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Department of Defense
Office of the Director of Administration and Management
Oversight and Compliance Directorate, Regulatory Division
4800 Mark Center Drive, Mailbox #24, Suite 05F16
Alexandria, VA 22350-1700

Re: Comment of Public Rights Project on Proposed Revisions to the Federal Post Card Application (Standard Form 76; OMB Control No. 0704-0503; Docket No. DOD-2026-OS-1982), 91 Fed. Reg. 57576 (Sept. 10, 2026) and the Federal Write-In Absentee Ballot (Standard Form 186; OMB Control No. 0704-0502; Docket No. DOD-2026-OS-1981), 91 Fed. Reg. 57577 (Sept. 10, 2026)

To Whom It May Concern:

Public Rights Project ("PRP") respectfully submits this comment on the Department of Defense's ("DOD") proposed revisions to the Federal Post Card Application ("FPCA") and the Federal Write-In Absentee Ballot ("FWAB"). PRP is a national nonprofit that partners with more than 250 local governments to provide legal support and technical assistance to help them protect the civil rights and voting rights of their constituents. PRP's partners include many local election officials who run elections in communities across the country. These officials, not DOD, receive and process every FPCA and FWAB. They are the ones who must decide, form by form, whether an applicant is eligible, where the applicant should be registered, and which ballot the applicant should receive.

The revised forms make each of those decisions harder. Both forms include the same three changes:

1. They remove the option for a U.S. citizen abroad to state that they have never resided in the United States.
2. They require voters to attest that they have "reviewed [their] state specific instructions" without telling voters where to find them.
3. And they list a U.S. passport as an identification option, even though election officials cannot verify passports and federal law does not contemplate using a U.S. passport to register.

DOD made these changes without the notice and comment required by the Paperwork Reduction Act. Instead, it requested emergency clearance in late August 2026, weeks before the September 19 deadline for transmitting ballots to military and overseas voters for the November 3 election, and without consulting the election officials who must send, receive, and process them.

For the reasons below, PRP urges DOD to withdraw the revised forms and restore the prior versions. At a minimum, DOD should restore the "never resided" option, remove the passport reference and the instructions attestation, and consult state and local election officials before making any further changes, as federal law requires.

BACKGROUND

I. The FPCA and FWAB are tools that local election officials, not DOD, administer.

The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") establishes a comprehensive federal scheme for absentee voter registration and voting by Uniformed Service members, their families, and civilian U.S. citizens living overseas.[1] UOCAVA directs the President's designee — which, since 1988, has been the Secretary of Defense[2] — to design two forms: (1) the FPCA, which is "an official post card form" for simultaneous voter registration and absentee ballot requests, and (2) the FWAB, which is "a Federal write-in absentee ballot" for military and overseas voters who timely request, but do not receive, their state absentee ballot.[3]

UOCAVA requires every state to use the FPCA, and to permit covered voters to use the FWAB in federal general elections.[4] Many states have written those forms into their own election codes.[5] The Act also requires states to transmit ballots no later than 45 days before an election to any UOCAVA voter whose request arrives at least 45 days before that election.[6]

Although the forms are a federal design, their consequences land on county and municipal election offices. As DOD itself acknowledges, it "neither collects nor retains any personal information" from the FPCA or FWAB. Rather, it is state and local election officials that collect, review, and act on information provided in these forms.[7] That is why Congress required the Presidential designee to "consult State and local election officials in carrying out" UOCAVA.[8]

