CAMPAIGN LEGAL CENTER

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DATE: November 9, 2026

RE: Comment Opposing Changes to the Federal Post Card Application (Docket No. DOD-2026-OS-1982) and Changes to the Federal Write-In Absentee Ballot (Docket No. DOD-2026-OS-1981)

Less than ninety days before a federal election, the Department of Defense (DOD) proposed amendments to the Federal Post Card Application (FPCA) and the Federal Write-In Absentee Ballot (FWAB), which were subsequently implemented by the Federal Voting Assistance Program (FVAP). Specifically, the Proposed Final Rules eliminate the following category from both the FPCA and FWAB: "I am a US citizen living outside the country, I have never lived in the United States." The removal of this category is both substantively deficient under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and will lead to voter confusion regarding who is eligible to vote in federal elections. Currently, U.S. citizens who have never physically resided in the United States are authorized to vote in federal elections in 38 states and the District of Columbia.[1] Many such voters have historically relied on the FPCA and FWAB to vote in federal elections and had planned to do so in the November 2026 federal election. Removing this category of voter from the FPCA and FWAB less than 90 days before a federal election not only contravened the intent of Congress as enacted through UOCAVA, but directly interfered with States' ability to develop and issue guidance for impacted voters prior to the federal election.

The Department of Defense bypassed the notice and comment process and requested an emergency justification to amend the two forms under the premise that, allegedly, public harm was reasonably likely to result if emergency processing was not followed.[2] DOD stated that "the current

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[1] *See Never Resided in the U.S.?*, Fed. Voting Assistance Program (FVAP), https://web.archive.org/web/20250228101132/https://www.fvap.gov/citizen-voter/reside.

[2] *See* Letter from Sean O'Keefe, Deputy Under Secretary of [Defense] for Personnel and Readiness, to Dominic Mancini, Deputy Administrator of the Office of Information and Regulatory Affairs 1 (Aug. 28, 2026) [hereinafter Aug. 28 Letter], https://omb.report/icr/202608-0704-009/doc/original/171967302.pdf.

format of [the] forms *may* confuse voters," but provided no evidence to support that contention[3] and took no steps to consult with interested agencies or members of the public who are directly impacted by the changes to the forms.[4] Both steps are required to authorize emergency processing under the Paperwork Reduction Act (PRA).[5]

Alongside this new rule, DOD published a policy paper on "'Never-Resided' US. Citizens UOCAVA Eligibility," which stated its new position that certain voters who have never resided in the United States cannot vote using the FPCA and FWAB.[6] This change in position, which apparently justified the changes, stands contrary to the Elections Clause as well as UOCAVA's mandates, both of which clearly defer to the states' authority to determine eligibility to vote as an overseas citizen.

Now, the Department of Defense has requested posthoc notice and comment to these dramatic changes to the FPCA (Docket No. DOD-2026-OS-1982) and FWAB (Docket No. DOD-2026-OS-1981) (collectively, the "Proposed Final Rules"). This Proposed Final Rulemaking directly undermines the goals of Congress when it enacted UOCAVA by interfering with the fundamental voting rights of the families of military service members and other U.S. citizens living abroad.[7]

Campaign Legal Center strongly opposes this Proposed Final Rulemaking for three reasons. *First*, the Proposed Final Rules are unconstitutional because the Rules infringe upon the States' authority to regulate election procedures under the Elections Clause and exceed the powers delegated to DOD and FVAP by Congress. *Second*, the Proposed Final Rules violate UOCAVA because the Rules deny certain covered voters the ability to use the FPCA and FWAB. *Third*, the Proposed Final Rules violate the Administrative Procedure Act and Paperwork Reduction Act

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[3] *Id.* (emphasis added).

[4] *See U.S. Vote Foundation Calls on Department of War to Revert Emergency Changes to Military and Overseas Voting Forms*, U.S. Vote Found. (Sep. 30, 2026), https://perma.cc/3KVR-88FE; *American Citizens Abroad (ACA) calls on the Department of Defense to restore overseas voting forms.*, Am. Citizens Abroad (Oct. 30, 2026), https://www.americansabroad.org/aca_calls_on_the_dod_to_restore_overseas_voting_forms.

[5] *See* 5 CFR § 1320.13(a)(2), (c).

[6] Pers. Readiness Mgmt. Agency, Dep't of [Def.], Policy Paper on "Never-Resided" U.S. Citizens UOCAVA Eligibility (Aug. 2026) [hereinafter Aug. Policy Paper], https://www.fvap.gov/uploads/FVAP/Policies/FVAP_PolicyBrief_NeverResidedUSCitizens.pdf.

