



A Policy Brief

Automatic Voter Registration

Fall 2016



Background on Automatic Voter Registration

In an attempt to modernize the voter registration process, several States are considering, or have recently considered, automatic voter registration. Project Vote defines “automatic voter registration” as a statutory system whereby State election officials use information about individuals’ voter eligibility existing within government databases to register qualified individuals to vote without the individuals themselves needing to take action.”¹ Citizens are given the choice of intentionally opting-out of registration or updating their information.

Once registered, the voter’s information is sent electronically from the State government agency that originally collected the information to the election official responsible for verifying the voter’s eligibility and/or updating the voter’s registration information. This would occur each time that the voter utilizes services with a particular State government agency (i.e., the Department of Motor Vehicles).

Current Legislative Status

As of August 9, 2016, five States have enacted automatic voter registration laws: Washington, D.C., Oregon, California, West Virginia, and Vermont. Connecticut enacted its system by administrative rule in May of 2016. According to the Brennan Center for Justice, 21 additional States plus the District of Columbia have considered measures in 2016 that would enact automatic voter registration.

There has been movement at the federal level as well. In July 2016, Rep. Robert Brady introduced H.R. 5779, the “Automatic Voter Registration Act of 2016,” that would require all eligible citizens to be automatically registered for federal elections when they utilize certain State or Federal

agencies. Senators Leahy, Klobuchar and Durbin introduced companion legislation in the Senate (S.3252). Similar legislation was introduced in 2015 by Sen. Bernie Sanders and by Rep. David Cicilline.

Potential Impact on UOCAVA Voters

While the intent of automatic voter registration is to modernize the voter registration system, add more voters to the rolls and streamline the administration of voter registration for voters and election officials alike, there are potential consequences for voters covered under the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. UOCAVA voters are U.S. citizens who are active members of the Uniformed Services, the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their eligible family members and U.S. citizens residing outside the United States. UOCAVA covers voters who are absent from their voting jurisdiction and affords them the use of forms prescribed by the Federal Voting Assistance Program (FVAP). FVAP's forms, specifically the Federal Post Card Application, allow the voter to simultaneously register and request a ballot for federal elections in at least the calendar year in which the form is submitted.

The distinctions between voter registration under the *National Voter Registration Act (NVRA)* and registration as a UOCAVA voter raise interesting questions in relation to automatic voter registration.

NVRA allows a voter to permanently register to vote in their assigned polling precinct. This registration is permanent and generally not canceled except under certain circumstances (i.e., voter relocates to another precinct; voter withdraws registration; failure to vote in a certain number of consecutive elections, etc.) UOCAVA registration is a little different and can vary from State to State. Some States treat the Federal Post Card Application (FPCA) as a temporary registration that must be updated by the voter every calendar year. Other States will place a

UOCAVA voter on their permanent registration voter rolls, but require an updated absentee ballot request every few years. Many *UOCAVA* voters already experience confusion between being registered and having a valid ballot request. Automatic voter registration could potentially intensify this confusion amongst this group of voters.

The distinctions between voter registration under the *National Voter Registration Act (NVRA)* and registration as a *UOCAVA* voter raise interesting questions in relation to automatic voter registration. For example, does voter registration that occurs under the terms of automatic registration impact a *UOCAVA* voter's status? Should it? Is there a method for a new *UOCAVA* voter to specify their *UOCAVA* status so that an absentee ballot request is made concurrently with their registration? Are there explicit protections in place to ensure that a previously registered *UOCAVA* voter retains that status even when their registration is updated under an automatic voter registration system?



States with enacted automatic voter registration: Washington, D.C., Oregon, California, West Virginia, and Vermont. 20 additional States have considered automatic voter registration measures.

The bottom line is that while voters are given the option to “opt-out” of automatic registration, UOCAVA voters are often first-time voters who may not have an understanding of how automatic registration could impact their residency and UOCAVA status.

The questions raised by the interplay between permanent registration, temporary registration and a valid absentee ballot request are particularly important given that much of the military population is young and may not be familiar with the provisions of automatic voter registration or the nuances between absentee voting resources versus those granting permanent registration. The bottom line is that while voters are given the option to “opt-out” of automatic registration, UOCAVA voters are often first-time voters who may not have an understanding of how automatic registration could impact their residency and UOCAVA status.

Potential Impact on Residency

Many UOCAVA voters, particularly those serving in the military, are highly mobile. They may need to utilize government services in a variety of States as they relocate from duty station to duty station; however, they may wish to retain their home of record as their voting residence address (within their State of legal residence). If this voter is automatically registered in a new State when they utilize a State government service, this could impact their legal residency depending on the law in the State in which they have now been automatically registered in conjunction with the law in their original State of residence. This could also inadvertently put them at odds with the provisions outlined in the FPCA prescribed oath which states, “I am not registering, requesting a ballot, or voting in any other jurisdiction in the United States, except the jurisdiction cited in this form (FPCA).”



.....
An active duty Service member has legal residence in Florida but is currently stationed in West Virginia. While serving in West Virginia, she visits the West Virginia Department of Motor Vehicles to obtain a West Virginia driver’s license. While filling out the forms, she fails to opt-out of voter registration in West Virginia and is now a registered voter in the State of West Virginia thus technically nullifying any previous registration in Florida and potentially having negative implications on her residency status in Florida. This could also result in additional tax implications.
.....

