FEDERAL VOTING ASSISTANCE PROGRAM
DEPARTMENT OF DEFENSE
WASHINGTON, DC 20301-1155

December 18, 2006

Mr. Aurelio Gracia Morales
President
State Elections Commission
P.O. Box 195552
San Juan, PR 00919-5552

Dear Mr. Gracia Morales,

I would like to thank you for the work you have done over the past several years to promote and support the legislative initiatives the Federal Voting Assistance Program (FVAP) has recommended. The 2006 elections pointed out the importance of the states enacting these legislative initiatives. In particular, the provision of 45 or more days for ballot transit; electronic transmission of Federal Post Card Applications, blank ballots, and voted ballots; and, authorization for the state chief election official to implement emergency measures. States with these provisions were able to support a greater number of situations faced by our brave men and women serving in combat areas such as Iraq and Afghanistan, and other U.S. citizens worldwide. I would ask you also to consider alternative methods that these citizens could use to request their absentee ballots such as phone or by proxy, and utilizing digital signatures with electronically transmitted materials.

After reviewing Puerto Rico's existing election code and procedures, I have identified nine initiatives that the Puerto Rico legislature might consider during the upcoming legislative session. These initiatives are discussed in detail with suggested wording in the enclosed legislative initiatives document. If these initiatives are enacted and signed into law, they would significantly help to facilitate the absentee voting process for Puerto Rico's citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. Information available to FVAP indicates that there are 5,897 Uniformed Services members, 4,422 family members and many overseas citizens that claim Puerto Rico as their voting residence.

As you review the enclosed initiatives for possible inclusion in Puerto Rico's 2007 legislative agenda, please do not hesitate to contact us for assistance. We can provide legislative wording that other states have enacted to implement similar measures and provide written or in-person testimony, if desired. We have come a long way in simplifying the absentee voting process since the enactment of the *UOCAVA*—let's continue our joint efforts to achieve the simplest possible absentee voting process while maintaining its integrity.

Sincerely,

J. Scott Wiedmann
Deputy Director

Enclosure:
2007 Legislative Initiatives and Suggested Wording

Puerto Rico 2007 Legislative Initiatives and Sample Language

Electronic Transmission of Election Materials

Since the 1990 general election, electronic transmission has proven to be a valuable alternative method for facilitating the enfranchisement of military persons and overseas citizens serving their country who may have otherwise been unable to vote. This initiative has helped ensure these citizens were not disenfranchised by allowing them to cast a ballot when they would not otherwise have been able to vote due to time and location constraints.

Throughout an election year cycle, various circumstances exist that require the need for this alternative procedure in order for citizens to vote. The basic concept of electronic transmission of election materials is to secure high-speed delivery of election materials to and from the voter and local election officials. Your support in developing the **acceptance of electronic transmission for all aspects of the process**, with proper controls, would cut the ballot transit time at least in half. This would reduce the major obstacle to voting absentee and allow local election officials more administrative flexibility in preparing election materials.

Although Puerto Rico currently allows electronic transmission of the FPCA, including fax and email, we encourage expansion of these alternative to include electronically sending the blank ballot to the voter, and electronically accepting the voted ballot from the voter where circumstances would otherwise disenfranchise them. **Twenty-three** states have expanded use of electronic transmission to allow sending the blank ballot, and accepting the voted ballot.

Sample Language

An applicant who is a member of the United States Uniformed Services or the United States merchant marine, a family member, or is a qualified elector living outside the United States, may apply for registration and an absentee ballot by electronic transmission if otherwise qualified to apply for and vote by absentee ballot. The Commonwealth Elections Commission may send and receive absentee ballot applications and accept voted ballots from eligible electors via electronic transmission.

