

# Memorandum

**To:** Linda Lamone  
**From:** Nikki Baines Trella  
**Date:** November 18, 2009  
**Re:** Impact of MOVE on Maryland Elections

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As you know, the recent enactment of the Military and Overseas Empowerment (MOVE) Act includes a requirement that certain absentee ballots to military and overseas voters must be transmitted at least 45 days before an election.<sup>1</sup> Recognizing that circumstances do not always permit election officials to meet this deadline, the MOVE Act includes a "hardship exemption" if one or more of the defined issues creates an "undue hardship" for a State<sup>2</sup>. To meet the hardship exemption, you, as the State's Chief Election Official, must submit a request to the Department of Defense's (DoD) Federal Voting Assistance Program (FVAP) for a waiver of the 45-day requirement, and the FVAP Director has the discretion whether or not to grant this request.

While we expect to submit such a request for the 2010 primary and general elections, I am concerned that the request will not be granted. My concerns are based on the following:

- Recent communications with FVAP's Director suggest that he does not plan on granting waivers to states whose sole basis of requesting a waiver is the late date of a primary election or other statutory deadlines that prevent ballots from being transmitted by the deadline<sup>3</sup>. It appears that he will only consider granting a waiver in extraordinary circumstances, such as a natural disaster, although the timing of the primary election is specifically listed in the federal law as an issue that may create an "undue hardship."
- The MOVE Act specifies the information that must be included in a request for a waiver. It requires a comprehensive plan that includes the steps the State will take to ensure that military and overseas voters receive and submit their absentee ballots in time and why the alternate means of providing the ballots provides sufficient time for these voters. Because of the short time between the certification of the 2010 primary election results and the general election (less than five weeks), there are very few alternative means of providing these voters with ballots.

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<sup>1</sup> An absentee ballot must be transmitted at least 45 days before an election if the corresponding request for an absentee ballot was received at least 45 days before an election for federal office. Requests received less than 45 days before an election must be processed and transmitted "as soon as practicable" (§ 9-306, Election Law Article) and "in a manner that expedites that transmission of such absentee ballot" (§ 579, MOVE Act).

<sup>2</sup> The MOVE Act defines the issues that can create an "undue hardship" as: (1) the State's primary election date prohibits the State from complying with the 45-day deadline; (2) the State has suffered a delay in generating ballots due to a legal contest; or (3) the State's Constitution prohibits the State from complying with the transmittal deadline.

<sup>3</sup> For a gubernatorial primary election, the candidate filing deadline is 70 days before the primary election. With the deadlines to withdraw and other statutory deadlines, the projected date for ballots for the 2010 Primary Election is August 5, 2010, 41 days before the primary election. See attached table showing for each election the State's estimated date when ballots are expected to be available and the date representing the 45<sup>th</sup> day before the election.

Maryland has a history of addressing and accommodating the unique circumstances of military and overseas voters. By permitting absentee ballots to be received up to ten days after most elections<sup>4</sup>, Maryland allows additional transit time for voted absentee ballots. This is especially important for our military and overseas voters. We also permit the use of the Federal Write-In Absentee Ballots<sup>5</sup> for all elections for federal, state and local offices (now a requirement of the MOVE Act) and provide local election officials with electronic versions of the absentee ballots so they can immediately print and mail absentee ballots to military and overseas voters (instead of waiting for the printed ballots to be printed and delivered). We are also working to enhance the voter look-up search on the website to allow voters to receive their absentee ballots via the website. We are currently in discussions with the Center for American Politics and Citizenship at the University of Maryland College Park to develop this service, which will provide yet another expedient way for military and overseas voters to receive their absentee ballots.

While we have taken steps to accommodate these voters, there are other hurdles that challenge election officials. These hurdles include:

- Military voters are mobile, especially in this time of regular deployments. Ensuring that we have correct addresses for voters who may not know the best mailing address when they complete the request for an absentee ballot is a challenge. The DoD has current addresses and email addresses for military voters and DoD contractors<sup>6</sup>, and we understand from prior conversations with the Pew Charitable Trusts that there might be interest in sharing this information with election officials. While this information would assist election officials by allowing them to mail absentee ballots to an address where the voter can quickly obtain the mail, Maryland law does not permit election officials to change an address of record for a voter without the voter's signature.
- The MOVE Act requires that election officials transmit the absentee ballot in the manner specified by the military or overseas voter. As a result, a local election official **must** mail an absentee ballot if the voter requested that the ballot be mailed; this is the case even if the local election official has an email address for the voter. While the transmittal date is the same if the ballot was mailed or emailed, the voter would obviously receive the absentee ballot more quickly and have longer to vote and return the ballot if it was emailed.

Because of the requirements of the MOVE Act and the hurdles identified above, the following legislative solutions may be considered:

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<sup>4</sup> Absentee ballots must be mailed on or before election day and for most elections, must be received by 10:00 am on the second Friday after the election. For a gubernatorial primary election, an absentee ballot must be received by 10:00 am on the second Wednesday after the election to be considered timely. The deadline for a gubernatorial primary election is different than for other elections because of the short timeframe between the gubernatorial primary and general elections.

<sup>5</sup> The Federal Write-In Absentee Ballot is a back-up ballot for military and overseas voters who submitted a timely request for an absentee ballot but have not received the State absentee ballot in time to vote it and return it by the deadline. With this write-in ballot, they can write in the names of the candidates for whom they wish to vote and mail the write-in ballot to the appropriate local election official. This ballot will be counted as long as it is timely received and the accompanying oath is signed.

