveries alone are insufficient to reach all voters. 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.

Adoption of Recommendations of the Uniform Law Commission

The Uniform Law Commission (ULC) has presented the *"Uniform Military and Overseas Voters Act" (UMOVA)* for adoption by the States. FVAP supports the Commission in this endeavor, and recommends that the States adopt the *Act*. 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.

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 stands ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on *UMOVA* is available at www.umova.org.

Enfranchise Citizens Who Have Never Resided in the U.S.

Many U.S. citizens, who have never resided in a State or territory, are not entitled to vote under current State law. These citizens are voting age children of U.S. citizens who are

eligible to vote under *UOCAVA*. Absent the decisions made by these children's parents to reside overseas, these disenfranchised children of *UOCAVA* voters would likely otherwise be allowed to vote. Therefore, FVAP urges that these U.S. citizens be allowed to vote in elections for Federal offices in the State in which either parent is eligible to vote under *UOCAVA*.

Sample Language

(a) An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements.

(b) An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements.

(c) An overseas voter who was born outside the United States, is not described in paragraph (a) or (b), and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if: (1) the last place where a parent or legal guardian of the voter was, or under this [act] would have been, eligible to vote before leaving the United States is within this state; and (2) the voter has not previously registered to vote in any other state.

(d) In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.