

**To:** Benjamin Ginsberg  
Katherine Crytzer  
**From:** Jeff Wieand  
**Date:** April 12, 2013  
**Re:** Outline of the Uniformed and Overseas Citizens Absentee Voting Act

### **Uniformed and Overseas Citizens Absentee Voting Act<sup>1</sup>**

#### **Title I – Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office**

##### **Sec 101. Federal Responsibilities.**

- Subsection (a) Required the president to designate the head of an executive department to have primary responsibility for the Federal functions under the title.<sup>2</sup>
- By Executive Order the President designated the Secretary of Defense as his designee under UOCAVA and authorized him to delegate “any or all of the functions, responsibilities, powers, authority, or discretion” granted to the Secretary by the Order.<sup>3</sup>
- Subsection (b) outlines the duties of the Presidential designee:
  - To consult with state and local election officials to carry out the obligations under the Title.<sup>4</sup>
  - To create an official post card form for the states to use that will contain an absentee voter registration application and an absentee ballot application.<sup>5</sup>
  - To carry out section 103 with respect to the Federal write-in absentee ballot for overseas voters in general elections for Federal Office.<sup>6</sup>
  - To suggest a design for absentee ballot mailing envelopes.<sup>7</sup>
  - To compile and distribute:
    - Descriptive materials on State absentee registration and voting procedures
    - Facts relating to specific elections, including dates, offices involved, and the text of the ballot questions.<sup>8</sup>
  - To report to the President and Congress by the end of the year following each Presidential election, on the effectiveness of assistance under Title I, including
    - A statistical analysis of voter participation, and
    - A description of State-Federal cooperation.<sup>9</sup>
- Subsection (c) permits the Presidential designee to ask the heads of Government departments, agencies and other entities to distribute balloting materials.<sup>10</sup>

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1. Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924 (Oct. 21, 1998), *codified at* 42 U.S.C. §§ 1973ff–197377-7, amended by the Military Overseas Voter, Pub. L. No. 111-84, §§ 577-83(a), 584-87, 123 Stat. 2190 (2009) [hereinafter UOCAVA].

8. UOCAVA, § 101(b)(5)A & B, *codified at* 42 U.S.C. § 1973ff(b)(5).

9. UOCAVA, § 101(b)(6), *codified at* 42 U.S.C. § 1973ff(b)(6).

4. UOCAVA, § 101(b)(1), *codified at* 42 U.S.C. § 1973ff(b)(1).

5. UOCAVA, § 101(b)(2), *codified at* 42 U.S.C. § 1973ff(b)(2).

6. UOCAVA, § 101(3), *codified at* 42 U.S.C. § 1973ff(b)(3).

7. UOCAVA, § 101(4), *codified at* 42 U.S.C. § 1973ff(b)(2).

2. UOCAVA § 101(a), *codified at* 42 U.S.C. § 1973ff(a) [hereinafter UOCAVA].

3. Exec. Order No. 12642, 53 Fed. Reg. 21,975 (June 8, 1988).

10. UOCAVA, § 101(c)(1), *codified at* 42 U.S.C. § 1973ff(c)(1).

- This includes requiring the Administrator of General Services to furnish the official post card forms prescribed under subsection (b) and the Federal write-in absentee ballots created by Section 103 of UOCAVA.<sup>11</sup>

## Section 102. State Responsibilities.

The Act requires each state to:

- Permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary and runoff elections for Federal office.<sup>12</sup>
- Accept and process any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received by the State election official not less than 30 days before any general, special, primary, or runoff election for Federal office.<sup>13</sup>
- Permit overseas voters to use the Federal write-in absentee ballot created by section 103 of UOCAVA in general elections for Federal office.<sup>14</sup>

## Sec. 103. Federal Write in Absentee Ballot for Overseas Voters in General Elections for Federal Office.

- Requires the Presidential designee to create a Federal write-in absentee ballot, that includes a secrecy envelope and mailing envelope, for use in general elections for Federal office by overseas voters.<sup>15</sup>
  - The voter must have made a timely application for a State's absentee ballot but not received on.
- The submission and process of Federal write-in absentee ballots shall occur in the manner provided for by the law regarding absentee ballots in each particular state.<sup>16</sup>
- But, Federal write-in absentee ballots from overseas voters shall not be counted if:
  - The ballot is submitted from any location within the United States, by an overseas voter who is not an absent uniformed services voter.<sup>17</sup>
  - The ballot is received by State election officials less than 30 days before the general election.<sup>18</sup>
  - A State absentee ballot from an overseas voter is received by the State election official prior to the deadline for receipt of State absentee ballots under State law.<sup>19</sup>
- Special Rules that apply to Federal write-in absentee ballots:
  - Overseas voters have two ways of completing a Federal write-in absentee ballot. By writing in:
    - The name of a candidate

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11. UOCAVA, § 101(c)(2), *codified at* 42 U.S.C. § 1973ff(c)(2).

