

Email Addresses Still Only Good For Two Years Under AB 1417

California's adoption of the Uniform Military and Overseas Voters Act (UMOVA) in 2012 (AB 1805 (Chapter 744, Statutes of 2012)) gave military and overseas voters permanent vote-by-mail voter status, eliminating the requirement that they complete a new Federal Post Card Application (FPCA) every two years in order to receive a ballot.

However, voters who ask to receive their ballots by email are treated differently than those who ask to receive their ballots by mail or fax because UMOVA also added a two-year "expiration" date for military and overseas voters' email addresses. Specifically, Elections Code section 3120 provides that when a military or overseas voter registers to vote and requests a ballot to be delivered by email, that request is only good for a maximum of two years. After that time period, county elections officials are precluded from sending a ballot to the email address on file for the voter.

Unfortunately, AB 1417 did not fix this problem. County elections officials must, therefore, set up a system in order to avoid emailing ballots to voters after the legal authority to send ballots to their email addresses has expired.

The Secretary of State is committed to sponsoring legislation in 2014 to remove this limitation that threatens to disenfranchise military and overseas voters. In the meantime, the Secretary of State advises county elections officials to comply with the current law by:

- 1) Setting up a tracking system to alert them when the legal authority to send a ballot to the email address of military or overseas voter is about to expire;
- 2) Setting up procedures to notify each of these voters before the legal authority to send a ballot to their email address expires and to ask the voter to renew the email address, provide a new email address, or provide a mailing address or fax number, if not already on file, to receive a ballot; and
- 3) Creating a system to ensure the affected voters are retained on the voter rolls even though the legal ability to send them a ballot by email has expired.

Modified Declaration on Return Envelope

The Secretary of State's office has modified the declaration that appears on the Military and Overseas Voter Return Envelope. (See, Elections Code sections 3101(e) and 3118 and attached language for the return envelope, which can be formatted to fit envelope templates.) This modified declaration specifically requires military or overseas voters to declare that they are absent from their voting jurisdiction. This added language should alert voters, who are no longer absent from their voting jurisdiction and therefore no longer classified as "military or overseas voters," to re-register.

UOCAVA/MOVE Act Training and FVAP Training Questions and Answers

In July 2012, the Secretary of State's office conducted training on the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the MOVE Act and followed up with [CC/ROV #12263](#) and [CC/ROV #13206](#) to provide further guidance to county elections officials.

Following the adoption of AB 1417, the Secretary of State has decided to update the prior guidance given in CC/ROVs [#12263](#) and [#13206](#). This update will apply beginning January 1, 2014.

Updated Q1: Does the UOCAVA apply to military domestic/stateside voters, as well as military overseas voters?

A1: Yes. All absent military voters (domestic and overseas), their spouses, and their dependants are UOCAVA voters and county elections officials are required by state and federal law to transmit vote-by-mail ballots to these voters no later than Saturday, 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).) Elections Code section 300(b) defines, in part, a military or overseas voter as an elector absent from the county in which he or she is otherwise eligible to vote.

Moreover, the Federal Voters Assistance Program's (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.

Updated Q2: If a person completes a Federal Post Card Application (FPCA) or registers as a military or overseas voter through the California Online Voter Registration (COVR) application 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?

A2: 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."

Updated Q3: 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 a vote-by-mail ballot and/or an FPCA to the voter?

A3: Yes. If there is enough time prior to E-60 to contact the voter and have them register using COVR or 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 or a link to COVR.

Q4: 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)?

A4: 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.

Q5: Is there a difference between the two categories of overseas citizen voters?

A5: No. All military and overseas voters are entitled to receive and vote a full ballot, one that includes all federal, state, and local contests.

Updated Q6: When a UOCAVA voter submits an FPCA or an application through COVR, how long is that application valid in California?

A6: Under California law, an FPCA/COVR application is valid unless the voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections. The federal UOCAVA is now silent on this issue.

California Elections Code section 3102 provides that when a person who qualifies as a military or overseas (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 provides that a voter's name shall be deleted from the permanent vote-by-mail list if the permanent vote-by-mail voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections.

Q7: Does a voter, who is on vacation overseas and who will be absent from the county on Election Day, become a UOCAVA voter?

A7: No. Under the law, any California voter who will be away from their home on Election Day – regardless of whether they will 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).)

Additionally, Elections Code section 300(b)(2) defines, in part, a military or overseas voter as a “citizen of the United States living outside of the territorial limits of the United States or the District of Columbia.”

