

DIRECTIVE 2010-62

September 17, 2010

To: All County Boards of Elections

Re: Processing UOCAVA Voter Requests

Earlier this year, our office issued Advisory 2010-05, explaining the effects of Sub. H.B. 48, state legislation adopted to implement federal law requiring certain changes in the handling of what has previously been referred to as UOCAVA (“Uniformed and Overseas Citizens Absentee Voting Act”) ballots for the November 2, 2010 election. This recent federal law, known as the “Military and Overseas Voting Empowerment Act,” or more popularly the “MOVE Act”, requires that a board of elections offer an individual who is eligible to vote a UOCAVA ballot the opportunity to state his or her preference for the method of transmitting to the voter: 1) a voter registration form, 2) an absent voter ballot application form, and 3) a blank absent voter ballot. This directive provides instructions to county boards of elections about how to process a request received from a person who is eligible to vote in accordance with UOCAVA (“UOCAVA voter”) under the MOVE Act.

DEFINITIONS

“Uniformed services” means the U.S. Army, Navy, Marines, Air Force, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.¹

“Uniformed services voter” means:

1. A member of a uniformed service on active duty who, by reason of such active duty, is absent from the member's place of residence where the member is otherwise qualified to vote;
2. A member of the merchant marine who, by reason of service in the merchant marine, is absent from the member's place of residence where the member is otherwise qualified to vote; and
3. A spouse or dependent of a member referred to in paragraphs (1) or (2) above, who, by reason of the active duty or service of the member, is absent from the person's place of residence where the spouse or dependent is otherwise qualified to vote.

¹ Because an absent uniformed services voter is a citizen on *active duty* with a *uniformed service*, neither a uniformed service member on *reserve* status nor a member of Ohio's organized militia qualifies as an absent uniformed services voter. However, if a member of a U.S. armed forces reserve unit or the Ohio organized militia is called to active duty with the U.S. armed forces, then that person's status changes during the time of active duty to that of a uniformed service member. Consequently, if the person's active duty service takes the person away from his or her Ohio voting residence, then the person is an absent uniformed services voter under UOCAVA. If the person's spouse and/or dependent(s) leave their Ohio voting residence to be with or near the service member, they likewise come within the absent uniformed service voters classification. Special absentee voting provisions for Ohio's organized militia members on active duty in Ohio are contained in R.C. 3509.031.

“Overseas” means:

1. any country *other than* the United States, including other nations in North and South America;
2. “Overseas” *does not include* Alaska, Hawaii or U.S. territories.

“Overseas voter” means:

1. A person who is not a uniformed services voter 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; or
2. A person who is not a uniformed services voter who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

Both federal and state laws contain provisions allowing qualified overseas voters to register to vote and to vote by absentee ballot. *See generally*, 42 U.S.C. 1973ff-6; R.C. 3511.01, 3501.02 and 3511.021.

- Under federal law, a U.S. citizen who is not a uniformed services voter who resides outside the United States is qualified to vote in federal elections held in Ohio, if Ohio was the last place in which the person was domiciled before leaving the U.S. and, but for such residency, the citizen would be qualified to vote in Ohio. The overseas citizen uses as his or her qualifying voting address the Ohio address at which the citizen resided for 30 consecutive days immediately before leaving the United States. If the overseas citizen cannot remember the exact street address, the board of elections should inquire regarding cross streets, geographic markers, former neighbors, or other means of identifying the correct voting precinct in which the overseas citizen is eligible to vote.
- There is no limit on the amount of time a citizen may live outside the U.S. and still be eligible to vote in federal elections, nor any requirement that the citizen intend to move back to Ohio in order to be eligible to vote in federal elections.
- Nothing in federal law allows a U.S. citizen who has never lived in Ohio, or who has not been a resident of Ohio for at least 30 consecutive days during his/her life, to register to vote in Ohio as an overseas voter. For example, if a U.S. citizen who is eligible to vote as an overseas voter in Ohio has a child while living outside the U.S., the child of the U.S. citizen is not eligible to vote as an overseas voter in Ohio unless the child has been an Ohio resident for at least 30 days at some period in the child's life.

“U.S. Citizen” means the native born or naturalized citizens of the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands.

VOTER REGISTRATION FORM

An individual who is eligible to be a UOCAVA voter may request a voter registration form and specify transmission of it by one of the following methods:

- in person,
- by first class standard mail,
- by fax, or
- by email.

