



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense  
Rosslyn Plaza North  
1777 North Kent Street  
14<sup>th</sup> Floor, Suite 14003  
Arlington, VA 22209-2162

Suggested Template Cover Page for a State Undue Hardship Waiver Request

**1. State Name (Colorado) and postal abbreviation (CO)**

**2. Chief State Election Official (CSEO)**

First Name: Bernie Last Name: Buescher  
Title: Colorado Secretary of State  
Address: 1700 Broadway  
Address: Suite 200  
City: Denver State: CO Zip: 80290 +4: 1201  
Email: [secretary@sos.state.co.us](mailto:secretary@sos.state.co.us) Phone: 303-894-2200 Fax: 303-869-4860

**3. Preferred State Election Contact:**

First Name: Judd Last Name: Choate  
Title: Director, Elections Division  
Address: 1700 Broadway  
Address: Suite 200  
City: Denver State: CO Zip: 80290 +4: 1201  
Email: [REDACTED]

**4. Acknowledgement of UOCAVA voters' right to vote**

(State) recognizes that the purpose of 42 USC 1973ff-1(a)(8)(A) is to allow absent uniformed services voters and overseas voters sufficient time to vote in an election for federal office.

Type initials: JC Date: 8/3/10

**5. Type of hardship claimed (check one)**

- 2(b)i. Undue hardship due to a late primary.
- 2(b)ii. Undue hardship due to a legal challenge
- 2(b)iii. Undue hardship caused by a state constitutional prohibition.

Please indicate location in package that identifies your plan to resolve the problem: Attached  
letter: Page 2, paragraph 2

**6. Please indicate the location in the package that contains the section in the comprehensive plan identifying the State's explanation for the necessity of the waiver request.** Attached  
letter: Page 1, paragraph 2

**7. On what date(s) will the State require ballots to be available and sent?** October 1

**8. Please indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to provide sufficient time for UOCAVA voters, who have timely submitted an absentee ballot request, to receive, mark, and submit their ballots in time to have those ballots counted?** Attached letter: Pages 2-4

**9. If included, indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to resolve the underlying issue prior to the next election for federal office, including steps already taken, to be taken, timelines, and supporting documentation?** Attached letter: Page 2, paragraph 2



August 3, 2010

*Via email delivery*

Mr. Bob Carey, Director  
Federal Voting Assistance Program  
Department of Defense  
1155 Defense Pentagon  
Washington, DC 20301-1155

RE: Request for waiver of the 45-day ballot mailing period requirement for the 2010 general election

Dear Mr. Carey:

The purpose of this letter is to request a waiver for the 2010 general election of the 45-day ballot transit time provision of the Military and Overseas Voter Empowerment Act of 2009 ("MOVE"), Public Law 111-84. Colorado respectfully requests a waiver from this provision because the state's late primary election and subsequent certification of the general election ballot leave insufficient time to print and mail ballots in order to meet the September 18 deadline for the 2010 general election. Colorado law contains a number of provisions that help ensure military and overseas electors are able to receive, vote, and return their ballot in time to be counted. The following paragraphs outline the need for a waiver for the 201 general election due to a late primary, and our plan for adjusting the election calendar in advance of the 2012 elections. This letter also outlines the various transmission and ballot options, late return, and other measures taken by Colorado counties to mitigate the shortened mailing period created by our current election calendar.

**Need for waiver in 2010:**

The Colorado Secretary of State understands the need for the 45-day mailing period for ballots sent to uniformed and overseas electors, and enthusiastically supports mailing of ballots to these electors as early as feasible. However, the combination of Colorado's late primary election and subsequent certification of the general election ballot, along with the associated ballot access deadlines render Colorado unable to comply with this provision for the 2010 general election. Colorado's primary election is currently held the second Tuesday in August and could not feasibly be changed in an election year because of the caucus and precinct dates, and petition deadlines that precede the primary election as well as the subsequent certification of the primary and ballot content for the general election.

In Colorado, the content for the general election ballot is certified by the Secretary of State on the 60th day before the general election, after which the counties must print and prepare ballots for mailing. Unfortunately, it is simply not feasible for all counties to print and mail ballots within the 15 days between certification of the ballot content and the 45-day deadline, as many counties commission printing through their out of state vendor. Vendors often take a significant amount of time to complete the entire printing process, which includes formatting, proofing, and testing prior to printing. In order to fully comply with this new federal requirement, Colorado will need to move its primary election date and adjust the entire election calendar.

**Long-term plan to achieve compliance:**

In preparation for the 2012 primary and general elections, however, our office will work closely with the Colorado General Assembly to develop and implement the needed legislative changes. The Secretary recently created a statewide commission, the Best Practices and Vision Commission, that began meeting earlier this summer. Secretary Buescher has asked the Commission to make the calendar adjustment one of its first priorities, and make a formal recommendation to the Secretary for a legislative solution. Our office, in conjunction with the Colorado County Clerks Association, convened a working group to review the election calendar and draft a proposal to move the primary election and all associated deadlines to allow for at least 45 days to mail out ballots to military and overseas electors. The committee began meeting in April and has finalized a plan that will be presented to the Commission at its next meeting for vetting in anticipation of legislation during the 2011 regular session of the Colorado General Assembly. Assuming a bill is successfully introduced and passed in the 2011 legislative session, the new calendar will be effective for the 2012 primary and general elections. Attached is the working draft side-by-side comparison of the key deadlines affecting the 2012 primary and general elections under current law and the committee's proposed adjustment to the calendar. Please note that this comparison is a working draft that has not yet been presented to the Commission for discussion; therefore, it is not final and we ask that you keep it confidential.

