



The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues

Kevin J. Coleman
Analyst in Elections

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Summary

Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, P.L. 99-410, 42 U.S.C.1973ff) of 1986. The law was enacted to improve absentee registration and voting for this group of voters and to consolidate existing laws. Since 1942, a number of federal laws have been enacted to assist these voters: the Soldier Voting Act of 1942 (amended in 1944), the Federal Voting Assistance Act of 1955, the Overseas Citizens Voting Rights Act of 1975 (both the 1955 and 1975 laws were amended in 1978 to improve procedures), and the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The law is administered by the Secretary of Defense, who delegates that responsibility to the director of the Federal Voting Assistance Program at the Department of Defense (DOD).

Improvements to UOCAVA (P.L. 99-410) were necessary as the result of controversy surrounding ballots received in Florida from uniformed services and overseas voters in the 2000 presidential election. The National Defense Authorization Act for FY2002 (P.L. 107-107; S. 1438) and the Help America Vote Act (P.L. 107-252; H.R. 3295) both included provisions concerning uniformed services and overseas voting. The President signed P.L. 107-107 on December 28, 2001, and P.L. 107-252 on October 29, 2002. The Ronald W. Reagan Defense Authorization Act for FY2005 (P.L. 108-375) amended UOCAVA as well, to ease the rules for use of the federal write-in ballot in place of state absentee ballots, and the John Warner National Defense Authorization Act for FY2007 (P.L. 109-364) extended a DOD program to assist uniformed services and overseas voters.

In the 111th Congress, a major overhaul of UOCAVA was accomplished when the President signed the National Defense Authorization Act for FY2010 (P.L. 111-84) on October 28. It included an amendment (S.Amdt. 1764) that contained the provisions of S. 1415, the Military and Overseas Voter Empowerment Act. The Senate had approved the conference committee report (H.Rept. 111-288) on the defense authorization act (H.R. 2647) on October 22 and the House had done so on October 8. Also on the House side, the Committee on House Administration reported H.R. 2393, which would require the collection and express delivery of ballots from overseas military voters before the polls close on election day. A similar provision was included in the defense authorization act as enacted.

This report will be updated periodically to reflect new developments.

Contents

| | |
|---|----|
| Historical Overview | 1 |
| Summary of the Law | 1 |
| Provisions of the Military and Overseas Voter Empowerment Act of 2010..... | 4 |
| The Federal Voting Assistance Program..... | 8 |
| FVAP Programs Since 2000 to Encourage Voting Participation..... | 8 |
| Voting Over the Internet (VOI)..... | 8 |
| Secure Electronic Registration and Voting Experiment (SERVE)..... | 9 |
| Interim Voting Assistance System and Integrated Voting Alternative Site (IVAS) | 10 |
| Legislation | 11 |
| 111 th Congress | 11 |
| 110 th Congress | 12 |
| Current Issues and Developments..... | 12 |

Contacts

| | |
|----------------------------------|----|
| Author Contact Information | 14 |
|----------------------------------|----|

Historical Overview

A number of federal laws have been enacted since 1942 to enable those in the military and U.S. citizens abroad to vote in federal elections. The original law, the Soldier Voting Act of 1942 (P.L. 712-561), was enacted to guarantee federal voting rights for members of the armed forces during wartime. The law allowed members of the armed forces to vote for presidential electors, and candidates for the U.S. Senate and House, whether or not they were previously registered and regardless of poll tax requirements. The law provided for the use of a postage-free, federal post card application to request an absentee ballot; it also instructed secretaries of state to prepare an appropriate number of “official war ballots,” which listed federal office candidates, as well as candidates for state and local office if authorized by the state legislature. The law “had almost no impact at all” as it was enacted on September 16, only weeks before the November general election.¹

Congressional authority to regulate state voting procedures expired once the war ended, as the law noted that its provisions applied “in time of war.”² The Soldier Voting Act of 1942 was amended in 1944. Under congressional war powers, the 1942 law *mandated* procedures for the states to permit service members to vote, but the amended law of 1944 *recommended* that states follow such procedures. The law was amended again in 1946 to include technical changes.

In 1951, President Truman asked the American Political Science Association (APSA) to study the military voting problem and make recommendations. APSA completed its study in 1952 and the President endorsed the association’s legislative recommendations, which were sent to Congress. The Federal Voting Assistance Act was subsequently enacted in 1955; it recommended, but did not guarantee, absentee registration and voting for members of the military, federal employees who lived outside the United States, and members of civilian service organizations affiliated with the armed forces. The law was amended in 1968 to include a more general provision for U.S. citizens temporarily residing outside the United States, expanding the number of civilians covered under the law. The Overseas Citizens Voting Rights Act of 1975 guaranteed absentee registration and voting rights for citizens outside the United States, whether or not they maintained a U.S. residence or address and their intention to return was uncertain.