Emergency Authority for Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission is created, it is recommended that **Puerto Rico's Chief Election Official have the authority to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could establish expeditious methods for handling absentee ballots including electronic transmission. As an example, in light of the surge of Guard and Reserve forces being deployed, the Chief Election Official can temporarily allow electronics transmission of voting materials for Active Duty Military. **Seventeen** states and territories have

passed legislation giving the Chief Election Official authority to designate alternate methods of handling absentee ballots in emergency situation.

Sample Language

The chief election official may exercise emergency powers over any election being held in a district in which either a natural disaster or extremely inclement weather has occurred. The chief election official may also exercise emergency powers during an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this commonwealth, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the Commonwealth.

The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

Elimination of Witness/Notary Requirement

Current Puerto Rico election law requires that the FPCA and the ballot return envelope must be sworn to by a person authorized to administer oaths. Depending on the category of *UOCAVA* voter, the oath must be administered by a commissioned officer, the highest officer on board ship, an official in the school registrar's office, a notary public, or a consular officer. We recommend that **Puerto Rico eliminate the requirement for voting materials to be notarized for uniformed service members and overseas citizens**. While such requirements may be appropriate for local or in-state absentee balloting, they create an additional burden to the uniformed service and overseas voters in order to request an absentee ballot and to return a voted ballot. Additionally, many overseas citizens who are not able to visit a U.S. embassy or consular office are forced to pay high fees for notarization or witnessing services in order to participate in the balloting process. In many countries, there are no notaries in their system of jurisprudence. Also, some small military installations may have no commissioned officer assigned. We strongly recommend **removal of the notary requirement for all absentee balloting materials**. **Fifty** states and territories have eliminated the notary requirement on all election materials.

Sample Language

If a voter is residing outside the United States or is a member of the United States Uniformed Services, merchant marine, or a family member, and he or she is a qualified elector and is required to execute an affidavit or form for voter registration or an absentee ballot, he or she may subscribe to a self-administered oath, under penalty of perjury.

Late Registration Procedures

We recommend that **Puerto Rico allow persons recently separated from the Uniformed Services or overseas employment, and their family members, to be able to register late or be exempt from registration**. Many members of the Uniformed Services and overseas citizens go through a transition period when they first leave the Uniformed Services or overseas employment and may reside in Puerto Rico just prior to an election and this time frame does not meet Puerto Rico's normal residency requirements. Often, the date of discharge or termination of overseas employment and a commonwealth's registration requirement combine to disenfranchise a discharged military member or overseas citizen returning home after employment abroad. Special procedures to allow these persons to register and vote would solve this problem. **Twenty-nine** states and territories currently allow such procedures.

Sample Language

An individual, or accompanying family member who has been discharged or separated from the Uniformed Services, the merchant marine, or from employment outside the territorial limits of the United States, too late to enable him or her to register by the regular commonwealth deadline for registration, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge, separation, or termination of employment.

State Special Write-In Absentee Ballot

We also recommend that Puerto Rico provide a special write-in absentee ballot for all elections. The purpose of the special write-in absentee ballot is to **provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular ballot from Puerto Rico in the normal time frame**. A voter could request a special write-in absentee ballot 90 days in advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular ballot in time to be counted. **Twenty-seven** states now provide special write-in absentee ballots.

This special write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at Embassies and Consulates, military installations, overseas organizations and corporations. In comparison, the FWAB is generally only available to military members on active duty absent from their voting residence and overseas citizens who have already applied for a regular absentee ballot from the state. If the regular absentee ballot from Puerto Rico does not arrive in sufficient time for the voter to return the voted ballot and meet the deadline, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a state write-in absentee ballot usually provides a "full" slate of offices to be voted upon including Federal, state, and local offices. On the other hand, the

FWAB generally allows voting for Federal offices. There are presently **thirteen** states that have expanded the use of the FWAB beyond Federal law. The revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

Sample Language

If the voter is a U.S. citizen residing outside the United States, or a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, he or she may request, not earlier than 180 days before an election, a special write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector cannot vote an absentee ballot during the normal absentee voting period. Puerto Rico will make the ballot available "90 to 180" days before the election.

