



## MEMORANDUM

March 23, 2009

**To:** Honorable Carolyn B. Maloney  
Attention: Doug Farrar

**From:** Kevin J. Coleman, Analyst in Elections, 707-7878

**Subject:** Analysis of the Overseas Voting Practical Amendments Act of 2009 (Maloney)

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This memorandum is sent in response to your request for a section-by-section analysis of draft legislation to be introduced by Representative Maloney, which you have provided to CRS, that would amend the Uniformed and Overseas Citizens Absentee Voting Act (P.L. 99-410, 42 USC 1973ff).

### **Sec. 1. Short Title.**

The Act may be cited as the “Overseas Voting Practical Amendments Act of 2009.”

### **Sec. 2. Designation of Official Federal Form as Federal Voter Registration and Ballot Application.**

Section two would amend the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973ff) to substitute the term “official Federal Voter Registration and Ballot Application” for “official post card form” in the law. Presumably, the change is intended to clarify any ambiguity concerning the “post card” form prescribed by the act to enable eligible persons to simultaneously register and apply for a ballot. The amendment would make clear that the law refers to the federal form (rather than any similar state form) described in the law and is an application to both register and apply for an absentee ballot.

The amendment is apparently intended to eliminate instances where a local election official receives the form and duly registers the voter, but does not process the form as an absentee ballot application. It is possible that, because states use a separate absentee ballot application form for regular voters, some states have not made the necessary changes to laws or procedures to accept the federal post card form as a ballot application. In any case, a military or overseas voter who submits the current federal form and expects to receive an absentee ballot prior to an election may be disenfranchised if the ballot does not arrive and the voter does not have sufficient time to make a second request.

Finally, a related section of current law requires that each state provide ballots for all federal elections through the next two general elections if the applicant requests that the post card application be considered to apply for two election cycles.<sup>1</sup> A voter could potentially be

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<sup>1</sup> 42 U.S.C. § 1973ff-3(a) states: “If a State accepts and processes an official post card form (prescribed (continued...))

disenfranchised in sequential elections if the post card form is not properly processed as a ballot application.

### **Sec. 3. Prohibiting Refusal to Accept Applications, Ballots, and Other Materials for Failure to Meet Nonessential Requirements.**

Section 3(a) would amend the law to prohibit states from refusing to accept voter registration and ballot applications, including the federal post card application, from voters covered under UOCAVA for the following reasons:

- the application is not on a post card, was produced using a computer program or the Internet, or is a facsimile of an official application;
- the federal post card form does not include specific information that is included on the state application;
- the application, the return envelope, or any affidavit or attestation does not conform to requirements under state law pertaining to the size, shape, weight, or color of the paper on which it is produced;
- the application is not notarized by a Notary Public or other authorized person;
- the application is received by the state by means other than through delivery by the United States Postal Service;
- the application is returned with insufficient postage; or,
- the application, the return envelope, and the affidavit or attestation does not meet some other requirement that is intended to prevent fraud, as determined by the presidential designee with responsibility for UOCAVA.

Section 3(b) would amend the law to prohibit states from refusing to accept an absentee ballot, including the federal write-in ballot from voters covered under UOCAVA for the following reasons:

- the ballot was printed or produced using a computer program or the Internet, or is a facsimile of the original ballot;
- the ballot, the return envelope, or any affidavit or attestation does not conform to requirements under state law pertaining to the size, shape, weight, or color of the paper on which it is produced;
- the ballot is not notarized by a Notary Public or other authorized person;

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under section 1973ff of this title) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 1973ff-1 (a)(4) of this title) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election.”

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- the ballot is received by the state by means other than through delivery by the United States Postal Service;
- the ballot is returned with insufficient postage; or,
- the ballot, the return envelope, and the affidavit or attestation does not meet some other requirement that is intended to prevent fraud, as determined by the presidential designee with responsibility for UOCAVA.

Section three presumably seeks to eliminate instances where an otherwise valid application or ballot is rejected for technical reasons that may differ from state to state. The intent of UOCAVA when it was adopted in its original form in 1942,<sup>2</sup> and subsequently amended, was to eliminate barriers for a class of voters disadvantaged by their necessary absence from their voting jurisdiction on election day. Part of the challenge facing military and overseas voters is the numerous state rules and regulations that can complicate the absentee process. For example, design specifications for absentee ballots concerning the color or weight of the paper would likely affect *only* military and overseas voters, assuming that the regular state absentee ballot is designed to meet such criteria. Because of the recent trend in some states to allow UOCAVA voters to send voted ballots by facsimile, a ballot sent in this manner (that might otherwise meet weight and color standards) could be rejected. Furthermore, some UOCAVA voters use the Federal Write-In Absentee Ballot (FWAB), a “failsafe” measure that is used at the voter’s discretion if the state absentee ballot does not arrive in time to be returned before the election. The bill would provide a remedy for any of these cases by prohibiting such requirements altogether for UOCAVA voters.

