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DIRECTIVE 2012-16

May 18, 2012

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Revisions to BMV and SSA Voter Records Information Verification Program

SUMMARY

On July 2, 2010, the Secretary of State's office issued Directive 2010-56 to establish a method by which counties are to contact first-time registered voters whose information does not match with information on file with the Bureau of Motor Vehicles (BMV) and/or the Social Security Administration (SSA).¹ This Directive reaffirms the ongoing Voter Records Information Verification Program outlined in Directive 2010-56 with one minor revision: county boards of elections are not required to issue a confirmation notice if the nonmatch is the result of a data entry error by the board of elections.

Accordingly, this Directive replaces Directive 2010-56, which is rescinded.

INSTRUCTIONS

Pursuant to the Help America Vote Act (HAVA), the National Voter Registration Act (NVRA), and various sections of the Ohio Revised Code, all Ohio county boards of elections must mail confirmation notices to certain electors as part of a uniform and nondiscriminatory voter records information verification program prescribed by the Secretary of State.

To assist county boards of elections with their ongoing BMV/SSA Voter Records Information Verification Program, the Ohio Secretary of State's office will continue to regularly send each board a BMV/SSA Voter Record Information Verification XML Packet. This electronic XML packet will notify the board if any of the following information in a new registration needs clarification or updating:

1. Driver's License Number (DLN) could not be verified,
2. Last Name (LN) could not be verified,
3. First Name (FN) could not be verified,
4. Date of Birth (DOB) could not be verified,
5. Last Four Digits of Social Security Number (SSN4) could not be verified, and/or
6. Whether the elector has been identified as deceased.

¹ 42 USC 15483(a)(5)(B)(i)

Boards of elections must use the information contained in the electronic XML packet to mail a Confirmation Notice, along with Confirmation Return Notice form, to any elector identified in the XML packet unless, upon review of the board's records, the information could not be matched as a result of a data entry error by the board of elections. The Notice and accompanying Return Notice must be sent within ten days of the receipt of the XML packet or other notification that further clarification or updating is needed for a particular voter registrant. Voter Information Confirmation Notices and Return Notices issued under the ongoing verification program must be on forms prescribed by the Secretary of State (SOS Form 10-C or SOS Form 10-D).

Boards may not remove the names of voters from their official list of voters solely because relevant information in a county's voter registration system does not match identification information maintained by the BMV or SSA. Boards may remove the names of ineligible voters from their official list of voters as authorized in this Directive.

Program Processing Details

The information provided by any new voter registrant is compared with the BMV or SSA to identify whether the relevant information supplied by the registrant may be verified, and who may need to clarify or update his or her voter registration information.² A new voter registrant is an individual not previously registered to vote in Ohio or an individual who was previously registered to vote in Ohio but lost his or her registration due to inactivity or by moving out of state.

If a new voter registration record contains information that cannot be verified by the BMV or SSA, the board must do the following: (a) mark or "flag" the record in the county voter registration system, (b) mail a Voter Information Confirmation Notice that includes a separate or detachable Voter Information Confirmation Return Notice to the address in the county's voter registration records, (c) note the date on which a Voter Information Confirmation Notice is mailed to the voter registrant in the county's voter registration records,³ and (d) note the date on which the board receives a completed Voter Information Confirmation Return Notice in response to that mailing.

1. Mailing the Voter Information Confirmation "Notice" and "Return Notice:"

The new voter registrants identified as having relevant information that needs to be clarified or updated must be sent a Voter Information Confirmation Notice (SOS Form 10-C or SOS Form 10-D) to the voter registrant's current address as recorded in the county voter registration system by forwardable mail. This mailing must include a separate or detachable postage pre-paid, pre-addressed Voter Information Confirmation Return Notice upon which the voter registrant may clarify or update his or her relevant information that could not be verified by the BMV or SSA.

² Help America Vote Act (HAVA) Sec. 303(a)(5)(B)(i), 42 USC 15483(a)(5)(B)(i)

³ This notation is essential for establishing the four-year anniversary date for when each Voter Information Confirmation Notice, along with the Voter Information Confirmation Return Notice, was mailed.

2. What to Do When Board Receives a Completed “Return Notice” of Voter Information Confirmation that CONFIRMS the Voter Registrant’s Information as Contained in the Board’s Records:

If a completed Return Notice confirms the voter registrant’s information as already contained in the board’s records, the board of elections must remove the mark or “flag” on the voter’s record and retain the completed return notice for a period of at least four years, in accordance with the Secretary of State’s Retention Chart.

