



September 4, 2020

Absentee Voting for Uniformed Services and Overseas Citizens: Roles and Process, In Brief

Members of the military, their families, and overseas U.S. citizens face unique voting challenges. These can include delays in receiving or transmitting balloting materials; uncertainty about voter eligibility; and varying state, territorial, and local requirements. This CRS In Focus provides congressional readers with an overview of the federal statute designed to aid these voters, and their typical registration and voting process. It does not contain legal analysis and is not intended to provide guidance to individual voters.

Overview of the Current Statute

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA; 52 U.S.C. §§20301-20311) is the only federal statute devoted specifically to voting access for members of the military and other uniformed services, and other overseas citizens. (Other federal elections and voting statutes not covered in this CRS product also could have implications for these voters.) Congress enacted UOCAVA in 1986 and most recently substantially amended the statute in 2009, through provisions in the FY2010 National Defense Authorization Act (NDAA; P.L. 111-84). The 2009 language (Title V, Subtitle H of the NDAA) was titled the Military and Overseas Voter Empowerment (MOVE) Act.

UOCAVA is designed to make it easier for uniformed servicemembers and overseas citizens to register and vote in federal elections, provided that they are otherwise qualified to do so. Perhaps most notably, UOCAVA requires states and some other jurisdictions (discussed below) to permit covered voters to register to vote absentee, and requires the federal government to expedite transmission of completed ballots.

Federal Responsibilities

Highlights of current *federal government* UOCAVA responsibilities include the following.

- A 1988 executive order designates the Secretary of Defense to administer UOCAVA. Currently, daily responsibility for doing so rests with the Federal Voting Assistance Program (FVAP) and that office's Director. FVAP administers military and civilian aspects of the statute.
- UOCAVA requires the FVAP Director to coordinate with the U.S. Postal Service to develop procedures to "expedite" delivery of delivery of completed ballots in time for those ballots to be counted, provided that they are received for transmission at least seven days before the election. Referencing postal law (39 U.S.C. § 3406), UOCAVA requires balloting materials to be transmitted

postage-free. Voters may be responsible for covering the cost of foreign postage or a commercial carrier, if applicable.

- The U.S. Department of Justice (DOJ) may enforce compliance with UOCAVA through litigation.
- FVAP prescribes the Federal Post Card Application (FPCA) and Federal Write-In Absentee Ballot (FWAB), discussed below.
- FVAP consults with and educates state, territorial, and local election officials about their obligations under the act, and provides information to covered voters.

State Responsibilities

Highlights of current *state government* UOCAVA responsibilities include the following. Exemptions can apply in specific circumstances.

- States must permit UOCAVA voters to vote and use absentee registration procedures in federal elections.
- States must accept and process voter registration and absentee ballot applications, if the voter makes a valid request at least 30 days before the election.
- States must transmit absentee ballots to UOCAVA voters no later than 45 days before a federal election, if the voter makes a valid request that is received at least 45 days before the election.
- States must transmit absentee ballots per state law, if the voter makes a valid request less than 45 days before a federal election, and, "if practical," at state discretion, "in a manner that expedites the transmission."
- States must establish procedures for transmitting ballots by mail and electronically, and must provide UOCAVA voters with an option to designate a preferred transmission method. States must send blank ballots electronically (or make them available online) at the voter's request.
- Because UOCAVA voters may print election materials themselves, states may not reject otherwise validly completed Federal Write-In Absentee Ballots solely because they do not comport with a state's requirements for envelopes, paper weight, or notarization.

Voters the Statute Covers

UOCAVA covers two groups of citizens: one that is primarily members of the military and the other that is primarily private citizens. The statute classifies these as (1)

absent uniformed services voters and certain dependents; and (2) overseas voters. In both cases, UOCAVA covers only certain voters who are away from their voting residence (discussed below) on Election Day because of their active-duty status, or, for overseas citizens, outside the United States.

Absent uniformed services voters are primarily active-duty military members who are away from their voting residence, even if they are stationed inside the United States. These include members of the U.S. Air Force, Army, Coast Guard, Marine Corps, and Navy. (UOCAVA predates establishment of the U.S. Space Force. The new branch is housed within the Department of the Air Force.) Several states have chosen to extend UOCAVA protections to their National Guard members who are on active-duty status under state orders.

