



## FEDERAL VOTING ASSISTANCE PROGRAM

DEPARTMENT OF DEFENSE  
WASHINGTON, DC 20301-1155

September 24, 2008

Mr. Soliai T. Fuimaono  
Chief Election Officer  
PO Box 3970  
Pago Pago, AS 96799-3970

Dear Mr. Fuimaono:

Every year I recommend specific legislative initiatives, which if enacted, would simplify and streamline the absentee voting process used by our citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. I would like to thank you for the work you and the territory of American Samoa have done over the past several years to promote and support these initiatives.

Recent elections have emphasized the importance of the states enacting 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 and territories with these provisions were able to quickly respond to 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, email or by proxy, and utilizing digital signatures with electronically transmitted materials.

After reviewing American Samoa's existing election code and procedures, I have identified nine initiatives that the American Samoa 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 American Samoa's citizens covered by *UOCAVA*. Information available to FVAP indicates that there are 41 Uniformed Services members, an estimated 31 family members and approximately 8,500 overseas citizens that claim American Samoa as their voting residence.

As you review the enclosed initiatives for possible inclusion in American Samoa's 2009 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 used by our *UOCAVA* citizens - let's continue to work together to achieve the simplest possible absentee voting process while maintaining the integrity of our elections.

Sincerely,

A handwritten signature in cursive script, reading "P. K. Brunelli".

P. K. Brunelli  
Director

Enclosure:  
2009 Legislative Initiatives and Suggested Wording

# American Samoa 2009 Legislative Initiatives and Sample Language

## The Need for 45 Day Ballot Transit Time

The most persistent problem which continues to face American Samoa military and overseas voters is the extremely short period of time these voters have to receive, vote, and return their absentee ballots in order to be counted. While electronic transmission of election materials offers an alternative to inadequate ballot transit time in emergency situations, the fact remains that insufficient ballot transit time through the mail continues to be the primary obstacle to ensuring timely delivery of absentee ballots for those who request them. Our post-election surveys and Postal Service statistics indicate that a **45-day transit time is needed** for absentee ballots sent through international mail or the military APO/FPO (overseas) post offices. This round trip transit time is especially necessary because of the remote location of many military personnel and overseas citizens such as sailors and marines aboard ship, airmen and sailors at isolated tracking sites around the world, as well as Department of State personnel and citizen employees of American multinational corporations in remote areas.

## Sample Language

*For all elections, the official charged with the printing and distribution of ballots and election materials shall print as many absentee ballots as may be necessary as soon as possible after receiving the information concerning candidates and measures to be voted on at an election, and balloting materials shall be mailed not later than the 45th day before the election.*

## 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 the chief election officer more administrative flexibility in preparing election materials.

Consideration should be given to expand the use of modern technology in the absentee voting process. We realize that American Samoa allows the electronic transmission of the FPCA for registration and absentee ballot request. We recommend expanded use of this alternative to include electronically sending the blank ballot to these voters, and accepting the voted ballot from these voters where circumstances would otherwise disenfranchise a citizen.

### *Sample Language*

*An applicant who is a member of the United States Uniformed Services, merchant marine, a family member, or 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. A local board of elections may receive FPCAs for registration, send blank ballots 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 American Samoa'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.

### *Sample Language*

*If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this Territory, 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 Territory.*

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

### **Notary Requirement**

Current American Samoa election law requires that the FPCA used for registration must be sworn to by a person authorized to administer oaths. The notary requirement creates problems for individuals living overseas where such services are difficult and expensive, if not impossible, to obtain. Some voters have paid \$90 to obtain notarial services. In many countries, there are no notaries in their system of jurisprudence. We recommend **removal of the notary requirement for all absentee balloting materials**. To date, fifty states 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, or a family member of a Uniformed Service member, and 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.*

### **Enfranchise Citizens Who Have Never Resided in the U.S. or the Territories**

There are many U.S. citizens who have never resided in a state or territory 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 or territory, they would be eligible to vote in elections for Federal office. Some local election officials make exceptions and allow these citizens to vote. Sixteen 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 citizen outside the Territory who has never lived in the Territory 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.*

### **Late Registration Procedures**

We recommend that American Samoa **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 of these citizens go through a transition period when they first leave the Uniformed Services or overseas employment and may reside in your state just prior to an election and this time frame does not meet your normal residency requirements. Often, the date of discharge or termination of overseas employment and a state'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. Thirty-two states currently allow such procedures.

#### **Sample Language**

*An individual, or accompanying family member who has been discharged or separated from the Uniformed Services or from employment outside the territorial limits of the United States, too late to enable him or her to register by the regular state 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.*

### **Special Write-In Absentee Ballot**

We also recommend American Samoa 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, Federal employees and contractors, 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 American Samoa 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-nine 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 Uniformed Services voters, stateside and overseas, and overseas citizens who have already applied for a regular ballot. They do not know in advance that they need the FWAB. However, if the regular ballot from the state 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 special 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.

### **Sample Language**

*If the voter is a U.S. citizen residing outside the United States or a member of the United States Uniformed Services or family member of a Uniformed Service 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. The Territory 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 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. Twenty states have expanded the use of the FWAB beyond 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 territory's registration requirements;
- (2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted;
- (3) the request is received by the appropriate election official not less than 30 days before the election or by the registration deadline established by American Samoa.

The adoption of this initiative would save the territory money and alleviate administrative responsibilities on the part of the chief election officer.

### **Sample Language**

- Expanded use of the FWAB:

*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 Uniformed Service member, and is a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, territory 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 Uniformed Service member, and is 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 territory;*
- (2) *the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and*
- (2) *the request is received by the appropriate election official not less than 30 days before the election or by the registration deadline established by American Samoa.*

**Reference to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in the Territory 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 territory 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. We recommend that *UOCAVA* be referenced in appropriate sections of the territory election code. **Thirty-eight** states 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.).*