

DIRECTIVE 2009-05

May 11, 2009

To: ALL COUNTY BOARDS OF ELECTIONS

Re: 2009 General Voter Records Maintenance Program (National Change of Address and Supplemental Processes); Grounds for Registration Cancellations

A. History

The *National Voter Registration Act of 1993* (NVRA), commonly referred to as the “motor voter law” (see 107 Stat. 77, 42 U.S.C. 1973gg), was signed into law on May 20, 1993. The purposes of the NVRA are to increase the number of voter registrations for eligible citizens, to enhance the participation of eligible citizens in the voter process, to protect the integrity of the electoral process and to ensure accurate and current voter registration rolls are maintained. The provisions of this federal law became effective on January 1, 1995. Following passage of the NVRA, the Ohio General Assembly enacted Substitute Senate Bill 300 to incorporate the requirements of the federal law into Ohio law. The provisions of the state enactment also became effective January 1, 1995.

B. General Voter Records Maintenance Program Components

In accordance with the NVRA and various sections of Ohio Revised Code, all Ohio boards of elections are required to mail confirmation notices to certain electors as part of a uniform and nondiscriminatory **general voter records maintenance program** prescribed by the Secretary of State. This program has been designed to ensure that accurate and current voter registration rolls are maintained, and to properly identify and cancel the voter registrations of ineligible individuals.

To assist Ohio boards of elections with their 2009 general voter records maintenance program, the Ohio Secretary of State’s office will be sending each board a **2009 NVRA Voter Records Maintenance Program CD-ROM**. The CD-ROM will include all the following:

- A copy of this directive.
- A National Change of Address (NCOA) data list of your county’s electors who may have moved.
- Instructions for working with your county’s NCOA data list.
- A sample Confirmation Notice/Confirmation Return Notice (SOS Form 10-S).
- A Program Completion Receipt Form.

Proper use of each of these items is outlined in this Directive.

In 2009, all boards of elections must mail Confirmation Notices/Confirmation Return Notices (SOS Form 10-S) to electors identified through Ohio’s **general voter records maintenance program** before removing the names of ineligible voters from their official list of voters. In 2009, all Confirmation Notices/Confirmation Return Notices (SOS Form 10-S) that are mailed pursuant to the program must be mailed no later than **August 31, 2009**.

The Ohio **general voter records maintenance program** has **two components** for identifying electors who may have moved and thus may need to reregister to vote where they currently reside. An overview of the processes for the two components - National Change of Address and the Supplemental Process - is provided below.

- 1. National Change of Address (NCOA) Process Overview:** This component compares boards of elections' voter lists with the U.S. Postal Service's (USPS) National Change of Address (NCOA) records to identify electors who moved since the records were last compared in 2007, and thus may need to update their voter registrations to their current voting residence address.

An elector identified through the NCOA process may be categorized as follows:

- a. moved within the same precinct,
- b. moved from one precinct to another in the same Ohio county,
- c. moved from one Ohio county to another Ohio county, or
- d. moved from Ohio to another state or a foreign country.

Boards of elections must use the NCOA data contained on the **NVRA Voter Records Maintenance Program CD-ROM** provided by the Secretary of State's office to mail a Confirmation Notice/Confirmation Return Notice to electors in their county identified in the data file. Confirmation Notices/Confirmation Return Notices issued under the NCOA process **must** be on the form prescribed by the Secretary of State (SOS Form 10-S).

IMPORTANT: Please read the instructions provided on the CD-ROM **before** attempting to process your NCOA data file, and follow the instructions provided.

- 2. Supplemental Process Overview:** Not every Ohio elector who moves will file a change of address with the U.S. Postal Service. Therefore, Ohio's **general voter records maintenance program** uses a second component to identify electors who may have moved and thus may need to update their voter registration to their current voting residence address. This second component is designated the "Supplemental Process," because it seeks to identify electors whose *lack of voter activity* indicates they may have moved, even though their names did not appear on the NCOA generated list.

Under this method, each board must identify electors whose names did not appear in the NCOA file, but who both:

- a. Did not vote in an election during the period **beginning May 8, 2007, and ending February 28, 2009, and**
- b. Did not engage in *any* voter activity or otherwise communicate with the board of elections during that same period of time.

Boards of elections should use the data contained in the voter registration database to mail a Confirmation Notice/Confirmation Return Notice to electors identified as part of the Supplemental Process. Confirmation Notices/Confirmation Return Notices issued under the Supplemental Process must be on a form prescribed by the Secretary of State (SOS Form 10-S).

