
VOTING BY FEDERAL POSTCARD APPLICATION (FPCA)

Important State and Federal Legislation: Pursuant to the Military and Overseas Voter Empowerment Act (“MOVE” Act) and the Texas Implementation of the MOVE Act, Senate Bill 100, 82nd Legislature, effective September 1, 2011, the FPCA will be valid for mail ballot request purposes for a period of one calendar year.

The federal MOVE Act was enacted to authorize FPCA applicants to request their ballots by email and to require the tracking of the balloting materials of FPCA applicants to allow applicants to obtain status of their ballots. The Secretary of State issued Subchapter M of Chapter 81 of the Texas Administrative Code to implement the federal act in Texas and the Texas Legislature enacted the federal law, along with modifications to the Texas Election Calendar to accommodate the 45-day deadline for mailing ballots as explained below.

NOTE: “FVAP” refers to the Federal Voting Assistance Program, a department within the Defense Department that assists all overseas voters (U.S. citizens overseas, whether military or not) and military voters (all military voters away from their home county, whether overseas or not).

I.

- A. Eligibility to vote early by mail by FPCA. [Sec. 101.001]
1. Must be a qualified voter of this state or if not a registered voter, would be qualified if registered.

A person must provide either their last place of residence in Texas or their parents’ or legal guardian’s last place of residence; however, if either address is no longer recognized as a residential address, the voter registrar shall assign the person to an address under procedures as prescribed by the Secretary of State.
 2. The person is:
 - a. a member of the U.S. Armed Forces, or the spouse or dependent of a member;
 - b. a member of the U.S. Merchant Marines, or the spouse of or dependent of a member;
 - c. a U.S. citizen domiciled in Texas but temporarily living outside the territorial limits of the United States and the District of Columbia.

NOTE: These are the definitions of all persons who may use an FPCA to obtain a ballot. However, certain specialized procedures in response to the

FPCA (such as who may fax a marked ballot in return) may apply to a “subset” of this group, such as military voters in a combat zone only.

- B. Voting is conducted and results processed as provided for in the early voting by mail outline with a few exceptions. [Sec. 101.002]
- C. Form and Contents of Application. [Sec. 101.003]
 - 1. An application for a ballot must:
 - a. be submitted on an official federal postcard application form; and
 - b. include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.
 - 2. The forms are federal forms, prescribed by the Federal Voting Assistance Program. *They are available online or can be ordered hardcopy.* Voters may obtain an application at the Federal Voting Assistance Program’s website: <http://www.fvap.gov>. The form is also linked on the SOS website.
- D. Submitting the Application. [Sec. 101.052]
 - 1. **Method of delivery:** FPCA must be submitted by mail, by common or contract carrier, by fax, or by emailing a signed scanned image to the early voting clerk for the election. Sec. 101.052 [Sec. 101.054(b); see also 1 Tex. Admin. Code §81.40 for additional rules regarding e-mailing the FPCA] See also Section 84.007, methods of submitting regular application for ballot by mail; Section 101.002, ballot by mail rules apply to FPCA unless inconsistent. Application may be submitted at any time during the calendar year, but not later than the prescribed deadline.

NOTE: Section 84.008, allowing personal delivery (by the voter only) of an ABBM before early voting starts, does not apply to an FPCA.

- 2. **First day to file, validity:** FPCAs received in the calendar year 2017 are valid until December 31st of the calendar year. The FPCA may be filed starting January 1 of the calendar year.

Exception: An FPCA may be filed in the preceding calendar year for an election occurring in January or February of the next calendar year. The FPCA cannot be filed earlier than the 60th day before the election.

NOTE: The FPCA law at Section 101.052 currently provides that for the “January-February” exception, the application must be filed using the time-frame of the regular ABBM. The prior 60-day rule for the regular (non-annual) ABBM was repealed in 2015, and the first day to file a regular ABBM is now January 1. In order to make the exception work approximately as originally intended, the SOS interpretation is to use the time-frame for the annual ABBM’s new January-February exception under Section 86.0015(b-2), as amended by House Bill 1927 (2015), effective September 1, 2015.

3. An FPCA mailed to the wrong early voting clerk must be forwarded to the correct early voting clerk not later than the day after it is received.
4. FPCA applicants who wish to have their ballots sent to an address inside their county of residence for forwarding outside the county should indicate under "Remarks" on the FPCA that the ballot will be forwarded to an address outside the United States.

If there is no indication in "*My Forwarding Address*" section, check for other indications, such as a return address that is outside the country.

