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Advisory No. 2006-07
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To: **ALL COUNTY BOARDS OF ELECTIONS**

Members, Directors and Deputy Directors

Re: Voter Registration & Absentee Voting of Uniformed Service Members & Overseas Citizens --
Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Ohio's Election Law

UOCAVA Overview

The office of the Ohio Secretary of State has been designated as this State's primary source of information about voter registration and absentee voting procedures for Uniformed Service members and voters living outside the United States who are covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*.

This advisory highlights provisions of the federal and state laws that govern how Ohio election officials handle voter registration and absentee voting of two particular groups of electors:

1. Uniformed Service members and
2. U.S. citizens living outside the United States.

Unless otherwise noted, these provisions apply to all federal elections and to many state elections.

The advisory addresses various scenarios the boards may encounter when processing voter registrations and/or absentee ballot requests from Uniformed Service members and overseas citizens. So that you may find more quickly the section that applies to a particular situation or question, the advisory is separated into five categories:

- I. Statutory Authority and Definitions
- II. Uniformed Services Absentee Voters
- III. U.S. Civilians Living Outside the United States
- IV. Civilians (non-armed service members) Living Outside Ohio but Within the U.S.
- V. Processing a Request of An Absentee Ballot for Overseas or Out-of-State Civilians
- VI. Absentee Voting by Members of Ohio's Organized Militia

This office strongly encourages every board of elections to consult, and to refer constituents to the website of, the U.S. Department of Defense's *Federal Voting Assistance Program (FVAP)*, www.fvap.gov. That site provides information about UOCAVA, using the *Federal Postcard Application (FPCA)* to register to vote and to request absentee ballots, and obtaining the on-line version of the FPCA.

A board also may direct its questions on this topic to the Elections Division, (614) 466-2585.

I. Statutory Authority & Definitions

A. Federal Law: Who is Covered?

The *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), 100 Stat. 924, 42 U.S.C.A. 1973ff (1986), generally covers certain United States citizens who are absent from the places of residence where those citizens are otherwise eligible to vote.

1. Members of the Uniformed Services on active duty

For purposes of *UOCAVA*, the Uniformed Services are the United States Army, Navy, Air Force, Marine Corps and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA).

2. Members of the Merchant Marine

A member of the Merchant Marine is defined as an individual (other than a member of a Uniformed Service or an individual employed, enrolled or maintained on the United States' Great Lakes or inland waterways) employed as an officer or crew member of a vessel that is owned, chartered, enrolled, maintained, or controlled by the United States, or documented under the laws of the United States.

3. A Spouse or Dependant of a Uniformed Service or Merchant Marine Member

A spouse or dependant is covered by *UOCAVA* if he/she is absent from his/her place of voting residence in order to be with or near the Uniformed Service or Merchant Marine member.

4. U.S. citizens residing outside the United States

Individual state's may have somewhat different provisions, but the general rule is that a U.S. citizen who resides outside the United States and, but for such residence, would be qualified to vote in federal elections in the last place in which that person was domiciled immediately before leaving the United States.

B. State Law: Revised Code of Ohio

Election officials are advised to review the provisions of state law applicable to voter registration and voting procedures for U.S. citizens who claim the right to vote in Ohio, even though they currently are absent from Ohio. Of particular interest are two chapters of the Revised Code of Ohio: Chapter 3509. (absentee voting, generally) and Chapter 3511. (armed services absent voter's ballots).

C. Additional Definitions

- *U.S. citizens*: Native born or naturalized citizens of the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa and the U.S. Virgin Islands.
- *Federal Post Card Application* (FPCA): A federally prescribed form used by a Uniformed Services voter or overseas citizen to register to vote and/or to request absentee ballots from local election officials. Voters may use either the cardstock FPCA (obtainable from the Federal Voting Assistance Program, tel. (800) 438-8683 or e-mail vote@fvap.ncr.gov) or the on-line FPCA, which can be downloaded from <http://www.fvap.gov/pubs/onlinefpcapdf>.