- The *absent uniformed services voter* definition also includes members of the merchant marine and commissioned officers of the U.S. Public Health Service and of the National Oceanographic and Atmospheric Administration (NOAA). UOCAVA applies to these voters who are absent from their voting residence because of their service.
- UOCAVA also covers *uniformed services* spouses or dependents who also are absent from their normal voting residence because of the uniformed servicemember's service.

Overseas voters who are not covered by the *uniformed services voter* definition, but who are covered by UOCAVA, include those Americans who reside abroad but who remain eligible to vote in their U.S. voting residence (e.g., federal employees stationed in foreign countries, students studying abroad, U.S. citizens who live abroad, etc.).

Jurisdictions the Statute Covers

The UOCAVA *state* definition includes the 50 states, the District of Columbia, and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. The statute does not cover the Commonwealth of the Northern Mariana Islands (CNMI). (There were no federal elections in the territory when Congress enacted UOCAVA.)

UOCAVA Voting Process

Per the U.S. Constitution and federal law, and federalism principles, states have the initial and principal responsibility for administering federal elections. UOCAVA requires those jurisdictions to provide the protections noted herein to covered voters. It does not otherwise change the way in which states, territories, and localities administer elections. Election jurisdictions remain responsible for communicating with voters; establishing registration and voter eligibility requirements (consistent with relevant federal law, such as the Voting Rights Act); and counting ballots.

Where UOCAVA Voters Register and Vote

The location in which the voter registers and casts a ballot generally is called the “voting residence.” This location

varies depending on a voter's individual circumstances. Often, it is the permanent U.S. address at which the voter is eligible to vote, or the last U.S. location in which the person lived (was “domiciled”) and was eligible to vote before moving to the current duty station or moving abroad. Importantly, casting a ballot in state or local elections can have tax and other legal residency implications that are beyond the scope of this CRS product, but that may be relevant for individual voters.

How UOCAVA Voters Register and Vote

Like traditional absentee voting, UOCAVA voting typically involves three major steps: (1) registering to vote; (2) requesting an absentee ballot; and (3) returning an absentee ballot. Because individual processes vary by state, election jurisdictions typically conduct specific outreach to UOCAVA voters. FVAP, military services, and U.S. embassies and consulates also conduct educational and outreach campaigns for UOCAVA voters. In addition, UOCAVA requires FVAP to establish an online database of state-specific information for registering to vote and requesting an absentee ballot (see <https://www.fvap.gov/>).

The Federal Post Card Application

UOCAVA prescribes the Federal Post Card Application (FPCA) for covered-voter registration, updating voter contact information, and requesting an absentee ballot in a single step. FVAP administers producing the FPCA and makes copies available in print and online.

The Federal Write-In Absentee Ballot

Normally, UOCAVA voters receive and return the same absentee ballot as other voters in the jurisdiction. A UOCAVA voter registered in St. Louis County, Missouri, for example, typically would receive and vote a St. Louis County ballot, complete with federal, state, and local races, ballot initiatives, etc. In addition, UOCAVA specifies a Federal Write-In Absentee Ballot (FWAB) as an emergency “back-up” for federal contests. Voters may use the FWAB if their state ballot does not arrive in time to cast a vote, or if the completed ballot is not received at the election jurisdiction. UOCAVA generally requires (unless states receive approval for their own absentee ballots) that states accept the FWAB for elections for federal office.

Returning the Ballot

Voters generally may return completed absentee ballots or FWABs by mail, commercial carrier (e.g., FedEx or UPS), or fax. Depending on a voter's location, mail transmission can involve handling by the U.S. Postal Service, the Military Postal Service Agency (MPSA), or a foreign postal service. Some states permit UOCAVA voters to return scanned ballots by email or online portal. Fax and online transmission typically requires the voter to sign a waiver acknowledging that traditional ballot secrecy cannot necessarily be maintained. Completed UOCAVA ballots must be transmitted expeditiously, postage-free, if using U.S. mail.

R. Sam Garrett, Specialist in American National Government

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.