TITLE XIV—UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT AMENDMENTS

SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

(a) IN GENERAL.—Subsection (c) of section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) is amended—

(1) by designating the text of that subsection as paragraph (3) and indenting that paragraph, as so designated, two ems from the left margin; and

(2) by inserting before paragraph (3), as so designated, the following new paragraphs:

"(1) PRE-ELECTION REPORT ON ABSENTEE BALLOT AVAILABILITY.—Not later than 55 days before any election for Federal office held in a State, such State shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying that absentee ballots are available for transmission to absentee voters, or that it is aware of no circumstances that will prevent absentee ballots from being available for transmission by 46 days before the election. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot availability from each unit of local government which will administer the election.

"(2) PRE-ELECTION REPORT ON ABSENTEE BALLOTS TRANSMITTED.—Not later than 43 days before any election for Federal office held in a State, such State

shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying whether all absentee ballots validly requested by absent uniformed services voters and overseas voters whose requests were received by the 46th day before the election have been transmitted to such voters by such date. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot transmission, including the total numbers of ballot requests received and ballots transmitted, from each unit of local government which will administer the election.".

(b) CONFORMING AMENDMENTS.—

(1) SUBSECTION HEADING.—The heading for such subsection is amended to read as follows: "REPORTS ON ABSENTEE BALLOTS.—".

(2) PARAGRAPH HEADING.—Paragraph (3) of such subsection, as designated by subsection (a)(1), is amended by inserting "POST-ELECTION REPORT ON NUMBER OF ABSENTEE BALLOTS TRANSMITTED AND RECEIVED.—" before "Not later than 90 days".

SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER PROVISION.

(a) IN GENERAL.—Subsection (a)(8) of section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) is amended by striking "voter—" and all that follows in that subsection and inserting "voter by the date and in the manner determined under subsection (g);".

(b) BALLOT TRANSMISSION REQUIREMENTS AND REPEAL OF WAIVER PROVISION.—Subsection (g) of such section is amended to read as follows:

"(g) BALLOT TRANSMISSION REQUIREMENTS.—

"(1) REQUESTS RECEIVED AT LEAST 46 DAYS BEFORE AN ELECTION FOR FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid request for an absentee ballot is received at least 46 days before an election for Federal office, the following rules shall apply:

"(A) TIME FOR TRANSMITTAL OF ABSENTEE BALLOT.—The State shall transmit the absentee ballot not later than 46 days before the election.

"(B) SPECIAL RULES IN CASE OF FAILURE TO TRANSMIT ON TIME.—

"(i) GENERAL RULE.—If the State fails to transmit any absentee ballot by the 46th day before the election as required by subparagraph (A) and the absent uniformed services voter or overseas voter did not request electronic ballot transmission pursuant to subsection (f), the State shall transmit such ballot by express delivery.

"(ii) EXTENDED FAILURE.—If the State fails to transmit any absentee ballot by the 41st day before the election, in addition to transmitting the ballot as provided in clause (i), the State shall—

"(I) in the case of absentee ballots requested by absent uniformed services voters with respect to regularly scheduled general elections, notify such voters of the

procedures established under section 103A for the collection and delivery of marked absentee ballots; and

"(II) in any other case, provide, at the State's expense, for the return of such ballot by express delivery.

"(iii) ENFORCEMENT.—A State's compliance with this subparagraph does not bar the Attorney General from seeking additional remedies necessary to effectuate the purposes of this Act.

"(2) REQUESTS RECEIVED AFTER 46TH DAY BEFORE AN ELECTION FOR FEDERAL OFFICE.—For purposes of subsection (a)(8), in a case in which a valid request for an absentee ballot is received less than 46 days before an election for Federal office, the State shall transmit the absentee ballot within one business day of receipt of the request.".

SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

(a) ENFORCEMENT.—Section 105 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-4) is amended to read as follows:

"SEC. 105. ENFORCEMENT.

"(a) IN GENERAL.—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 this title. In any such action, the only necessary party defendant is the State. It shall not be a defense to such action that local election officials are not also named as defendants.

