



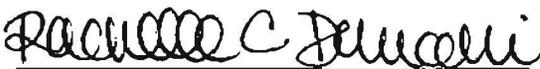
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August 29, 2012

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 12263

TO: All County Clerks/Registrars of Voters

FROM: 
Rachelle Delucchi
Elections Counsel

RE: General Election: UOCAVA/MOVE Act Training and FVAP Training
Questions and Answers

As part of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Military and Overseas Voter Empowerment (MOVE) Act training conducted by the Secretary of State's office, county elections officials and select members of their staff also completed an online training module developed by the Federal Voting Assistance Program (FVAP).

Following the training session conducted by our office and the completion of FVAP's training module, a number of questions and requests for clarification have arisen. The answers to those questions and to others that are likely to come up are provided below.

**UOCAVA/MOVE Act Training and FVAP Training
Questions and Answers**

Q: Does the UOCAVA apply to military domestic/stateside voters, as well as military overseas voters?

A: Yes. All absent military voters, domestic and overseas, their spouses and their dependants are UOCAVA voters and county elections officials are required by federal law to mail absentee ballots to those voters no later than E-45.

The definition of absent is found in the UOCAVA: absent from the place of residence where the member/spouse or dependant is otherwise qualified to vote. (U.S.C. 42, §1973ff-6 (1).) Moreover, the FVAP training module specifically states that "[a] uniformed service member who is living within her voting jurisdiction" is not eligible to vote under the federal UOCAVA absentee voting process. That service member can, however, submit a state voter registration form and apply for a regular vote-by-mail ballot.

Q: If a person completes a Federal Post Card Application (FPCA) and lists an address within the county in the box labeled "Address where you live now," should the county elections official register the person as a UOCAVA voter?

A: No. The county elections official should register the person as a voter, but not mark them as a UOCAVA voter because they are not "absent." The county elections official should contact the voter and let them know that they are registered and will be treated as a regular vote-by-mail voter and that the ballot will be mailed to the address the voter filled in as the "Address where you live now."

Q: If a person submits a voter registration form and lists a foreign address as their mailing address, should the county elections official register that person as a UOCAVA voter and send an absentee ballot and/or an FPCA to the voter?

A: The county elections official should register the person as a UOCAVA voter. If there is enough time prior to E-60 to contact the voter and have them submit an FPCA, the county elections official should take that course of action. If it is close to E-60, the county elections official should send the voter a ballot by E-45 along with an FPCA.

Q: Are county elections officials required to distinguish between military domestic/stateside voters and military overseas voters and track them separately in their election management system (EMS)?

A: Yes. When a county elections office files its UOCAVA/MOVE Act reports to the U.S. Election Assistance Commission, it is required to distinguish between these two groups of voters.

Q: What is the difference between the two categories of overseas citizen voters?

A: An overseas citizen voter should be provided a full ballot – one that includes all federal, state, and local contests – if they complete the Federal Post Card Application (FPCA) and check:

"I am a U.S. citizen residing outside the U.S., and I intend to return."

- or -

"A U.S. citizen residing outside the U.S. temporarily."

An overseas citizen voter should be provided with a federal-only ballot – one that includes only the federal offices of President, U.S. Senate, and U.S. Congress – if they complete the FPCA and check:

"I am a U.S. citizen residing outside the U.S., and I do not intend to return."

- or -

"A U.S. citizen residing outside the U.S. indefinitely."

Q: When a UOCAVA voter submits an FPCA, how long is that application valid in California?

A: Under California law, the FPCA application is valid unless the voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections.

When the MOVE Act was signed into law, it removed the provision in the UOCAVA that allowed an FPCA to be considered an application for an absentee ballot for the following two regularly scheduled federal elections.

The UOCAVA is now silent regarding how long the FPCA is valid.

California Elections Code section 3100 provides that when a voter, who qualifies as a special absentee voter (a UOCAVA voter), applies for a vote-by-mail ballot, the application shall be deemed to be an affidavit of registration and an application for permanent vote-by-mail status.

