



The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues

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Summary

Members of the military and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986. The law was enacted to improve absentee registration and voting for this group of voters and to consolidate existing laws. Since 1942, a number of federal laws have been enacted to assist these voters: the Soldier Voting Act of 1942 (amended in 1944), the Federal Voting Assistance Act of 1955, the Overseas Citizens Voting Rights Act of 1975 (both the 1955 and 1975 laws were amended in 1978 to improve procedures), and the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The law is administered by the Secretary of Defense, who delegates that responsibility to the Director of the Federal Voting Assistance Program at the Department of Defense (DOD).

Improvements to UOCAVA (P.L. 99-410) were necessary as the result of controversy surrounding ballots received in Florida from military and overseas voters in the 2000 presidential election. The National Defense Authorization Act for FY2002 (P.L. 107-107; S. 1438) and the Help America Vote Act (P.L. 107-252; H.R. 3295) both included provisions concerning military and overseas voting. The President signed P.L. 107-107 on December 28, 2001, and P.L. 107-252 on October 29, 2002. The Defense Authorization Act for FY2005 (P.L. 108-375) amended UOCAVA as well, to ease the rules for use of the federal write-in ballot in place of state absentee ballots, and the Defense Authorization Act for FY2007 (P.L. 109-364) extended a DoD program to assist military and overseas voters.

In the 111th Congress, a major overhaul of UOCAVA was accomplished when the President signed the National Defense Authorization Act for FY2010 (P.L. 111-84) on October 28. It included an amendment (S.Amdt. 1764) that contained the provisions of S. 1415, the Military and Overseas Voter Empowerment Act. The Senate had approved the conference committee report (H.Rept. 111-288) on the defense authorization act (H.R. 2647) on October 22 and the House had done so on October 8. Also on the House side, the Committee on House Administration reported H.R. 2393, which would require the collection and express delivery of ballots from overseas military voters before the polls close on election day. A similar provision was included in the defense authorization act as enacted.

This report will be updated periodically to reflect new developments.

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Historical Overview

Several federal laws have been enacted since 1942 to enable those in the military and U.S. citizens abroad to vote in federal elections. The original law, the Soldier Voting Act of 1942 (P.L. 712-561), was enacted to guarantee federal voting rights for members of the armed forces during wartime. The law allowed members of the armed forces to vote for presidential electors, and candidates for the U.S. Senate and House, whether or not they were previously registered and regardless of poll tax requirements. The law provided for the use of a postage-free, federal post card application to request an absentee ballot; it also instructed secretaries of state to prepare an appropriate number of “official war ballots,” which listed federal office candidates, as well as candidates for state and local office if authorized by the state legislature. The law “had almost no impact at all” as it was enacted on September 16, only weeks before the November general election.¹

Congressional authority to regulate state voting procedures expired once the war ended, as the law noted that its provisions applied “in time of war.”² The Soldier Voting Act of 1942 was amended in 1944. Under congressional war powers, the 1942 law *mandated* procedures for the states to permit service members to vote, but the amended law of 1944 *recommended* that states follow such procedures. The law was amended again in 1946 to include technical changes.

In 1951, President Truman asked the American Political Science Association (APSA) to study the military voting problem and make recommendations. APSA completed its study in 1952 and the President endorsed the association’s legislative recommendations, which were sent to Congress. The Federal Voting Assistance Act was subsequently enacted in 1955; it recommended, but did not guarantee, absentee registration and voting for members of the military, federal employees who lived outside the United States, and members of civilian service organizations affiliated with the armed forces. The law was amended in 1968 to include a more general provision for U.S. citizens temporarily residing outside the United States, expanding the number of civilians covered under the law. The Overseas Citizens Voting Rights Act of 1975 guaranteed absentee registration and voting rights for citizens outside the United States, whether or not they maintained a U.S. residence or address and their intention to return was uncertain.

Summary of the Law

The current law, the Uniformed and Overseas Citizens Absentee Voting Act (P.L. 99-410), was signed into law by President Reagan on August 28, 1986.³ It was amended in 2002 by the Help America Vote Act (P.L. 107-252), the National Defense Authorization Act of 2002 (P.L. 107-107), the Defense Authorization Act for FY2005 (P.L. 108-375), and the Defense Authorization Act for FY2007 (P.L. 109-364). The main provisions of the law require states to do the following:

- Permit absent uniformed services voters, their spouses and dependents, and overseas voters who no longer maintain a residence in the United States to

¹ U.S. Department of Defense, *The Federal Voting Assistance Program*, 11th Report (Washington: December 1977), p. 2.

² P.L. 56-393, Sec. 1.