[7] *See* H.R. Rep. 99-765, at 5 (1986); *see also United States v. Alabama*, 778 F.3d 926, 928 (11th Cir. 2015) (explaining that Congress passed UOCAVA to remedy the "severe difficulties" that absent uniformed service voters and their families have historically faced when exercising their right to vote).

because the Department of Defense failed to consult with interested parties and failed to provide sufficient reasoning to justify the usage of emergency processing.

I. The Proposed Final Rules are Unconstitutional Because the Rules Infringe upon the States' Authority to Regulate Election Procedures and Exceed the Powers Delegated to FVAP.

A. The Proposed Final Rules Infringe upon the States' Authority to Determine Voter Eligibility in Federal Elections.

The Department of Defense's position that certain U.S. citizens living abroad may not use the FPCA or FWAB is an unconstitutional usurpation of the States' constitutional authority to determine who is eligible to vote in federal elections. The Elections Clause of the United States Constitution delegates the power to regulate federal elections to the States, subject only to modification by Congress through legislation.[8] But only the States are tasked with "[p]rescribing voting qualifications," which "forms no part of the power to be conferred upon the national government' by the Election Clause."[9] In other words, "the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them."[10] Therefore, while Congress may delegate to DOD the power to determine the manner by which overseas and uniformed service voters register and cast their ballots, the Constitution reserves to the States the power to determine who is qualified to vote using the two UOCAVA forms consistent with state law.

By bypassing notice and comment, DOD sought to amend the two forms because they believe that United States citizens "who are not in the uniformed services and who have never resided in the United States are not within the class of voters specifically defined by UOCAVA and therefore may not be able to use the FPCA or the FWAB."[11] This is not DOD's role. The Proposed Final Rules infringe upon the States' authority to determine voting qualifications by preventing states from accepting the FPCA and FWAB from any overseas voter qualified to vote in federal elections under state law.

UOCAVA—consistent with the Elections Clause—expressly leaves to the states to determine who is qualified to avail themselves of UOCAVA's protections. First, under UOCAVA, the term "absent uniformed services voter" is defined to include "a spouse or dependent of a member [of a uniformed service or the merchant marine] who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is

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[8] U.S. Const. art. I, § 4, cl. 1; *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013) ("*ITCA*").

[9] *See ITCA*, 570 U.S. at 17 (quoting The Federalist No. 60 (Alexander Hamilton)).

[10] *Id.* at 16.

[11] Aug. 28 Letter at 3; *see also* Aug. Policy Paper at 1-2.

otherwise qualified to vote."[12] Likewise, UOCAVA defines "overseas voter" to include "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."[13]

The terms "residence" and "domicile" are not defined in the Uniformed and Overseas Citizens Absentee Voting Act. But the Supreme Court has long understood residence to be a qualification of voting.[14] Likewise, federal courts have recognized that states *may* require that citizens establish domicile to register to vote.[15] Moreover, the Supreme Court has held that when domicile is used in a federal statute, "Congress intended a state-law definition of a statutory term . . . where uniformity clearly was not intended."[16] As a voting qualification, Congress could not have intended for residence or domicile to have a uniform application—rather, consistent with the Elections Clause, the definition is left to "the unfettered discretion of state legislatures."[17] In other words, it is up to the states to determine what it means to be "a resident . . . otherwise qualified to vote" as a military spouse or dependent, or an overseas voter "qualified to vote in the last place in which the person was domiciled before leaving the United States."[18] Many states have decided that includes individuals who have never resided in the United States but have sufficient ties to establish eligibility to vote in that state.[19] A contrary application would unconstitutionally preempt those state laws that allow U.S. citizens who have never physically resided in the United States from deriving their domicile from their parents or spouse for the purposes of voting.

Rather than facilitating the constitutional right to vote for military and overseas voters, as UOCAVA was enacted to do,[20] the Proposed Final Rulemaking deters and potentially prohibits voters who have never physically resided in the United States from voting in federal elections in the District of Columbia or in one of the 38 States that allow such voters to so do consistent with state law. This is an unconstitutional Rulemaking because it directly supplants the States' power

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[12] 52 U.S.C. § 20310(1) (emphasis added).

[13] 52 U.S.C. § 20310(5) (emphasis added).

[14] *Dunn v. Blumstein*, 405 U.S. 330, 334 (1972).