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[1] 52 U.S.C. § 20301 *et seq.*
[2] Exec. Order No. 12642, 53 Fed. Reg. 21975 (June 8, 1988)
[3] 52 U.S.C. § 20301(b)(2)–(3); *Id.* § 20303(a)(1).
[4] 52 U.S.C. § 20302(a)(2)–(4).
[5] *See, e.g.*, C.R.S. § 1-8.3-102(4)–(5); Haw. Rev. Stat. § 15D-2; Mo. Rev. Stat. § 115.902(3)–(4); NRS 293D.230(1)–(2); N.C. Gen. Stat. ch. 163, art. 21A(3)(a); 26 Okla. Stat. § 14-137; Utah Code 20A-16-102(3)–(4); Va. Code Ann. § 24.2-452(3)–(4)
[6] 52 U.S.C. § 20302(a)(8)(A).
[7] Proposed Collection; Comment Request (Federal Write-In Absentee Ballot), 91 Fed. Reg. 57577 (Sept. 10, 2026); Comment Request (Federal Post Card Application), 91 FR 57576 (Sept. 10, 2026).
[8] 52 U.S.C. § 20301(b)(1).

II. DOD revised both forms without notice, comment, or consultation.

On August 13, 2026, DOD asked the Office of Management and Budget ("OMB") to approve revised versions of both the FPCA and FWAB on an emergency basis. On August 26, 2026, DOD submitted a second, nearly identical request. DOD asserted that "the current format" of the forms "may confuse voters" and described the proposed changes as "minor modifications."[9] DOD further explained that the impending election left "insufficient time" to comply with the ordinary review process and comment periods required by the Paperwork Reduction Act.[10]

On August 28, 2026, OMB approved DOD's request, and the revised forms were posted and in use by the September 19 deadline for transmitting ballots to UOCAVA voters. DOD did not consult state or local election officials prior to publishing the new forms.

The revised forms include three critical changes:

1. **Removal of the "never resided" option.** The FPCA and FWAB ask voters to check a box that defines their eligibility as an overseas voter. The prior forms included a "never resided" option: "I am a U.S. citizen living outside the country, I have never lived in the United States." Some version of that option had appeared on the forms since 2013.[11] The revised forms eliminate that option, leaving civilian applicants with only two choices: (1) "I am a U.S. citizen living outside the country, and I intend to return," or (2) "I am a U.S. citizen living outside the country, and my intent to return is uncertain."
2. **A new attestation about "state specific instructions."** An applicant without a state driver's license, state ID, or Social Security number must now check a box stating, "I have reviewed my state specific instructions and provide the following document or government-issued identification."
3. **A passport as an identification option.** That same box now offers, as examples, "a US Passport, Military Identification Card, etc."

[9] Letter from Sean O'Keefe, Deputy Under Sec'y of War for Pers. & Readiness, to Dominic Mancini, Deputy Adm'r, Off. of Info. & Regul. Affs. 1 (Aug. 13, 2026), https://perma.cc/Z6ET-ARF4 [hereinafter Aug. 13 ICR].

[10] Aug. 13 ICR, *supra* note 9, at 1.

[11] *Pentagon Quietly Alters Overseas Voter Forms As Republican Legal Push To Restrict Ballots Intensifies*, Foreign Policy J. (Oct. 2, 2026), https://www.foreignpolicyjournal.com/2026/10/02/pentagon-quietly-alters-overseas-voter-forms-as-republican-legal-push-to-restrict-ballots-intensifies/.

CONCERNS OF LOCAL ELECTION OFFICIALS

The proposed changes to the FPCA and FWAB raise several concerns for local election administrators who will evaluate these completed forms to determine whether an applicant is eligible, where the applicant should be registered, and which ballot the applicant should receive.

I. Removing the "Never Resided" Option Strips Election Officials of Information They Need to Determine Eligibility and Ballot Type.