E. Supplementation to FPCA Application.

If an FPCA is missing information required for registration, the clerk must notify the applicant. If the information is supplemented before the deadline, the applicant is entitled to a full ballot.

NOTE: For purposes of determining the end of the period that an application may be submitted, the FPCA is considered submitted when received by the clerk, as opposed to the postmark rule. However, the postmark is used for rules about whether to give the voter a full or federal ballot, as outlined below.

F. Whether Applicant Receives **FULL** vs. **FEDERAL** ballot. Current state law provides:

1. Intent to Return / Timeliness

An applicant is entitled to receive a full ballot (federal and nonfederal offices) if the FPCA is submitted on or before the 20th day before election day and the application contains the requisite information for registering to vote. An applicant also receives a full ballot if the FPCA is submitted after the 20th day and (by the 11th day deadline for the early voting clerk to receive the FPCA) and the applicant is registered to vote in the county. [Sec. 101.052]

If the 20th day is a Saturday, Sunday or legal state or national holiday, it is considered timely on the next regular business day.

If an FPCA does not bear a cancellation mark, it is considered timely if it is received by the early voting clerk by the 15th day before the election.

“U.S. Mail” definition: “An application mailed from an Army/Air Force Post Office (APO) or Fleet Post Office (FPO) is considered placed in the United States mail. The date indicated by the post office cancellation mark, including a United States military post office cancellation mark, is

considered to be the date the application was placed in the mail unless proven otherwise.”

2. Intent to Return Uncertain / Chapter 114 voters

If the applicant checks “U.S. citizen residing outside the U.S. and my return is not certain” (newer forms) the applicant is entitled to receive a federal ballot only since the voter’s intent to return to the state is uncertain. Chapter 114. In an election with no federal office on the ballot, this voter will not receive a ballot. Checking other boxes entitles the applicant to a full ballot (if the timeliness / registration status criteria above are met).

NOTE: Any voter who checks the category “U.S. citizen residing outside the U.S. indefinitely” will not receive permanent voter registration status.

G. Timelines of the FPCA Application.

1. As long as it is properly addressed, an FPCA is considered timely on the date of receipt by the early voting clerk. [Sec. 101.052]

NOTE: For purposes of applying for a ballot by mail (the “ABBM function” of the FPCA), the deadline is the 11th day before election day (new law). (The timeliness rules discussed above affect the full / federal ballot issue.)

H. Applying for more than one election with same application. [Sec. 101.054]

A person may apply with a single FPCA for a ballot for any one or more elections in which the early voting clerk to whom the application is submitted conducts early voting. The early voting clerk of a (county, a municipality, or an independent school district) must forward a copy of the FPCA to (a county, a municipality, or an independent school district) in the calendar year in which the application is received and in which the person is eligible to vote.

NOTE: These are not the same forwarding rules the Annual ABBMs now have pursuant to House Bill 1927 (2015). See Annual ABBM seminar outline.

I. Method of Providing Ballot. [Sec. 101.056]

1. The ballot must be air mailed to the voter free of U.S. Postage in an envelope labeled “Official Election Balloting Material via Airmail.”
2. The address to which the balloting materials are sent must be:
 - a. an address outside the Texas county of the voter's residence; or
 - b. an address in the United States for forwarding or delivering mail to the voter at a location outside the United States. (This can include an address within the county, but the early voting clerk must have enough information to know that the ballot will be forwarded outside the United States.)

3. E-mailing blank ballots. Starting in 2010 (federal law) and pursuant to 2011 changes in state law, blank ballots may be emailed to FPCA voters. Sections 101.101 – 101.109. See current advisories and 1 Tex. Admin. Code §81.39 for details. Note that a voter must still include a “mailing address” even if requesting an email ballot to show the voter’s location outside the county (military) or outside the United States (civilian). [Sec. 101.102]

NOTE: Senate Bill 2778, effective September 1, 2015. Blank ballots may be e-mailed to FPCA voters in all types of elections (not just elections conducted with a federal election or legislative vacancy). Example: The constitutional amendment election in November of an odd-numbered year. This change also impacts which voters may use the FWAB (because Texas rules for the FWAB use the same category of FPCA voters who may be e-mailed a blank ballot).

4. Senate Bill 904, effective September 1, 2013. (**NOTE:** This amendment codifies previous SOS advice and instructions for a signature sheet (similar to what is used with a FWAB in lieu of a carrier envelope) to be used by an FPCA voter to whom a ballot was emailed.)

