



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: James Reardon, Commissioner of Finance & Management
From: Nathan Lavery, Fiscal Analyst
Date: October 27, 2011
Subject: JFO #2527

No Joint Fiscal Committee member has requested that the following item be held for review:

JFO #2527 – Request to establish **one limited service position** in the Office of the Secretary of State. This position will perform duties required by the Help America Vote Act (HAVA) and will be funded through HAVA funding approved in Act 66 of 2003.
[JFO received 9/26/11]

The Governor's approval may now be considered final. Please inform the Secretary of Administration and your staff of this action.

cc: Jim Condos, Secretary of State



STATE OF VERMONT
JOINT FISCAL OFFICE

MEMORANDUM

To: Joint Fiscal Committee Members
From: Nathan Lavery, Fiscal Analyst
Date: September 30, 2011
Subject: Grant Requests

Enclosed please find five (5) items that the Joint Fiscal Office has received from the administration. Two (2) limited service position requests are included among these items.

JFO #2524 — \$195,720 grant from the U.S. Federal Emergency Management Agency (FEMA) to the Vermont Department of Mental Health. These emergency disaster funds will be used to provide crisis counseling for individuals and groups related to the impacts of Tropical Storm Irene. These services will be provided via a contract with Washington County Mental Health. **This grant exceeds the threshold for acceptance through the Tropical Storm Irene Temporary Expedited Grant Review Policy, but expedited review has been requested under the regular expedited review policy. Joint Fiscal Committee members will be contacted beginning October 5 with a request to waive the balance of the review period and accept this item.**

[JFO received 9/29/11]

JFO #2525 — \$200,000 grant from the U.S. Department of Justice to the Vermont Criminal Justice Training Council (CJTC). These funds will be used to provide CJTC students with laptop computers and wireless internet access.

[JFO received 9/23/11]

JFO #2526 — \$118,078 grant from the National Archives and Records Administration to the Vermont Secretary of State. These funds will be used to archive court records and make them available to the public (Vermont Court Records Project). **One limited service position is associated with this request.**

[JFO received 9/23/11]

JFO #2527 — Request to establish **one limited service position** in the Office of the Secretary of State. This position will perform duties required by the Help America Vote Act (HAVA) and will be funded through HAVA funding approved in Act 66 of 2003.

[JFO received 9/26/11]

JFO #2528 — \$9,985 grant from the U.S. Department of Health & Human Services to the Vermont Department of Health. These funds will be used to establish and support a Food Safety Task Force for one year, including one full day conference and two Task Force meetings.

[JFO received 9/23/11]

Please review the enclosed materials and notify the Joint Fiscal Office (Nathan Lavery at (802) 828-1488; nlavery@leg.state.vt.us) if you have questions or would like an item held for legislative review. Unless we hear from you to the contrary by October 14 we will assume that you agree to consider as final the Governor's acceptance of these requests.

**STATE OF VERMONT
Joint Fiscal Committee Review
Limited Service - Grant Funded
Position Request Form**

JFO 2527

This form is to be used by agencies and departments when additional grant funded positions are being requested. Review and approval by the Department of Human Resources must be obtained prior to review by the Department of Finance and Management. The Department of Finance will forward requests to the Joint Fiscal Office for JFC review. A Request for Classification Review Form (RFR) and an updated organizational chart showing to whom the new position(s) would report must be attached to this form. Please attach additional pages as necessary to provide enough detail.

Agency/Department: Office of the Secretary of State Date: 19 September 2011

Name and Phone (of the person completing this request): Paul Daley, 828-2477

Request is for:

- Positions funded and attached to a new grant.
 Positions funded and attached to an existing grant approved by JFO # Act 66 of 2003

1. Name of Granting Agency, Title of Grant, Grant Funding Detail (attach grant documents):

Election Assistance Administration (EAC)
 Title 1, Section 101 (CFDA 39.001) and Title II, Section 251 (CFDA 90.401) of the Help America Vote Act
 Public Law 107-252, October 29, 2002; 42. U.S.C. 15301 (acceptance authorized by Act 66 of 2003, Sec. 86)

2. List below titles, number of positions in each title, program area, and limited service end date (information should be based on grant award and should match information provided on the RFR) position(s) will be established only after JFC final approval:

<u>Title* of Position(s) Requested</u>	<u># of Positions</u>	<u>Division/Program</u>	<u>Grant Funding Period/Anticipated End Date</u>
Elections Administrator I	one	Elections	30 June 2016 unless extended

*Final determination of title and pay grade to be made by the Department of Human Resources Classification Division upon submission and review of Request for Classification Review.

3. Justification for this request as an essential grant program need:

This position is necessary in order to meet the ongoing requirements of the Help America Vote Act of 2002. The work to be performed by the incumbent in this position is an eligible direct expense of the HAVA grant. A Request for Classification Action with more detail is included with this request.

I certify that this information is correct and that necessary funding, space and equipment for the above position(s) are available (required by 32 VSA Sec. 5(b)).