This section would also remove any requirement for notarization, a problem for some voters covered by UOCAVA who do not have access to a notary. For citizens living abroad, notarization of ballot materials could be accomplished at a U.S. Embassy or Consulate, but could prove onerous to those who do not live in close proximity to towns or cities with one of these offices. Likewise, any state requirement that disqualifies a ballot because it was delivered by any means other than the postal service can be a hindrance to military and overseas voting. Such restrictions could be problematic if a voter sends a ballot by facsimile, private courier, or by diplomatic pouch, for example.

#### **Sec. 4. Restrictions on Form of Documentation Required for Applications and Ballots Produced by States.**

Section four would amend the law to prohibit states from requiring a UOCAVA voter to submit documentation (with a state-produced registration or ballot request) that is available only to an individual who physically resides in the state. Such documentation could include a current driver’s license or utility bill. States would also be prohibited from requiring such documentation when a UOCAVA voter submits a state-produced absentee ballot.

This provision presumably seeks to standardize the absentee registration and voting process specifically with respect to registration forms and ballots that a state produces, as well as certain accompanying materials that a state may require. The comparable federal forms, the Federal Voter Registration and Ballot Application and the Federal Write-In Absentee Ballot, do not require a voter to submit additional materials. States would be prohibited from requiring a voter who uses the state registration form or absentee ballot to submit documentation that is available only to those physically present in the state. An overseas or uniformed services voter would not be likely to have a copy of a current utility bill, for example, which could potentially invalidate a voter registration application or submitted absentee ballot. Similarly, driver’s licenses routinely include an expiration

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<sup>2</sup> P.L.712-561, 56 Stat. 753-757.

date, which could result in the disqualification of a UOCAVA voter either because the voter's license had expired or the voter did not possess one.

#### **Sec. 5. Requiring Clarification of Postage Markings on Certain Balloting Materials Mailed by State.**

This section would require that pre-printed envelopes for the return of voted ballots carry the designation "United States of America" or "USA" in the return address and also clearly indicate the identities of the sender and recipient. This provision would seem to specifically address cases where an overseas voter (either military or civilian) could be disenfranchised because the envelope does not indicate the country to which it should be delivered. It cannot reasonably be assumed that all overseas mail services personnel would be familiar with the names of every U.S. state; the provision arguably provides a simple solution to non-delivery of ballots because of insufficient information.

#### **Sec. 6. Provision of Ballots in Subsequent Elections.**

The sixth section would amend UOCAVA to extend indefinitely the period for which a voter would receive absentee ballots if the voter marked that choice on the official post card application. The state would continue to send ballots to the voter's address until an absentee ballot or other election material was returned as undeliverable or with no forwarding address, a new absentee ballot form was received, or after the voter notifies the state that the voter is no longer a UOCAVA voter. Under current law, a voter receives ballots through the next two general elections for federal office by marking that choice on the application.

The amendment would make the state responsible for providing the absentee ballot to the voter on a continuing basis, rather than requiring the voter to submit a new absentee ballot request after two general election cycles have elapsed. For the voter, a change of address would require sending in a new absentee ballot request, rather than requiring the voter to remember, at the risk of disenfranchisement, when the last request was sent. The change would seem to be more advantageous to overseas civilians, who might be less likely to move, than military voters.

#### **Sec. 7. Special Rules for Use of Federal Write-In Absentee Ballot in Certain States.**

This section would require that a voter who submits an absentee ballot, including a federal write-in ballot, in a state with same day registration, shall be deemed to have met the requirements for voter registration if the voter has signed the ballot and provided the same information as required on the Federal Voter Registration and Absentee Ballot Application. Furthermore, it would require that states that permit the use of a state absentee ballot for state and local elections also permit the use of the federal write-in ballot for state and local elections. The Presidential designee would be required to ensure that the federal write-in ballot is designed to accommodate voting for state and local offices.

The provision would allow UOCAVA voters to take advantage of laws that permit registration at the polls on election day in certain states, an option that does not presently exist under UOCAVA. Because UOCAVA voters cannot be physically present at the polls on election day, the provision would provide for an equivalent means of simultaneous registration and voting through the use of a submitted absentee ballot. UOCAVA voters would also be permitted to use the federal write-in ballot for state and local elections (UOCAVA pertains only to federal elections) and would require the federal ballot to be designed to accommodate such voting.

#### **Sec. 8. Application of UOCAVA to Individuals Never Residing in United States Whose Parents are Overseas Voters.**

The eighth section would amend UOCAVA to add explicit language to insure that individuals born to American citizens abroad who have never lived in the United States are covered under the law. Under current law, an overseas voter is defined as:

- (A) a uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of an election;
- (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.

Current law does not specifically refer to those who are born to American parents abroad and who have never lived in the United States.

The proposed amendment would seem to resolve any ambiguity concerning those who are citizens by virtue of their parentage, but who cannot themselves claim a previous domicile.

