

“Answer Key” for UOCAVA Survey

10/18/16

REGISTRATION

Some of these answers refer to “the FVAP training.” You can find this at www.fvaptraining.com.

1. How do you process an Oregon registration card with a military address?

The FVAP training makes it clear that this is sufficient information to identify the voter as a UOCAVA voter. If you wish, you may follow up with an FPCA, but if they don’t return the FPCA you should still treat as military.

2. How do you process an Oregon registration card with an overseas address?

The FVAP training makes it clear that this is sufficient information to identify the voter as a UOCAVA voter. However, under ORS 253.510(3) it matters if an overseas voter intends to return to Oregon.

The definition of residence in ORS 247.035 means that you can assume that “Oregon residence address” means that the voter is attesting that they intend to return there. You should issue a full ballot, but it is fine to send an FPCA or otherwise contact voter to clarify. If the voter sends you information that they’re permanently abroad then you can make the change to permanent limited. If they don’t respond you can treat that as intend to return.

3. Someone enters an overseas address into My Vote (online voter registration) but doesn’t check the absentee box that will let them tell you what kind of voter they are.

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4. A UOCAVA voter faxes you an FPCA (Federal Post Card Application) with a military address. The voter is already registered. What do you do?

An FPCA for a voter who is already registered is serving as an application for a ballot from a military or overseas elector (ORS 253.540) which just needs to be “a written request.” This is sufficient to update the voter’s address.

5. A regular voter faxes you an FPCA with a military address. The voter is already registered. What do you do?

The FVAP training makes it clear that a military address is sufficient to identify someone as a UOCAVA voter.

An FPCA for a voter who is already registered is serving as an application for a ballot from a military or overseas elector (ORS 253.540) which just needs to be “a written request.” This is sufficient to update the voter’s address.

6. A voter faxes you an FPCA as a brand new registration 22 days before the election. What do you do?

Under ORS 246.021(3) a registration card can’t be submitted by fax. So this is not sufficient to register the voter.

The UOCAVA committee is exploring ways to change this through legislation and/or administrative rule.

In the meantime, you should apply the following workaround to this kind of scenario:

(1) Reply as soon as possible to the voter explaining that they need to get a paper FPCA in the mail postmarked by the registration date or by going to the online application. Explain that you realize it may take a while for the paper FPCA to arrive, but having the postmarked paper copy is a legal requirement. Also explain that you will begin the process of getting a ballot to the voter, but that you won’t be able to count the ballot until the person is legally registered and only if the person meets the registration deadline.

(2) Register the voter the same as you would with a paper FPCA, but put an exception on the ballot.

(3) Mail a paper ballot as soon as possible and follow your normal practices for issuing the AFB.

(4) The ballot must be received by 8 p.m. on Election Day, the same as any other ballot.

(5) Don’t count the ballot until you receive either (a) an online registration submitted before the registration deadline or (b) a paper FPCA with a postmark on or before the registration dead line.

(6) In the case of the FPCA, this means that you could end up counting the ballot after Election Day. If the paper FPCA arrives before you've certified the results, remove the exception and count the ballot.

(7) If the paper FPCA arrives after you've certified the results, do not count the ballot. You should still update the registration according to the FPCA.

WHAT KIND OF BALLOT?

7. You receive an FPCA where the person checked "I am a U.S. citizen residing outside the United States, and my return is uncertain" and put an Oregon address in "Voting residence address." What kind of ballot do you issue the voter?

[This question's unstated assumption is that the voter listed a **mailing** address outside the U.S. Not everyone read it that way, so it should have been made clearer.]

The correct answer is a Federal-only ballot. The definition of "military or overseas elector" in ORS 253.510 requires an overseas voter to intend to reside in Oregon. So the person described does not meet that definition, but does fall under UOCAVA. The directions on the FPCA specifically say that for overseas citizens the Voting residence address is "usually the U.S. address where you last lived. You do not need to have any current physical ties to this address."

8. A UOCAVA voter contacts you in February for the Primary and states they may not have an address or email address to mail the ballot to. What do you do?

[The question's assumption was that the voter would have a valid Oregon address for voting, but be in a place where they couldn't receive mail or email]

The basic problem is that the voter might need to fill out and submit a ballot before the county has designed the ballot, or even before a filing deadline. So the voter needs to be able to vote for all the races for which they are qualified that the county knows are going to be on the ballot.