Jan C. Carole 9/19/11
 Signature of Agency or Department Head Date

Molly Paul 9/21/11
 Approved/Denied by Department of Human Resources Date

[Signature] 9/23/11
 Approved/Denied by Finance and Management Date

[Signature] 09/23/11
 Approved/Denied by Secretary of Administration Date

Comments:



REC'D SEP 23 2011





**State of Vermont
Office of the Secretary of State**

128 State Street
Montpelier, VT 05633-1101

[phone] 802-828-2363
[fax] 802-828-2496
www.sec.state.vt.us

**James C. Condos, Secretary of State
Brian H. Leven, Deputy Secretary**

:
MEMORANDUM

16 September 2011

TO: Molly Paulger, Director of Employment Services
Toni Hartrich, Budget & Management Analyst

FR: Paul Daley, Administrative Services Director

RE: Supporting information for HAVA Grant Position Request

This office is requesting a sponsored position to perform work required by the federal Help America Vote Act (HAVA). The original grant award was received in 2003 and acceptance was approved in the Fiscal Year 2004 Appropriations Act (Act 66 of 2003, sec 86). The grant award was \$16.61 million. The fund balance on 30 June 2011 was \$13,468,004.

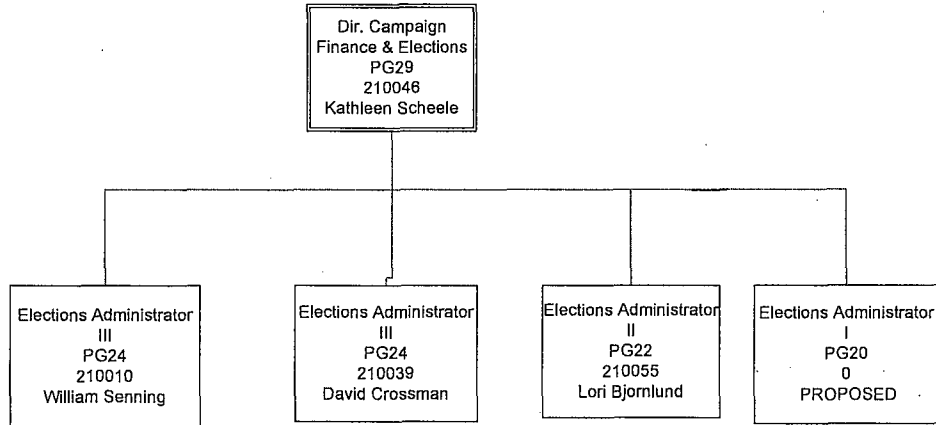
This position request is not the result of a detailed grant project or budget, rather it comes after a decade of increasing work activity driven by federal requirements. Three different federal agencies – Election Assistance Administration, Department of Justice and Department of Defense – have steadily increased their programmatic and reporting requirements. While the most obvious example was the federal requirement that forced Vermont to move its primary election date in 2010; there are many other changes that that have had year-round impact on the range, volume and complexity of election administration.

Another reason for this position request is the scheduled replacement of the statewide voter checklist. The replacement project will begin later this year and the new application is scheduled for completion in 2013 and ready for use for the 2014 elections. This project will require a significant commitment of time by elections staff at each stage of the project from development through end user training. The current staff could not complete this project while concurrently managing other ongoing responsibilities.

To help illustrate the factors driving this increasing workload, I'm enclosing issue briefs from the NCSL and National Association of Secretaries of State that address these increasing federal requirements. Also enclosed is the 2010 DoJ report to Congress on overseas voting. The Department of Justice requirements and the department's eagerness to pursue litigation over technical reporting issues have proven particularly burdensome

Attch (3)

Secretary of State
Elections and Campaign Finance Division



Request for Classification Action
New or Vacant Positions
EXISTING Job Class/Title ONLY
Position Description Form C/Notice of Action
For Department of Personnel Use Only

Notice of Action # _____	Date Received (Stamp) _____
Action Taken: _____	
New Job Title _____	
Current Class Code _____	New Class Code _____
Current Pay Grade _____	New Pay Grade _____
Current Mgt Level _____ B/U _____ OT Cat. _____	EEO Cat. _____ FLSA _____
New Mgt Level _____ B/U _____ OT Cat. _____	EEO Cat. _____ FLSA _____
Classification Analyst _____	Date _____ Effective Date: _____
Comments: _____	Date Processed: _____
Willis Rating/Components: Knowledge & Skills: _____	Mental Demands: _____ Accountability: _____
Working Conditions: _____	Total: _____

Position Information:

Incumbent: **Vacant or New Position**

Position Number: NEW Current Job/Class Title:

Agency/Department/Unit: Secretary of State/ Elections GUC: 21400

Pay Group: 21-A Work Station: Montpelier Zip Code: 05633

Position Type: Permanent Limited Service (end date) 30 June 2016

Funding Source: Core Sponsored Partnership. For Partnership positions provide the funding breakdown (% General Fund, % Federal, etc.) 100% Federal

Supervisor's Name, Title and Phone Number: Kathleen Scheele, Campaign Finance & Elections Director, x 2304

Check the type of request (new or vacant position) and complete the appropriate section.

New Position(s):

- a. **REQUIRED:** Allocation requested: Existing Class Code 456800 Existing Job/Class Title: Elections Administrator
- b. Position authorized by:

Joint Fiscal Office – JFO # Approval Date:

Legislature – Provide statutory citation (e.g. Act XX, Section XXX(x), XXXX session) Act 66, section 86, 2003 Adj. Sess.

Other (explain) -- Provide statutory citation if appropriate.

Vacant Position:

a. Position Number:

b. Date position became vacant:

c. Current Job/Class Code: Current Job/Class Title:

d. REQUIRED: Requested (existing) Job/Class Code: Requested (existing) Job/Class Title:

e. Are there any other changes to this position; for example: change of supervisor, GUC, work station? Yes No If Yes, please provide detailed information:

For All Requests:

1. List the anticipated job duties and expectations; include all major job duties:

Anticipated job duties consist of administrative and coordinating duties at a technical level in the administration of federal elections.