"(b) CIVIL PENALTY.—In a civil action brought under subsection (a), if the court finds that the State violated any provision of this title, it may, to vindicate the public interest, assess a civil penalty against the State—

"(1) in an amount not exceeding $110,000, for a first violation.

"(2) in an amount not exceeding $220,000, for any subsequent violation.

"(c) ANNUAL REPORT TO CONGRESS.—Not later than December 31 of each year, the Attorney General shall submit to Congress a report on any civil action brought under subsection (a) during that year.

"(d) PRIVATE RIGHT OF ACTION.—A person who is aggrieved by a State's violation of this Act may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this Act.

"(e) ATTORNEY'S FEES.—In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney's fees, including litigation expenses, and costs.".

(b) REPEAL OF CLARIFICATION REGARDING DELEGATION OF STATE RESPONSIBILITY.—Section 576 of the Military and Overseas Voter Empowerment Act (42 U.S.C. 1973ff-1 note) is repealed.

SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN ABSENTEE BALLOT.

(a) STATE RESPONSIBILITIES.—Section 102(a)(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1(a)(3)) is amended by striking "general".

(b) WRITE-IN ABSENTEE BALLOTS.—Section 103 of such Act (42 U.S.C. 1973ff-2) is amended—

(1) by striking "**GENERAL**" in the title of the section; and

(2) by striking "general" in subsection (b)(2)(B).

SEC. 1405. TREATMENT OF BALLOT REQUESTS.

(a) IN GENERAL.—Section 104 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-3) is amended—

(1) by striking "A State may not" and inserting

"(a) PROHIBITION OF REFUSAL OF APPLICATIONS ON GROUNDS OF EARLY SUBMISSION—A State may not";

(2) by inserting "or overseas voter" after "an absent uniformed services voter";

(3) by striking "members of the" before "uniformed services";

(4) by inserting "voters or overseas voters" before the period; and

(5) by adding at the end the following new subsection:

"(b) APPLICATION TREATED AS VALID FOR SUBSEQUENT ELECTIONS.—-

"(1) IN GENERAL.—- If a State accepts and processes a request for an absentee ballot by an absent uniformed services voter or overseas voter and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next regularly scheduled general election for Federal office (including any runoff elections which may occur as a result of the outcome of such general election), and any special elections for Federal office held in the State through the calendar

year following such general election, the State shall provide an absentee ballot to the voter for each such subsequent election.

"(2) EXCEPTION FOR VOTERS CHANGING REGISTRATION.—- Paragraph (1) shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.".

(b) CONFORMING AMENDMENT.—- The heading of such section is amended to read as follows:

"SEC. 104. "TREATMENT OF BALLOT REQUESTS.".

SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

Paragraphs (6) and (8) of section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-6) are each amended by striking "and American Samoa" and inserting "American Samoa, and the Commonwealth of the Northern Mariana Islands".

SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE THE FEDERAL POST CARD APPLICATION TO ALLOW VOTERS TO DESIGNATE BALLOT REQUESTS.

(a) REQUIREMENT.—The Presidential designee shall ensure that the official post card form (prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(2))) enables a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State through the next regularly scheduled general election for Federal office (including any runoff elections which may occur as a result of the outcome of such general election) and any special elections for Federal office held in the State through the calendar year following such general election; or

(2) request an absentee ballot for a specific election or elections for Federal office held in a State during the period described in paragraph (1).

(b) DEFINITION.—In this section, the term "Presidential designee" means the individual designated under section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(a)).

SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS AND GUAM FEDERAL ELECTIONS.

Section 2(a) of the Act entitled "An Act to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives" approved April 10, 1972 (48 U.S.C. 1712(a)), is amended—

(1) by striking "majority" in the second and third sentences and inserting "plurality"; and

(2) by striking the fourth sentence.

SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.

(a) ELIMINATION OF REPORTS FOR NON-ELECTION YEARS.—Section 105A(b) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-4a(b)) is amended—

(1) by striking "March 31 of each year" and inserting "June 30 of each odd-numbered year"; and

(2) by striking "the following information" and inserting "the following information with respect to the Federal elections held during the preceding calendar year".

