



Memorandum

December 6, 2007

TO: Honorable Carolyn B. Maloney
Attention: Jennifer Keaton

FROM: Kevin J. Coleman
Analyst in Elections
Government and Finance Division

SUBJECT: Analysis of H.R. 4237, the Overseas Practical Amendments Act of 2007

This memorandum is sent in response to your request for a section-by-section analysis of H.R. 4237, introduced by Representative Maloney on November 15, 2007.

Sec. 1. Short Title.

The Act may be cited as the “Overseas Voting Practical Amendments Act of 2007.”

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

Section 2 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 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 federal form currently in use 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 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.¹ A voter could potentially be 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 other than through delivery by the United States Postal Service;
- 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;
- the ballot is received by the state other than through delivery by the United States Postal Service;
- 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.

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

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 1942,² 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. H.R. 4237 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, through the military mail service, or by diplomatic pouch, for example.

Sec. 4. 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. 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. 5. Provision of Ballots in Subsequent Elections.

The fifth 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, or a new absentee ballot form was received. Under current law, a voter receives ballots through the next two general elections for federal office by marking that choice on the application.

² P.L.712, 56 Stat. 753-757.

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. 6. Application of UOCAVA to Individuals Never Residing in United States Whose Parents are Overseas Voters.

The sixth 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) an absent 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.

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

The 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. 7. Requiring Prompt Notification of Rejection of Voter Registration of Absentee Ballot Request.

This seventh 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.

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. 8. Use of Diplomatic Pouch for Returning Complete Absentee Ballots.

The eighth 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.³ A regular absentee voter in the United States who received a 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. 9. 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.

³ Mississippi requires an overseas civilian voter to return a completed absentee ballot on November 3, 2008. Military voters must return the ballot by November 4, 2008 (election day). [<https://www.overseasvotefoundation.org/svid-mississippi>, visited Dec. 10, 2008].