

FAQ #5

QUESTION:

DO THE IDENTIFICATION REQUIREMENTS OF HAVA SECTION 303(b) APPLY TO MILITARY AND OVERSEAS VOTERS WHO VOTE-BY-MAIL?

ANSWER:

NO, EXCEPT FOR NON-MILITARY “OVERSEAS VOTERS” WHO ARE ONLY OVERSEAS “TEMPORARILY.”

ANALYSIS:

HAVA Section 303(b) requires certain first time voters who register by mail to provide identification before voting in person or by mail. There are, however, exceptions specified in HAVA which exempt certain voters from having to show identification. One of the exceptions is set forth in Section 303(b)(3)(C)(i) which makes the identification inapplicable to a person who is “entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.).

The *Uniformed Overseas Citizens Absentee Voting Act* (“Act”) provides that each state shall “permit absent uniformed service voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.”
[emphasis added]

The Act defines “absent uniformed service voter” as:

- (A) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;
- (B) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) A spouse or dependent of a member referred to in (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

[42 U.S.C. 1973ff-6(1)]

The Act defines “overseas voter” 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. [emphasis added]

[42 U.S.C. 1973ff-6(5)]

Thus, under these provisions of law, the HAVA identification requirements, generally, do not apply to military personnel or to their dependents who are overseas or to California voters residing overseas who were last qualified to vote in California. However, it appears that the identification requirements do apply to non-military California residents only temporarily overseas. It should be noted that those subject to the identification requirements who do not present identification are entitled to vote “provisional” ballots.