Major Duty: Help America Vote Act (HAVA)

- user support for electronic statewide voter checklist;

- organize, support or deliver education and training to voters, poll workers and election officials.

Major Duty: National Voter Registration Act (NVRA)

- process voter registration forms transmitted from NVRA designated agencies;

- organize, support or deliver education and training to NVRA designated agency staff;

- organize, support or deliver education, training and assistance to local election officials to ensure that voter registration rolls are administered in compliance with NVRA requirements.

Major Duty: Military and Overseas Voter Empowerment (MOVE) Act and Uniformed and Civilian Absentee Voting Act (UOCAVA)

-organize, support and perform work to assure state compliance with federal laws related to absentee voting

NOTE - All of the duties for this position are eligible activities for direct funding through the HAVA grant.

2. Provide a brief justification/explanation of this request:

For the past two decades there has been a steadily increasing federal role in the conduct of elections. The Uniformed and Overseas Citizens Absentee Voting Act of 1986 and the the MOVE Act of 2009 both expanded the federal role in regulation of absentee voting. The NVRA or "motor voter act" was passed in 1993 and required expansion of voter registration opportunities, The most significant changes came with the passage of the 2002 Help America Vote Act. The agency created by that act, the Election Assistance Commission (EAC) has been in the lead in adding new requirements for state and local election officials. Special challenges are presented by the 2009 MOVE Act which forced Vermont to move its primary election and has required additional work and imposed tighter turnaround times on election administration. Simply filing all of the reports required by EAC, DoJ and DoD has become a significant additional duty for the office.

The Division of Elections & Campaign Finance was able, through the 2010 elections, to manage the increasing workload through careful planning, efficient use of "off year" periods, and the employment of seasonal temporary staff. The current and projected federal requirements are now more than can be effectively managed through these strategies. Recent staff turnover has shown management the risks of relying on a small, overextended staff during peak work periods.

The office has concluded that additional staffing is required to maintain compliance with all elections related federal requirements. This additional FTE will perform ongoing administrative and coordinating work, with direction from more senior elections administrators and the division director.

3. If the position will be supervisory, please list the names and titles of all classified employees reporting to this position (this information should be identified on the organizational chart as well). N/A

Personnel Administrator's Section:

4. If the requested class title is part of a job series or career ladder, will the position be recruited at different levels? Yes No

5. The name and title of the person who completed this form: Paul Daley, Administrative Services Dir.

6. Who should be contacted if there are questions about this position (provide name and phone number): Paul Daley (x2477) or Kathleen Scheele (x2304)

7. How many other positions are allocated to the requested class title in the department: None. The department has one position in the class title Elections Administrator II and two positions in the Elections Administrator III class title.

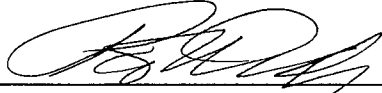
8. Will this change (new position added/change to vacant position) affect other positions within the organization? (For example, will this have an impact on the supervisor's management level designation; will duties be shifted within the unit requiring review of other positions; or are there other issues relevant to the classification process.) No

Attachments:

Organizational charts are **required** and must indicate where the position reports.

Class specification (optional).

- For new positions, include copies of the language authorizing the position, or any other information that would help us better understand the program, the need for the position, etc.
- Other supporting documentation such as memos regarding department reorganization, or further explanation regarding the need to reallocate a vacancy (if appropriate).



Personnel Administrator's Signature **(required)***

15 Sept 11

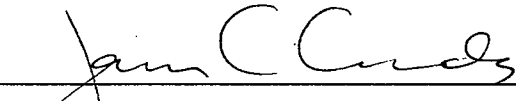
Date



Supervisor's Signature **(required)***

9-15-11

Date



Appointing Authority or Authorized Representative Signature **(required)***

9/15/11

Date

* Note: Attach additional information or comments if appropriate.



Federal Issue Brief

ELECTION REFORM

Issue Description

In 2002, the Help America Vote Act (HAVA) was signed into law. It imposed several state minimum standards in the area of federal election administration such as the elimination of lever and punchcard voting machines, mandatory provisional voting, mandatory statewide registration databases, and mandatory use of voting machines that are accessible to the disabled, have audit capabilities, and can alert the voter to over-or under-voting. NCSL had significant input into the provisions of HAVA, was consulted by congressional staff every step of the way and subsequently supported the passage of HAVA. The law also provided \$3.2 billion in federal funds to states for implementation. States have received all but approximately \$668 million of this funding. Since the passage of HAVA, legislation has been introduced to further restrict how states administer elections. Perhaps the most notable of these efforts were bills aimed at requiring mandatory voter ID and voter verified paper audit trails for all federal elections. NCSL has opposed these bills, believing that any further election administration policies are best determined by the individual states. None of these bills has passed due to broad state and local opposition.

State Concerns

NCSL is concerned that the federal government will attempt to micromanage state elections processes in the absence of the appropriate research and without taking state concerns into account, thereby making them overly burdensome, expensive and counter-productive.

NCSL Position

NCSL believes that Congress and the administration should look to the states as the laboratories of democracy for best practices and alternatives and not impose one-size-fits-all solutions that may work for some, but not all of the states. NCSL also calls upon Congress and the administration to fund HAVA fully.

