



FEDERAL VOTING ASSISTANCE PROGRAM

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December 8, 2011

The Honorable Scott Fitzgerald  
Republican Leader  
211 South, State Capitol  
PO Box 7882  
Madison, WI 53707

Dear Senator Fitzgerald,

Thank you for the work you, your staff, and your colleagues in the Wisconsin Legislature 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, the Wisconsin Legislature recently enacted SB 116, which moved the State's primary election from September to August and codified a requirement for election officials to send ballots to military and overseas voters at least 47 days prior to any primary or general election. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends Wisconsin adopt the following measures in statute or regulation:

- **Expand electronic transmission options for registration and ballot materials.** Wisconsin currently employs email and fax to provide, or “push,” election materials to voters. FVAP recommends Wisconsin 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 use of the Federal Write-In Absentee Ballot (FWAB).** While all military and overseas voters can use the FWAB to vote in federal races, Wisconsin law states that only military voters can use the FWAB to vote in State and local races. 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. 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.
- **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.
- **Permit Emergency Authority for the Chief Election Official.** During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Chief Election Official or another designated state official should have the authority to designate alternate methods for handling absentee ballots to ensure military and overseas voters have the opportunity to exercise their right to vote.
- **Remove Witnessing Requirements.** Wisconsin is one of just four States that still requires a witness on the ballot envelope. Witnessing requirements present a real barrier to voting for many military and overseas voters. Citizens living in remote areas overseas are hindered because identifying witnesses may be difficult.

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 Jeff Fitzgerald  
The Honorable Mark Miller  
The Honorable Peter Barca  
Mr. Kevin Kennedy

## **2012 FVAP Legislative Initiatives for Wisconsin**

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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 [www.fvap.gov](http://www.fvap.gov)

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

FVAP recommends States employ multiple electronic means to transmit voting materials to, and communicate with, voters. Specifically, each State should offer UOCAVA 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 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 (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 that they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the “emergency ballot” process for UOCAVA 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 that 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).*

### **Emergency Authority for State Chief Election Official**

During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Governor, the Chief Election Official, or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure UOCAVA voters have the opportunity to exercise their right to vote. Examples of such emergencies could include natural disasters such as floods, earthquakes, or man-made disasters, such as a fire, power outage or terrorist attack.

### **Sample Language**

*If an international, national, state, or local emergency or other situation arises that makes substantial compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq., impossible or impracticable, as confirmed by the existence of armed conflict involving United States Armed Forces or the mobilization of those forces, including State National Guard and Reserve component members of this state, or by the occurrence of a natural disaster or the existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, or by an official declaration by the governor that a state of emergency exists, the governor directly, or by delegation to [the state’s chief election authority], may prescribe, by emergency order or rule, a special procedure or requirement as may be necessary to facilitate absentee voting by those absent uniformed services voters, or overseas voters directly affected who are eligible to vote in this state. [The state’s chief election authority] shall take reasonable steps to provide absent uniformed services voters and overseas voters with timely notice of any special procedure or requirement prescribed under this section.*

## **Removal of Notarization and Witnessing Requirements**

Notarization and witnessing requirements on voter registration applications, ballot requests, and voted ballots present a real barrier to voting for many UOCAVA citizens. Citizens living in remote areas overseas are hindered because notary services may not exist, or may be prohibitively expensive and difficult to access. While the MOVE Act prohibits States from rejecting ballots or election materials submitted by UOCAVA voters for lack of a notary, it does not prohibit States from asking for it. This simply confuses the voter, drives them to find notaries even though not required, and likely disenfranchises many voters who, failing to find a notary, do not send in their ballots believing the State's notary request is legitimate. Similarly, witnessing requirements, especially those that specify the age or citizenship of the witness, may disenfranchise voters who cannot satisfy this requirement due to their location or circumstances. Notarization or witnessing requirements for all absentee balloting materials should be removed, and the voter's signature and date, under the self-administered oath on penalty of perjury, should verify the legitimacy of the voter and the application or ballot.

### **Sample Language**

*Notarization is not required for the execution of a document under this [act]. An authentication or witness, other than the declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state, or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this [act]. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.*