Upon receiving such a request, a board of elections must transmit a voter registration form to the individual via the method requested by the individual. If an individual who is eligible to be a

UOCAVA voter requests that a blank voter registration form be sent by email, the board must attempt to transmit the form via email to the address designated by the individual. If the board receives information that the email is undeliverable or if the recipient indicates that he/she cannot view the form as transmitted electronically, then the board must send the form by an alternative method, which may be by a different format of transmission by email or by mail or fax, whichever will get the form more quickly to the individual. In any email transmission to the individual, the board may also supply a web link to a downloadable voter registration form from the board's or the secretary of state's website or both. Examples include: (<http://www.sos.state.oh.us/SOS/voter/RegisteringToVote.aspx> and <https://ohio.overseasvotefoundation.org/overseas/Rava.htm?fields=3&3=39>.)

If the individual eligible to be a UOCAVA voter does not express a preferred method of transmission, it shall be transmitted to the voter by standard mail. R.C. 3503.191(B). However, if the individual has listed an email address, the board may, in addition, transmit the form by email, along with a link to a downloadable form (see above).

After completing and signing the voter registration form, an individual eligible to be a UOCAVA voter may return it by any one of the following methods:

- in person,
- by standard mail,
- by fax, or
- by email.

The board must process a valid voter registration form without regard to how it was transmitted to the board. This means that a facsimile of or emailed copy of a signed form will suffice under the law to register an individual who is eligible to be a UOCAVA voter.

If an individual who is eligible to be a UOCAVA voter transmits a voter registration form by email to the board, and if the board cannot open the file containing the completed voter registration form, or if the form is unreadable, or if required sections of the form are unreadable or missing, the board should immediately advise the applicant of the problem by email and offer the applicant the opportunity to resubmit the form by email (including using a different electronic image) or to transmit the form by an alternate method (e.g., by fax, or standard mail or by emailing it to a relative who can submit it in person to the board).

If a UOCAVA voter registration form is submitted by email on the **last day of registration** before the upcoming election, and it cannot be read or opened, the board must so notify the applicant within 24 hours of receiving the email and may accept a resubmission by email or fax no later than two days after the close of registration for that election and by standard mail postmarked no later than two days after the close of registration for that election.

Note that, under the new law, a UOCAVA voter is not required to mail to the board the original signed voter registration form; an electronic or fax copy of his or her signed voter registration form is permitted by law to take the place of an original.

In addition, under R.C. 3503.19(B)(2)(a), a UOCAVA voter also may return his or her completed voter registration form electronically to the office of the secretary of state or to the board of elections of the county in which the his or her voting residence is located.

EXCEPTIONS WHEN A UNIFORMED SERVICES VOTER USES THE FEDERAL POST CARD APPLICATION FORM TO REGISTER TO VOTE:

A citizen who is eligible to register to vote in Ohio as an absent uniformed services voter may also register to vote in Ohio or update the voter's existing Ohio voter registration using any of the following three forms:

- 1) **SOS prescribed voter registration form (Form #SEC4010).** The form is available on the Secretary of State's Web site at:
www.sos.state.oh.us/sos/upload/publications/election/VRform.pdf.
- 2) **National Voter Registration Form.** The form is available on the Elections Assistance Commission Web site at: www.fabnit.com/nvra_update.pdf.
- 3) **Federal Postcard Application.** The FPCA may be found on the Federal Voting Assistance Program Web site at: www.fvap.gov. The absent uniformed services voter must submit a properly completed FPCA to the board of elections in the county in which the voter's qualifying voting address is located. The absent uniformed services voter also may use an FPCA to update the voter's existing Ohio voter registration.

- **Voter Registration Deadline Waived if FPCA Used**

The voter registration deadline is waived for absent uniformed services voters who use the FPCA to register to vote. However, an absent uniformed services voter must register to vote in Ohio *before* the board of elections in such voter's U.S. county of residence may issue ballots to the absent uniformed services voter.

- **Documentary Proof of Personal Identification Waived if FPCA Used**

Uniformed services voters who use the FPCA to register to vote do not have to provide proof of personal identification otherwise required of voters by Ohio law.

ABSENT VOTER BALLOT APPLICATION FORM

A UOCAVA voter may request an absentee ballot application and specify transmission of it by one of the following methods:

- in person,
- by first class standard mail,
- by fax, or
- by email.

A UOCAVA voter is not required to submit a request for an absent voter's ballot on a prescribed form. However, the request must include all of the information required by R.C. 3511.02(A) in order for the application to be processed.

Upon receiving a request for an absentee ballot from a UOCAVA voter, whether on an application or by other form of request, a board of elections must transmit an absentee ballot application to the UOCAVA voter via the method requested by the individual. If the UOCAVA voter requests that an absentee ballot application be sent by email, the board must attempt to transmit the form via email to the address designated by the individual. If the board receives information that the email is undeliverable or if the recipient indicates that he/she cannot view the form as transmitted electronically, then the board must send the form by an alternative method, which may be by a different format of transmission by email or by mail or fax, whichever will get the form more quickly to the voter. In any email transmission to the individual, the board may also supply a web link to a downloadable absentee ballot application from the board's or the secretary of state's website or both. Examples include: (use SOS link and also the link to the page on the Overseas Vote Foundation portion of the website.)

