

CLOVE

INITIATIVE

Bob Carey
Director
Federal Voting Assistance Program
Department of Defense
1777 North Kent Street
Suite 14003
Arlington, VA 22209
USA

May 11, 2012

Dear Director Carey,

The CLOVE Initiative requests your attention to the issues raised during the recent conference calls with your agency held on May 3, 4, and 10, 2012. These issues are particular to the Classification section of the new Federal Post Card Application (FPCA), Standard Form 76 (Rev.08-2011).

While we appreciate your efforts to improve the form, the new language in the Classification section will thwart the efforts of overseas citizen voters to enter into the absentee voting process, and therefore we kindly request that remedial action be taken prior to the 2012 General Election.

With the previous 2005 FPCA, civilian voters completing were asked to affirm that they were either a “*U.S. citizen residing outside the U.S. temporarily*” or a “*U.S. citizen residing outside the U.S. indefinitely*”. In lieu of this language, the 2011 FPCA requires a selection of one of the following, under penalty of perjury:

- *I am a U.S. citizen residing outside of the U.S. and I intend to return*
- *I am a U.S. citizen residing outside of the U.S. and I do not intend to return*
- *I am a U.S. citizen otherwise granted military/overseas voting rights under State law.*

The CLOVE member groups have a depth of understanding of overseas citizens voter issues that only our decades of experience in overseas voter outreach and registration could bring. We do hope you recognize this and that we approach these issues as professionals. We believe that these FPCA modifications will deter voter participation for the following reasons:

1. *Uncertainty.* A vast number of eligible voters make decisions according to the ebb and flow of personal and professional endeavor, and thus have no current plans to return or to not return. With no “valid” answer available, voters may simply not answer, and be effectively disenfranchised.
2. *Potential latent tax liability.* Persons selecting “I intend to return” are sent full state ballots. Requesting the state ballot - albeit unknowingly - may be cited by state tax authorities as an additional nexus of connection to the state, justifying imposition of state tax liability.

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3. *Legal hazard.* Not knowing under what new circumstances and by whom their responses may be judged, a prudent citizen may question whether the benefits of voting are outweighed by the unknowable and incalculable risk incurred by completing the form.
4. *Opacity.* No data to substantiate why the language change was made, or why the intent-related questions are now being asked has been provided.
5. *Gratuitousness.* Since overseas citizens benefit from permanent eligibility to vote in federal elections, the question of intent to return is immaterial for the purposes of UOCAVA administration.

Given that the 2012 General Election is imminent and voter participation is a mutual goal, we respectfully ask that you curtail all print and electronic dissemination of the new 2011 FPCA, which would deter participation. If this is truly impossible, please explain to us *exactly why* it is impossible and the conditions that would be required to make it possible.

At the very least, because the 2005 FPCA is confirmed by your agency to be acceptable, we ask that for overseas citizen voters, you provide a choice, both online and on paper, of the two versions of the FPCA together with plain language instructions that allow the voter to make an informed choice of which FPCA to use. Even if the 2005 FPCA form is simply downloadable and not for completion through your wizard, it would be better than offering the citizen voters no choice at all.

We need an alternative to advising voters of the dangers of the 2011 FPCA and directing them elsewhere.

We look forward to your considered response.

Thank you,

*American Citizens Abroad
Association of Americans Residents Overseas
Federation of American Women's Clubs Overseas
Overseas Vote Foundation*

cc: Representative Carolyn Maloney
Department of Justice, Civil Rights Division, Voting Section