Summary of the Law

The current law, the Uniformed and Overseas Citizens Absentee Voting Act (P.L. 99-410), was signed into law by President Reagan on August 28, 1986.³ It was amended by the Help America Vote Act (P.L. 107-252) in 2002, the National Defense Authorization Act of 2002 (P.L. 107-107), the Defense Authorization Act for FY2005 (P.L. 108-375), the Defense Authorization Act for FY2007 (P.L. 109-364), and the National Defense Authorization Act for FY2010 (P.L. 111-84). The main provisions of the law require states to do the following:

¹ U.S. Department of Defense, *The Federal Voting Assistance Program*, 11th Report (Washington: December 1977), p. 2.

² P.L. 56-393, Sec. 1.

³ 42 U.S.C. §1973ff-ff-6.

- Permit absent uniformed services voters, their spouses and dependents, and overseas voters who no longer maintain a residence in the United States to register absentee (overseas voters are eligible to register absentee in the jurisdiction of their last residence) and to vote by absentee ballot in all elections for federal office (including general, primary, special, and runoff elections).⁴ The National Defense Authorization Act of 2002 amended UOCAVA to permit a voter to submit a single absentee application in order to receive an absentee ballot for each federal election in the state during the year. The Help America Vote Act subsequently amended that section of the law to extend the period covered by a single absentee ballot application to the next two regularly scheduled general elections for federal office. The section was repealed in 2009 under the National Defense Authorization Act for FY2010. The Help America Vote Act also added a new section that prohibits a state from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processes applications for the year; this section was retained when the law was amended in 2009.⁵
- Accept and process any valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than 30 days before the election. The Help America Vote Act amended that section of the law to require a state to provide to a voter the reasons for rejecting a registration application or an absentee ballot request.⁶
- Furthermore, the law recommends that states accept the federal write-in absentee ballot for general elections for federal office (provided the voter is registered, has made a timely request for a state absentee ballot, the absentee ballot has not arrived with sufficient time to return it, and the ballot is submitted from outside the United States or its territories).⁷
- The law also stipulates that voting materials be carried “expeditiously and free of postage.”⁸ It recommends that states accept the Federal Post Card Application (FPCA) from uniformed services voters, their spouses and dependents, and overseas voters to allow for simultaneous absentee registration and to request an absentee ballot. While all states and territories accept the FPCA, some require that a voter submit the state registration form separately in order to be permanently registered. Other recommendations in the law suggest that states:⁹

⁴ Sec. 107 (1). An absent uniformed services voter is defined as follows: a member of a uniformed service on active duty or a member of the merchant marine who, by reason of such active duty or service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and a spouse or dependent of a member of a uniformed service or a member of the merchant marine who is absent from his or her place of residence where he or she is otherwise qualified to vote, because of the active duty or service of the member.

⁵ 42 U.S.C. §1973ff-1(1), as amended by section 1606 (b) of the National Defense Authorization Act of 2002, by section 704 of the Help America Vote Act of 2002, and by section 592 of the National Defense Authorization Act for FY2010.

⁶ 42 U.S.C. §1973ff-1(2), as amended by Section 707 of the Help America Vote Act of 2002.

⁷ 42 U.S.C. §1973ff-1(3).

⁸ The United States Postal Service domestic mail manual notes that “To be mailable without prepayment of postage, the balloting materials must be deposited at a U.S. post office, an overseas U.S. military post office, or an American Embassy or American Consulate.” The relevant section of the manual may be found under “Absentee Balloting Materials” at <http://pe.usps.com/text/dmm300/703.htm#wp1140123>.

⁹ 42 U.S.C. §1973ff-3.

- waive registration requirements for military and overseas voters who do not have an opportunity to register because of service or residence;
- send registration materials, along with an absentee ballot to be returned simultaneously, if the FPCA is not sufficient for absentee registration;
- expedite the processing of voting materials;
- permit any required oath to be administered by a commissioned officer in the military or by any official authorized to administer oaths under federal law or the law of the state where the oath is administered;
- assure mailing absentee ballots to military and overseas voters at the earliest opportunity; and
- provide for late registration for persons recently separated from the military.

In addition to the amendments to UOCAVA mentioned above, the Help America Vote Act of 2002 does the following:

- requires the Secretary of Defense to establish procedures to provide time and resources for voting action officers to perform voting assistance duties; establish procedures to ensure a postmark or proof of mailing date on absentee ballots; requires secretaries of the armed forces to notify members of the last day for which ballots mailed at the facility can be expected to reach state or local officials in a timely fashion; requires that members of the military and their dependents have access to information on registration and voting requirements and deadlines; and requires that each person who enlists receives the national voter registration form;
- amends UOCAVA to require each state to designate a single office to provide information to all absent uniformed services voters and overseas voters who wish to register in the state;
- amends UOCAVA to require states to report the number of ballots sent to uniformed services and overseas voters and the number returned and cast in the election; and
- amends UOCAVA to require the Secretary of Defense to ensure that state officials are aware of the requirements of the law and to prescribe a standard oath for voting materials to be used in states that require such an oath.

The Defense Authorization Act for FY2002 also included provisions that (1) required an annual review of the voting assistance program and a report to Congress; (2) guaranteed state residency for military personnel who are absent because of military duty; (3) continued the online voting pilot project begun for the 2000 elections; and (4) permitted the use of DOD facilities as polling places if they had previously been used for that purpose since 1996 or were designated for use by December 2000.