J. Return of Voted Ballot. [Sec. 101.107]

1. A voted ballot may be returned by mail or common or contract carrier and must be received by 7 p.m. on election day except as provided below under “Counting of Late Ballots.”
2. A voted ballot may be transmitted electronically by fax machine through authorized channels if a military voter is casting a ballot from an area in which the voter is eligible to receive hostile fire pay or a location that has been designated by the President as a combat zone.

NOTE: This limited group of voters (hostile fire pay) will be the same group of voters who will be able to send marked ballots by email under a pilot program developed by SOS under House Bill 1129 (2013), and amended by Senate Bill 1115 (2015).

3. A member of the armed forces or the spouse or dependent of any member may cast a state write-in ballot before the time a voter may receive a regular ballot to be voted by mail if the voter is unable to cast a ballot on election day or during the regular period for early voting because of a military contingency. The voter must indicate on the application that he/she desires a state write-in ballot and includes information indicating he/she is a qualified voter of the area. [Sec. 105.002]

The state write-in ballot may be applied for not earlier than the 180th day before election day. The state write-in ballot allows the voter to write in his/her official candidate choices, or if applicable cast a straight-party vote.

K. Counting of Late Ballots.

1. FOR **NON-MILITARY FPCA** VOTERS ONLY (i.e., non-military U.S. citizens residing overseas): A marked mail ballot that arrives late may be counted if the ballot:
 - a. was cast from outside the United States;
 - b. was placed in delivery before the polls closed;
 - c. arrives not later than the fifth day after election day and
 - d. the carrier envelope or, if applicable, the envelope containing the carrier envelope is:
 - 1) properly addressed with postage or handling charges prepaid; and
 - 2) bears a cancellation mark of a recognized postal service or a receipt mark of a common or contract carrier or a courier indicating a time before the deadline

NOTE: If the deadline falls on a Saturday, Sunday, or legal state or national holiday, the deadline is extended to the next business day. For Tuesday elections, the fifth day after the election is Sunday, so this deadline will move to the next regular business day.

NOTE- NEW LAW: House Bill 1151 (2017) amended Section 86.007 to provide that the carrier envelope **must** be properly addressed **and** bear a cancellation mark from a postal service or a receipt mark from a common or contract carrier before the deadline.

2. FOR **MILITARY FPCA** VOTERS ONLY (i.e., military either domestic or overseas): A ballot voted by a voter described by Section 101.001(2)(A) or (B) **shall** be counted if the ballot arrives at the address on the carrier envelope not later than the **sixth day** after the date of the election, except that if that date falls on a Saturday, Sunday, or legal state or national holiday, then the deadline is extended to the next regular business day.

NOTE-NEW LAW: House Bill 929 (2017) amended Section 101.057 to provide that members of the armed forces and merchant marines of the United States, as well as their spouses or a dependent of a member **shall** have their ballots counted if the carrier envelope is received **not later** than the **sixth day** after the date of the election, except that if that date falls on a Saturday, Sunday, or legal state or national holiday, then the deadline is extended to the next regular business day.

L. Noting FPCA Registration on Poll List. [Sec. 101.004]

For each FPCA registrant accepted to vote, a notation must be made beside the voter's name on the early voting poll list indicating that the voter has been mailed a ballot.

M. Noting FPCA Registration on Early Voting Roster. [Sec. 101.005]

The entry on the early voting roster pertaining to a voter who is an FPCA registrant, must include a notation indicating that the voter has been mailed a ballot.

N. Forwarding the FPCA to the Voter Registrar.

The early voting clerk must forward the original FPCA to the voter registrar so that it may be processed as an application for voter registration. 1 Tex. Admin. Code §81.40.

II. QUESTIONS REGARDING FPCA

1. What if the county is having an election on the same day as one of its cities, and the County Clerk is conducting early voting for both the county and the city. The County received an FPCA addressed to the County and marked "all as permitted?"

A: The County must send the applicant ballots for both the county and the city elections and retain the FPCA for future county elections. The applicant must submit an FPCA to the City Secretary to receive ballots for future city elections unless the County is conducting a future joint election with the city.

2. If the County contracts to conduct early voting for the school district in a subsequent special election and the county is not having an election on the same day, does the County send the FPCA applicant a school district ballot?

A: Yes. The county clerk is the early voting clerk by contract, and identified as such to the voters in the election notice.

3. What is meant by "wrong early voting clerk"?

A: If the applicant has indicated a permanent residence address on the application that is not in your county, or he or she has requested a ballot for an election in which you are not the early voting clerk, he or she has submitted the application to the wrong early voting clerk. The "wrong" early voting clerk is required to forward the FPCA to the correct early voting clerk.