Whether a U.S. citizen born abroad who has never lived in the United States may vote is a question of state law. At least thirty-eight states and the District of Columbia permit "never-resided" citizens to register and vote if their parents had some prior connection to the state or D.C. The rules vary. Some states ask if the parent was last domiciled in the state; others ask if the parent was last registered, or eligible, to vote in the state.[12]

With the new revisions, the federal forms that "never-resided" citizens rely on to register and request ballots no longer give them an accurate way to describe themselves. A civilian applicant must now attest either "I intend to return" or "my intent to return is uncertain." But a person who has never lived in the United States cannot "return" to it, and many are certain that they have no intention of moving here. Faced with two inaccurate options, a "never-resided" applicant must either leave the question blank or check a box that is false, under penalty of perjury. Either way, the form no longer tells election officials the one fact that determines which eligibility rule applies—that the registrant has never resided in the United States. The "never-resided" option also helped local election officials determine which type of ballot to send because in some states, voters who have never lived in the United States (or whose intent to return is uncertain) receive a federal-only ballot, while voters who intend to return receive a full ballot that includes state and local contests.[13]

Removing the "never-resided" option will thus result in increased burdens on local election officials—requiring more follow-up correspondence, cure notices, rejected applications, and calls from confused voters. All of that takes staff time during an already busy window of the election calendar, when officials are racing to meet UOCAVA's 45-day transmission deadline. It also comes as UOCAVA ballots, and "never-resided" ballots in particular, face unprecedented legal scrutiny.[14] The problem is most acute in states that have codified the prior version of the

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[12] *See, e.g.*, Ariz. Rev. Stat. § 16-103(E) (tying eligibility to parent's voter registration in the state); R.I. Gen. Laws § 17-21.1-2(b) (tying eligibility to parent's eligibility to vote); Wis. Stat. § 6.24(1) (tying eligibility to parents' domicile).

[13] *See, e.g.*, Alaska Stat. § 15.05.11(c)–(e); Del. Code Ann. tit. 15, § 1901(b)(3); Ga. Code Ann. § 21-2-219(c), (e); 10 Ill. Comp. Stat. 5/20-1(4), 5/20-2.2; Minn. Stat. § 203B.16, subd. 2.

[14] *See, e.g., Griffin v. N.C. State Bd. of Elections,* 781 F. Supp. 3d 411, 447–50, 454–55 (E.D.N.C. 2025) (enjoining the discarding of ballots cast by voters misclassified as "never residents" without notice and an opportunity to contest that designation, after state courts held never-resident voters ineligible); *Republican Nat'l Comm. v. Evnen,* 322 Neb. 612 (2026) (affirming summary judgment for the Secretary of State in facial state constitutional challenge to Nebraska's never-resident voter statute); *Republican Nat'l Comm. v. Benson,* No. 25-000181-MZ (Mich. Ct. Cl. Apr. 22, 2026) (granting summary disposition and dismissing with prejudice

FPCA and FWAB forms in their state law, as those forms now conflict with the forms required to be used by federal law. This incongruity of forms will almost certainly create additional confusion for voters and election officials alike, as each attempts to identify which form to use.

The former director of the Federal Voting Assistance Program Bob Carey has explained that the "never-resided" option was originally added at the request of state officials.[15] For all the reasons described above, it should be restored.

II. The "State Specific Instructions" Attestation Will Increase Voter Confusion and Impose Resource Burdens on Local Election Officials.

The revised forms—which voters fill out and sign under penalty of perjury—ask applicants without a driver's license, state ID, or Social Security number to check a box stating, "I have reviewed my state specific instructions and provide the following document or government-issued identification." However, those instructions are not included with the form. Other parts of the forms refer vaguely to where the state guidelines can be found—e.g., "See your state's guidelines at FVAP.gov,"—without a specific link to any state's page or any explanation of which part of those guidelines the attestation concerns.

When a form tells voters to consult instructions that the form does not supply, and requires voters to attest under penalty of perjury that they did in fact consult the relevant instructions, the next step is predictable: voters will contact their local election office. But each additional inquiry consumes staff time in the weeks before an election that, as noted above, is already devoted to transmitting ballots, processing returns, and meeting UOCAVA's 45-day transmission deadline.[16]

The attestation box—which sits inside the identification section—also creates confusion for local election officials on what to do in several circumstances, including: (1) when the box is left unchecked, (2) when the box is checked but the accompanying documentation does not satisfy state requirements, or (3) when a voter submits an older version of the form that contains no attestation at all. Officials in different jurisdictions are likely to answer those questions differently, producing inconsistent treatment of similarly situated voters. DOD has offered no explanation of what practical utility the attestation serves for the officials who receive the form.