<sup>6</sup> There is, however, no similar database or resource for obtaining contact information for overseas citizens. While the Department of State and the international branches of the political parties may have information for some overseas citizens, there is no requirement that overseas citizens register with the U.S. embassy or consulate their presence in a foreign country or join an international branch of a political party.

- Starting with the 2014 elections, move the date of the gubernatorial primary election to a date on or before mid-July. Moving the date of the 2010 Primary Election is not feasible due to the current schedule for implementing a new voting system and early voting for the 2010 elections and other administrative reasons. While deferring the effective date until the 2014 elections will not assist the State in obtaining a waiver to the 45-day requirement for the 2010 General Election, it will demonstrate the State's intent to comply with the requirement for future elections and might be persuasive if the DoD denies our request for a waiver and the U.S. Department of Justice, the enforcement agency for the provisions of the MOVE Act, considers bringing an action against Maryland to enforce the 45-day requirement.<sup>7</sup>
- Review all of the deadlines and timeframes currently in the Election Law Article. Since we will be unable to meet the 45-day deadline for gubernatorial primary and general elections and presidential primary elections and will be very close to meeting the deadline for presidential general elections, the current election calendar should be reviewed to determine how best to comply with the 45-day mailing deadline.

If you have any questions or would like to discuss these issues, please contact me.

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<sup>7</sup> Should the FVAP deny a request for a waiver and the Department of Justice decide to pursue a civil action against the State, there would be very few pre-election remedies available. Any remedy would likely address when the ballot was voted and mailed (permit absentee ballots to be voted and mailed after election day) or extend the deadline for receipt of an absentee ballot.

Comparison: Election Calendar under Election Law Article and the MOVE Act  
 Prepared: November 18, 2009

Election	Statutory Deadlines <sup>1</sup>	Est. Date Ballots Available <sup>2</sup>	45 Day Mailing Deadline
Gubernatorial Primary  September 14, 2010	<b>Candidate Filing &amp; Associated Deadlines</b> <ul style="list-style-type: none"> <li>• Deadline to file as candidate – 70 days before primary election (July 6, 2010)</li> <li>• Deadline to withdraw candidacy – 10 days after filing deadline (July 16, 2010)</li> <li>• Filling vacancy in candidacy – 5<sup>th</sup> day after withdrawal deadline (July 21, 2010)</li> </ul> <b>Ballot Certification Deadline</b> <ul style="list-style-type: none"> <li>• No later than 50 days before primary election (July 26, 2010)</li> <li>• Delivery and posting of ballots (Aug. 2, 2010)</li> <li>• Begin printing ballots (Aug. 5, 2010)</li> </ul>	August 5, 2010 (41 days before election)	August 1, 2010
Gubernatorial General  November 2, 2010	<b>Date of Primary Election</b> <ul style="list-style-type: none"> <li>• Primary Election – 48 days before General Election (Sept. 14, 2010)</li> <li>• Certification of primary election results – 2 days after official results received from local boards (Sept. 27, 2010)</li> <li>• Deadline for declining nomination – 2 days after certification (Sept. 29, 2010)</li> <li>• Deadline for a recount – 3 days after certification (Sept. 30, 2010)</li> <li>• Deadline to fill vacancy – later of 40<sup>th</sup> day before general election or within 5 days of vacancy (Oct. 4, 2010)</li> <li>• Certification of ballot – no more than 18 days after primary election (Oct. 4, 2010)</li> <li>• Delivery and posting of ballots (Oct. 12, 2010)</li> <li>• Begin printing ballots (Oct. 15, 2010)</li> </ul>	October 15, 2010 (18 days before election)	September 18, 2010

<sup>1</sup> These deadlines incorporate the maximum time provided under the Election Law Article. There may be circumstances where the required task is completed before the maximum time set by statute.

<sup>2</sup> This is the estimated date that printing of ballots can begin. On this day, electronic versions of absentee ballots are provided to the local boards of elections. The local boards of elections can use these files to print absentee ballots for military and overseas voters and transmit them to voters who requested an absentee ballot. Because the optical scan voting units will not read ballots printed on copy paper, these ballots will have to be duplicated by a bi-partisan team during the absentee canvasses.

Comparison: Election Calendar under Election Law Article and the MOVE Act  
 Prepared: November 18, 2009

Election	Statutory Deadlines <sup>1</sup>	Est. Date Ballots Available <sup>2</sup>	45 Day Mailing Deadline
Presidential Primary February 14, 2012	<p>Candidate Filing &amp; Associated Deadlines</p> <ul style="list-style-type: none"> <li>• Deadline to file as candidate – 70 days before primary election (Dec. 5, 2011)</li> <li>• Deadline to withdraw candidacy – 10 days after filing deadline (Dec. 15, 2011)</li> <li>• Filling vacancy in candidacy – 5 days after withdrawal deadline (Dec. 20, 2011)</li> </ul> <p>Ballot Certification Deadline</p> <ul style="list-style-type: none"> <li>• No later than 42 days before primary election (Jan. 4, 2012)</li> <li>• Delivery and posting of ballots (Jan. 12, 2012)</li> <li>• Begin printing ballots (Jan. 14, 2012)</li> </ul>	January 14, 2012 (31 days before election)	January 1, 2012
Presidential General November 6, 2012	<p>Ballot Certification Deadline</p> <ul style="list-style-type: none"> <li>• No later than 55 days before election (Sept. 13, 2012)</li> <li>• Delivery and posting of ballots (Sept. 20, 2012)</li> <li>• Begin printing ballots (Sept. 23, 2012)</li> </ul> <p>* The candidates for President are dependent on the nomination process conducted at the national conventions. Ballot certification deadlines cannot be moved to a date earlier in calendar year than the conventions.</p>	September 23, 2012 (45 days before election)	September 23, 2012