³ 42 U.S.C. §1973ff-ff-6.

register absentee (overseas voters are eligible to register absentee in the jurisdiction of their last residence) and to vote by absentee ballot in all elections for federal office (including general, primary, special, and runoff elections).⁴ The National Defense Authorization Act of 2002 amended UOCAVA to permit a voter to submit a single absentee application in order to receive an absentee ballot for each federal election in the state during the year. The Help America Vote Act subsequently amended that section of the law to extend the period covered by a single absentee ballot application to the next two regularly scheduled general elections for federal office. The Help America Vote Act also added a new section that prohibits a state from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processes applications for the year.⁵

- Accept and process any valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than 30 days before the election. The Help America Vote Act amended that section of the law to require a state to provide to a voter the reasons for rejecting a registration application or an absentee ballot request.⁶
- Furthermore, the law recommends that states accept the federal write-in absentee ballot for general elections for federal office (provided the voter is registered, has made a timely request for a state absentee ballot, the absentee ballot has not arrived with sufficient time to return it, and the ballot is submitted from outside the United States or its territories).⁷
- The law also stipulates that voting materials be carried “expeditiously and free of postage.”⁸ It recommends that states accept the Federal Post Card Application (FPCA) from uniformed services voters, their spouses and dependents, and overseas voters to allow for simultaneous absentee registration and to request an absentee ballot. While all states and territories accept the FPCA, some require that a voter submit the state registration form separately in order to be permanently registered. Other recommendations in the law suggest that states:⁹
 - waive registration requirements for military and overseas voters who do not have an opportunity to register because of service or residence;
 - send registration materials, along with an absentee ballot to be returned simultaneously, if the FPCA is not sufficient for absentee registration;

⁴ Sec. 107 (1). An absent uniformed services voter is defined as follows: a member of a uniformed service on active duty or a member of the merchant marine who, by reason of such active duty or service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and a spouse or dependent of a member of a uniformed service or a member of the merchant marine who is absent from his or her place of residence where he or she is otherwise qualified to vote, because of the active duty or service of the member.

⁵ 42 U.S.C. §1973ff-1(1), as amended by section 1606 (b) of the National Defense Authorization Act of 2002, and subsequently, by section 704 of the Help America Vote Act of 2002.

⁶ 42 U.S.C. §1973ff-1(2), as amended by section 707 of the Help America Vote Act of 2002.

⁷ 42 U.S.C. §1973ff-1(3).

⁸ The United States Postal Service domestic mail manual notes that “To be mailable without prepayment of postage, the balloting materials must be deposited at a U.S. post office, an overseas U.S. military post office, or an American Embassy or American Consulate.”

⁹ 42 U.S.C. §1973ff-3.

- expedite the processing of voting materials;
- permit any required oath to be administered by a commissioned officer in the military or by any official authorized to administer oaths under federal law or the law of the state where the oath is administered;
- assure mailing absentee ballots to military and overseas voters at the earliest opportunity; and
- provide for late registration for persons recently separated from the military.

In addition to the amendments to UOCAVA mentioned above, the Help America Vote Act of 2002 does the following:

- requires the Secretary of Defense to establish procedures to provide time and resources for voting action officers to perform voting assistance duties; establish procedures to ensure a postmark or proof of mailing date on absentee ballots; requires secretaries of the armed forces to notify members of the last day for which ballots mailed at the facility can be expected to reach state or local officials in a timely fashion; requires that members of the military and their dependents have access to information on registration and voting requirements and deadlines; and requires that each person who enlists receives the national voter registration form;
- amends UOCAVA to require each state to designate a single office to provide information to all absent uniformed services voters and overseas voters who wish to register in the state;
- amends UOCAVA to require states to report the number of ballots sent to uniformed services and overseas voters and the number returned and cast in the election; and
- amends UOCAVA to require the Secretary of Defense to ensure that state officials are aware of the requirements of the law and to prescribe a standard oath for voting materials to be used in states that require such an oath.

The Defense Authorization Act for FY2002 also included provisions that (1) required an annual review of the voting assistance program and a report to Congress; (2) guaranteed state residency for military personnel who are absent because of military duty; (3) continued the online voting pilot project begun for the 2000 elections; and (4) permitted the use of DOD facilities as polling places if they had previously been used for that purpose since 1996 or were designated for use by December 2000.

The Federal Voting Assistance Program

The Federal Voting Assistance Act of 1955 called for the President to designate the head of an executive department to be responsible for and coordinate the federal functions described in the law. President Eisenhower designated the Secretary of Defense, who delegated the responsibility to the Assistant Secretary of Defense for Public Affairs, as coordinator of the Federal Voting Assistance Program (FVAP). Under the current law, the Director of the Federal Voting Assistance Program administers the FVAP for citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act. This office publishes the *Voting Assistance Guide*, a compilation of state

requirements and practices with respect to the federal law (including information on possible tax liability incurred in some states based on residence, as determined by voter registration). The FVAP office also maintains a toll free phone number to provide assistance to voters and to military and federal government personnel who are responsible for implementing the law; the office also maintains a website <http://www.fvap.gov>.

