

## **A New Election Year has Begun, Submit a New FPCA**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

- 7.1—Election officials must get the absentee ballots out in time for the service member to vote.
- 7.2—Service member or military spouse voting and domicile

Mr. Joe Schumacher, the Voting Assistance Officer (VAO) of the Marine Corps, has sent out a blast e-mail to Marines, reminding them of the need to complete and submit new Federal Post Card Applications<sup>3</sup> (FPCAs) for the primaries and general elections to be held in 2014. Other VAOs at the service level have likely sent out similar e-mail blasts.

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

<sup>3</sup>The name of this form is misleading, and the form should be renamed. Since 2003, this standard form is no longer a post card—it folds up into a sealed envelope. For more than a decade, the Department of Defense (DOD) has not asked military and overseas voters to put personal information (date of birth, Social Security Number, home address, etc.) on a post card. There are probably thousands of the old post card forms still out there. Those forms should be destroyed.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)<sup>4</sup> gives “absent uniformed services voters” and “overseas voters” the right to register and vote by absentee process in primary, general, special, and runoff elections for federal office (President, United States Senator, and United States Representative).<sup>5</sup> Most of these folks are also eligible to vote in state and local elections, but that is a matter of state law.

An absent uniformed services voter is a member of one of the seven uniformed services (Army, Navy, Marine Corps, Air Force, or Coast Guard, or the commissioned corps of the Public Health Service or the commissioned corps of the National Oceanic and Atmospheric Administration). The service member must be on active duty or in active service. Voting-age spouses and family member of uniformed services members also qualify.<sup>6</sup>

The active duty service member or family member need not be outside the United States to qualify to vote under UOCAVA. It is sufficient that the person be absent from the place of his or her domicile (legal residence) because of his or her uniformed service or the service of his or her spouse or parent.<sup>7</sup> For example, Joe Smith graduated from high school in Arlington, Virginia three years ago and is currently on active duty in the Navy, serving in Norfolk, Virginia, about 200 miles away from his Arlington home. Joe’s domicile (legal residence) is in Arlington, although he normally sleeps in Norfolk, in an apartment that he rents near the Navy base where he serves. Joe is an absent uniformed services voter as defined by UOCAVA.

UOCAVA also gives the right to vote to “overseas voters.” An overseas voter is a citizen of the United States who is currently outside our country either temporarily or permanently.<sup>8</sup> A person who is outside the United States temporarily, with the intent to return, is likely eligible (under state law) to vote by absentee ballot for non-federal as well as federal offices. A person who is outside our country indefinitely, without the intent to return, is nonetheless eligible to vote by absentee ballot for federal offices at the last place within the United States where he or she lived and was domiciled, even if the departure was decades ago and the person has no intent to return to that place.

If you are a UOCAVA voter (military or civilian), it is important that you use the FPCA (rather than a state form) to register to vote and/or apply for an absentee ballot. Your home state is *required by federal law* to accept the FPCA as a *simultaneous* voter registration application and absentee ballot request.<sup>9</sup>

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<sup>4</sup>Congress enacted UOCAVA in 1986 and has amended it several times. This law is codified in title 42 of the United States Code, at sections 1973ff through 1973ff-7 (42 U.S.C. 1973ff-1973ff-7).

<sup>5</sup>42 U.S.C. 1973ff-1(a)(1).

<sup>6</sup>42 U.S.C. 1973ff-6(1). Members of the U.S. flag Merchant Marine and their voting-age spouses and family members accompanying them also qualify as absent uniformed services voters. 42 U.S.C. 1973ff-6(1)(B).

<sup>7</sup>42 U.S.C. 1973ff-6(1)(A).

<sup>8</sup>42 U.S.C. 1973ff-6(5).

<sup>9</sup>42 U.S.C. 1973ff-1(a)(4).

For example, Joe Smith graduated from high school and joined the Navy in 2011, and he was living in Arlington, Virginia at the time. Arlington is still his domicile, although he normally sleeps in Norfolk, where he is stationed in the Navy. Joe did not try to vote in 2012 or 2013, but he wants to vote in 2014. Joe has never voted or registered to vote in the traditional sense. If Joe uses a Virginia absentee ballot request form, the Registrar of Voters will look for Joe's name on the Arlington County voter registration list. Not finding Joe's name, she won't send him a ballot. But if Joe uses the FPCA the Registrar must register him and send him an absentee ballot, from that one completed form.

In 1978, during my initial active duty period, I served (as a collateral duty) as the VAO for the Office of the Judge Advocate General of the Navy, which was then located in the Navy Annex in Arlington, Virginia. I distributed FPCAs to the 70 or so active duty military personnel assigned to the Office, and I gave them forms to take to their spouses. Using the 1978 edition of the *Voting Assistance Guide* (biennially published by DOD), I assisted service members and spouses in the proper completion and submission of the FPCA.