II. Uniformed Services Absentee Voters

A. Generally

Both federal and state law provide procedures allowing Uniformed Service members to register to vote and to vote absentee. *See generally*, 42 U.S.C. 1973ff-6; R.C. 3509.03 and 3511.01.

Additionally, Ohio's election laws contain specific provisions for registration and voting by armed services (forces) members only; these alternative options are not available to other types of uniform service members. *See* R.C. 3511.01, *et seq.*

B. Difference between a "Uniformed Services" and "Armed Services" voter

Ohio's election law distinguishes between the "armed services voter" and other types of Uniformed Service voters:

- "Uniformed Service voter" is the broader term, defined in *UOCAVA* to include the U.S. armed forces – referred to in Ohio election law as the "U.S. armed services" – as well as the merchant marine and the commissioned corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), and their eligible spouses and dependants.
- "Armed service" as used in Ohio election law refers only to the active duty members of the U.S. armed forces (U.S. Army, Air Force, Navy, Marines and Coast Guard).

This distinction determines who is, and who is not, eligible to vote an "armed service absent voter ballot" under Ohio Revised Code Chapter 3511.

C. Federal Law: Registering to Vote & Requesting Absentee Ballots

Any Uniformed Service voter who is a resident of Ohio on active duty as a Uniformed Service member, or the spouse or dependent of a uniform service member who is a U.S. citizen and Ohio resident residing outside Ohio to be with or near the service member, may use the FPCA to register to vote and/or to request absentee ballots.

To register to vote and request an absentee ballot, the Uniformed Service 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. Although Ohio waives the 30-day voter registration deadline for Uniformed Service voters, they must be registered to vote in Ohio before absentee ballots can be issued to them.

A uniform service voter who already is registered to vote in Ohio and wishes **only to request absentee ballots** must submit a completed FPCA to the appropriate county board of elections so that it arrives not later than noon on the third day before the election. A Uniformed Service *member* may fax an FPCA requesting absentee ballots to his or her county board of elections, and may request the board to send ballots via fax. However, marked ballots cannot be returned via fax; they must be submitted in person or by U.S. Mail.

D. State Law: Ohio's Armed Service Absent Voter's Ballots

1. Who is eligible?

Members of the United States armed services, and their spouses and dependents who have left Ohio to be with or near the armed services member, may vote absentee while away from their Ohio voting residence, whether they are stationed within or outside the United States, if they meet the requirements of R.C. 3511.01 for voting in Ohio.

Note: Spouses and dependents may use the *FPCA* or SoS Form 11-D (*Armed Services Absentee Ballot Application*) to request ballots *only* if they left Ohio to be with or near a service member.

2. What must an Armed Services voter do to receive an absentee ballot?

Deliver by U.S. Mail, via fax, or in person to the board of elections of the county in which the applicant's voting residence is located a signed application for an armed service absentee ballot.

Armed service absentee voters may apply for absentee ballots either one election at a time using Form 11-D *or*, using the *FPCA*, request all ballots for a calendar year. (As explained under "3. *FPCA*," below, an *FPCA* request for absentee ballots could be valid for the next two general federal elections.)

Whatever form the application takes, it must contain *all* of the following:

1. A request for ballot(s).
2. The election(s) for which ballot(s) is/are requested and, if a partisan primary election, the applicant's political party affiliation.
3. A statement that the applicant is serving in the U.S. armed forces, or is the spouse or dependent of a person serving in the U.S. armed forces.
4. The length of time the applicant resided in Ohio immediately before:
 - the commencement of military service, or
 - leaving Ohio to be with or near the service member.
5. The applicant's qualifying Ohio voting residence address.
6. A statement that the person is a qualified elector.
7. The applicant's birth date.
8. One of the following forms of personal identification:
 - the applicant's Ohio driver's license number, or
 - the last four digits of the applicant's social security number, or
 - a copy of a current and valid photo identification, a current utility bill, bank statement, government check, government paycheck, military identification or other government document that shows the applicant's name and address.
9. The address to which the ballot is to be mailed or, if the ballot is to be faxed to the service member, the fax number.
10. The applicant's signature.