Sections 3200 and 3201 state that a voter who is eligible and qualifies as a vote-by-mail voter shall be entitled to become a permanent vote-by-mail voter.

Section 3206 states that if a permanent vote-by-mail voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections, the voter's name shall be deleted from the permanent vote-by-mail list.

Q: Does a voter who is on vacation overseas and who will be absent from the county on Election Day become a UOCAVA voter?

A: No. Under the law, any California voter who will be away from their home on Election Day – regardless of whether they'll be in another town, city, state, or country – can apply for and cast a vote-by-mail ballot.

Under UOCAVA, an overseas voter who must cast a special absentee ballot is defined as: (A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved; (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States. (U.S.C. 42, §1973ff -6 (5).)

Q: Does the federal write-in absentee ballot (FWAB) or the “military and overseas voter generic absentee ballot” satisfy the UOCAVA/ MOVE Act requirement to mail UOCAVA voters an absentee ballot by E-45?

A: No. Under the UOCAVA, when a voter requests an absentee ballot, they are requesting an absentee ballot, not a write-in absentee ballot. Moreover, pursuant to the UOCAVA, the FWAB is designed as a “fail-safe” ballot that the UOCAVA voter should access directly. It is not intended to be a document that the county elections official sends to the UOCAVA voter. In federal elections, which are covered by the UOCAVA, the Secretary of State’s office will not issue the military and overseas voter generic absentee ballot.

Q: In California, does the submission of a FWAB act as voter registration for an unregistered UOCAVA voter?

A: Yes, if the submitter checks the box on the FWAB that indicates they would like to register to vote and/or request an absentee ballot. Elections Code section 3111 provides: “Whenever by any statute of the United States [i.e., the UOCAVA], provision is made for vote by mail, an application for a vote by mail ballot under that law may be given the same effect as an application for a vote by mail ballot under this code.”

Pursuant to Elections Code sections 3100 and 3104, a special absentee (UOCAVA) voter’s application for a vote by mail ballot deems it to be an affidavit of registration. Therefore, if a UOCAVA voter checks the above-indicated FWAB box, one effect of which is to “request an absentee ballot for all elections in which I am eligible to vote,” the Elections Code deems the FWAB to be an affidavit of registration.

Q: If a UOCAVA voter submits a FWAB and then timely submits a voted absentee ballot, should the absentee ballot be counted?

A: Yes. This scenario is specifically covered under the UOCAVA (U.S.C. 42, §1973ff -2 (b)(3)) and is also addressed on FVAP’s California page.

Q: Can permanent overseas voters (the voters who receive the federal-only ballot) return their ballots via fax?

A: No. Under Elections Code section 3103.5, only special absentee voters who are “temporarily living outside” of the U.S. can return their ballots via fax.

Q: Must county elections officials include all contests (e.g., school districts, special districts, local bond measures) with the ballot they send to non-permanent UOCAVA voters at E-60?

A: Yes. While permanent overseas voters receive federal-only ballots, those UOCAVA voters who are overseas temporarily are entitled to vote on all candidates and

measures for which the voters is qualified to vote. Therefore, the county elections officials must include all contests on the ballot. (See Elections Code section 3103(b).)

Q: If a UOCAVA voter indicates a certain political party for a contest, but not a candidate, should the elections official count the vote for the candidate running for that party?

A: County elections officials should make every attempt to contact the voter for clarification. If that is not successful, county elections officials are permitted to count the vote for the candidate of that party, assuming there is only one candidate of the indicated party. No votes could be cast for nonpartisan offices or for candidates who state no party preference (NPP).

Q: Can UOCAVA voters return their voted absentee ballots by email?

A: No. Under Elections Code section 3103.5, a UOCAVA voters can return their voted absentee ballots by mail or fax only.

If you have any questions, please feel free to contact me at rachelle.delucchi@sos.ca.gov or (916) 651-6971. Thank you.