If a UOCAVA voter does not express a preferred method of transmission, the absentee ballot application shall be transmitted to the voter by first class standard mail. R.C. 3503.191(B). However, if the individual has listed an email address, the board may, in addition, transmit the form by email, along with a link to a downloadable form.

After completing and signing the absentee ballot application, a UOCAVA voter may return it by any one of the following methods:

- in person,
- by standard mail,
- by fax, or
- by email.

The board must process a valid absentee ballot application without regard to how it was transmitted to the board. This means that a facsimile of or emailed signed form will suffice under the law for a UOCAVA voter to receive his or her absentee ballot.

If a UOCAVA voter transmits an absentee ballot application by email to the board, and if the board cannot open the file containing the absentee ballot application form, or if an application form is attached to the email but is unreadable, or if required sections or text of the application are unreadable or missing, the board should immediately advise the applicant of the problem by email and offer the applicant the opportunity to resubmit his or her application (including using a different electronic image) or to simply make the request by email that he or she is requesting an absent voter's ballot for the upcoming election, or to transmit the form by an alternate method (e.g., by fax, or standard mail or by emailing it to a relative who can submit it in person to the board).

Please note that a UOCAVA voter is not required to submit a request for an absent voter's ballot on a prescribed form. However, the request must include all of the information required by R.C. 3511.02(A) for a UOCAVA absent voter's ballot:

- (1) The UOCAVA voter's name;
- (2) The UOCAVA voter's signature;
- (3) The address at which the UOCAVA voter is registered to vote;
- (4) The UOCAVA voter's date of birth;
- (5) One of the following:
 - (a) The UOCAVA voter's driver's license number;
 - (b) The last four digits of the UOCAVA voter's social security number;
 - (c) A copy of the UOCAVA voter's current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election mailed by a board of elections under section 3501.19 of the Revised Code or a notice of voter registration mailed by a board of elections under section 3503.19 of the Revised Code, that shows the name and address of the UOCAVA voter.

- (6) A statement identifying the election for which absent voter's ballots are requested;
- (7) A statement that the person requesting the ballots is a qualified elector;
- (8) A statement that the UOCAVA voter is an absent uniformed services voter or overseas voter as defined in 42 U.S.C. 1973ff-6;
- (9) A statement of the UOCAVA voter's length of residence in the state immediately preceding the commencement of service, immediately preceding the date of leaving to be with or near the service member, or immediately preceding leaving the United States, whichever is applicable;
- (10) If the request is for primary election ballots, the UOCAVA voter's party affiliation;
- (11) If the UOCAVA voter desires ballots to be mailed to him or her, the address to which those ballots shall be mailed;
- (12) If the elector desires ballots to be sent to the elector by facsimile machine, the telephone number to which they shall be so sent.

In any notification to a UOCAVA voter whose absentee ballot application by email contains problems that prevent processing, the board of elections must also include the following link <http://www.fvap.gov/> to the Federal Voting Assistance Program's website for the Federal Post Card Application for Absentee Ballot (FPCA). Required content for notification language to the UOCAVA voter whose email request for an absentee ballot cannot be processed is set forth as an example below:

Dear Uniformed Services or Overseas Voter:

The _____ (County to be filled in by the board) County Board of Elections has received an email from you that appears to request/requests an absentee ballot for the _____ (date to be filled in by the board) election. There were problems with your request, and we are unable to process the request as you sent it. We were unable to process your request for an absentee ballot because: (Describe the nature of the problem(s).)

Please review your previous email to the board of elections and do **one or more** of the following:

- 1) resend your previous email with any errors or problems corrected in the scanning of your document, the completion of the document contents or the file format,
- 2) send us a new email with your request attached in a different file format,

- 3) send us a new email with the following information in the body of the email and a copy of your signature:
- a) your name,
 - b) the address in the U.S. where you are registered to vote,
 - c) a statement of how long you lived at the address where you are registered to vote immediately preceding when you commenced your military service, immediately preceding the date you left to be with or near the service member, or immediately preceding the date you left the United States, whichever is applicable,
 - d) your date of birth,
 - e) **one** of the following for identification: your driver's license number, the last 4 digits of your social security number, a current and valid photo identification, a copy of a military identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that contains your U.S. address at which you are registered to vote (remember you need just one of the above items for identification),
 - f) a statement that you are a "qualified elector,"
 - g) a statement that you are an "absent uniformed services voter or overseas voter as defined in 42 U.S.C. 1973ff-6,"
 - h) if your request is for a primary election, your party affiliation, or if you are independent of a party, that fact,
 - i) the addresses where you want a ballot mailed, faxed or emailed, and please specify addresses for all,
 - j) the order of preference for transmitting your ballot to you (e.g. email first, then mail, then fax) (note: if no preference is included, Ohio law requires the ballot be sent by first class standard mail),

- k) a facsimile of your signature, either included in the email or attached to the email.

