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County Clerk/Registrar of Voters (CC/ROV) Memorandum # 13026

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rachelle Delucchi
Elections Counsel

RE: Military and Overseas Voters: Assembly Bill 1805

The enactment of Assembly Bill 1805 (AB 1805) (Chapter 744, Statutes of 2012) means some of the county elections officials' duties and procedures with respect to military and overseas voters have changed.

Below are some of the highlights of the new law and revisions to guidance previously provided in CC/ROV #12263, issued on August 29, 2012.

New Duties and Procedures for County Elections Officials Under AB 1805

- The term "special absentee voter" has been replaced with "military or overseas voter" and now includes citizens born outside of the U.S., whose parents or guardians were residents of California when they last lived in the U.S. (Elections Code sections 300, 321)
- A newly required declaration, to appear on a Military and Overseas Voter Return Envelope, must be included with the ballot that is mailed to the voter and must be signed and returned by the voter in order for their ballot to be counted. (See attached language for the envelope; the language can be formatted to fit envelope templates.) (Elections Code sections 3101(e) and 3118)
- The concept of "federal only" voters is gone. Now all military and overseas voters are entitled to receive and vote a full ballot. (Elections Code section 3102)
- Ballots must be transmitted to military and overseas voters by Friday, E-46. In cases where a federal office is on the ballot, if additional requests are received on E-45, additional ballots must be transmitted on E-45. (Elections Codes sections 3105(b)(1) and 3114(a))
- The Secretary of State's office is no longer permitted to issue a military and overseas voter generic absentee ballot in any election. Instead, the county elections

official must provide the specific ballot to be used by the military or overseas voter. (Elections Codes section 3105(b)(1))

- Any military or overseas voter, for any election for which the voter is eligible to cast a ballot, can use the Federal Write-In Absentee Ballot (FWAB). (Elections Code sections 3105(b)(2) and 3116)
- Any military or overseas voter, living outside of the territorial limits of the U.S. or D.C. or who 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 fax. (Elections Code section 3106(a))
- Elections officials shall request an email address from each military or overseas voter who registers to vote after January 1, 2013. If a voter requests his or her ballot to be delivered electronically, that can be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies. An elections official shall provide a ballot electronically to a military or overseas voter who makes a standing request for each election to which the request is applicable. A military or overseas voter who is entitled to receive a ballot electronically for a primary election is entitled to receive a military or overseas ballot electronically for the general election. (Elections Code section 3120)
- As soon as practicable before an election, each elections official shall publish on his or her Internet Web site a list of all of the ballot measures and federal, state, and local offices that, as of that date, the elections official expects to be on the ballot on the date of the election. The list shall also contain specific instructions for how a voter is to indicate on a federal write-in absentee ballot their choice for each office to be filled and for each ballot measure to be contested.

If a military or overseas voter requests a copy of the list, the elections official shall send the list to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

Not later than E-60 before a regularly scheduled election and as soon as practicable before a special election, the elections official shall update on his or her Internet Web site the list with the certified candidates for each office and certified ballot measures and make the updated list publicly available. (Elections Code section 3121)

- A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this chapter on application by either a military or overseas voter, or an elections official. (Elections Code section 3123)

**Current Practices and/or Procedures Required Under UOCAVA/MOVE Act
Codified in the Elections Code (applies to all elections)**

- The elections official for each district shall ensure that his or her jurisdiction has available a system that would allow a military or overseas voter to electronically request and receive a vote-by-mail application, an unvoted ballot, and other information. (Elections Code section 3101(c))
- Elections officials shall implement an electronic free access system by which a military or overseas voter may determine by telephone, electronic mail, or Internet whether the military or overseas voter's ballot has been received. (Elections Code 3119)
- If a military or overseas voter uses California Online Voter Registration (COVR), a Federal Post Card Application (FPCA), or a FWAB to register to vote, the application must be postmarked or time stamped on or before E-15. If any of those applications are being used solely as an application for a vote-by-mail ballot, the application must be received on or before E-7. (Elections Code section 3102(e))
- When an application from a military or overseas voter arrives after E-45, the elections official shall transmit a ballot and materials to the voter "as soon as practicable." (Elections Code section 3114(b))
- On a FWAB, if the intention of the voter is discernible under the definition of what constitutes a vote and the ballot is eligible to be counted pursuant to Election Code sections 3019 and 3106, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote. (Elections Code section 3122)

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

As a result of AB 1805, many of the answers provided in CC/ROV #12263, issued on August 29, 2012, must be updated. Below are the previously set forth 14 questions and answers that were addressed in CC/ROV #12263, with updated information, as needed.

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 law to transmit vote-by-mail ballots to these voters no later than Friday, E-46. In cases where a federal office is on the ballot, if additional requests are received on E-45, additional ballots must be transmitted on 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 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.

No Update Q2: 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?

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: 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-46 along with an FPCA. In cases where a federal office is on the ballot, if additional requests are received on E-45, additional ballots must be transmitted on E-45 and county elections official should send along an FPCA.

No Update 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.

Updated Q5: What is the difference between the two categories of overseas citizen voters?

A5: There is no longer a difference between the two categories of overseas citizen voters. 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, how long is that application valid in California?

A6: 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 3102 provides that when a voter, 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.

Updated 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 and the state law requirement to transmit ballots by E-46?

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.

Updated 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. 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.

Updated 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 (the voters who receive the federal-only ballot) return their ballots via fax?

A11: 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.”

Updated 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).)

No Update 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: 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.

You can find the full text of the bill at www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1801-1850/ab_1805_bill_20120929_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 a 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 an eligible spouse or dependent of such person; or 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.