**Comprehensive plan for ensuring military and overseas electors are able to cast a ballot that will be counted in the 2010 general election:**

In the meantime, the Secretary of State is encouraging use of all available transmission alternatives to mitigate the abbreviated timeline. Under current law, ballots must be in the possession of county clerk and recorder 32 days before the election, and transmitted to military and overseas electors no later than 30 days before the election where a request was received at least 35 days before the election. Ballot must be transmitted within 72 hours of any subsequent requests. However, although faced with the short timeframe, many counties successfully worked with their vendors in the primary election to send ballots out as soon as 45 days prior to the election. Our office anticipates that some counties may be able to again meet the 45-day mailing deadline for the general election. Although all counties will not be able to get their ballots printed within the 15-day window, Colorado law provides a number of ballot transmission options for military and overseas electors that help ensure that military and overseas electors are able to receive, vote, and return their ballot in time to be counted.

First, Colorado provides an option of electronic transmission of the blank and voted ballot to all military and overseas electors. Any military or overseas elector may request fax transmission of the blank ballot, and may return their ballot by fax, if they choose. Additionally, military personnel serving outside the United States, and their spouses or dependents absent from the United States for the same reason, may request email transmission of their blank ballot and may

return their voted ballot by email, if they choose. The deadlines for electronic ballot transmission are the same as the deadlines for ballots sent by mail. However, electronic transmission eliminates the lengthy mail delivery time from the process. In many cases, an elector is able to receive, vote, and return his or her ballot within the same business day through electronic transmission.

In addition, five Colorado counties are participating in the Federal Voting Assistance Program electronic ballot delivery project. The five participating counties are Denver, El Paso, Gilpin, Park, and Weld. This group includes three of the counties in Colorado with the largest military and overseas population and the group represents about 4,400 military and overseas electors with active ballot requests. The project is well-underway, with initial user acceptance testing of the system scheduled for August 4. Participation in the pilot ensures that the five counties will meet the 45-day deadline in addition to providing more efficient electronic ballot delivery. Our office is confident that the project will be a success and anticipates expanding participation for future elections.

Colorado law also provides for two write-in ballot options. Colorado accepts the Federal Write-in Ballot in any federal election. In addition, the state Special Write-in Ballot is made available no later than 57 days before any federal or state election. Any military or overseas elector may apply for the Special Write-in Ballot, which allows them to cast their votes for all federal, state and local races and issues for which they are eligible to vote.

In addition to the various transmission and write-in options available to military and overseas electors, Colorado law also provides for late receipt of overseas military electors' ballots. All ballots cast (mailed or electronically transmitted) by military personnel serving overseas on or before the close of polls on election day will be counted as long as they are received by the close of business on the eighth day after the election.

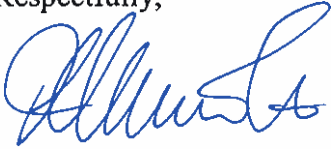
Furthermore, Colorado counties will continue to take proactive steps to ensure military and overseas electors are able to receive and vote their ballot by maintaining current and accurate registration information. Many counties have already sent a regular mailing to all military and overseas electors requesting they verify their address and offering them the opportunity to request alternative ballot transmission or a permanent absentee ballot. Additionally, counties ask military and overseas electors for email addresses and frequently use email to communicate with this mobile group of electors.

Clearly, there is always room for improvement; however, the proactive measures taken by Colorado counties have resulted in a high number of ballots being returned by military and overseas electors in time to be counted. In the 2008 general election, approximately 80% of ballots sent to military and overseas electors were timely returned, and only about 1.5% were returned as undeliverable.

Therefore, because of the state's late primary election and ensuing statutory deadlines, I respectfully request a waiver from the 45-day ballot mailing period requirement in the Move Act for the 2010 general election. Colorado is committed to ensuring that every military and overseas elector has the opportunity to receive, vote, and return their ballot in time to be counted. Accordingly, our office will work diligently to ensure that the statutory calendar deadlines are adjusted during the 2011 legislative session. In the meantime, however, we must seek a waiver

because we cannot guarantee that all counties will be able to meet the 45-day deadline, despite their best efforts. If you require additional information or need any clarification, please contact me at (303) 894-2200 ext. [REDACTED] or by email at [REDACTED]