12. UOCAVA, § 102(1), *codified at* 42 U.S.C. § 1973ff-1(a)(1).

13. UOCAVA, § 102(2), *codified at* 42 U.S.C. § 1973ff-1(a)(2).

14. UOCAVA, § 102(3), *codified at* 42 U.S.C. § 1973ff-1(a)(3).

17. UOCAVA, § 103(b)(1), *codified at* 42 U.S.C. § 1973ff-2(b)(1).

18. UOCAVA, § 103(b)(2), *codified at* 42 U.S.C. § 1973ff-2(b)(2)(B) (section 103(b)(2) appears to have been amended as the U.S. Code language differs from that in the Act).

19. UOCAVA, § 103(b)(3), *codified at* 42 U.S.C. § 1973ff-2(b)(3).

15. UOCAVA, § 103(a), *codified at* 42 U.S.C. § 1973ff-2(a)(1).

16. UOCAVA, § 103(b), *codified at* 42 U.S.C. § 1973ff-2(b).

- The name of a political party, which will count the ballot for the candidate of that party.<sup>20</sup>
  - When voting for President or Vice-President, an overseas voter can vote for the electors supporting a candidate by:
    - Writing in the name of the candidate
    - Writing in the name of a political party.<sup>21</sup>
  - If the intent of the overseas voter can be determined by the ballot counter, then any abbreviation, misspelling, or variation in form in the name of a candidate or political party, should be disregarded, and the ballot remains valid.<sup>22</sup>
- If an overseas voter receives a State absentee ballot after submitting a Federal write-in absentee ballot, he may still submit a State absentee ballot.
  - But, the overseas voter must make every reasonable effort to inform the appropriate State election official that he has submitted more than one ballot.
  - The Presidential designee must include this requirement in the instructions for submitting a Federal write-in absentee ballot.<sup>23</sup>
- If a State provides an approved absentee ballot, the Federal write-in absentee ballot is not valid for use in a general election. To be an approved replacement absentee ballot must:
  - Be approved by the Presidential designee at the request of the State.<sup>24</sup>
  - Be made available to overseas voters at least 60 days prior to the deadline for receipt of the State ballot under State law.<sup>25</sup>
- The Act allows that under certain circumstances some states will be exempted from the requirement of permitting use of a Federal write-in absentee ballot. A State may be exempted, if, on and after the date of enactment of UOCAVA, the State has a law in effect providing that:
  - Requires the State to make available a State absentee ballot, at least 90 days prior to the general election, to absent uniformed services voters who by reason of active duty or military service will be absent from the United States on election day.<sup>26</sup>
  - Requires the State to make available a State absentee ballot as soon as the official list of candidates in a general election is completed to:
    - Any person who resides outside of the United States and is qualified to vote in the last place the person was domiciled before leaving the U.S.
    - Any person who resides outside of the United States, who would be qualified to vote in the place in which they were last domiciled, but for the fact that they now reside outside of the U.S.<sup>27</sup>

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20. UOCAVA, § 103(c)(1), *codified at* 42 U.S.C. § 1973ff-2(c)(1).

21. UOCAVA, § 103(c)(3), *codified at* 42 U.S.C. § 1973ff-2(c)(2).

22. UOCAVA, § 103(c)(3), *codified at* 42 U.S.C. § 1973ff-2(c)(3).

23. UOCAVA, § 103(d), *codified at* 42 U.S.C. § 1973ff-2(d).

24. UOCAVA, § 103(e)(1), *codified at* 42 U.S.C. § 1973ff-2(e)(1).

25. UOCAVA, § 103(e)(2), *codified at* 42 U.S.C. § 1973ff-2(e)(2).

26. UOCAVA, § 103(f)(1), *codified at* 42 U.S.C. § 1973ff-2(g)(1) (section 103(f)(1) incorporates by reference the definition of overseas voter contained in UOCAVA section 107(5)(A), which I have written out in full).

27. UOCAVA, § 103(f)(2), *codified at* 42 U.S.C. § 1973ff-2(g)(2) (section 103(f)(2) incorporates by reference the definition of overseas voter contained in UOCAVA section 107(5)(B) & (C), which I have written out in full) (Code section 1973ff-2(g)(2) appears to have been amended from “the official list of candidates in the general election” in UOCAVA section 103(f)(2) to now state “the official list of candidates in the general, special, primary or runoff election for Federal office”).