Note: **Boards of elections must complete the NCOA process first and then begin the Supplemental process second. An elector to whom a board of elections already mailed a 10-S notice due to the NCOA process should not be mailed a second notice as part of the supplemental process.**

C. General Records Maintenance Program Processing Details

Listed below are the details for both the NCOA process and the Supplemental process to identify electors who may have moved and thus may need to reregister to vote where they currently reside.

1. NCOA Process Details

Each board first must process its NCOA data file according to the instructions provided on the NCOA Process CD-ROM. Each board is reminded that its voter registration records **must indicate (a) the date on which a Confirmation Notice/Confirmation Return Notice is mailed to an elector, and (b) the date on which the board receives a completed Confirmation Return Notice in response to that mailing.**

This record is essential for establishing the four-year anniversary date for each Confirmation Notice/Confirmation Return Notice mailed.

Mailing the Confirmation Notice/Confirmation Return Notice

The electors identified on the NCOA data file as having moved must be sent a Confirmation Notice/Confirmation Return Notice (SOS Form 10-S) by forwardable mail. The elector may use the postage pre-paid, pre-addressed "Confirmation Return Notice" to verify or update his or her address. The notice must be sent to the elector's current address as reported on the NCOA list.

Responses to the Mailed NCOA Confirmation Notice/Confirmation Return Notice

- a. **Confirmation Return Notice received by board – current address within the county confirmed:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming that the elector still resides at the same address on file with the board of elections, the board shall indicate on the elector's registration record the date the Confirmation Return Notice was received by the board and note that the address on file with the board of elections is correct.
- b. **Confirmation Return Notice received by board – address change within the county:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming a new address *within the county*, the elector's registration record shall be updated by the board of elections with the new address and the date the Confirmation Return Notice was received by the board. The board shall send the elector an Acknowledgement Notice (SOS Form 10-J) informing the elector of the registration update and the location of his or her new polling place.
- c. **Confirmation Return Notice Received by board – address change outside the county but still in Ohio:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming a new address outside the county but still in Ohio, the board of elections that mailed the Confirmation Notice to the elector shall cancel elector's registration and make a notation on the elector's registration record of the date the Confirmation Return Notice was received by the board and the date of cancellation. The board shall send to the Secretary of State's office copies of the Confirmation Return Notices for electors who have moved from the county but still reside in Ohio, so that the Secretary of State may provide to such canceled electors a voter registration form to provide them with an opportunity to register to vote in their new county of residence. Copies of the Confirmation Return Notices may be sent via e-mailed PDF format or by regular mail no less than weekly and no more than monthly intervals.
- d. **Confirmation Return Notice received by board – address change outside the State of Ohio:** If the elector returns the postage pre-paid Confirmation Return Notice

(originally sent with the Confirmation Notice) confirming a new address outside the State of Ohio, the board of elections that mailed the Confirmation Notice to the elector shall cancel the elector's registration and make a notation on the elector's registration record of the date the Confirmation Return Notice was received by the board and the date of cancellation.

- e. **Confirmation Return Notice not returned to board:** If the elector fails to return the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) *and* otherwise fails to:

1. update his or her registration *or*
2. vote

for a period of four years from the date of mailing the Confirmation Notice/Confirmation Return Notice (this period shall include two general federal elections, i.e. occurring in November for even-numbered years), then the board of elections that mailed the Confirmation Notice to the elector shall cancel the elector's registration and make a notation of the date of cancellation.

It is possible that an elector who appeared on the 2009 NCOA list may have also appeared on the 2005 NCOA list or 2007 NCOA list. Do not send another Confirmation Notice/Confirmation Return Notice to an elector to whom the board already has sent a Confirmation Notice/Confirmation Return Notice, *unless* the 2009 NCOA data file provides an address for that elector that is *different* than the address to which the previous Confirmation Notice/Confirmation Return Notice was sent in 2005 or 2007.

2. Supplemental Process Details

Only *after* completing the NCOA Process shall a board implement the Supplemental Process. (The criteria for choosing electors who receive the Supplemental Confirmation Notice/Confirmation Return Notice is a lack of voter activity, which is used in this Directive to mean that the voter: (a) did not vote in an election during the period beginning May 9, 2007, and ending February 28, 2009, and (b) did not engage in any voter activity or otherwise communicate with the board of elections during that same period of time.)