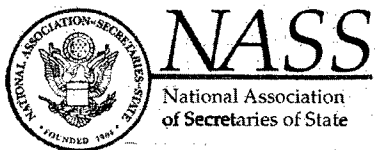
State Activity

States have actively worked on elections administration issues since the passage of HAVA. For more information on the types of laws and activities states have taken in this area, please visit our election reform database at the following link: <http://www.ncsl.org/programs/legismgt/elect/taskfc/database.htm>.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Susan Parnas Frederick, Federal Affairs Counsel
State-Federal Relations
Law and Criminal Justice
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(202) 624-3566

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For Immediate Release
October 26, 2010

NASS Fact Sheet: The Military & Overseas Voter Empowerment (MOVE) Act

Background

The Military and Overseas Voter Empowerment Act (MOVE), signed into law on October 28, 2009, as part of the National Defense Authorization Act of 2010, makes changes to certain absentee voting laws and procedures that apply to military and overseas citizens. Specifically, the MOVE Act amends the 1986 Uniformed and Overseas Absentee Voting Act (UOCAVA). In addition to new state election administration procedures, it requires the U.S. Department of Defense to expand its outreach services to UOCAVA voters and implement procedures for express mail delivery of ballots from military voters stationed overseas. The MOVE Act also authorizes the Department of Defense to conduct electronic voting pilot programs. MOVE provisions must be implemented for the general election on November 2, 2010.

MOVE Act Overview

The MOVE Act is designed to make it easier and faster for military and overseas voters by providing for the electronic transmission of their absentee voting materials, including voter registration, absentee ballot application and blank ballot forms. The law also seeks to improve the process by:

- Requiring acceptance of a failsafe ballot known as the Federal Write-In Absentee Ballot (FWAB), that UOCAVA voters can use (and download online) for all federal elections if their ballots do not arrive;
- Allowing a military voter or overseas citizen to designate how they want to receive their absentee ballot—either electronically or by mail;
- Requiring confirmation that election officials have received the voter's completed ballot;
- Preventing the rejection of a marked absentee ballot solely on the basis of a missing notary signature, paper size, or other state restrictions imposed on military and overseas voters;
- Requiring that states mail ballots to military voters and overseas citizens at least 45 days before all federal elections.

Hardship Waivers

Federal law provides that if a state is unable to comply with the 45-day mailing provision because of a hardship, which includes a legal contest or because of the date of the state primary (which delays ballot production), the state may apply for a waiver. As part of the hardship waiver application, the state must develop a comprehensive plan to ensure that military voters and overseas citizens have sufficient time to receive their ballot, mark it and return it to be counted in the election. This waiver is limited to the requirement that absentee ballots be mailed to military voters and overseas citizens at least 45 days before the election. For the November 2010 general election cycle, ten states (plus the District of Columbia and the U.S. Virgin Islands) requested a waiver. The U.S. Department of Defense granted waivers to five states (DE, MA, NY, RI and WA). Six jurisdictions (AK, CO, DC, HI, USVI and WI) were not granted waivers, and one state – Maryland - withdrew its waiver request prior to the deadline.

NASS Fact Sheet: The Military & Overseas Voter Empowerment (MOVE) Act

(Page 2 of 2)

Electronic Transmission of Voting Materials

Under MOVE, all states must provide for the electronic delivery of a blank ballot to military and overseas voters, which can include the use of fax, email or a Web-based system. For the November 2010 general election, some states worked with vendors selected by the U.S. Department of Defense to assist UOCAVA voters in receiving and marking their blank ballot online.

The U.S. Department of Defense Federal Voting Assistance Program (FVAP) reports that 48 states currently allow voters to submit their completed Federal Post Card Application (FPCA) electronically. At least 32 states allow voters to submit their ballot electronically (all of these states allow fax returns, 23 allow email attachments and two use a Web-based system). Both of these electronic transmission options go beyond MOVE requirements.

Since 2008, military and overseas voters from Arizona have been able to register to vote and/or request a ballot online, as well as upload and return their voted ballot using a secure server process. Eight counties in West Virginia are also participating in an online voting pilot for the November 2010 general election, an expansion of the five counties that initially pilot-tested the system for the May 2010 primary election. Meanwhile, both Georgia and Colorado recently passed legislation authorizing pilots for online UOCAVA voting systems.

MOVE-Related Legislation

Through August 2010, at least 27 states had passed legislation related to the MOVE Act, including:

- Nineteen states that either enacted a new 45-day ballot transmission timeframe, or expanded an existing 45-day timeframe to apply to all federal elections;
- Nineteen states that adopted language for electronic blank ballot transmission (in many cases, adding to existing options);
- Eight states that expanded the use of the Federal Write-in Absentee Ballot for all federal elections;
- Seven states that authorized the development of a ballot receipt confirmation system (by email, phone and/or Internet);
- Three states (HI, MN and VT) that moved the state primary date from September to August in order to comply with the 45-day ballot transmission requirement.
- One state, Maine, passed a new law authorizing the Secretary of State to send, receive and count absentee ballots from a central location.

Additional Resources for Military & Overseas Voters

To assist UOCAVA voters and others, many states provide a website for confirming the status of an absentee ballot. Forty-one states also allow voters to verify their voter registration status online.

Founded in 1904, the National Association of Secretaries of State (NASS) is the oldest, nonpartisan professional organization of public officials in the United States. Members include the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam and the U.S. Virgin Islands. On the Web at: www.nass.org.