You may also use the Federal Post Card Application (FPCA) from the Federal Voting Assistance Program (FVAP) to request an absentee ballot instead of using one of the options above. A web link for the FVAP that will allow you to fill out the application online is: <http://www.fvap.gov/>. The completed FPCA then may be printed and sent to the board of elections by mail, email, or fax.

(For general elections only: Also, please be aware that, if you requested an absentee ballot at least 30 days before the general election and in the event that your ballot does not reach you within 15 days before Election Day,

_____ (board to fill in date of general election), you may use a Federal Write-in Absentee Ballot, as a backup ballot if your ballot is late. That ballot must be printed out and mailed no later than Election Day and can be accessed at this web address:

<https://ohio.overseasvotefoundation.org/overseas/FwabStart.htm?fields=3&3=3>

9). You may still vote your regular absentee ballot and return it if you receive it before Election Day. If that ballot is mailed before Election Day and received within 10 days after the election, it will be the one counted and not the write-in ballot.

Please feel free to email or call the board of elections with any questions.

The board's telephone number is: _____ (board to fill in telephone number) and its email address is: _____ (board to fill in email address). Thank you for your cooperation.

_____ (name and title of appropriate board personnel)

If a UOCAVA absentee ballot request is submitted by email on or before noon of the Saturday before the election in question and it cannot be read or opened, the board must so notify the applicant within 24 hours of receiving the email and may accept a resubmission by email or fax no later than the close of business the day before the election, and by standard mail postmarked no later than the Saturday before the election in question.

Note that, under the new law, a UOCAVA voter is not required to mail to the board the original signed absentee ballot application or request; an electronic or fax copy of his or her signed application is permitted by law to take the place of an original.

USE OF THE FEDERAL POST CARD APPLICATION (FPCA) BY A UOCAVA VOTER TO APPLY FOR AN OHIO ABSENTEE BALLOT:

Ohio law provides that, whenever any person covered by UOCAVA **applies for registration as a voter using the FPCA, the application shall also be sufficient for both voter registration and as a request for absent voter's ballots.** When the FPCA is used by a UOCAVA overseas voter who has not registered with the board of elections in the county where he or she lived at least 30 days prior to leaving the country, the FPCA must be received by the board of elections or the secretary of state by the voter registration deadline before the election for which the overseas voter has requested an absentee ballot. If the FPCA contains no postmark or an illegible postmark, then it must be received by the board of elections or the secretary of state no later than the 25th day before the election. R.C. 3503.19(A).

Comment [j1]: I commented on this in the advisory, because I could not see this in the statute and wondered if maybe this was specific to the FPCA itself.

Also, please note that the Federal Post Card Application permits a UOCAVA voter to request absentee ballots for all elections in a calendar year. R.C. 3511.02(B) requires that, "A single federal postcard application shall be processed by the board of elections pursuant to section 3511.04 of the Revised Code the same as if the voter had applied separately for uniformed services or overseas absent voter's ballots for each election."

The FPCA must be delivered to the director not earlier than the first day of January of the year of the elections for which the uniformed services absent voter's ballots are requested or not earlier than 90 days before the day of the election at which the ballots are to be voted, whichever is earlier, and not later than 12 noon of the third day preceding the day of the election, or not later than the close of regular business hours on the day before the Election Day at which those ballots are to be voted if the application is delivered in person to the office of the board. MOVE Act amendments to UOCAVA requirements indicate that an absentee ballot request for UOCAVA voters using a federal post card application ("FPCA") will only be good for one year now (a calendar year).

However, the Justice Department recommends that we honor existing FPCAs on file from 2008 & 2009, which at the time they were submitted, were valid for two federal election cycles (2008 & 2010). Therefore, if a board of elections received an absentee ballot request on an FPCA for a UOCAVA voter in 2008 or 2009, they are entitled to receive an absentee ballot for two federal election cycles, which includes that of 2010. Absentee ballot requests from UOCAVA voters using an FPCA received in 2010 are valid for all elections in 2010 (one calendar year).

A UOCAVA voter may transmit a completed and signed FPCA to the appropriate board of elections by U.S. Postal Service or other delivery service (such as UPS or FedEx), via fax, or as a file attached to an e-mail.

A UOCAVA voter using the FPCA **does not** have to provide proof of personal identification otherwise required of voters by Ohio law.

If the ballot is to be sent to the UOCAVA voter by mailed or electronic means, the application must be received by the director of the board of elections not later than noon on the third day before the election.