Provisions of the Military and Overseas Voter Empowerment Act of 2010

The latest revision of UOCAVA was signed into law by President Obama on October 28, 2009, as part of the National Defense Authorization Act for FY2010 (P.L. 111-84). Its provisions include the following:

- States are required to establish procedures to permit absent uniformed services voters and overseas voters to request voter registration and absentee ballot applications by mail and electronically for all federal elections.
- States are required to establish procedures to transmit, by mail and electronically, blank absentee ballots to absent uniformed services voters and overseas voters for federal elections.
- States are required to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter no later than 45 days before an election if the request is received at least 45 days before the election. A state can seek a hardship waiver from the requirement under certain circumstances.
- The presidential designee who administers the law (Secretary of Defense) is required to establish procedures to collect marked general election absentee ballots from absent overseas uniformed services voters for delivery to the appropriate election official.
- The use of the federal write-in absentee ballot for general elections has been broadened to include special, primary, and runoff elections as well.
- A state is prohibited from refusing to accept an otherwise valid voter registration application, absentee ballot application or marked absentee ballot from an absent uniformed services or overseas voter on the basis of notarization requirements or restrictions on paper or envelope type, including size and weight.
- The presidential designee is required to develop online portals of information to inform absent uniformed services voters about voter registration and absentee ballot procedures and make other improvements to the Federal Voting Assistance Program.
- The presidential designee is required to develop standards for states to report on the number of absentee ballots transmitted to and received from absent uniformed services and overseas voters and to develop standards to store such data.
- The act repeals subsections of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) which required states to process an official post card form as an absentee ballot request for the next two regularly scheduled general elections, if requested by the voter. The act would retain the subsection that prohibits a state from refusing to accept or process an otherwise valid registration or absentee ballot application because it was submitted before the date on which the state accepts such applications from absentee voters who are not members of the armed services.
- The presidential designee is required to report to relevant committees in Congress on the implementation of the program to collect and deliver marked

ballots from overseas uniformed services voters and to assess the Voting Assistance Officer program at the Department of Defense.

- The Attorney General is required to submit an annual report to Congress on any civil action brought with respect to UOCAVA during the preceding year.
- The act authorizes requirements payments under the Help America Vote Act to meet the new requirements of the act.
- The presidential designee may establish one or more pilot programs to test new election technology to assist absent uniformed services and overseas voters.

Most of the provisions of the MOVE Act are effective as of the November 2, 2010, general election. According to the National Conference of State Legislatures, 20 states have enacted legislation to comply with the new law or certain provisions of it, and in three others, bills approved by the legislature have been sent to the governor.¹⁰ A pressing issue for states that had late-occurring primaries is the requirement for absentee ballots to be mailed 45 days before a federal election. Hawaii's primary date was September 18, which is 45 days before the general election, and seven other states and the District of Columbia had primaries scheduled for the 14th of September, 49 days before the election (Delaware, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Wisconsin). The process for preparing and printing general election absentee ballots may take longer than several days for a number of reasons. Delays in tabulating results are not uncommon and the results must often be certified or otherwise validated before the names of winning candidates can be included on general election ballots. Election contests can cause further delays. States that changed the primary date in order to achieve compliance with the 45-day ballot availability requirement include Minnesota (August 10) and Vermont (August 24). In Hawaii, a bill to move the primary to the second Saturday in August was approved and signed by the governor, but it will not become effective until January 2011.

A state could obtain a waiver from the requirement if (1) the primary date prevents the state from complying, (2) a legal contest results in a delay in generating the absentee ballots or, (3) the state constitution prevents compliance. Twelve jurisdictions filed for a waiver, including Alaska (August 24), Colorado (August 10), Delaware, the District of Columbia, Hawaii, Maryland, Massachusetts, New York, Rhode Island, the Virgin Islands (September 11), Wisconsin, and Washington (August 17).¹¹ The Department of Defense issued a press release on August 27 announcing that waiver requests had been approved for five states (Delaware, Massachusetts, New York, Rhode Island, and Washington), and not approved for six jurisdictions (Alaska, Colorado, Hawaii, the Virgin Islands, Wisconsin, and the District of Columbia).¹² Maryland withdrew its waiver application on August 25, 2010. A few days before the general election, the state was ordered by U.S. District Judge Roger Titus to extend the deadline for receiving marked ballots from November 12 to November 22.¹³ Maryland reportedly sent ballots that listed federal

¹⁰ The following states enacted legislation to comply with the MOVE Act: Arizona, Florida, Georgia, Hawaii, Idaho, Indiana, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New York, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Virginia, and West Virginia. In Illinois, Louisiana, and New Hampshire, bills to comply with the MOVE Act have been sent to the governor.

¹¹ FOXNews.com, "DOJ Responds to Accusation of Stalling on MOVE Act for Voters in Military," August 4, 2010, available at <http://www.foxnews.com/politics/2010/08/04/doj-responds-accusations-ignoring-move-act/>.