SERVE Internet Voting Program

The FVAP administered an experimental internet voting program, the Secure Electronic Registration and Voting Experiment (SERVE), for military and overseas citizens in the November 2000 election. Those eligible to cast ballots via the Internet were voters whose legal residence was in one of fourteen participating counties in Florida, South Carolina, Texas, and Utah. The pilot project was limited to a total of 350 voters, of whom 84 cast absentee ballots over the Internet. The FVAP issued a June 2001 report evaluating the program. An expanded version was in place in seven states for the 2004 elections, but it was cancelled after a report reviewing the program raised Internet security concerns. Among other conclusions, the report noted that because fundamental vulnerabilities exist with Internet voting, a successful cyber attack on the SERVE program could undermine the November election.¹⁰

Legislation

111th Congress

A number of bills that focus specifically on military and overseas voting have been introduced in the 111th Congress. The Senate Rules Committee reported S. 1415, as amended, on July 15. The text of the bill was subsequently added as an amendment to the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647), which was passed by the Senate on July 23. The House voted in favor of the conference report to the bill (H.Rept. 111-288) on October 8 and the Senate approved it on October 22; President Obama signed the bill on October 28 (P.L. 111-84). It establishes procedures for the use of email and facsimile transmittal for registration and absentee ballot applications, establishes procedures for the collection of marked absentee ballots from overseas uniformed services voters for delivery to the appropriate state election officials, and establishes additional procedures and requirements to improve UOCAVA voting. The House Administration Committee also reported H.R. 2393, the Military Voting Protection Act, on June 10, 2009. The bill would require the Secretary of Defense to establish procedures for the collection of marked absentee ballots from overseas uniformed services voters for delivery to the appropriate state election officials.

Both the Senate Rules and Administration and House Administration Committees had previously held hearings on UOCAVA voting. The hearings were convened on May 13 in the Senate and May 21 in the House.¹¹ Among the bills introduced thus far in the 111th Congress are two sponsored by Representative Maloney, H.R. 1659 and H.R. 1739. The first would amend

¹⁰ The report may be found at <http://www.servesecurityreport.org/>.

¹¹ An archived version of the webcast for the Senate hearing can be found at http://rules.senate.gov/public/index.cfm?FuseAction=CommitteeSchedule.Hearing&Hearing_id=4bbebc7a-f4b9-487b-a1e6-47065a293ccf; an archived version of the House hearing webcast can be found here: http://cha.house.gov/view_hearing.aspx?r=50.

UOCAVA to require that the presidential designee have experience in election administration that includes oversight of voter registration and absentee ballot distribution and it would establish an Overseas Voting Advisory Board. H.R. 1739 is a more far-reaching proposal that would amend UOCAVA to make a series of adjustments concerning balloting materials and related election administration procedures in the states, and would establish a grant program for voter outreach. H.R. 2082 (Holt) would amend UOCAVA to require states to accept ballots submitted by overseas voters using a provider of express mail service, so long as the ballot was submitted the day before, and received within 10 days after, the election. The bill would also require the presidential designee to reimburse the voter for the express mail cost. As noted above, H.R. 2393 (McCarthy), would amend UOCAVA to require the presidential designee to collect marked general election ballots from overseas uniformed services voters for delivery to the appropriate election officials before the polls close, using U.S Postal Service express mail delivery. The bill would also require a tracking system so the voter could determine whether the ballot was delivered. It was reported by the House Administration Committee on June 10. A companion measure, S. 1026 (Cornyn), was introduced in the Senate.