#### Sec. 104. Recommendations to the States to Maximize Access to the Polls by Absent Uniformed Services Votes and Overseas Voters.

- These recommendations were intended to “afford maximum access to the polls by absent uniformed services voters and overseas voters.”<sup>28</sup>
- The entirety of section 104 was replaced in 2001 by section 1606(b) of the National Defense Authorization Act of 2002 which provided for the “Use of a Single [Voter Registration and Absentee Ballot] Application for All Subsequent Elections.”<sup>29</sup>
- 42 U.S.C. section 1973ff-3 now prohibits States from refusing to accept or process otherwise valid voter registration and absentee ballot applications that were submitted by absent uniformed services voters prior to the date the State accepts such applications from absentee voters who are not members of the uniformed services.<sup>30</sup>
- The prior recommendations included:
  - The use of the official post card for simultaneous voter registration and absentee ballot application, as prescribed under section 101.<sup>31</sup>
  - Adoption of the suggested design for absentee ballot mailing envelopes prescribed under section 101.<sup>32</sup>
  - Waiver of the registration requirements for absent uniformed services voters and overseas voters who, by reason of service of residence, do not have an opportunity to register.<sup>33</sup>
  - Allowing any required application registration forms, other than the post card form, to be sent with the absentee ballot and returned with it.<sup>34</sup>
  - Expediting the processing of balloting materials for absent uniformed services voters and overseas voters.<sup>35</sup>
  - Permitting commissioned officers of the Armed Forces or any other official authorized to administer oaths under Federal law or the law of the state, to administer any oath required for the documents under Title I of the Act.<sup>36</sup>
  - Assuring that absentee ballots are mailed to uniformed services voters and overseas voters at the earliest opportunity.<sup>37</sup>
  - Assisting the Presidential designee in compiling statistical and other information relating to this title and required by section 101(b)(6).<sup>38</sup>
  - Providing late registration procedures for persons recently separated from the Armed Forces.<sup>39</sup>

#### Sec. 105. Enforcement

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28. UOCAVA, § 104, *formerly codified at* 42 U.S.C. § 1973ff-3.

31. UOCAVA, § 104(1).

32. *Id.* § 104(2).

33. *Id.* § 104(3).

34. *Id.* § 104(4).

35. *Id.* § 104(5).

36. *Id.* § 104(6).

37. *Id.* § 104(7).

38. *Id.* § 104(8).

39. *Id.* § 104(9).

29. National Defense Authorization Act of 2002, Pub. L. No. 107-107 § 1606(b), *codified at* 42 U.S.C. § 1973ff-3 (Dec. 28, 2001).

30. 42 U.S.C. § 1973ff-3, as amended by the MOVE Act, § 585(a).

- Permits the Attorney General of the United States to bring a civil action for such declaratory or injunctive relief as is necessary to carry out the provisions of Title I of UOCAVA.<sup>40</sup>

#### Section 106. Effect on Certain Other Laws.

- Any exercise under UOCAVA does not affect the residence or domicile of any person exercising that right for purposes of Federal, State and local tax purposes.<sup>41</sup>

#### Section 107. Definitions.

- “absent uniformed services voter”
  - A member of a uniformed service who because of active duty service will be absent from the place of residence where he or she is otherwise eligible to vote
  - A member of the merchant marine, who because of service in the merchant marine will be absent from the place of residence where he or she is otherwise eligible to vote.
  - The spouse of an active duty uniformed service member, or member of the merchant marine who will be absent from their registered place of voting due to that service.<sup>42</sup>
- “balloting materials”
  - The official post card form prescribe by section 101,
  - The Federal write-in absentee ballots prescribed by section 103,
  - Any State balloting materials that the Presidential designee determines are necessary for carrying out Title I of UOCAVA.<sup>43</sup>
- “Federal office”
  - President, Vice-President, U.S. Senator, U.S. Congressional Representative, U.S. Congressional Delegate, or Resident Commissioner to Congress.<sup>44</sup>
- “overseas voter”
  - A uniformed services voter who by reason of active duty or service will be absent from the United States on the election date involved.<sup>45</sup>
  - A person who lives outside the U.S. and is qualified to vote in the last place he or she resided in before leaving the U.S.<sup>46</sup>
  - A person who lives outside the U.S. who, but for such residence, would be qualified to vote in the last place she was domiciled in before leaving the U.S.<sup>47</sup>
- “State”
  - Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa<sup>48</sup>
- “uniformed services”

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40. UOCAVA, § 105, *codified at* 42 U.S.C. § 1973ff-4(a).