**United States Department of Justice
Uniformed and Overseas Citizens Absentee Voting Act
Annual Report to Congress
2010**

I. Summary

On October 28, 2009, the President signed into law the Military and Overseas Voter Empowerment (MOVE) Act, Pub. L. No. 111-84, 123 Stat. 2190 (2009), which amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Protecting the rights of military and overseas voters to cast their ballots and have their votes counted is one of the highest priorities of the Department of Justice (Department), and the Department strongly supports the goals of this landmark legislation. Since the MOVE Act took effect, the Department has devoted significant resources to monitoring compliance with the law and to pursuing enforcement actions where necessary.

For the November 2, 2010 Federal general election, the Department actively monitored all covered states, territories, and the District of Columbia to ensure compliance with the MOVE Act. In April 2010, the Department sent letters to all covered jurisdictions reminding them of the MOVE Act's requirements and requesting information about their plans for complying with the law. And as described below, the Department obtained court orders, court-approved consent decrees, or out-of-court letter or memorandum agreements in fourteen jurisdictions (eleven states, two territories, and the District of Columbia). Each of these resolutions ensured that military and overseas voters would have at least a 45-day period to receive, mark, and return their ballots, or ensured they would be provided expedited mailing or other procedures to provide sufficient opportunity for ballots to be returned by the jurisdiction's ballot receipt deadline. After taking action against each of these fourteen jurisdictions, the Department actively continued to monitor compliance with the court orders and agreements it obtained.

The referenced enforcement actions included the Department's swift negotiation of resolutions to remedy or avoid MOVE Act violations in the six jurisdictions in which requests for a waiver of the 45-day advance mailing requirement were denied by the Department of Defense (DoD). The Department also filed a lawsuit against one jurisdiction after election officials failed to send thousands of ballots by the deadline approved as a condition of receiving an undue-hardship waiver. In addition, as noted above, the Department monitored whether the remaining states and territories – that is, those that did not seek a waiver – timely transmitted ballots to military and overseas voters. When formal action was necessary to protect UOCAVA voters, the Department filed lawsuits or obtained out-of-court agreements to allow military and overseas voters sufficient opportunity to receive and return their ballots in time to be counted.

As a result of the Department's actions, thousands of military and overseas voters had a reasonable opportunity to cast their ballots this year despite the failure of some election officials to timely send their ballots. In the coming year, the Department will assess the specific causes of ballot mailing delays for the 2010 Federal general election, and will evaluate the need for changes in state laws or procedures to ensure compliance with UOCAVA for future Federal elections.

II. Background

UOCAVA, enacted in 1986, requires that states and territories allow active duty members of the United States uniformed services and merchant marine, their spouses and dependents, and American citizens residing outside the United States to register and vote absentee in elections for Federal offices. UOCAVA was strengthened significantly in 2009 when Congress passed the MOVE Act to expand the protections for individuals eligible to vote under its terms. Most of the new requirements of the MOVE Act went into effect for the November 2, 2010, Federal general election.

The Secretary of Defense is the Presidential designee with primary responsibility for implementing the Federal functions mandated by UOCAVA, and the Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out the provisions of the statute. 42 U.S.C. § 1973ff(a); 42 U.S.C. § 1973ff-4(a). The Attorney General has assigned responsibility for prosecuting violations of UOCAVA to the Civil Rights Division, and the Division's Voting Section handles these enforcement actions. Since UOCAVA was enacted in 1986, the Voting Section has initiated and resolved numerous cases to enforce UOCAVA.

Under the MOVE Act amendments, UOCAVA requires that the Attorney General submit an annual report to Congress by December 31 of each year on any civil action brought under the Attorney General's enforcement authority under UOCAVA during the preceding year. 42 U.S.C. § 1973ff-4(b). The Department filed its first report under this provision in 2009.

III. Enforcement Actions by the Attorney General in 2010

As noted above, in 2010, the Attorney General initiated litigation or out-of-court agreements to enforce the MOVE Act amendments to UOCAVA in 11 states, 2 territories, and the District of Columbia. In circumstances where the remedy for UOCAVA violations could not be achieved without court action, the Department filed litigation to obtain court-ordered relief. Where states possessed the authority to take the necessary steps to achieve compliance or adequate remedial measures, the Department negotiated resolution of the disputes without the need for litigation. With respect to all the court orders and agreements, the Department is engaged in ongoing monitoring and evaluation of the effectiveness of the remedies adopted and in the coming year will be assessing the need for changes in the jurisdictions' state laws or administrative procedures to ensure compliance with UOCAVA for future Federal elections. Copies of the complaints, agreements, and orders referenced herein are attached to this report.

A. Enforcement Actions Following Denial of Undue-Hardship Waivers

One of the significant UOCAVA mandates added by the MOVE Act requires states to transmit validly-requested absentee ballots to UOCAVA voters no later than 45 days before a Federal election when the request has been received by that date, except where the state has been granted an undue-hardship waiver for that election pursuant to the Act. States can be exempted from the requirement to transmit ballots 45 days in advance of a Federal election if they apply for, and are granted, a waiver from the Secretary of Defense. 42 U.S.C. § 1973ff-1(g).