Note: An FPCA is valid **only** if used by an absent uniformed services voter or overseas voter in accordance with law. If a board of elections has personal knowledge that an elector who has an FPCA on file with the board no longer qualifies as a UOCAVA voter, the board should consider that FPCA is no longer valid. If the FPCA is no longer valid, the board of elections should notify the elector of his or her precinct polling location in the county.

SITUATIONS WHEN A QUALIFIED RELATIVE OF A UOCAVA VOTER REQUESTS THE ABSENTEE BALLOT FOR THE UOCAVA VOTER:

A qualified relative of a UOCAVA voter may submit a written request that ballots be sent to the UOCAVA voter. A “qualified relative” is any one of the following:

the spouse, father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother or sister of the whole blood or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew or niece of an absent uniformed services voter.

A qualified relative may request an absentee ballot for a UOCAVA voter by using no more than two of the following three forms:

1) Federal Post Card Application (FPCA),

R.C. 3511.02(B) allows a qualified relative of a UOCAVA voter to use the FPCA to request an absentee ballot for the UOCAVA voter. The FPCA may be used to request absentee ballots for all elections in which the individual is eligible to vote during a calendar year. The same qualifications and requirements for use of the FPCA apply whether the absentee ballot request is made by the uniformed services voter or a qualified relative of the absent uniformed services voter. However, a qualified relative may not submit the FPCA for a UOCAVA voter electronically. An FPCA submitted by a qualified relative must be submitted either in person or by U.S. mail.

2) SOS Form 11-E, “Application by Relative for **Uniform Services Absent Voter’s Ballot**,” in accordance with R.C. 3511.02(C)

The absent uniformed services voter’s relative must deliver, either in person or by U.S. Mail (no electronic submission by relatives), the completed form, sworn to and signed by the service voter’s relative, to the board of elections in the county in which the absent uniformed services voter’s qualifying voting address is located.

3) SOS Form 11-H, “Application by Relative for **Overseas Absent Voter’s Ballot**,” in accordance with R.C. 3511.02(C)

The absent overseas voter’s relative must deliver, either in person or by U.S. Mail (no electronic submission by relatives), the completed form, sworn to and signed by the overseas voter’s relative, to the board of elections in the county in which the absent overseas voter’s qualifying voting address is located.

Comment [j2]: Do we refer them to an existing directive at this point?

Comment [j3]: Does the Ohio statutory definition of “qualified relative” apply to the FPCA, or is there a federal definition that differs from Ohio?

Comment [j4]: Can the FPCA be submitted electronically by the qualified relative?

ABSENT VOTER’S BALLOT

Upon receiving a valid UOCAVA absent voter's ballot application, the board must send an absent voter's ballot to the UOCAVA voter for the precinct in which the voter last resided for at least 30 days in the U.S. and any accompanying materials such as instructions to the voter via the method of transmission requested by the voter. If the board becomes aware that the first preference for transmission of the ballot fails (e.g. email), the board must send the ballot to the UOCAVA voter by another method of transmission stated to be preferred by the UOCAVA voter in the event of a failure of the voter's stated more preferred method. If the voter does not express a preference for how he or she wishes for the board to transmit his or her absent voter ballot, it shall be delivered by standard mail. R.C.3511.021(A).

R.C. 3511.08 provides that, after a board issues the requested UOCAVA voter's ballots, the board shall not issue additional ballots of the same kind to the voter pursuant to a subsequent request *unless* (i) the subsequent request contains the statement that an earlier request had been sent to the board more than 30 days before the election and that the UOCAVA voter's ballots requested had not been received by the voter by the 15th day before the election, and (ii) the board has not received an identification envelope purporting to contain marked uniformed services absent voter's ballots from the voter.

SPECIAL CONSIDERATIONS REGARDING OVERSEAS ABSENT VOTER'S BALLOTS (NOT APPLICABLE TO UNIFORMED SERVICES ABSENT VOTER'S BALLOTS):

A. Determining Type of Ballot to be Sent to Overseas Citizens

One of the determinations a board of elections must make **before** issuing an absentee ballot to an overseas voter is whether that person is eligible to vote a "full" ballot (federal, state, and local candidates and issues) or only a federal ballot (only candidates for president, vice-president and U.S. Congress, and not any issues or questions). That decision is determined by the individual overseas voter's residency status:

1. Overseas voter currently maintains a qualifying Ohio voting address – "full ballot" eligibility:

An overseas voter who maintains a qualifying Ohio voting address as defined in R.C. 3503.02 may be eligible to vote a "full" ballot.

a. Requirements

All overseas voters are eligible to vote in federal elections. To be eligible to vote in state and local elections, as well as federal elections, an overseas voter must qualify as an Ohio elector. To be a qualified elector, the individual must, among other things, be timely registered to vote at a qualifying Ohio voting residence. A person's voting residence is defined in R.C. 3503.02 as the place in which a person's habitation is fixed and to which, whenever absent, the person has the intention of returning. As discussed below, election officials may use a questionnaire (SOS Form #12-L, "Questionnaire for Overseas Absent Voter") to determine voter eligibility for state and local elections.