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challenge to statute permitting accompanying spouses and dependents of overseas voters, including those who never resided in Michigan, to vote absentee), appeal docketed, No. 380702 (Mich. Ct. App. May 12, 2026); *Republican Party of Ariz., LLC v. Arizona,* No. CV2025-022859 (Ariz. Super. Ct. Maricopa Cnty. Oct. 22, 2025) (denying motion to dismiss state constitutional challenge to A.R.S. § 16-103(E)); *Republican Nat'l Comm. v. Griswold,* No. 2026CV32338 (Colo. Dist. Ct. Denver Cnty. filed June 26, 2026); *Republican Nat'l Comm. v. Aguilar,* No. 26-OC-00200 1B (Nev. Dist. Ct. Carson City filed June 29, 2026); *Republican Nat'l Comm. v. Va. State Bd. of Elections,* No. CL26-2003 (Va. Cir. Ct. Richmond City filed Apr. 6, 2026).

[15] Foreign Policy J., *supra* note 11.

[16] 52 U.S.C. § 20302(a)(8).

III. The Passport Option Asks for Information Election Officials Cannot Verify and Federal Law Does Not Require.

The Help America Vote Act ("HAVA") specifies the identifying information a prospective voter must provide when registering to vote in federal elections: a current driver's license number or, if the applicant has none, the last four digits of the applicant's Social Security number.[17] If an applicant has neither, HAVA directs the state to assign the applicant a unique identifying number.[18] HAVA requires states to verify voter-identification information through agreements between the chief state election official, the state motor vehicle authority, and the Social Security Administration.[19] HAVA also expressly exempts voters "entitled to vote by absentee ballot under [UOCAVA]" from its documentary identification requirement for first-time mail registrants.[20] Nothing in HAVA or UOCAVA requires a voter to have a U.S. passport.

The prior forms left this framework intact. The forms asked only for a driver's license, state ID number, or a Social Security number. An applicant without a driver's license or Social Security number left those fields blank, and the state would assign an identifier under HAVA. The revised forms, however, now invite applicants to "provide" a passport. But they do not explain what is actually required to be provided—just the passport number or a copy of the passport itself—nor what a local election official is supposed to do with it. That creates confusion, not only for the voter, but for the local election official who must also comply with HAVA. Do they still issue a unique identifying number? How do they verify that a passport number actually belongs to the voter applicant when they do not have access to passport records held by the U.S. State Department? And what privacy law requirements are triggered if local election officials now receive digital copies of voter passports? Supplying a passport transmits extraneous and sensitive information to local election officials that does nothing to facilitate their job of determining voter eligibility

Again, the form revisions, implemented without consulting local election officials, create more confusion and burden without any corresponding benefit.

IV. DOD Has Not Accounted for the Burden on Election Officials or Followed the Required Process.

For any proposed collection of information affecting at least 10 people—or proposed change in an existing collection of information—the Paperwork Reduction Act requires agencies to solicit comments on, among other things, whether the collection is "necessary for the proper performance of the functions of the agency," has "practical utility," and provides an accurate "estimate of the burden of the proposed" information collection.[21] The revised collections fail on each count.