¹² U.S. Department of Defense, Office of the Assistant Secretary of Defense, "DOD Announces Military and Overseas Voting Waivers," No. 775-10, August 27, 2010, which is available at <http://www.defense.gov/utility/printitem.aspx?print=http://www.defense.gov/releases/release.aspx?releaseid=13837>.

¹³ The Associated Press State & Local Wire, "Judge extends deadline for military ballots," October 30, 2010, which (continued...)

candidates only, in order to comply with the 45-day ballot availability deadline in the MOVE Act. A member of the Maryland National Guard sued the state board of elections, alleging that the state's actions denied overseas voters sufficient time to vote for state candidates (i.e., governor).

With respect to enforcement, the Department of Justice filed lawsuits against Illinois, New York, New Mexico, Wisconsin, and Guam to ensure that overseas military and civilian voters can fully participate in the November 2 election. In Illinois, various county election officials failed to send ballots by September 18 and also failed to send ballots electronically to voters who had requested that means of delivery; the ballots were instead sent by mail. The department reached an agreement with Illinois—announced on October 22—under which the state would extend the deadline for receiving voted ballots until November 16 (in six counties), extended the date such ballots must be postmarked from November 1 to November 2, and required counties to send ballots electronically to voters who had requested them. The department announced that it had reached an agreement with New Mexico on October 13; the lawsuit had alleged that election officials in six counties had violated federal law when they failed to send absentee ballots to military and overseas voters by September 18. The agreement extended the deadline for accepting ballots that were requested by September 18 from November 2 to November 6.¹⁴ New York had received a waiver on August 27, provided ballots were transmitted by October 1 and accepted for counting until November 15 for ballots postmarked by November 1. Thirteen counties failed to send ballots by October 1 and the department subsequently filed suit against the state, as well as the State Board of Elections. The parties subsequently signed a consent decree that required extending the deadline for receipt of ballots postmarked by November 1 until November 24. The state was also to make efforts to notify voters of these changes and that they could receive ballots electronically through the state's online ballot delivery wizard. A report on the number of ballots sent, returned, and counted must be filed after the election.¹⁵ The department filed suit against Guam in early October in federal district court in Hagatna, Guam, and also sought emergency relief to extend the deadline for accepting absentee ballots until November 15 and require officials to ensure email delivery of blank ballots.¹⁶ The suit went to trial and Guam was ordered by the federal judge to extend the deadline until November 15.¹⁷ Wisconsin and the department reached an agreement (at the same time as the lawsuit was filed) under which the state would accept absentee ballots until November 19 and local election officials would send ballots no later than October 1.¹⁸

(...continued)

may be found at http://www.abc2news.com/dpp/news/region/anne_arundel_county_/judge-extends-military-ballot-deadline.

¹⁴ U.S. Department of Justice press release, *Justice Department Reaches Agreement to Protect Rights of Military and Overseas Voters in New Mexico*, October 13, 2010, which may be found at <http://www.justice.gov/opa/pr/2010/October/10-crt-1137.html>.

¹⁵ *Ibid.*

¹⁶ U.S. Department of Justice press release, *Justice Department Announces Lawsuit to Protect Rights of Military and Overseas Voters in Guam*, October 6, 2010, which may be found at <http://www.justice.gov/opa/pr/2010/October/10-crt-1122.html>.

¹⁷ The New York Times, *Feds: 65,000 Overseas Voters Protected Before Vote*, October 27, 2010, which may be found at http://www.nytimes.com/aponline/2010/10/27/us/politics/AP-US-Overseas-Votes.html?_r=1&ref=politics.

¹⁸ U.S. Department of Justice press release, *Justice Department Reaches Agreement to Protect Rights of Military and Overseas Voters in Wisconsin*, September 10, 2010, which may be found at <http://www.justice.gov/opa/pr/2010/September/10-crt-1018.html>.

With respect to other states that had difficulty meeting the requirement, Alaska, Colorado, the District of Columbia, Hawaii, Kansas, Mississippi, Nevada, North Dakota, and the Virgin Islands each entered into a memorandum of agreement with the Department of Justice concerning the requirement. Under a consent decree issued by the U.S. District Court for the Western District of Wisconsin, the state had agreed to certify the September 14 primary results by September 27 and ordered local election officials to transmit absentee ballots no later than October 1; the state would accept voted ballots that were executed and sent by November 2 and received by November 19 (Wisconsin's deadline for accepting UOCAVA ballots was 10 days after the general election).¹⁹ Alaska expedited its certification of results so that ballots could be prepared by September 18; requests from voters for ballots to be faxed to them would be sent on that day as well.²⁰ Colorado agreed to "take all necessary actions" to ensure that each of its 64 counties transmitted ballots by September 18, to deploy staff from the Secretary of State's office to assist in that endeavor, and to notify the Department of Justice of any failure to do so.²¹ The District of Columbia agreed to complete certification of the September 14 primary results by September 24, to make ballots available for transmission to UOCAVA voters no later than October 4, and extended the deadline for accepting such ballots by seven days until November 19 (the District's deadline for accepting UOCAVA ballots is 10 days after the election).²² Hawaii agreed to send ballots no later than September 24 (barring election contests), and to use express delivery and return of ballots that had been requested by mail.²³ In Kansas, seven counties failed to send ballots by September 18 and the state agreed to extend the deadline for accepting ballots to ensure a 45-day period to vote an absentee ballot. The state would also provide contact information for voters who needed assistance and would file a report on the number of ballots received and counted.²⁴ Mississippi reached a similar agreement when 22 of its counties failed to send ballots in time to meet the requirement. Ballot acceptance deadlines were to be extended to November 8, in cases where the ballot request was received by September 18, and the state would notify voters of the extension and provide a post-election report.²⁵ One county in Nevada failed to send ballots to 34 voters who had requested them by September 18, and the state agreed to extend the county deadline for accepting ballots until November 8, provided they were executed and sent by election day.²⁶ The Virgin Islands had one federal office on the general election ballot, for which there was no primary election. These ballots were to be sent no later than September 18. A second