If an overseas voter who has lived outside Ohio for **less than four years** responds to the **questionnaire** sent by a board of elections (SOS Form #12-L, "Questionnaire for Overseas Absent Voter") that he or she intends to return to his or her qualifying Ohio voting residence, then the overseas citizen is eligible to vote a "full" ballot and should be provided with a regular absentee ballot.

b. Federal and State Government Employees

Comment [j5]: By "timely" do you mean 30 days before an election or that they registered in their county before they left the U.S.?

Comment [j6]: Don't we need to provide the boards with a questionnaire form?

U.S. citizens living overseas due to employment with federal or state government do not lose the right to vote in state and local elections in Ohio as the result of leaving their Ohio county of residence and should receive a “full” ballot. R.C. 3503.02(G).

2. Overseas voter does not have a qualifying Ohio voting address, does not intend to return to Ohio, or has lived outside Ohio for four years or more – only “federal ballot” eligibility:

- a. No qualifying Ohio address:** An overseas voter who does not have a qualifying Ohio voting address as defined in R.C. 3503.02 is eligible to vote only a federal ballot. The board of elections must determine the Ohio precinct in which the overseas voter resided immediately before leaving the United States to live in another country in order to determine which federal candidates should appear on the overseas voter’s federal ballot. If the overseas voter cannot remember the exact street address at which the person lived, the board of elections should inquire regarding cross streets, geographic markers, former neighbors, or other means of identifying the correct precinct for an overseas voter.
- b. Based on questionnaire responses:** If the overseas voter indicates, in response to the questionnaire sent by the board of elections (SOS Form #12-L, “Questionnaire for Overseas Absent Voter”), that the overseas voter has no intention to return to Ohio, then the overseas voter is ineligible to vote a “full” ballot and should be provided only a federal ballot.
- c. Length of time overseas:** If the overseas voter has resided outside Ohio continuously for a period of four or more years (and is not living overseas due to employment with the federal or state government), then the overseas voter is ineligible to vote a “full” ballot and should be provided only a federal ballot.
- d. Voting another state’s ballot before leaving Ohio for overseas:** If an overseas voter has voted in a state other than Ohio subsequent to leaving Ohio, the person is considered to have lost his or her Ohio residency and should therefore not receive any ballot from Ohio. R.C. 3503.02(H).

3. Qualifying Ohio voting address for an overseas voter, or eligibility to vote in Ohio as an overseas voter, cannot be determined

If an absentee ballot application received from or on behalf of an overseas voter is proper on its face, the board of elections must issue the appropriate ballot – “full” or federal – to the overseas voter at the address provided by the overseas voter.

If the board is unsure which ballot – “full” or federal – the overseas voter is eligible to vote, or if the board is uncertain that the person is eligible to vote as an overseas voter in Ohio, the board should promptly send (by a method such as by email if the applicant provided an email address) to the person the questionnaire (SOS Form #12-L, “Questionnaire for Overseas Absent Voter”) and request a response before sending the overseas voter an absentee ballot.

However, if there is not sufficient time for the board to send the questionnaire and to receive a response to the questionnaire **before the deadline for an absentee ballot request** from an overseas voter, then the board should include the questionnaire (SOS Form #12-L, “Questionnaire for Overseas Absent Voter”) with the absentee ballot, advising that the questionnaire must be completed and returned with the voted absentee

ballot, and that failure to return the completed questionnaire may prevent the board from counting the ballot.

Comment [j7]: All of this language should be in a questionnaire form.

The board should note which absentee ballot (full or federal) was sent with the questionnaire. If the questionnaire is not returned but a full ballot was returned by the overseas voter, the board should remake the ballot to count in its tabulation of votes only those votes for federal offices.

Note: *NEVER* send the questionnaire to an absent uniformed services voter.