[15] *United States v. Texas*, 445 F. Supp. 1245, 1255 (S.D. Tex. 1978), *aff'd sub nom. Symm v. United States*, 439 U.S. 1105 (1979).

[16] *See Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 44 (1989).

[17] *ITCA*, 570 U.S. at 17; *cf. Miss. Band of Choctaw Indians*, 490 U.S. at 43-47 (finding that uniformity was intended because the law's purpose was to secure the rights of Native American families no matter where they lived).

[18] 52 U.S.C. § 20310.

[19] *E.g.*, A.R.S. § 16-103(E) (Arizona); MCL 168.759a(3) (Michigan); N.J.S.A 19:59-2(f) (New Jersey).

[20] *See* 155 Cong. Rec. S7947-03, S7966 (daily ed. July 23, 2009); H.R. Rep. No. 99-765, at 5 (1986).

to determine voting qualifications by changing the method of registration and absentee voting in a manner not approved by Congress and foreclosed by the Constitution.

B. The Proposed Final Rules Exceed the Powers Delegated to FVAP by Congress and Constitute an *Ultra Vires* Action.

FVAP's removal of the "never lived in the United States" category from the FPCA and FWAB also exceeds the powers delegated by Congress by limiting the scope of voters covered under UOCAVA. "When an executive agency administers a federal statute, the agency's power to act is 'authoritatively prescribed by Congress.'"[21] "Any action that an agency takes outside the bounds of its statutory authority is *ultra vires*."[22] Such an action violates the Constitution's separation of powers and the fundamental principles of federalism. As a result, "[t]o permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress."[23]

At UOCAVA's enactment, Congress authorized the President to designate an executive department head to oversee the federal functions of UOCAVA.[24] The Secretary of Defense was then properly marked as the "Presidential designee" and power was properly delegated to FVAP to carry out the purpose of UOCAVA.[25] However, it is clear that Congress never intended to delegate to FVAP the power to prohibit a State from regulating federal elections in accordance with State law. The Proposed Final Rules purport to prohibit U.S. citizens "who are not in the uniformed services and who have never resided in the United States" from using both the FPCA and FWAB to vote in federal elections in the states in which they are otherwise qualified to vote.[26] By prohibiting these voters from using the two forms, DOD also seeks to prohibit States from accepting and processing Federal Post Card Applications and Federal Write-In Ballots received from these voters. But under UOCAVA, Congress has not delegated to the Secretary of Defense or FVAP the power to prohibit States from using the FPCA and FWAB for a federally-defined subset of overseas voters qualified to vote in federal elections under state law.

With regard to the FPCA, Congress delegated the power to FVAP to "prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States."[27] It leaves to the states to "accept and process, with respect to

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[21] *City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (quoting *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013)).

[22] *Id.* (emphasis added).

[23] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374-75 (1986).

[24] 52 U.S.C. § 20301(a).

[25] *See* Exec. Order No. 12642, 53 Fed. Reg. 21975 (1988).

[26] *See* Aug. 28 Letter at 3.

[27] 52 U.S.C. § 20301(b)(2).

any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter."[28] Likewise, Congress delegated to FVAP the power to "prescribe a Federal write-in absentee ballot . . . for use in general, special, primary, and runoff elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, [sic] absentee ballots."[29] It requires states to "permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots . . . in general elections for Federal office."[30] In neither case did Congress delegate to the Secretary of Defense or FVAP the ability to limit the categories of voters whom states may allow to avail themselves of UOCAVA's protections.[31] As noted above, while prescribing the manner in which military and overseas voters may cast their ballots, UOCAVA expressly leaves to the states the determination of who qualifies to use the ballot.

DOD's conclusion that "A US citizen who has never resided in the United States is not eligible for the voting protections under UOCAVA" is both wrong and—as to their authority to come to this conclusion—legally irrelevant.[32] Prohibiting UOCAVA voters who have never physically resided in the United States from using the FPCA or FWAB, then, extends beyond the powers delegated to FVAP and DOD by Congress and is therefore *ultra vires*.

II. The Proposed Final Rules Violate UOCAVA Because the Rules Deny Certain Covered Voters the Ability to Use Both the FPCA and FWAB.