Potential Impact on UOCAVA Status

Another potential impact to UOCAVA voters is the inability of automatic voter registration to properly capture a person's status as a UOCAVA voter, and its potential to strip that status altogether. For example, a UOCAVA voter may need to update their driver's license in their State of legal residence even though they are currently stationed in another State.



.....
An active duty Marine from North Carolina is interested in purchasing a vehicle while stationed at Camp Pendleton in San Diego, but needs to obtain a driver's license. When he makes that transaction with the California Department of Motor Vehicles, he will automatically be registered to vote under automatic voter registration provisions after failing to opt-out of the transaction. Additionally, the Department of Motor Vehicles may have no way of verifying or knowing that the voter qualifies as a UOCAVA voter given his active duty military status. Therefore, the voter would be registered as a regular in-state voter causing the potential loss of UOCAVA protections. Additionally, this voter would now be registered in both North Carolina and California, which could lead to further complications when the Marine returns to Camp Pendleton and submits a Federal Post Card Application to his home jurisdiction in North Carolina.
.....

Potential Tax Implications

Overseas citizens, particularly those who have never resided in the United States, are sensitive to anything that would impact their tax status in the United States or their State of residence. Active duty Service members may also have tax implications from changes to voter registration that impacts residency. This is particularly true for those Service members who have established their residence in States that do not have a State income tax (e.g., Florida or Texas).

While many automatic voter registration laws apply only to services utilized through a State's Department of Motor Vehicles, some legislative proposals extend automatic voter registration to other social services that overseas citizens may be more likely to utilize, such as attendance at State universities. Depending on the State, voter registration also serves as the establishment of residency in the State. An overseas citizen attending school in a State with such a law on the books may suddenly find themselves a resident of the State through automatic voter registration and may then find themselves liable for State income taxes.



.....
A spouse of an active duty Service member with legal residence in Texas attends graduate school at a State university in New York with plans to immediately return to Texas upon graduation. New York (hypothetically) has automatic voter registration for anyone attending a State university and so this voter is registered upon enrollment in the university. This individual is now considered a voter, and potentially a legal resident, in the State of New York. As a legal resident, she would now be liable for State income taxes in the State of New York.
.....



Local DMV office in Georgia.

Potential Solutions

The Federal Voting Assistance Program provides Service members, their eligible family members and overseas citizens with information about, and assistance with, absentee voting.

As more States consider adopting or begin implementation of their automatic voter registration systems, there are steps the States can take to help alleviate potential negative implications for *UOCAVA* voters. It is important that voters be provided as much information as possible regarding the automatic voter registration system and what utilizing the system could potentially mean for the voter. For example, in West Virginia, a voter utilizing its automatic voter registration system is asked to confirm several times that they are both eligible to register in West Virginia and that they want to register in West Virginia. This helps to ensure the voter has full awareness that they are registering to vote in West Virginia and reinforces that registering to vote in West Virginia is their intent.

States have also taken initial steps to ensure that voters who are currently registered as *UOCAVA* voters will not have their *UOCAVA* status stripped because of automatic voter registration. In Oregon, when a voter utilizes Oregon's Motor Voter system, the voter's local election official is notified that the voter is a *UOCAVA* voter and the election official then investigates the *UOCAVA* voter's record to determine whether their registration should be updated. West Virginia has incorporated a similar control procedure to help ensure that updating one's voter registration with West Virginia will not strip their *UOCAVA* status. A previously submitted FPCA remains valid and in effect through the election year regardless of whether the voter is registered at the Department of Motor Vehicles in the interim.

Conclusion and FVAP Next Steps

FVAP does not advocate for or against automatic voter registration.

This brief was intended to highlight the challenges and benefits UOCAVA voters might experience with automatic registration.

FVAP remains agnostic on the larger issue of whether automatic registration should be enacted by the States; however, it does have a responsibility to consider and educate stakeholders on the potential impact to UOCAVA voters. When considering implementation of automatic voter registration systems, FVAP encourages the States to consider the potential impact to UOCAVA voters, many of whom are first-time voters who often find the process of voting absentee daunting. Automatic registration could be yet another facet of the process they would need to be aware of. States should provide as much information as possible so that UOCAVA voters understand the potential implications automatic voter registration could have on both their legal residence and their status as a UOCAVA voter. As States consider adopting automatic voter registration or move forward with implementation of existing laws, we encourage States to examine ways to alleviate potential issues for UOCAVA voters.

These points should also be considered as States enter into interstate agreements to exchange voter registration data. While the most recent voter transaction would typically take precedence, controls over potential consequences for UOCAVA voters should be considered critically important.

1 “Automatic Voter Registration Best Practices.” August 2015. <http://www.projectvote.org/wp-content/uploads/2015/08/Automatic-Registration-Best-Practices-August-2015.pdf>



For more information on the Federal Voting Assistance Program, this research, or how FVAP can assist your office, please contact your FVAP State Analyst:

Nate Bacchus (571) 372-0739 nate.a.bacchus@fvap.gov
Meghan Kelly (571) 372-0742 meghan.kelly@fvap.gov