The best option is the FWAB (Federal Write-in Absentee Ballot), a blank write-in ballot with no contests or candidates listed on it. You can see one here:

<https://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>

You can let the voter know the contests that are going to be on their ballot and the voter can submit a FWAB. The county can of course duplicate the ballot once it has printed the ballots.

There's also a state statute (ORS 253.565) about providing a special ballot often referred to as a "submarine ballot." On this ballot the county clerk lists all the races and measures scheduled to appear on the ballot and gives it to the voter. The voter can then write in the names of candidates and vote on measures. The "submarine ballot" statute is still on the books, so a voter could theoretically request one. This seems pretty unlikely, though, especially if you explain how it's possible to achieve the same goal with the FWAB.

9. The FPCA lets a voter rank preferences for receiving the ballot. Let's say a voter put 1-email, 2-mail, and 3-fax. How would you use this information?

First, you have to mail a paper ballot to every voter, even if their preference is email or fax. The law requires you to mail a paper ballot even if a voter is using another kind of ballot.

Other than that, this is up to you. A county that emails all UOCAVA voters can continue this process and wouldn't do anything differently with this information; nor would a county that doesn't email ballots, and simply relies on My Vote.

10. What is the last date on which you mail military of out-of-country ballots?

Under ORS 253.545(3) this needs to be no earlier than five days before the election. The committee could find nothing that supported an earlier cutoff for out-of-country ballots. Yes, many of those ballots will get to voters after Election Day.

- (1) It's the law. We are required to mail the ballots.
- (2) We don't really know how fast service is to various countries. Maybe it could get to the voter on Election Day and the voter could fax or email an AFB. It's safer to just mail it.
- (3) Getting a ballot after Election Day can be a reminder to voters to request a ballot far enough in advance of an election.

11. Do you process UOCAVA ballots as you receive them or do you hold ballots and show as received later in the process?

What matters here is the outcome: voters knowing that their ballots were received and accepted. What makes sense for one county may not be best for another. For example, a small county might find it better to simply be in communication with its ten UOCAVA voters by email, doing the actual OCVR processing on Election Day.

12. A military or overseas ballot comes back with a yellow USPS sticker with a forwarding address. (In the case of an overseas voter assume the new address is outside the U.S.) What do you do?

22 days+ before election: If it's 22 days or more before the election, you need to update to the address on the yellow sticker. Send a ballot to the new address. (ORS 247.292, ORS 247.307)

5-21 days before election: You may wait until after the election to update the address (ORS 247.298). If you do update the address before Election Day you will send a ballot to the new address (ORS 247.307).

5 days or less before the election: You are not required to mail a ballot to the new address even if you update before the election. See ORS 253.545(3).

These statutes apply to the entire vote by mail process, but the only way you are going to get a ballot returned with a forwarding label 22 days or sooner before the election is domestic absentee, military or overseas ballots.

13. What action do you take if you receive a Federal Write-in Absentee Ballot (FWAB)?

The key thing about a FWAB is it is a backup ballot. Any other ballot—AFB, or print ballot issued by the county—takes precedence over it. You should process it under your normal business procedures.

14. A voter returns a Federal Write-in Absentee Ballot (FWAB) by mail. Next you receive an emailed AFB, followed by a printed AFB, followed by a mail issued printed Oregon ballot, and lastly a faxed AFB. Both ballots returned electronically had all the proper forms. What do you do?

The committee decided on this simple standard: count the first Oregon ballot received. In this scenario it is the emailed AFB.

15. What, if anything, do you do to check if someone is still a military voter?

It's fine to have a procedure to ask voters to confirm if they are still military voters, but you should never remove someone just because they have an address that doesn't look like a military address. Plenty of active duty service members live off base and have standard-looking addresses.

If someone does not respond, you should leave them as a military voter.

If someone is registered in your county and is living in your county, they cannot be a military voter. This is because the federal and state laws both define military voters as being absent from their home jurisdiction. So, if a voter returns to your county they are no longer a military voter, even if they are still active duty.

There may be situations where a military voter wants a ballot sent to an address in your county so that friends or family members can forward the ballot to them. It is fine to work to accommodate such a voter and let them retain their military status once you've confirmed they're absent from your county. It'd also be good to make sure they understand you can send the ballot to them directly.