The Proposed Rule violates UOCAVA for largely the same reasons described in Section I. Congress enacted UOCAVA "to facilitate absentee voting by United States citizens, both military and civilian, who are overseas."[33] To that end, UOCAVA requires states to allow military and overseas voters to use the Federal Post Card Application and Federal Write-In Ballot when voting in federal elections.[34]

Military and overseas families take many forms. For example, it is fairly common for military service members to meet and marry while overseas and have children while overseas (or adopt the children of their spouse). In some cases, for military service members who spend many years serving consecutive overseas assignments, their families become well-settled abroad. Thus, even if the service member returns to the United States for a single assignment, their U.S. citizen

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[28] 52 U.S.C. § 20302(a)(2).

[29] *Id.* § 20303(a)(1).

[30] *Id.* § 20302(a)(3).

[31] *See supra* Part A; 52 U.S.C. § 20310 (defining qualified overseas and military voters as determined by state law).

[32] Aug. Policy Paper at 1.

[33] H.R. Rep. No. 99-765, at 5 (1986).

[34] *See* 52 U.S.C. § 20302(a).

spouse and children may remain overseas to avoid familial disruption. Additionally, the children of U.S. citizens who were born overseas because of their parent's military service may remain overseas as their service member parent separates from the military and transitions into civilian or contract work for the military at those same overseas locations. Although their formal military service may have ended, these children have not returned to the United States because their parent, who is now a veteran of the U.S. military, continues to serve our country and contribute to national security, albeit in a different capacity. And diplomatic and civilian government employees also serve the country abroad for extended periods of time and similarly may choose to start their families while in service.

By prohibiting voters who have never physically resided in the United States from using the FPCA and FWAB, the Proposed Final Rulemaking prevents two categories of voters covered under UOCAVA from using the UOCAVA forms. Specifically, these changes target (1) spouses and dependents of uniformed service members who are eligible to vote at the residence of the uniformed service member, and (2) other overseas voters who are found to be domiciled within a state for the purposes of voting under State law.

First, the Proposed Final Rules improperly target the voting rights of spouses and dependents of members of absent uniformed service voters who have not previously resided in the United States. As noted *supra* Section I, UOCAVA expressly allows the spouse and dependent of a servicemember to vote using UOCAVA's protections. Moreover, the Military Spouse Residency Relief Act (MSRRA) likewise provides that "the spouse of a servicemember may elect to use the same residence as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred."[35] The spouse may use the servicemember's residence for the purpose of voting even if the spouse has not been physically present at the servicemember's address of residence.[36]

While the FPCA and FWAB still include an "eligible spouse or dependent" category for servicemembers, many of those voters used to check the box "I have never lived in the United States" rather than denote themselves as the spouse or dependent of a servicemember. As a result of FVAP's removal of the "I have never lived in the United States" category from the FPCA and FWAB, the spouses and dependents of uniformed and servicemembers who have never physically resided in the United States may be discouraged from using the form while voting.[37] Specifically, the removal of the category, while keeping "*eligible* spouse or dependent," suggests to those voters that they can no longer vote, even though federal law specifically allows never-resided spouses or dependents of servicemembers to derive their residence from the servicemember.

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[35] 50 U.S.C. § 4025.

[36] *See How to Determine Your Voting Residency*, Fed. Voting Assistance Program, https://www.fvap.gov/info/laws/voting-residence.

[37] *See* Aug. 28 Letter at 3.

Second, the Proposed Final Rules improperly target the voting rights of other overseas voters who are found to be domiciled within a State for the purpose of voting under State law. In addition to removing the "I have never lived in the United States" category from the FPCA and FWAB, the U.S. General Services Administration (GSA) website now states that the FPCA is for "citizens residing outside the U.S. intending on returning only."[38] Confusingly, this statement directly conflicts with the language of the FPCA and FWAB which allow voters to select the category "I am a U.S. citizen living outside the country, and my intent to return is uncertain." In any event, FVAP clearly intends to discourage "never resided" citizens from voting, even if, as stated *supra* Section I*,* they could establish domicile under state law.

But even if "never-resided" citizens were not expressly covered by UOCAVA, DOD could not lawfully prevent states from using the UOCAVA ballot for those voters. UOCAVA itself does not *prohibit* a State from accepting FPCA and FWAB from United States citizens who have not previously resided in the United States. Rather, UOCAVA provides the floor, not the ceiling, for who is entitled to avail themselves of the process provided under the statute. These minimum standards can be exceeded by states who decide to expand the right to vote to those who are otherwise not a covered military voter. This understanding of the statute is consistent with Congress's intent "to facilitate absentee voting by U.S. citizens, both military and civilian, who are overseas,"[39] as well as the text of the statute itself, which does not set forth any prohibition for never-resided citizens. Thus, DOD's attempt to exclude never-resided citizens from UOCAVA's protections violates UOCAVA.