A waiver applies only to the 45-day advance ballot transmission requirement, and only to the election for Federal office for which it is submitted. 42 U.S.C. § 1973ff-1(g) & (g)(4). Under the Act, the only issues that create an undue hardship for the state are where 1) the state's primary election date prohibits it from complying; 2) the state has suffered a delay in generating ballots due to a legal contest; or 3) the state's constitution prohibits compliance by the state. 42 U.S.C. § 1973ff-1(g)(2)(B). States seeking a waiver must submit a comprehensive plan to the Secretary of Defense, and to qualify for a waiver, the plan must ensure UOCAVA voters have sufficient time to receive absentee ballots that they have requested and to submit their marked ballots in time to have those ballots counted in the election for Federal office. 42 U.S.C. § 1973ff-1(g)(2)(A).

The deadline for requesting a waiver of this requirement in 2010 was August 4 (90 days before the election), except where the grounds for the waiver request were caused by a legal contest. The statute required DoD to approve or deny the request, after consulting with the Attorney General, not later than August 29 (65 days before the election). 42 U.S.C. § 1973ff-1(g)(3).

Following enactment of the MOVE Act, the Department consulted regularly with the Federal Voting Assistance Program at DoD (FVAP), the office assigned to review states' undue-hardship requests, concerning the waiver process and standards for determining whether a waiver should be granted. As noted above, in April of this year, the Department sent letters to every state and territory seeking to determine its plans for coming into compliance with the MOVE Act by the November 2010 general election, and reminding them of the Act's 45-day ballot transmission requirement and procedures governing requests for undue-hardship waivers. The Department worked closely with FVAP during consideration of the pending waiver requests, and participated in joint telephone conferences with state officials concerning their applications.

Twelve states applied for waivers for the November 2, 2010 Federal general election. All twelve states sought a waiver based on the date of the primary election; no waiver requests based on legal contests were received this year. One state, Maryland, subsequently withdrew its request for a waiver (representing that it had determined it could meet the 45-day mailing deadline), and the Secretary of Defense thus made no determination on Maryland's waiver application. On August 27, 2010, DoD issued the following determinations on the remaining eleven waiver applications:

- Denied Waivers (six): Alaska, Colorado, the District of Columbia, Hawaii, the U.S. Virgin Islands, and Wisconsin.
- Approved Waivers (five): Delaware, Massachusetts, New York, Rhode Island, and Washington.

On the day DoD issued these waiver determinations, and on the same telephone calls in which DoD advised the six jurisdictions of their waiver denials, the Voting Section advised these states that the Assistant Attorney General for the Civil Rights Division had authorized the filing of litigation, if necessary, to enforce compliance with UOCAVA's 45-day mailing requirement. Immediately thereafter, the Voting Section sent formal notice letters to these six jurisdictions and

began negotiations with officials in the six jurisdictions to achieve appropriate resolutions. As a result of these enforcement efforts, the Department filed a lawsuit against Wisconsin (resolved by a consent decree filed with the complaint), and reached out-of-court agreements with the remaining five jurisdictions to remedy the violations. The successful resolution for each of these jurisdictions is outlined below.

- Alaska: On September 3, 2010, the Department and Alaska reached an agreement in response to the denial of its waiver request. Alaska's primary election was August 24, 2010. DoD's waiver determination letter stated that although the state had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, Alaska's proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Department's negotiations with Alaska officials resulted in an agreement by the State to expedite elements of its candidate certification procedures for the primary election so that it was able to send out an official absentee ballot to all UOCAVA voters no later than September 18, 2010, the 45th day before the general election, thus ensuring eligible military and overseas voters sufficient time to receive, cast, and return their ballots and to have their votes counted. Alaska also agreed to update the Department on the ballot certification status and provide a report on the ballots mailed to UOCAVA voters.
- Colorado: On September 16, 2010, the Department signed a Memorandum of Agreement with Colorado. Colorado's primary election was August 10, 2010. DoD's waiver determination letter stated both that Colorado had not shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, and that its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. Under the Agreement, Colorado was required to take specific steps to ensure that each of its 64 counties sent an official absentee ballot to UOCAVA voters no later than September 18, 2010, the 45th day before the election. The required measures included issuing directives to the counties, monitoring their progress, providing direct assistance to any county that needs it, and if necessary, taking enforcement action to obtain compliance. Under the Agreement, the state committed to taking steps to ensure compliance in future Federal elections and to confer with and provide a report to the Department of Justice on those efforts.
- District of Columbia: On September 17, 2010, the Department signed a Memorandum of Agreement with the District of Columbia. The District's primary election was September 14, 2010. DoD's waiver determination letter found that although the District had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Department's negotiations with District officials resulted in an agreement under which they would send absentee ballots to military and overseas voters no later than October 4, 2010, and provide additional time, until November 19, 2010, for receipt of the ballots. The District passed

emergency rules embodying these new deadlines to ensure that eligible military and overseas voters would have at least 45 days to receive, cast, and return their ballots in time for them to be counted. Earlier this year, the Council of the District of Columbia adopted a "Sense of the Council Primary Election Timing Resolution of 2010" acknowledging that the District needed to enact legislation to move its primary election for Federal offices to a date no later than the first Tuesday of the first full week of August, beginning in 2012. Under the Agreement, the District committed to taking all necessary steps to ensure compliance in future Federal elections and to confer with and provide a report to the Department of Justice on those efforts.