3. Using the FPCA

A Uniformed Services voter may use the *FPCA* to register to vote and/or to request absentee ballots. A Uniformed Services voter may use a single *FPCA* to request armed services absentee ballots for all elections in which that individual is eligible to vote during a calendar year. An *FPCA* that requests ballots for all elections shall also serve as an application for ballots through the next two subsequent general elections for federal office.

Note: An FPCA is valid *only* if used by an elector covered by *UOCAVA*. If a board of elections has personal knowledge that an elector whose FPCA is on file with the board is no longer a *UOCAVA* voter, then that FPCA is no longer valid. The board may want to notify the elector of his or her precinct polling location in the county.

4. Voter registration deadline waived if FPCA used

The voter registration deadline is waived for Uniformed Services voters who use the FPCA to register to vote. A board that receives an FPCA for the November 7 election from a Uniformed Services voter after October 10 must process the registration for the election and, if requested, mail or fax the appropriate absentee ballot to that person.

E. Faxing ballots an armed service absentee voter

R.C. 3511.02 authorizes any armed service absentee voter to request that election officials send his/her absentee ballot either by first class U.S. Mail or via facsimile. However, voted ballots cannot be *returned* via fax. Under current law, voted ballots must be returned to the appropriate board of elections office either by U.S. Mail or in person.

F. When must voted absentee ballots be returned and received in order to be counted?

1. From Within the United States

Absentee ballots for the November 7 election voted by military personnel living within the United States (including Alaska and Hawaii) must be received no later than 7:30 p.m. on November 7, 2006 to be counted in the general election.

2. From Outside the United States

Absentee ballots for the November 7 election that are returned by military personnel living outside the U.S. need not be postmarked, but must be received by the board of elections no later than November 17, 2006 to be counted in the general election. However, if the return envelope is postmarked, or the I.D. envelope is dated, after the date of the election, the board cannot count the absentee ballot.

III. U.S. Civilians Living Outside the United States ("Overseas Voters")

Note: "Overseas" means any country other than the United States, including other North American countries. It does not include Alaska, Hawaii or U.S. territories.

A. Generally

Both federal and state law contain procedures that allow overseas citizens to register to vote and to vote absentee. *See generally*, 42 U.S.C. 1973ff-6 (UOCAVA) and R.C. 3509.022, 3509.03, *et seq.* One of the most frequent decisions a board of elections must make before issuing an absentee ballot to a U.S. citizen living outside the country is whether that citizen is eligible to vote a "full" (local, state and federal) ballot or only a federal ballot (in 2006, candidates for U.S. Senator and U.S. Representative). That decision is determined by that citizen's residency status:

- **The overseas citizen currently maintains a qualifying Ohio voting residence**

An overseas citizen who maintains a qualifying Ohio voting address as defined in R.C. 3503.02 might be eligible to vote a “full” ballot. The citizen may register to vote and/or request absentee ballots using an FPCA as provided in R.C. 3509.03. An overseas citizen who already is registered to vote at a qualifying Ohio residence may, but does not have to, use an FPCA to request an absentee ballot.

- **The overseas citizen does not currently maintain a qualifying Ohio voting address**

An overseas citizen who does not have a qualifying Ohio voting address as defined in R.C. 3503.02 is eligible to vote only a federal ballot from the Ohio precinct in which he or she resided immediately before leaving the United States to live in another country. The overseas citizen must register to vote and/or request the appropriate absentee ballot using an FPCA; *see* “B. Federal Ballot Only,” *below*.

B. Federal Ballot Only

1. Eligibility

A U.S. citizen residing outside the country may cast a federal ballot in Ohio if:

- Ohio was the state in which the citizen resided immediately prior to leaving the U.S., *and*
- the citizen could have registered to vote at that Ohio residence, even if the citizen was not registered to vote in Ohio prior to leaving the state.