As with the NCOA Process, each board **must record the dates on which a Confirmation Notice/Confirmation Return Notice¹ is sent to an elector *and* when the board receives a completed Confirmation Return Notice in response to the Supplemental Process mailing.** As with the NCOA Process, this record of date of mailing is essential for establishing the four-year anniversary date for each Supplemental Confirmation Notice/Confirmation Return Notice mailed.

The Supplemental Confirmation Notice/Confirmation Return Notice is to be used only for electors who were not mailed a Confirmation Notice/Confirmation Return Notice under the NCOA Process. Do **not** send a Confirmation Notice/Confirmation Return Notice to an elector under the Supplemental Process for any other reason (e.g., acknowledgement notice returned, other election mailings returned).

Mailing the Supplemental Confirmation Notice/ Confirmation Return Notice

The electors identified as part of the Supplemental Process who may have moved and whose names did **not** appear on the 2009 NCOA data list must be sent a Supplemental Confirmation Notice (SOS Form 10-S) by *forwardable* mail, and must include a postage pre-paid, pre-

¹ This Directive No. 2009-05 refers to a "Supplemental Confirmation Notice/Confirmation Return Notice" to clarify which process is being used. However, the actual form used for both processes is the same form 10-S.

addressed "Confirmation Return Notice" on which the elector may verify or update his or her address. The notice must be sent to the current address as reported on the board of elections voter registration records. Each board of elections must note on its voter registration records all electors sent a Supplemental Confirmation Notice/Confirmation Return Notice and the date the notice was mailed.

Responses to the Mailed Supplemental Confirmation Notice/Return Confirmation Notice

- a. **Confirmation Return Notice received by board – current address within the county confirmed:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming that the elector still resides at the same address on file with the board of elections, the board shall indicate on the elector's registration record the date the Confirmation Return Notice was received by the board and note the address on file with the board of elections is correct.
- b. **Confirmation Return Notice received by board – address change within the county:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming a new address *within the county*, the elector's registration record shall be updated by the board of elections with the new address and the date the Confirmation Return Notice was received by the board. The board shall send the elector an Acknowledgement Notice (SOS Form 10-J) informing the elector of the registration update and the location of his or her new polling place.
- c. **Confirmation Return Notice received by board – address change outside the county but still in Ohio:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming a new address outside the county but still in Ohio, the board of elections that mailed the Confirmation Notice to the election shall cancel the elector's registration and make a notation on the elector's registration record of the date the Confirmation Return Notice was received by the board and the date of cancellation. The board shall send to the Secretary of State's office copies of the Confirmation Return Notices for electors who have moved from the county but still reside in Ohio so that the Secretary of State may provide to such cancelled electors a voter registration form to provide them with an opportunity to reregister in their new county. Copies of the Confirmation Return Notice may be sent via e-mailed PDF format or by regular mail at no less than weekly and no more than monthly intervals.
- d. **Confirmation Return Notice received by board – address change outside the State of Ohio:** If the elector returns the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) confirming a new address outside the State of Ohio, the board of elections that mailed the Confirmation Notice to the elector shall cancel the elector's registration and make a notation on the elector's registration record of the date the Confirmation Return Notice was received by the board and the date of cancellation.
- e. **Confirmation Return Notice not returned to board:** If the elector fails to return the postage pre-paid Confirmation Return Notice (originally sent with the Confirmation Notice) *and* otherwise fails to:
 1. update his or her registration or
 2. votefor a period of four years from the date of mailing the Confirmation Notice/Confirmation Return Notice (this period shall include two general federal elections, i.e. occurring in November for even-numbered years), then the board of elections that mailed the Confirmation Notice to the elector shall cancel the elector's registration and make a notation of the date of cancellation.

Under the Supplemental Process, do not send a Supplemental Confirmation Notice/ Confirmation Return Notice to an elector to whom the board already has sent such a notice, *unless* the 2009 NCOA data file provides an address for that elector that is *different* than the address to which the previous Confirmation Notice/Confirmation Return Notice was sent in 2005 or 2007.

3. Handling “No Forwarding Address” Returns

Confirmation notices must be sent by forwardable mail. However, the U.S. Postal Service (USPS) sometimes will return to the board a confirmation notice that is non-deliverable because the USPS does not have a forwarding address for the addressee (the elector). The board should record that fact in its records (e.g., in the comments section of that elector’s file) and keep the undeliverable confirmation notice for four years. This will enable the board to document its compliance with the **general voter records maintenance program**.