¹⁹ The consent decree may be found at http://www.fvap.gov/resources/media/wi_signed_consent_decree.pdf.

²⁰ The memorandum of agreement for Alaska may be found at http://www.fvap.gov/resources/media/ak_doj_agreement.pdf.

²¹ The memorandum of agreement for Colorado may be found at http://www.fvap.gov/resources/media/co_doj_agreement.pdf.

²² The memorandum of agreement for the District of Columbia may be found at http://www.fvap.gov/resources/media/dc_doj_agreement.pdf.

²³ The memorandum of agreement for Hawaii may be found at http://www.fvap.gov/resources/media/hi_doj_agreement.pdf.

²⁴ U.S. Department of Justice press release, *Justice Department Reached Agreements to Protect Rights of Military and Overseas Voters From New York, Kansas and Mississippi*, October 15, 2010, which may be found at <http://www.justice.gov/opa/pr/2010/October/10-crt-1158.html>.

²⁵ *Ibid.*

²⁶ U.S. Department of Justice press release, *Department Announces Agreement to Protect Rights of Military and Overseas Voters from Nevada*, October 8, 2010, which may be found at <http://www.justice.gov/opa/pr/2010/October/10-crt-1130.html>.

ballot with local candidates was to be sent by October 2, after the primary results have been certified.²⁷

A second issue concerned the new requirement for states to establish procedures to allow UOCAVA voters to request registration and absentee ballot applications electronically and by mail, and for states to transmit the materials to the voter in the same manner. It was unclear how many states either did not provide for electronic means of submission or delivery, or did so only under certain circumstances.²⁸ With respect to returning marked ballots, 19 states, American Samoa, Guam, and Puerto Rico permitted voters to return ballots by mail only. Thirty one states and the Virgin Islands permitted voters to return ballots by mail and fax and, in some cases, by email as well.

The Federal Voting Assistance Program

The Federal Voting Assistance Act of 1955 called for the President to designate the head of an executive department to be responsible for and coordinate the federal functions described in the law. President Eisenhower designated the Secretary of Defense, who delegated the responsibility to the Assistant Secretary of Defense for Public Affairs, as coordinator of the Federal Voting Assistance Program (FVAP). Under the current law, the director of the Federal Voting Assistance Program administers the FVAP for citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act. This office publishes a print and online version of its *Voting Assistance Guide*, a compilation of state requirements and practices with respect to the federal law (including information on possible tax liability incurred in some states based on residence, as determined by voter registration). The FVAP office also maintains a toll free phone number to provide assistance to voters and to military and federal government personnel who are responsible for implementing the law; the office also maintains a website <http://www.fvap.gov>. The website also includes a fully electronic system for uniformed services and overseas voters to register, request a ballot, and track the ballot for all voting jurisdictions in the country.

FVAP Programs Since 2000 to Encourage Voting Participation

Voting Over the Internet (VOI)

In the 2000 presidential general election, some members of the military and citizens living abroad cast their votes via the Internet on November 7. Voters who were covered by the UOCAVA and whose legal residence was one of 14 counties participating in the project in Florida, South Carolina, Texas, and Utah were eligible to participate. The program, referred to as the Voting Over the Internet (VOI) pilot project, was limited to a total of 350 potential voters who could request and vote an absentee ballot via the Internet. The project was designed to explore the viability of using the Internet to assist UOCAVA voters, most of whom face unique challenges when registering and voting. To request a ballot, the voter would fill out an electronic version of

²⁷ The memorandum of agreement for the Virgin Islands may be found at http://www.fvap.gov/resources/media/vi_doj_agreement.pdf.