B. Processing Voted Absentee Ballots When Questionnaire is Received Back with Voted “Full” Ballot

1. If an overseas voter answers on the questionnaire (SOS Form #12-L, “Questionnaire for Overseas Absent Voter”) that he or she:
 - is a U.S. citizen,
 - is a resident of the Ohio county,
 - has lived continuously outside Ohio for a period of less than four years, and
 - intends to return to the qualifying Ohio voting residence,the vote(s) cast on the “full” ballot for federal, state, and local candidates and issue should be counted.
2. If the overseas voter indicates that he or she is a U.S. citizen and was a resident of the county before leaving the country but that the voter has lived outside Ohio for four years or more OR the voter does not intend to return to the county, the voter’s ballot must be remake using the procedures listed in Directive 2008-69 (Remake of Optical Scan Ballots) and only the vote(s) cast for federal candidates should be transferred onto the remake ballot.
3. If the applicant does not return a completed questionnaire but has returned the “full” ballot that was voted, the voter’s ballot must be remake using the procedures listed in Directive 2008-69 (Remake of Optical Scan Ballots) and only the vote(s) cast for federal candidates should be transferred onto the remake ballot.
4. If the overseas voter is not a U.S. citizen or has never been a resident of the county, the ballot **should not be counted**.

IV. Federal Write-in Absentee Ballot (FWAB) - General Election Only

A. Generally

Federal law provides for an official Federal Write-in Absentee Ballot (Standard Form 186 [Oct. 95] – the “FWAB”), which may be used by eligible uniformed services and overseas voters who timely requested, but have not yet received, a regular absentee ballot for a federal general election.

Am. Sub. H.B. No. 48 enacted a new section of law, R.C. 3511.14, which provides that “a board of elections shall accept and process federal write-in ballots for all elections as required under [UOCAVA].” Under UOCAVA, the FWAB is only required for federal general elections. Consequently, the FWAB may be used in Ohio only to vote for federal offices in a

general election; it cannot be used to vote in a federal primary election or in any state or local election.

The FWAB is an actual ballot, not an application for an absentee ballot. Only properly registered voters residing outside the U.S. whose regular absentee ballot requests were received by the appropriate boards of elections at least 30 days before the election may use the FWAB.

Generally, there are two situations in which an eligible overseas voter will use an FWAB:

1. The voter will be unreachable during the regular absentee voting period.

Example: The board of elections receives in January an FPCA absentee ballot request from a voter who is a U.S. Navy submariner. The FPCA requests absentee ballots for all elections held in the voter's precinct during that calendar year. However, the voter will be on submarine duty from mid-September to mid-December that year. Consequently, the voter will be incommunicado when the absentee ballots for the general election are ready. Before leaving for sea duty, the voter may use the FWAB to vote for federal offices to be elected at the general election only.

2. The voter has not yet received his regular absentee ballot and is concerned that the ballot may come too late to be voted and returned in time to be counted in the election.

Example: The board of elections receives the absentee ballot application of a U.S. citizen living abroad at least 30 days before the general election. Two weeks before the election, the voter still has not received an absentee ballot. This overseas voter is able to vote for federal offices using the FWAB.

If, after mailing the voted FWAB to the board of elections, the voter receives the regular absentee ballot, the voter still may vote and return the regular absentee ballot. If the board receives both the FWAB and the regular absentee ballot by the 10th day after the general election, the regular absentee ballot will be counted instead of the FWAB.

B. Processing a Voted Federal Write-in Absentee Ballot

Upon receiving an FWAB, the board of elections should examine its absentee lists as well as the FWAB return envelope. The FWAB is valid if the board determines that:

1. The voter is eligible to vote in that county,
2. The voter's application for a regular absentee ballot request was received at least 30 days *before* the general election,
3. The voter properly completed the "Voter's Declaration" on the *FWAB* return envelope,
4. The *FWAB* was mailed from outside the U.S. on or before Election Day,
5. The *FWAB* was received by the board on or before the 10th day *after* the federal general election, and
6. The board did not receive the voter's regular absentee ballot by the 10th day after the federal general election.

A valid FWAB is processed in the same manner as other absentee ballots. The voter's ballot must be remade using the procedures listed in Directive 2008-69 (Remake of

Optical Scan Ballots) and the vote(s) cast for federal candidates should be transferred onto the remade ballot.

C. When a Federal Write-in Absentee Ballot Shall Not be Counted

A board of elections shall **not** count an FWAB in any of the following circumstances:

1. The FWAB is submitted from within the United States.
Note: "APO" and "FPO" addresses are deemed to be outside the United States.
2. The voter's application to have a regular absentee ballot mailed or, pursuant to R.C. 3511.02, faxed or emailed to the voter is received by the appropriate board of elections after the thirtieth day before the federal general election.
3. The voter's completed regular absentee ballot is received on or before the 10th day after the federal general election.
4. The FWAB is received after the 10th day after the federal general election.

Comment [j8]: Wouldn't this be after 30 days before the general election?

Additionally, boards of elections sometimes receive FWABs from persons who are not registered to vote and/or have not completed the FPCA (Federal Post Card Application) or applied for a regular absentee ballot. These FWABs cannot be counted, or processed as applications for absentee ballots. However, a board that receives an FWAB under such circumstance should contact the person and explain how to use the FPCA to register to vote and/or to request absentee ballots.