41. UOCAVA, § 106, *codified at* 42 U.S.C. § 1973ff-5.

42. UOCAVA, § 107(1)(A)–(1)(C), *codified at* 42 U.S.C. § 1973ff-6(1)(A)–(1)(C).

43. UOCAVA, § 107(2), *codified at* 42 U.S.C. § 1973ff-6(2).

44. UOCAVA, § 107(3), *codified at* 42 U.S.C. § 1973ff-6(3).

45. UOCAVA, § 107(5)(A), *codified at* 42 U.S.C. § 1973ff-6(5)(A).

46. UOCAVA, § 107(5)(B), *codified at* 42 U.S.C. § 1973ff-6(5)(B).

47. UOCAVA, § 107(5)(C), *codified at* 42 U.S.C. § 1973ff-6(5)(C).

48. UOCAVA, § 107(6), *codified at* 42 U.S.C. § 1973ff-6(6).

- The Army, Navy, Air Force, Marine Corps, the Coast Guard, and the commissioned corps of both the Public Health Service and the National Oceanic and Atmospheric Administration<sup>49</sup>
- “United States”
  - In the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.<sup>50</sup>

## **Title II – Postal, Criminal and General Provisions**

### **Sec. 201. Postal Code Amendments.**

- Provides that balloting materials under UOCAVA:
  - Shall be carried expeditiously and free of charge
  - May be mailed at a post office established outside the United States, except when prohibited by treaty or other international agreement.<sup>51</sup>

### **Sec. 202. Criminal Code Amendments.**

- Added a new section 608 that
  - Permitted fines, imprisonment of up to 5 years, or both, for any person who knowingly deprives or attempts to deprive a person of a right provided by UOCAVA.<sup>52</sup>
  - Permitted fines, imprisonment of up to 5 years, or both, for any person who for the purposes of establishing eligibility under UOCAVA
    - Knowingly gives false information of any person to register or vote under UOCAVA, or
    - Pays, offers to pay, or accepts payment for registering or voting under UOCAVA.<sup>53</sup>

### **Sec. 203. Repeals.**

- UOCAVA repealed both the Federal Voting Assistance Act of 1955<sup>54</sup>, and the Overseas Citizens Rights Act of 1975.<sup>55</sup>

### **Sec. 204. Effective Date.**

- The Act applied to all elections taking place after December 31, 1987.

## **Relevant Secondary Sources**

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- 49. UOCAVA, § 107(7), *codified at* 42 U.S.C. § 1973ff-6(7).
  - 50. UOCAVA, § 107(8), *codified at* 42 U.S.C. § 1973ff-6(8).
  - 51. UOCAVA, § 201(a), *codified at* 39 U.S.C. § 3406(a).
  - 53. UOCAVA, § 202(a), *codified at* 18 U.S.C. § 608(b).
  - 52. UOCAVA, § 202(a), *codified at* 18 U.S.C. § 608(a).
  - 54. 42 U.S.C. §§ 1973cc et seq.
  - 55. 42 U.S.C. §§ 1973dd et seq.

1. Kevin J. Coleman, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, Congressional Research Service (Oct. 4, 2012).

2. Alan Gura, *Ex-Patriates and Patriots: A Constitutional Examination of the Uniformed and Overseas Citizens Absentee Voting Act*, 6 Tex. Rev. L. & Pol. 179 (2001).

- Argues that although military personnel and their dependents may be entitled to protection of their voting rights, UOCAVA should be abolished because the Act's extension of the franchise to other ex-patriates exceeds Congress's powers and tramples the rights of domestic voters.

3. Steven F. Huefner, *Lessons From Improvements in Military and Overseas Voting*, 47 U. Rich. L. Rev. 833 (2013).

- Describes the evolution of voting procedures and rights for uniformed and overseas voters.
- Explores the accommodations provided for uniformed and overseas voters through the lens of three recent "controversies." Including::
  - Problems in Florida during the 2000 election
  - Virginia's difficulties processing uniformed and overseas absentee ballots during the 2008 election.
  - The Obama campaign's lawsuit over early-voting in Ohio during the 2012 election.
- Offers some best approaches for early and absentee voting, and encourages states that have not done so, to adopt the Uniform Law Commission's state-level Uniform Military Overseas Voters Act.

4. R. Michael Alvarez, Thad E. Hall, & Brian F. Roberts, *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transfer Problem*, 34 Fordham Urb. L. J. 935 (2007).