Updated Q8: Does the Federal Write-In Absentee Ballot (FWAB) or the “military and overseas voter generic absentee ballot” satisfy the UOCAVA/MOVE Act requirement to transmit UOCAVA voters a vote-by-mail ballot by E-45?

A8: No. Under the UOCAVA, when a voter requests a vote-by-mail ballot, they are requesting a vote-by-mail ballot, not a write-in 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. The Secretary of State’s office is no longer permitted to issue a military and overseas voter generic absentee ballot.

Q9: In California does the submission of a FWAB act as voter registration for an unregistered UOCAVA voter?

A9: Yes. If the submitter checks the box on the FWAB that indicates they would like to register to vote and/or request a vote-by-mail ballot, the FWAB will act as voter registration for that submitter. Elections Code section 3112 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 section 3102, a military or overseas (UOCAVA) voter's application for a vote-by-mail ballot is deemed 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.

Q10: If a UOCAVA voter submits a voted FWAB and then timely submits a voted vote-by-mail ballot, should the vote-by-mail ballot be counted?

A10: 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.

Updated Q11: Can permanent overseas voters return their ballots via fax?

A11: Yes. There is no longer a distinction between overseas voters; all military and overseas voters are entitled to a full ballot. Additionally, Elections Code section 3106 provides that any "military or overseas voter who is living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a vote by mail ballot, may return his or her ballot by facsimile transmission."

Q12: 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?

A12: Yes. There is no longer a distinction between overseas voters; all military and overseas voters are entitled to receive and vote a full ballot for which the voters are qualified to vote. Therefore, the county elections officials must include all contests on the ballot. (See Elections Code section 3102(a).)

Q13: 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?

A13: Yes. 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).

Updated Q14: Can UOCAVA voters return their voted vote-by-mail ballots by email?

A14: No. Under Elections Code section 3106, UOCAVA voters can return their voted vote-by-mail ballots by mail or fax only. For information on which UOCAVA voters can return their ballots by facsimile transmission, see Q11 and A11.

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You can find the full text of AB 1417 at www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1401-1450/ab_1417_bill_20040918_chaptered.pdf.

If you have any questions, please feel free to contact Rachelle Delucchi at Rachelle.Delucchi@sos.ca.gov / (916) 651-6971 or Robbie Anderson at Robbie.Anderson@sos.ca.gov / (916) 653-1690. Thank you.

Military or Overseas Voter Return Envelope

**Official Vote-By-Mail Ballot – to be opened ONLY BY Election Canvassing Board.
Voting more than once in the same election is a crime.**

Return your vote-by-mail ballot to the Elections Department or to any polling place in
_____(insert)____ County **no later than 8 p.m. on Election Day.**
Your ballot will not be counted if received after 8 p.m., **regardless of postmark.**
WARNING: Your ballot will not be counted unless you sign below in your own handwriting
and your signature compares with your signature on your voter registration card.

I declare as follows:

- I am absent from the California county where I am registered to vote; and
- I am a 1) member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; a Merchant Marine; a member of the United States Public Health Service Commissioned Corps; a member of the National Oceanic and Atmospheric Administration Commissioned Corps of the United States; or a member on activated status of the National Guard or state militia; or 2) an eligible spouse or dependent of such person; or 3) an eligible U.S. citizen living outside of the territorial limits of the U.S. or the District of Columbia; and
- I am a U.S. citizen, at least 18 years of age or older on Election Day, and I am eligible to vote in the California jurisdiction in which I am voting with the enclosed/attached voted ballot; and
- I am not in prison, on parole, serving a state prison sentence in county jail, serving a sentence for a felony pursuant to subdivision (h) of California Penal Code section 1170, or on post release community supervision; and
- I have not been found by a court to be mentally incompetent, or if so, my voting rights have been reinstated; and
- I am not registering, requesting a ballot, or voting in any other jurisdiction in the U.S., except the California jurisdiction cited in this enclosed/attached ballot; and
- I am the person whose name appears on this envelope.

I understand that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the State of California or the U.S.

I declare under penalty of perjury under the laws of the State of California or the U.S. that the foregoing is true and correct

YOU MUST SIGN BELOW OR YOUR BALLOT CANNOT BE COUNTED

X _____
Your signature as registered to vote (Power of Attorney NOT ACCEPTABLE)

Print your name Date of signing

Residence address as registered in _____(insert)_____ County – NOT Mailing Address

AUTHORIZED AGENT

I am unable to return my ballot and hereby authorize:

Name of person returning ballot

Relationship (Circle one): spouse, child, parent, grandparent, grandchild, brother, sister, or household member.