²⁸ Information on individual state rules can be found in the Federal Voting Assistance Program's *Voting Assistance Guide*, although changes to procedures in recent months may not be accounted for in the *Guide*, which may be found at <http://www.fvap.gov/resources/media/2010vag.pdf>.

the request form and sign it with a digital certificate. A local election official would then post an electronic version of the ballot to a secure server, where it would be retrieved by the voter. Once the ballot was completed by the voter, it was digitally signed and encrypted and placed on a FVAP server. The completed ballot could only be decrypted by the appropriate local election official, who printed the ballot and counted it with mail-in absentee ballots. A total of 91 persons used the system to register to vote and 84 (representing 21 states and territories, and 11 countries) cast ballots under the program. A report that evaluated the program was issued in June 2001 by FVAP and noted, among other conclusions, that “further development is needed before Internet remote registration and voting can be provided effectively, reliably, and securely on a large scale.”²⁹

Secure Electronic Registration and Voting Experiment (SERVE)

An expanded version of the VOI project was to be used in the 2002 elections according to a provision in the Defense Authorization Act for FY2002 (P.L. 107-107), and it was expected that more states than the four that participated in 2000 would be involved. The provision called for the Secretary of Defense to “carry out a demonstration project under which absent uniformed services voters are permitted to cast ballots in the regularly scheduled general election for Federal office for November 2002 through an electronic voting system” called the Secure Electronic Registration and Voting Experiment (SERVE).³⁰ But the law also included a provision under which the Secretary could delay the program until the 2004 general election if the Secretary determined that the demonstration project could “adversely affect the national security of the United States.”³¹ The law was signed by the President on December 28, 2001. Without sufficient time to develop the project before the 2002 election, the Secretary of Defense sent a letter to the Senate and House Armed Services Committees in May 2002 to request approval to implement the project for the 2004 election. In October 2002, staff from a number of congressional committees were briefed on the SERVE program, which was to provide the capability to identify and authenticate voters and local election officials using unique digital signatures. The voters and officials had to register with SERVE in order to be assigned the digital identity, which would allow them to access servers hosted by the FVAP in order to register and vote.³² The program was expanded from four states that participated in the Voting Over the Internet project in 2000 to seven,³³ with a target of 100,000 participants.

The FVAP assembled a group in 2003, the Security Peer Review Group (SPRG), to review the SERVE program’s security design. Several members of the group released their own, unofficial report in January 2004 that asserted that the program had fundamental security problems that made it vulnerable to “a variety of well-known cyber attacks (insider attacks, denial of service

²⁹ Department of Defense, Washington Headquarters Services, Federal Voting Assistance Program, “Voting Over the Internet Pilot Project Assessment Report,” June 2001, p. ES-2.

³⁰ § 1604 (a)(1).

³¹ § 1604 (a)(2).

³² A description of the program may be found in a report by Andrew Regenscheid and Nelson Hastings, *A Threat Analysis on UOCAVA Voting Systems*, NISTIR 7551 (National Institute of Standards and Technology, December 2008), pp. 5-6, available at <http://www.nist.gov/itl/vote/upload/uocava-threatanalysis-final.pdf>.

³³ Arkansas, Florida, Hawaii, North Carolina, South Carolina, Utah, and Washington, as reported in an undated internal document entitled “Secure Electronic Registration and Voting Experiment,” pp. 6-7, available from the Federal Voting Assistance Program at <http://www.fvap.gov/resources/media/serve.pdf>.

attacks, spoofing, automated vote buying, viral attacks on voter PCs, etc.), any one of which could be catastrophic.”³⁴ As a result, the group recommended the following:

Because the danger of successful, large-scale attacks is so great, we reluctantly recommend shutting down the development of SERVE immediately and not attempting anything like it in the future until both the Internet and the world’s home computer infrastructure have been fundamentally redesigned, or some other unforeseen security breakthroughs appear.³⁵

The Secretary of Defense subsequently suspended the program later in the year, and the defense authorization act for FY2005, enacted on October 28, 2004, instructed the Secretary to wait until the Election Assistance Commission (EAC) issued guidelines for electronic absentee voting before pursuing another Internet voting project.³⁶ The EAC has not yet developed guidelines, but issued a report in April 2010 on its objectives and progress to date.³⁷

Interim Voting Assistance System and Integrated Voting Alternative Site (IVAS)

DOD launched a new program in September 2004, apparently as a result of having to suspend the SERVE program, which allowed registered UOCAVA voters to request and receive absentee ballots over the Internet. Using the Interim Voting Assistance System (IVAS) website on an FVAP server, a previously registered voter in a state that volunteered to participate would request a ballot and the request would be forwarded to the appropriate election official. If the request was approved, the voter was notified by e-mail to retrieve the absentee ballot using the IVAS secure connection. The voter was required to download the ballot, print and complete it, then return it by mail to the local election official.

Under P.L. 109-234, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (enacted on June 15, 2006), the Secretary of Defense was instructed to continue the IVAS program for uniformed services voters, their dependents, and Department of Defense personnel.³⁸ The Interim Voting Assistance System was subsequently reconfigured in September 2006, and the new system was called the Integrated Voting Alternative Site. It also required a voter to be previously registered and provided two means of requesting and receiving an absentee blank ballot: by e-mail or through a secure server. Both methods relied on a unique identifier that uniformed services personnel, their family members, and DOD overseas personnel and contractors possessed. To use the e-mail method, a previously registered voter would use the unique identifier to connect via the Internet to a tool on

³⁴ Dr. David Jefferson, Dr. Aviel D. Rubin, Dr. Barbara Simons, Dr. David Wagner, “A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE),” p. 2, available at <http://servesecurityreport.org/>.