- Hawaii: On September 16, 2010, the Department signed a Memorandum of Agreement with Hawaii. Hawaii's primary election was on September 18, 2010, the 45th day before the November 2, 2010 Federal general election. DoD's waiver determination letter stated that although the State had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. To ensure that the State's military and overseas voters would have sufficient time to receive, cast, and return their ballots in time for them to be counted in the November 2, 2010 election, the Agreement required Hawaii to send out ballots by express delivery service no later than September 24, 2010, and to provide voters with the means to return their completed ballots by express delivery free of charge. Earlier this year, Hawaii enacted legislation, effective on January 1, 2011, that moves Hawaii's primary date to the second Saturday in August in every even-numbered year to help ensure compliance with UOCAVA's 45-day advance ballot mailing requirement in future Federal general elections.
- U.S. Virgin Islands: On September 2, 2010, the Department reached an agreement with the U.S. Virgin Islands to address the denial of its waiver request. The Virgin Islands had a scheduled Federal primary election on September 11, 2010, but there was not a contested primary for the Federal office of Delegate to Congress this year. DoD's waiver determination letter stated that the Virgin Islands had not shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, and that its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. Under the agreement, the Virgin Islands committed to sending absentee ballots for the Federal office on or before September 18, 2010, the 45th day before the election.
- Wisconsin: On September 10, 2010, the Department filed a lawsuit against Wisconsin. *United States v. State of Wisconsin*, No. 3:10-cv-00518 (W.D. Wis.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on September 15, 2010. Wisconsin's primary election was September 14, 2010. DoD's waiver determination letter stated that although Wisconsin had shown an undue hardship to transmit ballots 45 days before the

November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Consent Decree required Wisconsin officials to take certain steps to ensure that all local election offices in the State sent absentee ballots to military and overseas voters by no later than October 1, 2010, and provided for additional time, until November 19, 2010, for receipt of absentee ballots to ensure that eligible military and overseas voters have sufficient time to cast and return their ballots and to have them counted. The Consent Decree requires that Wisconsin take all necessary actions to ensure compliance in future Federal elections, including proposing legislation and taking administrative actions to remedy the potential UOCAVA violations arising from the primary election schedule. The State must confer with and provide a status report to the Department on those efforts.

B. Enforcement Action for Failure to Comply with Terms of Waiver

- **New York:** On October 12, 2010, the Department filed a lawsuit against New York. *United States v. State of New York*, No. 1:10-cv-1214 (N.D.N.Y.). The lawsuit was resolved by a Consent Decree, approved by the Federal district court on October 19, 2010. DoD granted New York an undue-hardship waiver based on the State's comprehensive plan, which relied on two key provisions that together created a 45-day period for UOCAVA voters to receive, mark, and return their ballots. Specifically, New York's plan required election officials to send ballots to UOCAVA voters by October 1, 2010, and accept otherwise valid ballots returned by November 15, 2010. However, numerous counties across the state, including those comprising New York City, failed to transmit UOCAVA ballots by the October 1 deadline. The Consent Decree provided additional time, until November 24, 2010, for receipt of UOCAVA ballots, and other procedures to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. In addition, the Consent Decree committed New York to explore the need for future relief, including changes of law or administrative regulation, to prevent violations of UOCAVA in the future arising from the State's election schedule or practices. The State must confer with and provide a status report to the Department on those efforts.

C. Additional Civil Actions Filed to Enforce UOCAVA

In addition to resolving the post-waiver denial enforcement actions, the Department also initiated enforcement actions for failure to comply with the 45-day requirement in states that had not sought waivers. FVAP determined that it would monitor compliance in the five states for which waivers had been granted. In advance of the 45-day deadline, the Voting Section contacted each of the remaining states and territories to remind them again of the MOVE Act's ballot transmission deadline, to inquire whether any ballot delays were anticipated, and to request that they confirm to the Voting Section that their localities had timely transmitted their UOCAVA ballots. The Department filed the following enforcement actions for failure to timely transmit ballots in accordance with UOCAVA:

- Guam: On October 6, 2010, the Department filed a lawsuit and motion for emergency injunctive relief against the Territory of Guam. *United States v. Government of Guam*, No. 10-00025 (D. Guam). Guam had failed to send its UOCAVA ballots by the September 18, 2010 deadline, and failed to provide an electronic transmission option for receipt of ballots in accordance with UOCAVA. On October 13, 2010, after a telephonic hearing on the motion, the Federal district court entered an order granting the relief requested by the Department. The order provided additional time, until November 15, 2010, for receipt of UOCAVA ballots, to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. In addition, the order required Guam to provide the option of e-mail transmission of ballots, and notice thereof, to UOCAVA voters for the November 2, 2010 election. The order also requires that Guam take all necessary actions to ensure compliance in future Federal elections, including proposing legislation and taking administrative actions to remedy the potential UOCAVA violations arising from Guam's election schedule and practices. Guam must confer with and provide a status report to the Department on those efforts.
- Illinois: On October 22, 2010, the Department filed a lawsuit against Illinois. *United States v. State of Illinois*, No. 10-cv-06800 (N.D. Ill.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on October 22, 2010. Election authorities in numerous Illinois jurisdictions had failed to send UOCAVA ballots by the September 18, 2010 deadline, and some jurisdictions failed to transmit ballots by electronic means to UOCAVA voters who had timely requested electronic delivery of their ballots, and instead sent the ballots by postal mail. The Consent Decree provided additional time beyond the State's existing November 16, 2010 deadline – 14 days after Election Day – for receipt of UOCAVA ballots in six counties, and other measures to ensure that eligible military and overseas voters in those counties would have sufficient time to cast and return their ballots and to have them counted. The Consent Decree also extended the date by which ballots from those counties must be postmarked from November 1 to November 2, 2010. In addition, the Consent Decree required that officials send ballots to any UOCAVA voters who asked to receive their ballots electronically by the requested delivery method. Under the Consent Decree, Illinois must take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State must confer with and provide a status report to the Department on those efforts.
- New Mexico: On October 12, 2010, the Department filed a lawsuit against New Mexico. *United States v. State of New Mexico*, No. 10-cv-968 (D.N.M.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on October 14, 2010. Election officials in several New Mexico counties had failed to send their UOCAVA ballots by the September 18, 2010 deadline. The

Consent Decree provided additional time, until November 6, 2010, for receipt of UOCAVA ballots to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. The order also requires that New Mexico take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State must confer with and provide a status report to the Department on those efforts.