3. What to Do When Board Receives a Completed “Return Notice” of Voter Information Confirmation that INDICATES CHANGES ARE NEEDED to the Voter Registrant’s Information as Contained in the Board’s Records:

- a. If a completed Return Notice confirms **the relevant information must be updated/changed**, the board of elections should update the relevant information consistent with the information provided by the voter on the Voter Information Confirmation Return Notice. The board of elections must remove the mark or “flag” on the voter’s record and retain the completed Return Notice for a period of at least four years, in accordance with the Secretary of State’s Retention Chart.
- b. If a completed Return Notice indicates a **new address within the county**, the voter registrant’s registration record must be updated by the board of elections with the new address and the date the Voter Information Confirmation Return Notice was received by the board. The board of elections must remove the mark or “flag” on the voter’s record and retain the completed Return Notice for a period of at least four years, in accordance with the Secretary of State’s Retention Chart. The board must then send the voter registrant an Acknowledgement Notice (SOS Form 10-J), informing the voter registrant of the registration update and the location of his or her new polling place.
- c. If a completed Return Notice indicates a **new address outside the county but still in Ohio**, the board of elections that mailed the Voter Information Confirmation Notice must cancel the voter registrant’s registration and make a notation on the voter registrant’s registration record of the date the return notice was received by the board and the date of cancellation. The board must send to the Secretary of State’s office copies of the Voter Information Confirmation Return Notices, so that the Secretary of State may provide to such canceled voter registrants a voter registration form to register to vote in their new county of residence. Copies of the Voter Information Confirmation Return Notices may be sent via e-mail in PDF format or by regular mail no less frequently than monthly and no more frequently than weekly. The completed Return Notice must be retained for a period of at least four years, in accordance with the Secretary of State’s Retention Chart.
- d. If a completed Return Notice indicates a **new address outside the State of Ohio**, the board of elections must cancel the voter registrant’s registration and make a notation on the voter registrant’s registration record of the date the Voter

Information Confirmation Return Notice was received by the board and the date of cancellation. The completed Return Notice must be retained for a period of at least four years, in accordance with the Secretary of State's Retention Chart.

4. What to Do When Board DOES NOT Receive a Completed "Return Notice" of Voter Information Confirmation:

If the voter registrant fails to return the postage pre-paid Voter Information Confirmation Return Notice or otherwise fails to confirm the relevant information within the county's voter registration system, then the board of elections must leave the mark or "flag" on the voter's record.

Once a voter registrant's voter registration record is flagged for failure to return a completed Return Notice of Voter Information Confirmation, the board must maintain its records with the voter registrant's information flagged in the county voter registration database with a notation of the date the notice was mailed to the voter registrant. If the voter registrant fails for a period of four years (that includes two federal elections, occurring in November of even-numbered years) to update his or her registration or vote, then the board shall cancel the voter registrant's registration and make a notation of the date of cancellation.

If a Voter Information Confirmation Notice or Return Notice is sent to a voter registrant to whom the board already has sent such a notice under the NVRA, the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent Notice under this Directive is mailed and not returned.

5. What to Do When Board Receives Information in the XML Packet that the Voter May Be Deceased:

If the BMV or SSA databases indicate that an elector is deceased, the board of elections must check with the chief health officer in the county and with the Ohio Department of Health to confirm a report of a deceased elector. County boards of elections should compare the information provided in the voter record (i.e., name, date of birth, etc.) with the same information provided in county and state health records to verify that the elector indicated in the BMV or SSA database as deceased is actually deceased. A voter registration record shall be cancelled by the board of elections upon performing such a comparison and making an affirmative finding that the voter is deceased. Boards may not cancel a voter registration record on the sole basis that the BMV or SSA databases indicate that the voter may be deceased. If the BMV or SSA databases indicate that an elector is deceased, but the board of elections is unable to confirm the report of the deceased elector by comparing information in its records regarding the elector with the chief health officer in the county and the Ohio Department of Health, the board must send a letter addressed to the elector. The letter shall request that the elector confirm his or her voter registration information as a way to help the board of elections determine if the deceased status indicated in the

BMV or SSA databases in error. The letter shall be accompanied by a postage prepaid return envelope. If there is no response to the letter or otherwise no confirmation that the elector is or is not deceased, then the board of elections should leave the mark or “flag” on the voter’s record.