³⁵ *Ibid.*, p. 3.

³⁶ § 567 of P.L. 108-375, The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, instructed the Secretary to suspend the electronic voting demonstration project “until the first regularly scheduled general election for Federal office which occurs after the Election Assistance Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project.”

³⁷ Election Assistance Commission, “Report to Congress on EAC’s Efforts to Establish Guidelines for Remote Electronic Absentee Voting Systems,” April 26, 2010, which may be found at <http://www.fvap.gov/resources/media/eacroadmap.pdf>.

³⁸ §1212 (b)(1) said, “The Interim Voting Assistance System (IVAS) Ballot Request Program shall be continued with respect to all absent uniformed services voters, Department of Defense personnel, and dependents covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) with the objective to further improve ballot request procedures and voting assistance with respect to such persons.”

the FVAP website. The voter would complete an electronic version of the Federal Post Card Application (FPCA), save it as a PDF file (without an electronic or digital signature), and e-mail the attached file to their local election official for processing. The website included information from the FVAP's *Voting Assistance Guide* which provided information on each state's acceptable procedures for requesting and receiving absentee ballots (e-mail, facsimile, and postal mail) and local election official contact information. If the request was approved by the local official, a blank ballot was sent to the voter by whatever means the state allowed, and the voter would complete and return the ballot. The second method required the voter to connect to a secure server using the unique identifier to complete an electronic version of the FPCA. A local election official would connect to the server to process the application and, if approved, post a PDF version of the blank ballot on the server. The voter would again connect to the server to access and print out the ballot. The voter could then complete and return the ballot to the election official. The IVAS system did not provide the means for the voter to return the completed ballot to the election official, but required the voter to send it by whatever means available in the particular voting jurisdiction (facsimile, e-mail, and postal mail).

Legislation

111th Congress

A number of bills that focus specifically on military and overseas voting have been introduced in the 111th Congress. The Senate Rules Committee reported S. 1415, as amended, on July 15. The text of the bill was subsequently added as an amendment to the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647), which was passed by the Senate on July 23. The House voted in favor of the conference report to the bill (H.Rept. 111-288) on October 8 and the Senate approved it on October 22; President Obama signed the bill on October 28 (P.L. 111-84). It establishes procedures for the use of e-mail and facsimile transmittal for registration and absentee ballot applications, establishes procedures for the collection of marked absentee ballots from overseas uniformed services voters for delivery to the appropriate state election officials, and establishes additional procedures and requirements to improve UOCAVA voting. The House Administration Committee also reported H.R. 2393, the Military Voting Protection Act, on June 10, 2009. The bill would require the Secretary of Defense to establish procedures for the collection of marked absentee ballots from overseas uniformed services voters for delivery to the appropriate state election officials; the newly enacted law includes a similar provision.

Both the Senate Rules and Administration and House Administration Committees had previously held hearings on UOCAVA voting. The hearings were convened on May 13 in the Senate and May 21 in the House. Other bills introduced in the 111th Congress include two sponsored by Representative Maloney, H.R. 1659 and H.R. 1739. The first would amend UOCAVA to require that the presidential designee have experience in election administration that includes oversight of voter registration and absentee ballot distribution and it would establish an Overseas Voting Advisory Board. H.R. 1739 is a more far-reaching proposal that would amend UOCAVA to make a series of adjustments concerning balloting materials and related election administration procedures in the states, and would establish a grant program for voter outreach. H.R. 2082 (Holt) would amend UOCAVA to require states to accept ballots submitted by overseas voters using a provider of express mail service, as long as the ballot was submitted the day before, and received within 10 days after, the election. The bill would also require the presidential designee to reimburse the voter for the express mail cost. As noted above, H.R. 2393 (McCarthy) would

amend UOCAVA to require the presidential designee to collect marked general election ballots from overseas uniformed services voters for delivery to the appropriate election officials before the polls close, using U.S. Postal Service express mail delivery. The bill would also require a tracking system so the voter could determine whether the ballot was delivered. It was reported by the House Administration Committee on June 10. A companion measure, S. 1026 (Cornyn), was introduced in the Senate. Finally, H.R. 2823 (Coffman), would require states to accept and process any otherwise valid voter registration application without any requirement for notarization and would permit electronic submission of the official post card form to register and request an absentee ballot.