Respectfully,



Judd Choate, Director  
Elections Division

Working Draft - Proposed Adjustments to Calendar

ELECTION DEADLINE	Current Deadlines	Proposed Deadlines	C.R.S.
	8/14/2012		
Precinct Caucus Day (In a presidential election year, a political party may hold its precinct caucus on the 1st Tuesday in February or the third Tuesday in March)	Tuesday, February 07, 2012		1-3-102(1)(a)(i)
First day to circulate major/minor party candidate petitions for Primary Election (move to the 3rd Monday in March)	Monday, March 26, 2012		1-4-802(1)(d)(iii)
Last day to file major/minor party candidate petitions for Primary Election (move from 75 days before the Primary to 82 days)	Thursday, May 31, 2012		1-4-801(5) 1-4-802(1)(f)(ii)
Last day to hold district and state major party assemblies for Primary Election (move from 70 days before the Primary to 77 days)	Tuesday, June 05, 2012		1-4-601(1)
Last day a write-in candidate may file an Affidavit of Intent for Primary Election	Friday, June 08, 2012		1-4-1102(1)
Last day to hold minor party assemblies for the General Election	Sunday, June 10, 2012		1-4-1304 1-4-104.5;
Ballot certification for Primary Election; may cancel if no contested races	Friday, June 15, 2012		1-5-203(1)(a); 1-5-203(3)(a)
Last day to notify SOS and submit plan for conducting the Primary Election by mail ballot election (Move to 55 days prior to the election from 120 days )	Monday, April 16, 2012		1-7.5-105(1.5)
Unaffiliated candidate petition deadline (Move to allow same amount of circulation time as currently available)	Tuesday, June 19, 2012		1-4-802(f)(i) 1-5-402(1)
Ballots for primary election must be printed and in possession	Friday, July 13, 2012		*MOVE ACT 1-7.5-107(3) 1-8-111(1)(b) 1-106(5)
Deadline to send mail/mail-in ballots to overseas electors (MOVE ACT - 45 Days *Saturday)	Friday, July 13, 2012		*MOVE ACT 1-2-201(3) 1-2-209(2)
Last day to register to vote for Primary Election	Monday, July 16, 2012		1-2-219
Last day to change or withdraw from major political party affiliation	Monday, July 16, 2012		1-7.5-107(3)(a); 1-8-111(1)
First day mail/mail-in ballots sent to electors with an active request, except for UOCAVA electors	Monday, July 23, 2012		
Deadline for DEO to issue statement sufficiency/insufficiency for unaffiliated candidate petition (Move to clearly identify period in which to amend- allows 31 days to review)	Tuesday, August 14, 2012		
Deadline to make drop-off locations available for Primary Elections conducted by mail ballot	Tuesday, July 31, 2012		1-7.5-107(4.3)(b)
Early voting begins	Saturday, August 04, 2012		1-8-202
First day that walk-in voting locations (service centers) may be open for Primary Elections conducted by mail ballot.	Monday, August 06, 2012		1-7.5-107(4.5)(c)
Last day for an unaffiliated candidate to amended nominating petition (Move to 10 days from sufficiency)	Friday, August 03, 2012		1-4-912
Last day for designated election official to notify an unaffiliated candidate of whether the amended nominating petition is sufficient (5 days after deadline to amend - primary day)	Wednesday, August 08, 2012		1-4-912(1)
<b>PRIMARY ELECTION</b>	<b>Tuesday, August 14, 2012</b>		<b>1-4-101(1)</b>
Deadline for County Board of Canvassers to prepare official Abstract of Votes for Primary Election and deliver copy to SOS	Monday, August 27, 2012		1-10-102(1)
Last day for SOS to compile, total the returns and order appropriate recounts of Primary Election	Monday, September 03, 2012		1-10-103(2)
Last day interested parties may request a recount of Primary Election at their own expense	Monday, September 03, 2012		1-10.5-106(2) 1-5-203(1); 1-5-203(3)(a)
Ballot certification for General Election	Friday, September 07, 2012		1-10.5-102(2) 1-10.5-103 1-10.5-106(2)
Last day to complete statutory or requested recount of Primary Election	Thursday, September 13, 2012		1-5-403(1) 1-7.5-107(3) 1-8-111(1)(b) 1-106(5)
Ballots for General must be printed and in possession	Friday, October 05, 2012		*MOVE ACT 1-2-201(3); 1-2-209(2)
Deadline to send mail/mail-in ballots to overseas electors (MOVE ACT - 45 Days *Saturday)	Friday, October 05, 2012		1-8-111(1); 1-1-106(4)
Last day to register to vote for General Election (Falls on Columbus Day)	Tuesday, October 09, 2012		1-8-202
First day mail-in ballots sent to electors with an active request, except for UOCAVA electors	Monday, October 15, 2012		1-1-104(17); 1-4-201
Early voting begins	Monday, October 22, 2012		
<b>GENERAL ELECTION</b>	<b>Tuesday, November 06, 2012</b>		

Working Draft - Proposed Adjustments to Calendar

ELECTION DEADLINE	Current Deadlines	Proposed Deadlines	C.R.S.
	8/14/2012		
Deadline for counties to certify results to SOS (17 days to complete duties, 18 days to transmit to the SOS)	Friday, November 23, 2012		1-10-102; 1-10-103
Deadline for the SOS to compile and total returns from the counties (Move to 30 days after the General Election)	Friday, November 30, 2012		1-10-103