Once an elector’s voter registration record is flagged for failure to respond to the letter seeking confirmation of the records of the BMV or SSA database or otherwise fails to confirm, whether or not through an executor, he or she is or is not deceased, the board must maintain its records with the elector’s information flagged in the county voter registration database with a notation in its records of the date the notice was mailed to the elector so that if the elector fails for a period of four years (that includes two federal elections, occurring in November of even-numbered years) to update his or her registration or vote, then the board shall cancel the elector’s registration and make a notation of the date of cancellation.

If a letter seeking confirmation of the records of the BMV of the death status of an elector is sent to an elector to whom the board already has sent such a notice under the NVRA, the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent letter regarding death status under this Directive is mailed and does not receive a response.

Please note that state and federal laws prohibit election officials from canceling any voter registration solely because the voter registrant has not provided updated information, or solely because the voter provided information on his/her voter registration form that did not match the information on file with the BMV or SSA. This means that, unless a voter is deceased or there is a court order requiring removal, his or her name cannot be removed from the voter registration database without first being sent a notice as required by this Directive under the HAVA and/or the NVRA.

6. What to do with “No Forwarding Address” Returns for the BMV/SSA Voter Information Records Verification Program

All Voter Information Confirmation Notices must be:

- a. postage prepaid,
- b. sent according to forwardable mail standards of the U.S. Postal Service, and
- c. sent with a Return Notice that may be on the reverse side of the Notice (or detachable from it) for the voter to complete and send back to the board of elections. The Return Notice must be able to be sent by the voter in a manner such that the voter’s private information on the Return Notice is not visible to persons who handle such Return Notices through the U.S. Mail.

Sometimes the U.S. Postal Service (USPS) will return this type of mail to the board as non-deliverable, because the USPS does not have a forwarding address

for the addressee (the elector or voter registrant). The board must record that fact in its records (e.g., in the comments section of that voter's file) and retain the undeliverable confirmation notice for four years. This will enable the board to document its compliance with this Directive as well as the general voter records maintenance program.

BMV/SSA Voter Record Information Verification Program is Prospective in Nature

The BMV/SSA Voter Record Information Verification Program is prospective in nature. This means that each confirmation notice must provide information advising the elector or voter registrant that his or her registration may be canceled four years *after* the postmark on that Voter Information Confirmation Notice (which period must include two federal general elections), unless the elector or voter registrant performs at least one of the following affirmative acts during the stated four-year period after the Voter Information Confirmation Notice is mailed:

- returns the Voter Information Confirmation Return Notice card (originally sent with the Voter Information Confirmation Notice) confirming the accuracy of the previously outlined relevant information contained in his or her voter record at the board of elections;
- clarifies or updates his or her voter registration and submits it to the board of elections via the Return Notice or otherwise; or
- votes before that four-year period ends.

If an elector or voter registrant fails to both:

- 1) respond to a Voter Information Confirmation Notice sent to him or her; and
- 2) update his or her voter registration, or vote thereafter.

The board of elections shall not cancel his or her voter registration until after the four-year period (determined from the mailing of the Voter Information Confirmation Notice and computing within that four years the occurrence of two federal general elections). However, the elector's or voter registrant's record shall remain flagged in the voter registration system until the record is cancelled or until appropriate action is taken by, or on behalf of, the elector or voter registrant to clarify or update his or her voter registration information in the board's records.

Please note that, if a Voter Information Confirmation Notice sent pursuant to the BMV/SSA Voter Record Information Confirmation Program, is sent to an elector to whom the board already has sent a confirmation notice, the mailing of this notice does not begin or "reset" the four year anniversary period for that elector.

Grounds for Cancellation of a Registration

If an elector or voter registrant fails both to respond to a Voter Information Confirmation Notice and update his or her voter registration or vote by the appropriate four-year anniversary date (established under a mailing pursuant to the NVRA or pursuant to this Directive that includes two federal general elections), 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 Voter Information Confirmation Notice/Voter Information 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 or solely because the voter has not provided updated information, or solely because the voter provided information on his/her voter registration form that did not match the information on file with the BMV or SSA as provided by the information in the revised BMV/SSA Voter Record Information Verification Program.

Any cancellation of an elector's or voter registrant's voting eligibility in the board's records must be marked on his or her voter registration information and must include the date of cancellation.

If you have any questions about this Directive, please contact Matt Masterson, Caitlin Decatur, or Robin Fields in the Secretary of State's Elections Division at 614-466-2585.

Sincerely,



Jon Husted