110th Congress

Several relevant election reform bills were introduced in the 110th Congress and two received action. On October 1, the Senate passed S. 3073 (Cornyn), which would have required the Secretary of Defense to collect ballots from overseas military voters and ensure their delivery to election officials using express mail services. On the House side, H.R. 6625 was passed on September 17; it would have allowed state election officials to designate facilities of the Department of Veterans Affairs as voter registration agencies under the National Voter Registration Act (P.L. 103-31, the “motor-voter” law). Other bills that were not acted on included H.R. 2835, H.R. 4173, H.R. 4237, H.R. 5673, and S. 1487. H.R. 2835 (Faleomavaega) would have extended UOCAVA law’s provisions to cover legislative and gubernatorial elections in American Samoa. H.R. 4173 (Honda) would have prohibited states from requiring notarization of absentee ballots, broadened the use of the federal write-in ballot, established a grant program to inform overseas citizens about absentee voting, and required that overseas federal employees be informed about UOCAVA and information about the law included in U.S. passports. H.R. 4237 (Maloney) would have prohibited states from refusing to accept registration or ballot applications because they do not meet nonessential requirements, clarified postage markings on balloting materials, and would have amended the law concerning individuals who never lived in the United States, notification of the rejection of registration or ballot applications, and the use of the diplomatic pouch to transmit absentee ballots. H.R. 5673 (McCarthy) would have required the Secretary of Defense to collect marked absentee ballots from overseas uniformed services voters and to guarantee their delivery to the appropriate election officials before the polls close. The bill would also have encouraged the use of private providers of air transportation to deliver ballots, which would allow individual voters to track the progress of their voted ballot. S. 1487 (Feinstein) would have prohibited states from refusing to accept registration or ballot applications because they do not meet nonessential requirements and would have permitted accepting a federal write-in ballot from an overseas voter if it is submitted from a location in the United States. No action was taken on any of these measures.

Current Issues and Developments

The Overseas Vote Foundation published a report in February 2009 based on survey responses from approximately 24,000 UOCAVA voters and 1,000 local election officials. The report noted that there is “some evidence of overall progress” with respect to voting under UOCAVA, but that “progress is uneven, and the surveys point to numerous areas ripe for reform.”³⁹ For example, one

³⁹ The Overseas Vote Foundation, 2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at (continued...)

in four respondents did not receive their requested absentee ballot; 8% of these voters used the federal write-in absentee ballot to vote, but 14% did not participate in the election (not all voters are aware that they may use the federal write-in ballot if they have requested a regular state ballot that does not arrive). Furthermore, more than half (52%) of those who tried to vote but failed to do so either received a late ballot or never received one at all.⁴⁰

The Pew Center on the States issued a January 2009 report that examined the variety of state practices that can make casting a ballot difficult for UOCAVA voters and made recommendations for improving the voting process.⁴¹ Among its findings, the report noted that “25 states and Washington, D.C., need to improve their absentee balloting rules for military voters abroad,” and “the other 25 states would better serve these voters by giving them additional time to request and return their ballots as well.”⁴² The report recommended eliminating notarization requirements, expanding electronic transmission of election materials, expanding the use of the federal blank ballot if a regular ballot does not arrive in time, and providing for a period of at least 45 days to receive and return a ballot.

In October 2007, the Overseas Vote Foundation (OVF) launched a website to assist UOCAVA voters by providing a means to electronically register and request a ballot.⁴³ The OVF, a nonpartisan, non-governmental entity, offers the necessary information to complete the application process for each of the states, including a database of local election officials to whom the applications must be delivered.

Reports on military and overseas voting in the 2006 election highlighted continuing challenges faced by these voters, despite the efforts of the past several years to improve voting rates. The GAO issued an evaluation of federal efforts to facilitate electronic absentee voting in June 2007⁴⁴ and the EAC reported in September 2007 the results of its survey of military and overseas voters after the 2006 election.⁴⁵ According to the EAC report, 33% of ballots requested by these voters were cast or counted in the election; of those that were not counted, nearly 70% were returned to election officials as undeliverable. GAO estimated that there were 6 million UOCAVA voters and its report outlined a series of recommendations to DOD (the FVAP) and the EAC for electronic solutions to overcome the obstacles posed by time and distance.

The Defense Authorization Act for FY2007, signed into law on October 17, 2006, as P.L. 109-364, included a number of provisions on military and overseas voting. It continued the Integrated Voting Assistance System (IVAS) for military voters and employees of the Department of Defense through the 2006 elections and required reports from the Comptroller General on IVAS

(...continued)

How Overseas and Military Voters and Election Officials Fared in the 2008 General Election and What To Do About It, February 2009; it may be found at https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf.

⁴⁰ Ibid., p. 5.

⁴¹ The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters*, January, 2009; the report may be found at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/NTTV_Report_Web.pdf.

⁴² Ibid.

⁴³ The OVF website can be found at <https://www.overseasvotefoundation.org/overseas/home.htm>.

⁴⁴ The GAO report may be found at <http://www.gao.gov/new.items/d07774.pdf>.

⁴⁵ The EAC report may be found at <http://www.eac.gov/clearinghouse/2006-uniformed-and-overseas-citizens-voting-act-survey-and-conference-materials/>.

and other efforts to utilize electronic mail, facsimile transmission, and the Internet to facilitate registration and voting. The Government Accountability Office (GAO) issued a report in September 2006, which noted that two major challenges remained with respect to (1) simplifying and standardizing absentee voting across the states, and (2) developing a secure electronic registration and voting system.⁴⁶

Author Contact Information

Kevin J. Coleman
Analyst in Elections
kcoleman@crs.loc.gov, 7-7878

⁴⁶ The GAO report can be found at <http://www.gao.gov/htext/d061134t.html>.