III. The Proposed Final Rules Violate the Paperwork Reduction Act and the Administrative Procedure Act.

In addition to the substantive deficiencies of the Proposed Final Rules, this rulemaking also suffers from several procedural deficiencies. First, the utter lack of justification for the decision-making process violates the Paperwork Reduction Act. Second, the substantive illegality and lack of process violates the Administrative Procedure Act.

A. The Emergency Justification Violated the Paperwork Reduction Act Because the Department of Defense Failed to Consult with Interested Parties and Failed to Provide Sufficient Reasoning to Justify the Usage of Emergency Processing.

DOD's request for emergency processing without consultation with impacted overseas and military voters and without evidence of imminent voter harm or confusion violates the Paperwork

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[38] *See Voter Registration and Absentee Ballot Request: Federal Post Card Application (FPCA)*, U.S. Gen. Servs. Admin. (Aug. 2026), https://www.gsa.gov/reference/forms/voter-registration-and-absentee-ballot-request-federal-post-card-application-fpca.

[39] H.R. Rep. No. 99-765, at 5 (1986).

Reduction Act (PRA). The PRA governs the process of changing government forms, including voter registration forms.[40] Under the PRA, a request from an agency to the Office of Management and Budget (OMB) to authorize emergency processing must be accompanied by a written statement detailing that the change to a government form "[i]s needed prior to the expiration of time periods" and "[i]s essential to the mission of the agency."[41] The agency must also stipulate that they cannot "reasonably comply" with standard preclearance procedures because of one of the following three reasons: (1) "[p]ublic harm is reasonably likely to result if normal clearance procedures are followed;" (2) "[a]n unanticipated event has occurred;" or (3) "[t]he use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed."[42] Furthermore, an agency requesting emergency processing must "submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information."[43]

DOD's letter to OMB requesting emergency processing meets none of those standards. While gesturing at the then-impending federal election, DOD does not state at all why they could not have gone through a normal notice and comment within that already-compressed time period. As to public harm, the letter declared that "the current format of [the FPCA and FWAB] *may* confuse voters," but the letter did not provide evidence to demonstrate the reasonable likeliness of the harm.[44] As to the second factor, the purported concern is hardly unanticipated. The letter stated that DOD's unsupported concern about confusion "has recently come to our attention," but did provided the sources who expressed concern, when those concerns were expressed, or even the basis for the concerns.[45] Moreover, the letter justifies the emergency proceeding with the then-impending election, but gave no reason why this process could not have started sooner; an election is certainly an anticipated event. Indeed, there have been widely publicized (and largely unsuccessful) challenges to residency qualifications for never-resided voters across the country since at least 2024; this is hardly a recent development.[46] As to the third factor, the timing of the change—two weeks before UOCAVA ballots were set to be sent—almost guaranteed that voters would be prevented from submitting their applications in time for the 2026 elections, far from

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[40] *See generally* 44 U.S.C. § 3501.

[41] 5 C.F.R. § 1320.13(a)(1).

[42] *Id.* § 1320.13(a)(2).

[43] *Id.* § 1320.13(c).

[44] Aug. 28 Letter at 1 (emphasis added).

[45] *Id.*

[46] *See* Campaign Legal Ctr., Ensuring Military and Overseas Voters Can Make Their Voice Heard This Election (Sep. 29, 2026), https://perma.cc/ZYW5-PGWB (detailing challenges to never-resided qualifications under state law).

"prevent[ing] or disrupt[ing] the collection of information."[47] And while the letter states that stakeholder input is not necessary because "no additional burden is anticipated," stakeholders universally believe that these changes *caused* confusion for eligible military and overseas voters.[48]

Instead of "all practicable steps," DOD admitted that it took *no* steps to consult stakeholders. Rather, DOD flagrantly flouted—or outright ignored—the factors supporting an emergency justification. The Proposed Final Rulemaking would only further the ongoing PRA violation by allowing the FPCA and FWAB changes without meaningful input and on an unjustifiably rushed timeline.

B. The Proposed Final Rules Violate the Administrative Procedure Act Because the Rules' Voting Qualification Determinations Contravene Constitutional Rights, Exceed FVAP's Statutory Authority, and Are Not Supported by Sufficient Reasoning.