Under federal law, 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 or anywhere in the U.S. in order to be eligible to vote in a *federal* election.

2. What the Overseas Voter Must Do to Receive an Absentee Ballot

The overseas citizen must mail a properly completed *FPCA* to the board of elections of the county in which he or she resided immediately prior to moving out of the country.

3. Registration/Absentee Request Deadlines

If a non-military overseas voter uses an *FPCA* both to register to vote and to request an absentee ballot, the board must receive the properly completed *FPCA* not later than the close of voter registration. If the overseas citizen already is registered to vote in Ohio and uses an *FPCA* to request an absentee ballot, the appropriate board of elections must receive the properly completed and signed *FPCA* by noon the Saturday before the election.

C. “Full Ballot” Eligibility

To be eligible to vote in state and local elections as well as federal elections, an overseas citizen must qualify as an Ohio elector. To be a qualified elector, the person 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 to determine voter eligibility for state and local elections.

1. Example:

If an overseas citizen who has lived outside Ohio for less than four years responds to a board of elections' questionnaire that he or she intends to return to the qualifying Ohio voting residence, then the overseas citizen is eligible to vote a full ballot and should be provided with a regular

absentee ballot. However, if the citizen either indicates no intention to return, or has resided continuously outside Ohio for a period of four or more years, then the citizen is ineligible to vote a full ballot and should be provided only the federal ballot. (See "B. Federal Ballot Only," above.)

2. What the Overseas Civilian Voter Must Do to Receive an Absentee Ballot

Deliver in person or send via U.S. Mail to the board of elections of the county in which the overseas citizen's voting residence is located a signed application for an absentee ballot. The application need not be in any particular form (may use Form 11-A), but the application must contain the following:

1. A request for a ballot,
2. The election for which the ballot is requested and, if a partisan primary election, the applicant's political party affiliation,
3. A statement that the applicant is a qualified elector,
4. The applicant's Ohio voting residence address,
5. Applicant's birthdate.
6. As proof of the applicant's identity, one of the following:
 - The applicant's current Ohio driver's license number, or
 - The last four digits of the applicant's social security number, or
 - A copy of a current and valid photo identification, a current utility bill, bank statement, government check, government paycheck, military identification or other government document that shows the applicant's name and address,
7. The address to which the ballot shall be mailed (*Note: There currently is no provision in state law allowing Ohio election officials to fax blank ballots to non-armed services voters*), and
8. The applicant's signature.

3. When to Request Absentee Ballot(s)

Not earlier than January 1 of the year in which the election is held, or 90 days before the election -- whichever is earlier -- and not later than noon on the Saturday immediately prior to the election.

Note: Ohio does not waive the voter registration deadline for non-armed service voters living outside the United States. Therefore, if an overseas citizen who was not registered to vote in Ohio when he or she moved outside the United States uses an FPCA to register to vote as well as to request an absentee ballot, then his or her properly completed and signed FPCA must be received by the board of elections not later than the close of voter registration.

D. When must an overseas citizen's voted absentee ballot be returned to, and received by, election officials in order to be counted?

The return envelope containing a ballot voted by an overseas citizen must indicate that it was mailed from outside the United States. To be counted, a ballot must be received by the appropriate board of elections or the Secretary of State's office no later than November 17, 2006 (10 days after the election).

In addition to the reasons set forth in R.C. 3509.07 to reject an absentee ballot, R.C. 3509.05 provides that an absentee ballot returned from an overseas citizen cannot be counted if:

- the ID envelope is dated, or the return envelope is postmarked, after the date of the election, or
- the ballot is received by the board or Secretary of State after November 17.