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) by striking "ANNUAL REPORT" in the subsection heading and inserting "BIENNIAL REPORT"; and

(2) by striking "In the case of" in paragraph (3) and all that follows through "a description" and inserting "A description".

Section-by-Section Analysis

SEC. 1401. PRE-ELECTION REPORTING REQUIREMENTS ON AVAILABILITY AND TRANSMISSION OF ABSENTEE BALLOTS.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense, and amends Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 46th day before the election. It requires that States submit the second report 43 days before the election and

certify whether each of its jurisdictions transmitted its ballots by the 46th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 1402. TRANSMISSION REQUIREMENTS; REPEAL OF WAIVER PROVISION.

Except as noted below, the substance of this section is substantially the same as section 202 of the Department of Justice 2011 proposal as coordinated with the Department of Defense. In addition, it includes Section 204 of the 2011 proposal, repeal of the waiver provision, blended into this provision by Senate staffers who drafted Senator Brown's bill introduced last Congress (S. 3322).

This provision, which changes the 45-day deadline under the MOVE Act to a 46-day deadline, addresses the substance of Section 205 of our 2011 proposal. Our 2011 proposal offered a "Saturday Mailing Date Rule," while maintaining the 45-day deadline. Initially, Senate staff proposed the 46-day rule as a cleaner way of accomplishing the same goal of clarifying the general ballot deadline. We propose incorporating the 46-day deadline in our 2013 proposals. Conforming changes to the 46 day deadline are made throughout this proposal.

This section amends Section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 46-day deadline to voters who request ballots by the 46th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 41st day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 46-day rule. Our 2011 proposal triggered the requirement to provide for the express return of ballots at the State's expense after the 40th day, *i.e.*, when a ballot was sent late by 5 days or more. The 41st day reference here (in Section 102(g)(1)(B)(ii)) conforms to the new 46 day transmission standard, and provides the same 5 day trigger we envisioned in our 2011 proposal.

This section also repeals UOCAVA's hardship waiver provision, Section 102(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 46-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

Section 102(g)(2) is amended because the MOVE Act language (currently in Section 102(a)(8)(b) of UOCAVA) affords no specific requirement to ensure ballots requested between 45 and 30 days of the election (or a later date where states accepted ballot requests closer to the election) are promptly transmitted to voters. Some states have a law or practice of sending ballots promptly; others do not. There remains confusion as to what this provision mandates, if anything. This amendment would ensure that that ballot requests are promptly transmitted by directing that ballots be sent within one business day of receipt.

SEC. 1403. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section is substantially the same as the Department of Justice 2011 proposal as coordinated with the Department of Defense. This section amends Section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also repeals 42 U.S.C. 1973ff-1 note, which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 1404. TECHNICAL CLARIFICATIONS TO CONFORM TO 2009 MOVE ACT AMENDMENTS RELATED TO THE FEDERAL WRITE-IN ABSENTEE BALLOT

Section 581 of the MOVE Act extended UOCAVA voters' eligibility to use a Federal Write-In Absentee Ballot (FWAB) to all elections for Federal office, effective December 31, 2010. Prior to that time, FWABs could only be cast in federal general elections. Section 581 effects a number of conforming amendments, but fails to revise these two other FWAB references in the Act.

SEC. 1405. TREATMENT OF BALLOT REQUESTS.

This section amends Section 104 of UOCAVA and is based in part on Section 206 of our 2011 proposal the Department of Justice 2011 proposal as coordinated with the Department of Defense. As in our the 2011 proposal, this section amends Section 104 of UOCAVA to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act.

This proposal also restores, in part, language the 2009 MOVE Act deleted related to treating a ballot application as valid for subsequent elections. Rather than allowing a voter to use the application to request ballots through two general election cycles as the pre-MOVE Act law

did, this proposal would provide that applications are valid for one general election cycle, which includes any runoff elections that are held after that general election, a provision contained in Senator Brown's bill (S. 3322). We propose one addition to extend the period to cover any special Federal elections that occur between the general election and the end of the following year. It also provides that all absent uniformed services voters and overseas voters have the option of applying for ballots for all Federal elections held during the period prescribed by this section.