### **Sec. 9. Requiring Prompt Notification of Rejection of Voter Registration of Absentee Ballot Request.**

This section would amend UOCAVA to require that, if a voter's registration or absentee ballot request is rejected by a state, the state would provide "prompt" notification as to the reasons for the rejection. The bill does not define what constitutes a prompt notification.

By requiring a state to promptly notify a voter of the problem with a request, the voter may have an opportunity to rectify the problem and reapply. Because time and distance create a particular challenge for military and overseas voters, solving a problem with a rejected application as quickly as possible is important to prevent disenfranchisement.

### **Sec. 10. Use of Diplomatic Pouch for Returning Complete Absentee Ballots.**

The tenth section would amend UOCAVA to require that a completed absentee ballot delivered to an overseas facility of the Department of State will be transmitted to the United States by diplomatic pouch if:

- 1) the ballot is delivered to the facility no earlier than 14 days before the election, and;
- 2) the Secretary of State determines that no effective alternative exists, including private courier services, for the voter to return the ballot on time.

The amendment would provide a last resort for UOCAVA voters by authorizing the State Department to transmit a completed absentee ballot to the U.S. within two weeks of an election. The provision would require a determination that other means of delivery within a two week window of the election, such as the mail, would not be effective, and private delivery services are not available. Although most states require a ballot to be returned to the appropriate election official by election day, in at least one state, the ballot must be returned the day before the election.<sup>2</sup> A regular absentee

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<sup>2</sup> Mississippi required an overseas civilian voter to return a completed absentee ballot by November 3, 2008. Military voters needed to return the ballot by November 4, 2008 (election day).

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voter in the United States who receives an absentee ballot two weeks prior to an election could be confident that the completed ballot could be returned on time, but a UOCAVA voter might reasonably expect a two week timeline to be a disqualifying obstacle. Furthermore, the UOCAVA voter has no other option to cast a ballot, such as walk-in early voting at an election office or in person voting on election day.

### **Sec. 11. Grant Program for Overseas Civilian Voter Outreach.**

This section would require the Election Assistance Commission (EAC) to establish and operate a program to provide grants to organizations that would identify and assist uniformed services and overseas civilian voters to increase participation for this group of voters. Selected organizations would develop programs to provide nonpartisan outreach, education, and assistance, and would be required to provide regular reports to the EAC on their activities. It would authorize \$10 million for FY2010 and \$10 million for every successive, two-fiscal year period for the following eight years.

Under current law, the various branches of the uniformed services provide outreach and education to potential voters through what are called “voting action officers.” As noted in a Department of Defense directive, eligible voters should “[B]e given, unless military necessity precludes it, an opportunity to register and vote in any election for which he or she is eligible,” and “The Heads of the DoD Components and the Uniformed Services shall encourage eligible voters in their organizations to register and vote in elections for Federal, State, and local office.”<sup>3</sup> The grant program described in this section would provide an additional outreach effort that would also include overseas civilians who are dispersed and, therefore, less easily reached than those in the armed forces. The Department of State also has voting action officers at each embassy and consulate, but contact with many eligible overseas citizens might be sporadic or nonexistent. An additional program to target potential UOCAVA voters could increase awareness and participation to higher-than-current levels.

### **Sec. 12. Other Outreach Efforts to Encourage Overseas Citizens to Cast Absentee Ballots in Elections.**

This section would require that the heads of federal government offices abroad provide notice to employees concerning their rights under UOCAVA to register and vote absentee. Notices would be provided no later than September 1 of each odd-numbered year and June 1 of each even numbered year. It would also require that all passports issued by the State Department following enactment include a page describing UOCAVA rights and a list of resources to obtain additional, relevant information.

Along with Section 11 (described above), this provision would provide two additional methods to reach civilians covered under UOCAVA, specifically federal employees who are posted abroad and any person issued a passport by the State Department. It would initiate ongoing outreach efforts to ensure that American civilians abroad were fully aware of their rights to participate in federal elections.

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[<https://www.overseasvotefoundation.org/svid-mississippi>, visited Dec. 10, 2008].

<sup>3</sup> Department of Defense Directive, “Federal Voting Assistance Program (FVAP),” Number 1000.04, April 14, 2004, p. 2.

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**Sec. 13. Regulations.**

This section would require the Presidential designee to promulgate regulations to carry out the amendments of the act, including those concerning the redesign and renaming of the federal post card application as the Federal Voter Registration and Absentee Ballot application.

**Sec. 14. Rule of Construction Regarding Internet Voting.**

This section would stipulate that nothing in the act or in any amendments made by the act authorize the Presidential designee or any state or local official to require or authorize the use of the Internet to cast a ballot in any election for public office.

**Sec. 15. Effective Date.**

The amendments are effective with respect to elections that occur on or after the date that is 45 days after enactment.

I trust that this memorandum is responsive to your request. If I can provide additional assistance, please contact me at 707-7878.

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