Military units still have assigned collateral duty VAOs, and it is still possible to obtain and complete the paper FPCA in the way that I and my 1978 Navy colleagues did, pen on paper and submit the application by snail mail. But that approach is "so 20<sup>th</sup> Century" in the vernacular of today's service members. A much better way to complete and submit the FPCA in the Internet Age is to go to the website of the Federal Voting Assistance Program (FVAP). Specifically, I suggest that you visit <https://www.fvap.gov/citizen-voter/overview>. At that site, you will find an electronic FPCA and a "wizard" to help you complete the form in a complete, correct, and legible way and to submit it (perhaps electronically) to the appropriate election official in your home state.

Where do you submit your completed FPCA? In Alaska, Maine, and the District of Columbia there is a statewide official who receives applications for absentee ballots, sends out the unmarked ballots, and receives and counts the marked ballots. In all other states, a local election official (LEO) at the county, municipal, or township level, or parishes in Louisiana, administers absentee voting. There are more than 7,500 LEOs who administer absentee voting for federal elections. The FVAP website will help you identify the appropriate election official and send your application to the right place.

Until amended in 2009, UOCAVA required election officials to send out multiple absentee ballots, for multiple elections through two election cycles (like 2006 and 2008) based on one completed FPCA. That practice proved to be very wasteful, because service members and other UOCAVA voters move frequently, and an absentee ballot sent in 2008 to an address provided in 2006 often came back to the LEO marked "moved not forwardable." In 2009, Congress amended UOCAVA to eliminate this requirement. In other words, you should not expect to receive an absentee ballot in 2014 based on an application that you made in 2012. You need to complete and submit a new FPCA for 2014, even if you still have the same mailing address that you had in 2012.

Service members often wait to submit their FPCAs because they don't know where they will be in the weeks leading up to the November general election. I suggest that you not wait—submit the completed FPCA now. The FVAP website will help you establish and maintain contact with your home-town election official. When you know where you need the ballot to be sent, you can contact the election official by e-mail or telephone and provide that information.

A lack of ballot transmission time has always been a problem for military and overseas voters. Because of late primaries, ballot access lawsuits, and other problems, election officials have sometimes not had absentee ballots printed and ready to mail until a few days before Election Day. Although the voter may have applied months in advance, the voter was disenfranchised because there just was not enough time provided for the ballot to go from the election official to the voter and back by Election Day.

In 2009, Congress amended UOCAVA in some important ways. Now, all states are *required by federal law* to mail out absentee ballots to UOCAVA voters at least 45 days before the primary, general, or special election.<sup>10</sup> Of course, the election official cannot send you a ballot until he or she has your completed application in hand. It is important that you complete and submit the FPCA so that your home-town election official has your completed application in hand well prior to the 45<sup>th</sup> day before Election Day.

For example, the 2014 general election will be conducted on Tuesday, November 4. The 45<sup>th</sup> day before November 4 is Saturday, September 20. I suggest that you have your application in well before that day.

Calendar year 2014 has just begun, but it is not too early to complete and submit your FPCA for the November general election. UOCAVA supersedes and overrides state “not earlier than” rules concerning the submission of an absentee ballot request.<sup>11</sup> UOCAVA provides: “A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 1973ff of this title) [the FPCA] submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes for that year submitted by absentee voters who are not members of the uniformed services.”<sup>12</sup>

This year, all 435 members of the United States House of Representatives and 34 United States Senators will be elected or reelected, and tens of thousands of state and local offices are also on the ballot. If you are on active duty or are married to an active duty service member, or if you are outside the United States, you are eligible to participate in the election of these officials, in the primary and the general election, regardless of where the service of our country

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<sup>10</sup>42 U.S.C. 1973-1(a)(8).

<sup>11</sup>Under Article VI, Clause 2 of the United States Constitution (commonly called the “Supremacy Clause”), a federal statute like UOCAVA trumps a state constitution or statute.

<sup>12</sup>42 U.S.C. 1973ff-3.

has taken you. You are affected in many important ways by the decisions that these officials make, and you should participate in these elections.

### **x Update – April 2022**

The location of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) within the United States Code changed. UOCAVA was previously cited at 42 U.S.C. §§ 1973ff–1973ff-7. After an editorial reclassification, the UOCAVA is now codified at 52 U.S.C. §§ 20301–20311. The changes in codification have not changed the substance or application of the sections.

The relevant sections cited throughout the article can be found at:

42 U.S.C. § 1973ff-1 discussing state responsibilities can be found at 52 U.S.C. § 20302.

42 U.S.C. § 1973ff-3 discussing the prohibition of refusal of applications on grounds of early submission can be found at 52 U.S.C. § 20306.

42 U.S.C. § 1973ff-6 discussing the definitions used throughout the title can be found at 52 U.S.C. § 20306.

### **Please join or support ROA**

This article is one of 1800-plus “Law Review” articles available at <https://www.roa.org/page/lawcenter>. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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