4. General Voter Records Maintenance Program is Prospective in Nature

Both the NCOA and Supplemental processes are prospective in nature. This means each confirmation notice must advise the elector that his/her registration may be canceled four years *after* the postmark on that Confirmation Notice/Confirmation Return Notice (including two federal general elections), *unless* the elector performs one or more of the following affirmative acts during the four years after the Confirmation Notice/Confirmation Return Notice is mailed:

- Returns the Confirmation Return Notice card (originally sent with the Confirmation Notice) confirming a qualifying voting address in the county. (If the elector returns the card confirming his/her voting residence address is located in another county or state, cancel that elector’s registration in your county.)
- Properly updates his or her voter registration and submits it to the board of elections.
- Votes or engages in other voter activity before that four-year period ends. The phrase “voter activity” as used in this directive means activity engaged in by an elector in the context of the electoral process *other than* voting in an election or communicating directly with the board of elections (such as through responding to a confirmation notice or filing a change of address form). Voter activity may include participating in the electoral process through any other legally available means, such as signing or circulating a petition for a candidate or issue. A board of elections may choose to expand its general voter records maintenance program to exclude the removal of the voter registration of an elector who engages in voter activity such as signing or circulating a petition. However, when using such voter activity to prevent a voter registration from being removed, the board must do so in a uniform and nondiscriminatory manner.

Federal and state law require that a general voter records maintenance program be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965. If a board of elections incorporates a check of petition signatures as voter activity in its general records maintenance program, then it must include a check of all signatures on all petitions filed with or reviewed by the board. Additionally, if the board chooses to expand the supplemental process of its general voter records maintenance program in this or similar way to include any voter activity, then it should develop a written policy describing how such a program will be implemented.

Thus, the registration of an elector who fails to both:

1. respond to a Confirmation Notice/Confirmation Return Notice that is **sent in 2009**; and
 2. update his or her voter registration, or vote, or engage in voter activity thereafter,
- shall not** be canceled until after the four-year anniversary date **in the year 2013** from the mailing of the 2009 Confirmation Notice/Confirmation Return Notice.

If the elector fails to both respond to the Confirmation Notice/Confirmation Return Notice and update his or her voter registration or vote or engage in voter activity by the appropriate anniversary date **in 2013**, the registration of the elector *shall be cancelled* by one of the following dates, whichever is later:

1. not later than one hundred twenty (120) days after the date of the second federal general election in which the elector fails to vote; *or*
2. not later than one hundred twenty (120) days after the expiration of the four-year period in which the elector fails to vote or respond to a Confirmation Notice/Confirmation Return Notice.

Please note that state and federal laws prohibit election officials from canceling any voter registration solely because the elector has not voted. As discussed under the "Supplemental Process," above, a board is required to mail a Confirmation Notice/Confirmation Return Notice (SOS Form 10-S) to an elector whose lack of voting activity during the recent federal election cycle indicates that the elector may have moved; this notification process (either NCOA or Supplemental) must be undertaken *before* canceling an elector's registration.

5. Deadline for Completing Program in 2009

As was stated in the first paragraph of this directive, the deadline for completing the **general records maintenance program** and the NCOA and supplemental components is **August 31, 2009**. If the date of the issuance of this directive results in a hardship in meeting this deadline, a board must request additional time no later than August 14, 2009, and no more than ten (10) working days extension will be granted beyond the August 31 deadline.

6. Boards to Send Receipt to Secretary of State when Program Is Completed

Each board must provide written notice to the Secretary of State's office that the general records maintenance program has been completed. The Program Completion Receipt Form, provided with the **2009 NVRA Voter Records Maintenance Program CD-ROM**, must be completed by the director or deputy director and returned to the SOS Elections Division promptly after the NCOA and Supplemental processes have been completed, but **no later than September 18, 2009**.

Return via fax: Ohio Secretary of State's Office - Elections Division
Attn: Denise Sherrod
(614) 752-4360

Return via e-mail: dsherrod@sos.state.oh.us

Return via US Mail: Ohio Secretary of State's Office – Elections Division
Attn: Denise Sherrod
PO Box 2828
Columbus OH 43216

7. Grounds for Cancellation of a Registration in 2009

As mentioned previously in this directive, a board of elections may cancel an elector's registration only if, during the four years *after* a Confirmation Notice/Confirmation Return Notice is mailed, that elector failed to vote *and* failed either to respond to the confirmation mailing, or to engage in any voter activity.