Expand Use of Federal Write-In Absentee Ballot

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in general elections for Federal offices only. This ballot is prepositioned worldwide at Embassies and Consulates, military installations and overseas organizations and corporations with American membership. By **expanding its use to include special, primary and runoff elections for Federal offices**, citizens would not be disenfranchised because regular ballots are not received in a timely manner. Frequently, there is insufficient time between the call for a special election and the actual election and between primary and runoff elections. Allowing use of the FWAB in these elections would reduce the possible need for legal action when insufficient time exists for the ballot to be received, voted and returned to be counted. During past primaries, on an *ad hoc* basis, several states and jurisdictions allowed the FWAB to be used for offices other than Federal offices. **Thirteen** states have legislatively expanded the use of the FWAB for other than Federal offices beyond the Federal law.

In addition, for those citizens that desire to vote in elections for Federal office only, the acceptance of the FWAB voter declaration as **a request for registration simultaneously with the submission of the FWAB** would further simplify the process, improve on transit time and help ensure enfranchisement. It should be noted that the information requested on the voter declaration is basically the same as the information requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB be accepted simultaneously as a registration form and ballot by the state for general election and Federal offices if:

(1) the information submitted complied with the commonwealth's registration requirements;

(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and

(3) the request is received by the appropriate commonwealth election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.

The adoption of this initiative would save the commonwealth money and alleviate administrative responsibilities on the part of the local election official.

Sample Language

- Expanded use of the FWAB:

If the voter is residing outside the United States or a member of the United States Uniformed Services or a family member of a member of the Uniformed Services and a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, commonwealth and Federal offices.

- Use of FWAB as a Combined Request for Registration and Ballot Submission:

If the voter is residing outside the United States, or is a member of the United States Uniformed Services, or a family member of a member of the Uniformed Services, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot (FWAB) voter declaration as a request for registration simultaneously with the submission of the FWAB if:

(1) the information submitted complies with the registration requirements of the commonwealth of Puerto Rico;
(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and

(3) the request is received by the appropriate Puerto Rico election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.

Reference to the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* in the Commonwealth Election Code

In 1986, Congress updated and consolidated the provisions of the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 into the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. **Reference to *UOCAVA* in the commonwealth's election code** will help election officials and interested citizens find guidance to applicable Federal law and increase their familiarity with the statute and its application. **Thirty-seven** states and territories now reference the UOCAVA in their election code.

Sample Language

This language is usually found under the chapter in the Election Code that makes reference to Federal elections:

It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the Federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.).

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

There are many U.S. citizens who have never resided in a state and under current law are not entitled to vote. These are usually first or second generation citizens who are subject to U.S. income tax and all other requirements of citizens. Except for the fact that they have never resided in a state, they would be eligible to vote in elections for Federal office. **Fifteen** states have passed legislation allowing these citizens to claim the legal residence of a parent. **We recommend these citizens be allowed to vote in elections for Federal offices where either parent is eligible to vote under UOCAVA.**

Sample Language

If a U.S. citizen outside the United States who has never lived in the Commonwealth of Puerto Rico has a parent who is a qualified elector, then that person is eligible to register and vote where his or her parent is a qualified elector.

Acceptance of a Signature and Date on Ballot as Evidence of Time of Completion

We recommend that **Puerto Rico accept the signature and date on a ballot envelope as evidence of the time the ballot was completed by a uniformed service or overseas voter in lieu of a postmark**. Although *UOCAVA* voters may have voted and mailed their ballot in a timely manner, the ballot envelope may not have been postmarked on that date. By signing and dating the ballot the voter, under penalty of perjury, is certifying that their ballot was voted prior to the close of polls on election day.

Sample Language

If the voter is residing outside the United States, or is a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, the ballot shall be counted if it is signed and dated by the voter prior to the close of polls on election day and received by the absentee ballot deadline.