4. If an FPCA applicant indicates an address to which I should mail balloting materials and that address is located in my political subdivision with no indication that the

ballot will be forwarded to an address outside of the United States, should I reject the application?

A: Yes. The law requires an indication that the ballot will be forwarded on an application in those circumstances. However, before rejecting the FPCA, examine the entire FPCA and the envelope in which it arrived. Under general Texas early voting law, the application consists of the application and any envelope. For example, if you see an overseas address on the voter's return address, we think that is enough of an indication that the ballot will be forwarded outside the United States.

5. Can FPCA applicants return two carrier envelopes in another envelope if the two applicants are registered at the same address?

A Yes. The same rule regarding returning more than one carrier envelope together as long as the voters are registered at the same address applies to FPCA voters.

6. Can I fax balloting materials to an FPCA voter who is located overseas?

A: No, you can fax an application to the FPCA voter, and the FPCA voter can fax the application back, but you may not fax other balloting materials to any voter. However, our office has prescribed procedures for the electronic transmission of a voted mail ballot by a military voter IF the military voter is casting a ballot from an area in which the voter is eligible to receive hostile fire pay or a location that has been designated by the President as a combat zone in accordance with Chapter 105 of the Texas Election Code.

NOTE: The federal MOVE Act and Senate Bill 100, 82nd Legislature, authorizes the electronic submission (email only, but other electronic transmission may be approved by the Secretary of State) of blank ballots to uniformed officers, along with their spouses and dependents, and overseas voters, and requires the tracking of the ballots to allow voters to obtain status of their ballots.

NOTE: Currently, SOS has authorized by advisory the emailing of a link to a ballot which the FPCA voter can use to print out the ballot, fill out the resulting hardcopy ballot, and mail. See advisories for details.

7. If I call one voter about a defective carrier envelope, do I have to call all FPCA applicants who sent defective carrier envelopes?

A: Yes.

8. If an FPCA applicant is a registered voter at an address in my county and provides a residence address that is not the residence address at which the voter is registered, should I accept the application? What about a Statement of Residence?

A: Yes, you should accept the application, unless the voter marked indefinitely away / away without intent to return, the FPCA is treated as an application for a permanent voter registration application. Because the FPCA is also an application for voter registration, it “doubles” as its own Statement of Residence; therefore, you do not need to send a separate Statement of Residence. The early voting clerk (if a different county official) will process FPCA applications as you process regular applications for ballot by mail.

9. What do the following categories on the form mean for our state law? The current form (from 2013) has one box about how the voter “never resided” in the United States. Another category refers to the activated National Guard on state orders.

A: These two categories are not categories for FPCA voters under current Texas law. (The FPCA is a 50-state form and some states add more categories of voters by state law.) If the voter chooses one of these, for purposes of ballot by mail, the early voting clerk must reject the FPCA promptly; if the voter has given you an email address, you may use email to send the notice of rejection. Please note that voters often choose these categories because they do not understand what the form is asking. This rejection does not necessarily mean a voter could not re-apply under another category of the FPCA. Second, a voter not eligible to use an FPCA might still be able to use regular ballot by mail; e.g., a member of the national guard serving outside his or her home Texas county could use a regular ABBM.

NOTE: The registration of a voter who says they never resided in the US should be cancelled by the voter registrar, if that individual was already registered to vote in your county.

We think if a voter checks the box for national guard, even though the FPCA will be rejected as an ABBM (the ballot by mail function of the form), the FPCA can still be recognized as an application for voter registration and processed accordingly.

10. Which election official is responsible for the FPCA ballot tracker function in TEAM?

A: It is the responsibility of the Early Voting Clerk to enter the FPCA into TEAM. Where the Early Voting Clerk is not the same as the Voter Registrar, the Voter Registrar will not have access to enter this information. FPCA information (and updates to ballots) are required to be submitted for the Ballot Tracker in order to comply with federal law.

11. I have voters calling me asking for the FPCA form. Where can they get one?

A: The forms are federal forms, prescribed by the Federal Voting Assistance Program. *They are available online or can be ordered hardcopy.* All military voters should have access to a voting assistance officer on their military base. If they need additional help, or if an overseas voter is calling, refer them to the Federal Voting Assistance program. There is a toll-free number for the United States and for most of the countries in which citizens are stationed. You may also refer them to

the FVAP website: <http://www.fvap.gov> which is especially helpful to voters in time zones different from yours. You may also give our office's phone number and web site. We answer e-mails from overseas voters all over the world.