The Proposed Rules also violate the Administrative Procedure Act (APA).[49] As an initial matter, for the reasons discussed *supra* Sections I and II, the Proposed Rules' voting qualification determinations exceed FVAP's statutory authority and contravene the Elections Clause. Under the APA, a reviewing court is required to "hold unlawful and set aside" any agency action that is determined to be "contrary to constitutional right, power, privilege, or immunity," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."[50]

Additionally, the Proposed Rules are arbitrary and capricious because the Department of Defense failed to provide sufficient reasoning to justify the removal of the "I have never lived in the United States" category from the FPCA and the FWAB. Under the APA, if an agency action is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," the reviewing court shall "hold unlawful and set aside [the] agency action."[51] An agency action is arbitrary and capricious if:

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[47] 5 C.F.R. § 1320.13(a)(2)(iii).

[48] Aug. 26 Letter at 3; *see, e.g.*, *U.S. Vote Foundation Calls on Department of War to Revert Emergency Changes to Military and Overseas Voting Forms*, U.S. Vote Found. (Sep. 30, 2026), https://perma.cc/3KVR-88FE (providing that the organization has "[n]ot ever" received a report of "harm from the FPCA or FWAB forms" from military or overseas voters).

[49] Either the emergency process or the Proposed Final Rules would constitute a final agency action under the APA. *See, e.g.*, *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep't of Homeland Sec.*, 783 F. Supp. 3d 200, 219 (D.D.C.) ("The APA's procedural requirements apply to interim final rules, which constitute final agency action while in effect."), *reconsideration denied*, No. CV 24-1702, 2025 WL 2105564 (D.D.C. July 28, 2025).

[50] 5 U.S.C. § 706(2)(B)-(C).

[51] *Id.* § 706(2)(A).

> [T]he agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[52]

To satisfy the "arbitrary and capricious" standard, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[53]

As detailed above, DOD's sole justification for the proposed changes is both uncorroborated and contrary to the experience of stakeholders. As a result of the rushed process, DOD failed to consider the fact that states had already prepared to send out UOCAVA ballots to the targeted voters; that certain military spouses and dependents previously relied on the "I have never lived in the United States" category; and that the GSA website contradicted the instructions of the FPCA and FWAB, among other considerations.

And far from supporting their decision, the data actually *undermines* any idea that these changes support UOCAVA's mission "to facilitate absentee voting by United States citizens, both military and civilian, who are overseas."[54] Overseas voters face formidable obstacles at every stage of the process—from registering to vote, to requesting and returning absentee ballots, to meeting key deadlines. Studies conducted by DOD as recently as 2024 demonstrate that 11% of overseas citizens reported difficulties "requesting a ballot."[55] The consequence: ultimately, only an estimated 11% of eligible overseas citizens voted in the 2020 election, compared to 76.1% of domestic voters.[56] This disparity persists regardless of election: in the 2022 midterm elections, for example, only an estimated 3.4% of eligible overseas citizens voted, compared to 62.5% of domestic voters.[57] Abrupt changes to the process only harm overseas citizens—both the ones targeted by DOD and those that no one disputes is qualified under state and federal law. DOD's failure to support these changes with evidence constitutes an arbitrary and capricious agency action in violation of the APA.

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[52] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[53] *Id.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

[54] H.R. Rep. No. 99-765, at 5 (1986).

[55] *Post-Election Voting Survey: Overseas Citizen Population Analysis (OCPA) Technical Report 2024*, Fed. Voting Assistance Program, at 96 (2024), https://perma.cc/P4Z8-42S3.

[56] *Id.* at 31.

[57] *2022 Overseas Citizen Population Analysis (OCPA): Technical Report*, Fed. Voting Assistance Program, at 31 (2023), https://perma.cc/BD4R-GEQL.

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For the foregoing reasons, CLC urges the Department of Defense to abandon the changes made to FPCA and FWAB during the emergency process, and revert to the versions of those forms used prior to August 28, 2026. If DOD wishes to make changes to the forms, CLC urges an adequate rulemaking process, one that explicitly incorporates stakeholder proposals and input, is supported by evidence, and complies with federal statutes and the United States Constitution. The Proposed Rules' harm to military and overseas voters is unlawful and unjustifiable.

In the light of the deficiencies identified here, we ask the Department not to finalize this Proposed Rule. Thank you for your attention to these important issues. For more information, please contact CLC's Senior Legal Counsel, Valencia Richardson, at vrichardson@campaignlegalcenter.org.

Sincerely,

Campaign Legal Center