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[17] 52 U.S.C. § 21083(a)(5)(A)(i).
[18] *Id.* § 21083(a)(5)(A)(ii).
[19] *Id.* § 21083(a)(5)(B).
[20] *Id.* § 21083(b)(3)(C)(i).
[21] 44 U.S.C. § 3506(c)(2)(A); *see also id.* § 3502(3)(A)(i) (defining "collection of information" to include questions posed to ten or more persons)

- ***First***, the revisions are not "necessary for the proper performance of the functions of the agency." Indeed, and as noted above, DOD does not receive, use, or process the information in the FPCA or FWAB. Rather, it publishes these forms for use by local election officials and overseas voters. That is why UOCAVA requires DOD to consult with local election officials on all matters related to implementation of UOCAVA—something it wholly failed to do here.

- ***Second***, the information collection does not have "practical utility." As described above, each revision to the form creates confusion for voters and local election officials alike. "Never-resided" voters will be unclear how to respond to the question about eligibility, and local election officials will lack sufficient information to judge both eligibility and the appropriate ballot to send. Inclusion of a new attestation about consulting state rules creates confusion by not pointing voters to the relevant rules in question—something that will increase the burden on local election officials fielding voter inquiries and create confusion when voters either fail to check the attestation box or check the box but send in information that conflicts with state rules. And reference to a passport suggests requirements that do not exist in federal law, and requires local election officials to determine how to verify and maintain sensitive documentation that they otherwise have not been collecting. In sum, the revisions included in this information collection notice not only lack "practical utility;" they undermine the practical utility of the unrevised forms.

- ***Third***, DOD's estimate of the burden is inaccurate because it fails to account for the people most impacted. The notices list state and local governments among the affected public. Yet, each estimate counts only the time that voters spend completing the form: fifteen minutes for each of 1,200,000 respondents, or 300,000 hours a year per form.[22] The notices include no estimates of the time and resource burden this will cause local election officials.

OMB also erred in approving emergency processing of these information collections. Emergency processing is warranted only when an agency shows that the collection is (1) needed before normal clearance procedures can be completed, (2) is "essential" to the agency's mission, and (3) where ordinary procedures are reasonably likely to cause public harm, to prevent or disrupt the collection, or to cause a missed statutory or court-ordered deadlines, or that an unanticipated event has occurred.[23] The November 2026 general election was not an unanticipated event, and DOD has not identified any harm that the prior forms, in use since at least 2013, were causing. If anything, changing the forms inside the ninety-day window before a federal election *created* the risk of confusion that DOD cites as its justification for emergency processing.[24]

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[22] 91 Fed. Reg. 57577; Fed. Reg. Doc. No. 2026-18479, *supra* note 7.

[23] 5 C.F.R. § 1320.13(a); 44 U.S.C. § 3507(j)(1).

[24] The Democratic National Committee has already sued DOD and OMB over the emergency clearance of the FPCA, alleging that the claimed emergency was pretextual and that using emergency processing to bypass the Paperwork Reduction Act's notice-and-comment process was arbitrary and capricious under the Administrative Procedure Act. *See* Complaint ¶¶ 5–6, 88,

CONCLUSION

The FPCA and FWAB work only when they give election officials the information they need to register eligible voters and send them the right ballot. The August 2026 revisions do the opposite. They remove a way of denoting an eligibility category that state law recognizes, add an attestation that sends voters searching for instructions, and request identification that officials cannot verify and federal law does not require. Each change shifts the burden from the form to the local election office.

PRP respectfully urges DOD to:

1. Withdraw the August 2026 revisions to both forms and restore the prior versions;
2. Restore the option for citizens who have never lived in the United States;
3. Remove the "state specific instructions" attestation and the passport reference, and return the identification section to the HAVA framework;
4. Revise the burden estimates to account for the work these forms impose on state and local election officials;
5. Publicly disclose the basis for its emergency clearance request; and
6. Consult state and local election officials, as UOCAVA requires, before proposing any future changes.

Thank you for the opportunity to comment. Please contact elections@publicrightsproject.org with any questions.

Respectfully submitted,

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93, 164–83, *Democratic Nat'l Comm. v. U.S. Dep't of Def.*, No. 1:26-cv-03431 (D.D.C. filed Oct. 1, 2026).