SEC. 1406. INCLUSION OF NORTHERN MARIANA ISLANDS IN THE DEFINITION OF "STATE" FOR PURPOSES OF THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.

This section is substantially the same as Section 207 of the Department of Justice 2011 proposal coordinated with the Department of Defense. This section amends UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 1407. REQUIREMENT FOR PRESIDENTIAL DESIGNEE TO REVISE THE FEDERAL POST CARD APPLICATION (FPCA) TO ALLOW VOTERS TO DESIGNATE BALLOT REQUESTS.

The provision for FVAP to revise the FPCA was included in the Department of Justice 2011 proposal as coordinated with the Department of Defense. We revised the language to conform to the change referenced in Section 1705, and contained in Senator Brown's bill (S. 3322), which would allow voters to request ballots through the next general election and included the additional option we propose to extend it to special Federal elections that may be held after the general election through the following calendar year.

SEC. 1408. REQUIREMENT OF PLURALITY VOTE FOR VIRGIN ISLANDS AND GUAM FEDERAL ELECTIONS.

The MOVE Act required that absentee ballots be transmitted 45 days in advance of an election for Federal office. The Department of Justice has interpreted this requirement to apply to all Federal elections, including runoff elections, and a federal district court in Georgia recently affirmed that interpretation. See Order, *U.S. v. State of Georgia*, No. 1:12-cv-02230 (N.D. Ga. Apr. 30, 2013).

In response to the MOVE Act's 45-day deadline, some States changed their State laws to allow sufficient time in their election calendars to transmit runoff ballots if a primary election triggers a runoff. The Virgin Islands and Guam are not able to make a similar change to their runoff election calendars because 48 U.S.C. 1712 requires that runoff elections be held within 14 days after a Federal general election, if no candidate receives a majority of the votes cast at the general election. This proposal provides that the Delegates for the Virgin Islands and Guam be elected by plurality vote. It is consistent with the general rule for the election of Delegates to the other territories and the District of Columbia.

SEC. 1409. EXTENSION OF REPORTING DEADLINE FOR THE ANNUAL REPORT ON THE ASSESSMENT OF THE EFFECTIVENESS OF ACTIVITIES OF THE FEDERAL VOTING ASSISTANCE PROGRAM.

Section 1409 would change the deadline to submit the annual report on the effectiveness of activities of the Federal Voting Assistance Program (FVAP) from March 31 of every year to June 30 of odd-numbered years. It also would clarify that the information submitted in the report should cover the previous calendar year – the year in which the regularly scheduled elections for Federal office occurred. Therefore, the Department of Defense seeks these changes toensure that the report provides the best quality information about FVAP's program, voter registration and participation in the election and enhance the validity of post-election survey results.

The Department of Defense strongly believes that developing and publishing this report for odd-numbered calendar years in which few Federal elections occur does not provide sufficient information to warrant the time, effort and expense expended in preparing the report. Few elections for Federal office occur in odd-numbered years. In 2009 there were a total of only four elections for Federal office. Again in 2011, only four elections occurred.

Evaluation and analysis of FVAP activities for special primary or general elections requires the Department of Defense to obtain the election data from the local jurisdiction involved and, in many cases, the specific data required to make accurate analysis is not available or is not available in a timely manner. The Department of Defense has concluded that analysis of odd-numbered year elections could lead to poor policy decisions based upon incomplete data and/or conclusions which may not be valid in even-numbered election years, which have greater public participation and FVAP activity.

In addition, the Department of Defense has determined that the post-election survey results for even-numbered year reports and quadrennial analysis cannot be collected, processed, analyzed and reported by the current March 31 deadline. General elections for Federal office are held in November (potentially with some States conducting run-off elections for Federal office in December). The FVAP's survey instruments will be fielded in January and the Department believes they need to be open for at least three months to garner sufficient participation to make them statistically valid. Thus, the March 31 deadline provides little time after the elections to collect, synthesize and thoughtfully analyze post-election survey data to base program evaluations and policy decisions. Accordingly, the Department of Defense recommends that the reporting deadline be extended from March 31 to June 30, and that the report only be submitted in odd-numbered years.