D. Other Memorandum Agreements and Letter Agreements Obtained

The Department also negotiated memorandum or letter agreements with four other states after the Department's inquiries revealed that some local election officials in those states had failed to send UOCAVA ballots by the September 18, 2010 deadline. In each case, the states possessed the authority to authorize extensions of the ballot receipt deadlines necessary to provide at least 45 days for transmission and return of ballots without the need for a Federal court order.

- **Kansas**: On October 15, 2010, the Department signed a Memorandum of Agreement with Kansas. Seven counties in Kansas had failed to send UOCAVA ballots by the September 18, 2010 deadline. Under the Agreement, to ensure that those counties provided at least 45 days for the transmission, execution, and return of ballots to all qualified UOCAVA voters who requested absentee ballots on or before September 18, 2010, Kansas extended the ballot receipt deadlines in those counties commensurate with the delay in each of those counties in sending ballots. Under the Agreement, Kansas committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to confer with and provide a status report to the Department on those efforts.
- **Mississippi**: On October 15, 2010, the Department reached an agreement with Mississippi. Twenty-two counties in Mississippi had failed to send UOCAVA ballots by the September 18, 2010 deadline. To resolve this violation, Mississippi's Secretary of State promulgated a temporary Administrative Rule that extended the deadline, until November 8, 2010, for the receipt of ballots from military and overseas voters in the 22 counties affected, to ensure that they would have at least 45 days to receive, cast, and return their ballots. In addition, Mississippi committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots, and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to provide a status report to the Department on those efforts.

- Nevada: On October 8, 2010, the Department reached an agreement with Nevada. One county, Elko County, had failed to send its UOCAVA ballots by the September 18, 2010 deadline. Along with other measures to expedite delivery of the requested ballots, including efforts to send ballots by e-mail or expedited mail, the Nevada Secretary of State adopted an emergency regulation to provide an additional six days, until November 8, 2010, for Elko County's UOCAVA voters to return their ballots to provide eligible military and overseas voters at least 45 days to receive, cast, and return their ballots.
- North Dakota: On October 8, 2010, the Department reached an agreement with North Dakota. Thirteen counties in North Dakota had failed to send their UOCAVA ballots by the September 18, 2010 deadline. To remedy this violation, North Dakota confirmed that the canvassing boards in the affected counties agreed to meet to canvass the election results six days after the election, to provide eligible military and overseas voters at least 45 days to receive, cast, and return their ballots. In addition, North Dakota committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to provide a status report to the Department on those efforts.

E. Activity in Other Litigation by the Attorney General under UOCAVA

The Department concluded its 2008 litigation against the Commonwealth of Virginia upon the Federal district court's recent entry of a Consent Decree requiring remedial measures for future Federal elections.

- Virginia: On December 14, 2010, the Federal district court in *United States v. Cunningham*, No. 3:08-cv-709 (E.D. Va.), signed and entered a Consent Decree between the United States and Commonwealth of Virginia officials embodying a remedial program for compliance with UOCAVA in future Federal elections. Approval of this remedial agreement concludes extensive litigation initiated in 2008 to enforce UOCAVA in that year's Federal general election and to obtain relief to ensure full compliance in the future. On November 14, 2008, the Department filed a motion to intervene in *McCain-Palin 2008, Inc. v. Cunningham* (E.D. Va.) and filed a complaint alleging that Virginia election officials failed to send absentee ballots in a timely manner to military and overseas voters for the November 4, 2008 Federal general election. On October 15, 2009, the court granted summary judgment for the United States, holding that the Commonwealth violated UOCAVA by failing to timely mail absentee ballots to eligible uniformed service members and overseas citizens, and ordered the Defendants to count timely requested, late-mailed, and otherwise-valid absentee ballots from military and overseas voters that arrived within 30 days of the close of the polls on November 4, 2008. The Court permitted the parties time to negotiate agreed procedures to ensure full UOCAVA compliance in future

elections. After negotiations failed to resolve the matter, the Department filed a motion for entry of permanent relief. On September 13, 2010, the court ruled that it would take the motion for permanent relief under advisement. It held that the United States properly raised the issue of prospective relief, and rejected Defendants' argument that the case was at an end after the ruling on liability. The court ordered the parties to undertake discovery to develop the facts on the cause of Virginia's prior noncompliance, and further ordered the parties to discuss "the creation of an appropriate, functional future compliance plan."

Following discovery, further settlement discussions and mediation resulted in the agreement filed by the parties on December 10, 2010 and ordered by the court on December 14, 2010. The Consent Decree provides training, monitoring, reporting, and backup procedures to be used by Commonwealth election officials to ensure that absentee ballots are transmitted to eligible military and overseas voters no later than 45 days before a Federal election. In addition, it requires Defendants to undertake a review of operational procedures to determine the reasons for prior failures to timely transmit UOCAVA ballots and to address such failures with appropriate training.