110th Congress

Several relevant election reform bills were introduced in the 110th Congress and two received action. On October 1, the Senate passed S. 3073 (Cornyn), which would have required the Secretary of Defense to collect ballots from overseas military voters and ensure their delivery to election officials using express mail services. On the House side, H.R. 6625 was passed on September 17; it would have allowed state election officials to designate facilities of the Department of Veterans Affairs as voter registration agencies under the National Voter Registration Act (P.L. 103-31, the “motor-voter” law). Other bills that were not acted on included H.R. 2835, H.R. 4173, H.R. 4237, H.R. 5673, and S. 1487. H.R. 2835 (Faleomavaega) would have extended UOCAVA law’s provisions to cover legislative and gubernatorial elections in American Samoa. H.R. 4173 (Honda) would have prohibited states from requiring notarization of absentee ballots, broadened the use of the federal write-in ballot, established a grant program to inform overseas citizens about absentee voting, and required that overseas federal employees be informed about UOCAVA and information about the law included in U.S. passports. H.R. 4237 (Maloney) would have prohibited states from refusing to accept registration or ballot applications because they do not meet nonessential requirements, clarified postage markings on balloting materials, and would have amended the law concerning individuals who never lived in the United States, notification of the rejection of registration or ballot applications, and the use of the diplomatic pouch to transmit absentee ballots. H.R. 5673 (McCarthy) would have required the Secretary of Defense to collect marked absentee ballots from overseas uniformed services voters and to guarantee their delivery to the appropriate election officials before the polls close. The bill would also have encouraged the use of private providers of air transportation to deliver ballots, which would allow individual voters to track the progress of their voted ballot. S. 1487 (Feinstein) would have prohibited states from refusing to accept registration or ballot applications because they do not meet nonessential requirements and would have permitted accepting a federal write-in ballot from an overseas voter if it is submitted from a location in the United States. No action was taken on any of these measures.

Current Issues and Developments

The Overseas Vote Foundation published a report in February 2009 based on survey responses from approximately 24,000 UOCAVA voters and 1,000 local election officials. The report noted that there is “some evidence of overall progress” with respect to voting under UOCAVA, but that “progress is uneven, and the surveys point to numerous areas ripe for reform.”¹² For example, one in four respondents did not receive their requested absentee ballot; 8% of these voters used the federal write-in absentee ballot to vote, but 14% did not participate in the election (not all voters are aware that they may use the federal write-in ballot if they have requested a regular state ballot that does not arrive). Furthermore, more than half (52%) of those who tried to vote but failed to do so either received a late ballot or never received one at all.¹³

The Pew Center on the States issued a January 2009 report that examined the variety of state practices that can make casting a ballot difficult for UOCAVA voters and made recommendations for improving the voting process.¹⁴ Among its findings, the report noted that “25 states and Washington, D.C., need to improve their absentee balloting rules for military voters abroad,” and “the other 25 states would better serve these voters by giving them additional time to request and return their ballots as well.”¹⁵ The report recommended eliminating notarization requirements, expanding electronic transmission of election materials, expanding the use of the federal blank ballot if a regular ballot does not arrive in time, and providing for a period of at least 45 days to receive and return a ballot.

In October 2007, the Overseas Vote Foundation (OVF) launched a website to assist UOCAVA voters by providing a means to electronically register and request a ballot.¹⁶ The OVF, a nonpartisan, non-governmental entity, offers the necessary information to complete the application process for each of the states, including a database of local election officials to whom the applications must be delivered.

Reports on military and overseas voting in the 2006 election highlighted continuing challenges faced by these voters, despite the efforts of the past several years to improve voting rates. The GAO issued an evaluation of federal efforts to facilitate electronic absentee voting in June 2007¹⁷ and the EAC reported in September 2007 the results of its survey of military and overseas voters after the 2006 election.¹⁸ According to the EAC report, 33% of ballots requested by these voters were cast or counted in the election; of those that were not counted, nearly 70% were returned to election officials as undeliverable. GAO estimated that there were six million UOCAVA voters

¹² The Overseas Vote Foundation, 2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters and Election Officials Fared in the 2008 General Election and What To Do About It, February 2009; it made be found at https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf.

¹³ Ibid., p. 5.

¹⁴ The Pew Center on the States, *No Time to Vote: Challenges Facing America’s Overseas Military Voters*, January, 2009; the report may be found at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/NTTV_Report_Web.pdf.

¹⁵ Ibid.

¹⁶ The OVF website can be found at <https://www.overseasvotefoundation.org/overseas/home.htm>.

¹⁷ The GAO report may be found at <http://www.gao.gov/new.items/d07774.pdf>.

¹⁸ The EAC report may be found at <http://www.eac.gov/clearinghouse/2006-uniformed-and-overseas-citizens-voting-act-survey-and-conference-materials/>.

and its report outlined a series of recommendations to DoD (the FVAP) and the EAC for electronic solutions to overcome the obstacles posed by time and distance.

The Defense Authorization Act for FY2007, signed into law on October 17, 2006, as P.L. 109-364, included a number of provisions on military and overseas voting. It continued the Integrated Voting Assistance System (IVAS) for military voters and employees of the Department of Defense through the 2006 elections and required reports from the Comptroller General on IVAS and other efforts to utilize electronic mail, facsimile transmission, and the Internet to facilitate registration and voting. The Government Accountability Office (GAO) issued a report in September 2006, which noted that two major challenges remained with respect to (1) simplifying and standardizing absentee voting across the states, and (2) developing a secure electronic registration and voting system.¹⁹

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¹⁹ The GAO report can be found at <http://www.gao.gov/htext/d061134t.html>.