Thus, the registration of an elector who failed to both:

- 1) respond to a Confirmation Notice/Confirmation Return Notice that was sent **in 2005**; *and*
- 2) update his or her voter registration, or vote , or engage in voter activity (2005 through 2009)

shall be cancelled not later than one hundred twenty (120) days after the four-year anniversary date in 2009 of the mailing of the 2005 Confirmation Notice/Return Confirmation Notice is reached.

Please remember to make a notation of the *date of cancellation* on the registration as well.

D. Other Grounds for Cancellation of a Registration in 2009

In addition to the reasons for cancellation outlined in the **general records maintenance program** in B. and C. above, R.C. 3503.21 provides other grounds for a cancelling an elector's registration. Those grounds include:

1. The filing by a registered elector of a signed written request with a board of elections that the elector's registration be canceled. The filing of such a request does **not** prohibit an otherwise qualified elector from reregistering to vote at any time.
2. The filing of a notice of the death of the registered elector. The chief health officer of a political subdivision and the director of health shall file at least once a month with the county board of elections the names, dates of birth, dates of death and the residences of all persons over 18 years of age who have died within the subdivision, this state or another state in accordance with R.C. 3503.18. If a board receives notice of the death of an elector from other sources and verifies that the elector is deceased, the registration shall be cancelled.
3. The conviction *and incarceration* of the registered elector for the commission of any felony offense under the laws of this state, any other state, or the United States, as provided in R.C. 2961.01. The clerk of the common pleas court of each county shall notify the board of elections of the names and addresses of persons convicted of felonies as provided in R.C. 3503.18. If the report contains the address of an elector from another county, the director shall promptly notify the appropriate board. The notice of felony convictions in federal courts is provided to the Secretary of State's office and forwarded to the appropriate county boards of elections.

Note: Except as otherwise provided in R.C. 3599.39 (discussed in 5. below), Ohio law disfranchises only persons convicted of felonies who are *actually incarcerated* for those felonies (local jail time, prison or incarceration for felony probation or parole violation) lose their rights as electors. If the list received from the clerk of common pleas court does not indicate the reason for an incarceration, or if the list simply provides information about a person convicted of any felony without stating that the sentence imposed included incarceration, then the voter should not be removed from the voter registration system. Felony convictions that result

in the imposition of community control (probation) will not disenfranchise or make ineligible an elector who has been convicted of a felony. Also note that the reversal of a felony conviction, a pardon or the granting by a court of post-conviction relief removes the ineligibility to be an elector for the period of incarceration. Finally, if the elector has served his or her sentence and has been released at the time the board learns of the felony incarceration, no cancellation should occur solely on the basis of the conviction and prior incarceration. Persons who have been convicted of felonies, incarcerated and released and who are under post-release control supervision (parole) are eligible to be electors.

4. A registered elector who has been declared incompetent by a judge specifically for the purpose of voting as provided in R.C. 5122.301. In accordance with R.C. 3503.18, the probate judge shall file once a month the names and residence addresses of all persons over the age of 18 who have been found to be incompetent for voting purposes.
5. An elector has been permanently disfranchised for violations of election laws as provided by R.C. 3599.39 (“Any person convicted of a violation of any provision of the Title XXXV of the Revised Code, who is again convicted of a violation of any such provision, whether such conviction is for the same offense or not, is on such second conviction guilty of a felony of the fourth degree, and in addition, shall be disfranchised.”)

The registration of an elector also may be cancelled if a board of elections holds a hearing in accordance with R.C. 3503.24(B), after which the board determines that the person is not entitled to be an elector.

In accordance with R.C. 3503.21(A)(5) the registration of an elector may also be cancelled upon the receipt of a signed change of address form or new registration form containing a current residence address in a county other than the elector’s current county of registration. The board of elections cancelling the elector’s registration shall notify the elector that his or her registration has been cancelled pursuant to R.C. 3503.33.

Please remember to make a notation of the *date of cancellation* on the registration.

Questions

- Please direct any questions concerning this directive to your county’s assigned elections counsel or one of the election administrators.
- Please direct questions about the NCOA CD or file processing instructions to the Secretary of State HELP Desk at (614) 466-8467 or HELP@sos.state.oh.us.

Sincerely,

Jennifer Brunner