CENTRAL BALLOT TRACKING SYSTEM (CBTS) AND ACCOMPANYING MATERIALS TO BALLOT

As you are aware, a Central Ballot Tracking System (CBTS) has been developed by the Secretary of State's office. The CBTS will allow a UOCAVA voter to track the processing of his or her ballot. This system, of course, will not work for the Federal Absentee Write-in Ballot, since the ballot is obtained by the UOCAVA voter and sent to the board when the voter has not received his or her requested absentee ballot (which can be tracked through the system).

When a board of elections enters and submits a new UOCAVA voter record into the CBTS, a unique personal identification number (PIN) is generated automatically by the system and assigned to the UOCAVA voter. Each UOCAVA voter must receive notice of his/her unique PIN in order to access the voter's information on the CBTS. This office has developed a new form (Notice of PIN - SOS Form #12-J) that each board of elections must use to provide a UOCAVA voter with his or her unique PIN. The form also provides the voter with information on how to access the CBTS website to track his or her absentee ballot. This form must accompany a ballot issued to a UOCAVA voter, regardless of the method by which the voter has requested that his or her ballot be transmitted.

Listed below are the materials that must accompany an absent voter's ballot issued to a UOCAVA voter. Please note that the accompanying materials vary depending on the method by which the absent voter's ballot is transmitted to the voter. If your county's absent voter's ballots contain two stubs, remove one stub from the ballot and retain for reconciliation purposes (same as when mailing a ballot) before faxing the ballot or scanning it for email transmission, leaving the remaining stub on the ballot.

If the UOCAVA voter requests the absent voter's ballot be emailed, the absent voter ballot along with all required accompanying materials shall be scanned as one PDF file and attached to the email sent to the voter. The purpose for a single pdf is to accommodate military voters who often are allotted a short time, such as 15 minutes, for access to a computer when deployed overseas.

The following are required accompanying materials with the absent voter's ballot when transmitted by:

Mail:

- Appropriate blank absent voter's ballot with one stub;
- Instructions to Uniformed Services or Overseas Voter (SOS Form #12-K);
- UOCAVA Voter Notification of PIN (SOS Form #12-J);
- Statement of Voter on Identification Envelope (SOS Form #12-A or #12-A-OS);
- Return mailing envelope (SOS Form #285); and
- Questionnaire for Overseas Absent Voter (SOS Form #12-L) in cases where there is a question of whether an overseas (non-uniformed services) voter should be provided a full ballot or just a federal ballot.

Fax:

- Appropriate blank absent voter ballot with one stub;
- Instructions to Uniformed Services or Overseas Voter (SOS Form #12-K);
- UOCAVA Voter Notification of PIN (SOS Form #12-J);
- Statement of Voter Form (SOS Form #12 or #12-A-SV);
- Return Envelope Form (SOS Form #287); and
- Questionnaire for Overseas Absent Voter (SOS Form #12-L) in cases where there is a question of whether an overseas (non-uniformed services) voter should be provided a full ballot or just a federal ballot.

Email:

- Appropriate blank absent voter ballot with one stub;
- Instructions to Uniformed Services and Overseas Voter (SOS Form #12-K);
- UOCAVA Notification of PIN (SOS Form #12-J);
- Statement of Voter Form (SOS Form #12 or 12-A-SV); and
- Return Envelope Form (SOS Form #287); and
- Questionnaire for Overseas Absent Voter (SOS Form #12-L) Questionnaire in cases where there is a question of whether an overseas (non-uniformed services) voter should be provided a full ballot or just a federal ballot.

Note: The absent voter's ballot, along with all the required materials above, shall be scanned as one PDF file and attached to the email sent to the voter.

To reiterate, if the board becomes aware that the first preference for transmission of the ballot fails (e.g. email), the board must send the ballot to the UOCAVA voter by another method of transmission stated to be preferred by the UOCAVA voter in the event of a failure of the voter's stated more preferred method. If the voter does not express a preference for how he or she wishes for the board to transmit his or her absent voter ballot, it shall be delivered by standard mail. R.C.3511.021(A).

A voted absent voter's ballot may only be returned to the board of elections by one of the following methods:

- in person,

- by mail, or
- by other type of delivery service (e.g., Fed Ex. or UPS).

Pursuant to R.C. 3511.021(A)(4), a board of elections **shall not** accept, process, or count any voted ballot that is returned by electronic means (e.g., via fax, e-mail, or other form of electronic transmission).

A voted absent voter's ballot from a UOCAVA voter must be mailed no later than the day before Election Day and must be received by the board no later than ten days after Election Day.

If you have any questions regarding this directive, please contact your county's assigned elections counsel at 614-466-2585 or via email.

Sincerely,

Jennifer Brunner