IV. Civilians living outside Ohio, but within the U.S.

A. Who is eligible to vote?

A voter, other than a Uniformed Services voter, who resides outside Ohio but within the United States may vote an absentee ballot if that voter meets all the following requirements:

1. Maintains a qualifying voting residence in Ohio,
2. Is *temporarily* living outside Ohio,
3. Has the intent to return to the county in which he or she is offering to vote,
4. Is properly registered to vote at the address at which he or she is offering to vote, and
5. Has not voted in any other county or state since leaving the county where registered.

B. What must the stateside civilian absentee voter do?

Deliver in person or send by U.S. mail to the board of elections of the county in which the applicant's voting residence is located a written and signed application for an absentee ballot. The application need not be in any particular form, but must contain all of the following:

1. The request for a ballot,
2. The election for which the ballot is requested and, if for a partisan primary election, the applicant's political party affiliation,
3. A statement that applicant is a qualified elector,
4. The applicant's voting residence address,
5. The applicant's birth date,
6. One of the following forms of personal identification:
 - The applicant's Ohio driver's license number, or
 - The last four digits of the applicant's social security number, or
 - A copy of a current and valid photo identification, a current utility bill, bank statement, government check, government paycheck, military identification or other government document that shows the applicant's name and address,
7. The address to which the ballot is to be mailed, and
8. The applicant's signature.

C. When may an elector request an absentee ballot?

Not earlier than January 1 of the year in which the election is held or 90 days before the election -- whichever is earlier -- and not later than noon on the Saturday immediately before the election.

D. When must voted absentee ballots be received in order to be counted?

A properly completed and signed identification envelope containing a marked absentee ballot, with the stub still attached, that is returned from within the U.S. must be delivered to the appropriate board of elections office in person or via U.S. Mail by the close of the polls on election day.

V. Processing a Request for an Absentee Ballot

A. Determining Eligibility of Civilian (Non-Military) Voters

When a board of elections receives a request for an absentee ballot from an overseas or out-of-state civilian voter, the board must first determine if the voter is eligible to vote from the address designated as the qualifying Ohio voting address. If the voter is eligible, the appropriate absentee ballot (full or federal) must be provided.

1. Procedure When Person Not Previously Registered to Vote Requests an Absentee Ballot

a. Eligibility can be determined without additional information

If a board of elections simultaneously receives from the same person a voter registration application and an absentee ballot request, both of which are timely submitted and facially proper, the board must register the person to vote and send the person an acknowledgment notice, together with an absentee ballot.

b. Eligibility cannot be determined without additional information

If a board of elections simultaneously receives from the same person a voter registration and an absentee ballot request, but the registration application is missing necessary information (e.g., no date of birth, signature, etc.), the board must immediately notify the applicant of the reasons for rejecting the application and request the applicant to provide the missing information or verification, in accordance with R.C. 3503.19(C).

If the applicant submits a properly completed registration to the board by the registration deadline, the board must registrar the person to vote and provide the absentee ballot.

2. Procedure When Previously-Registered Voter Requests Absentee Ballot

a. Generally

If an absentee ballot application received by mail is proper on its face, the board must issue the appropriate ballot to the elector at the address provided. However, if the board is unsure which ballot – full or federal – the elector is eligible to vote, the board may include a questionnaire with the absentee ballot, advising that the questionnaire must be completed and returned with the absentee ballot, and that failure to return the completed questionnaire may prevent the board from counting the ballot.

b. Content of Questionnaire

A board opting to use a questionnaire should include the following questions:

1. Are you a United States citizen?
2. Were you a resident of _____ County immediately prior to leaving the state/country?
3. When did you most recently reside in _____ County?
4. Were you a registered voter in _____ County before leaving Ohio/the United States?
5. Do you intend to return to _____ County?
6. Have you registered to vote in any other jurisdiction since leaving Ohio?
7. Is your absence from Ohio/the United States due to your state/federal employment?

Note: Send a questionnaire only to civilian voters whose eligibility the board has been unable to determine. NEVER send a questionnaire to Uniformed Services voters!

B. Processing Absentee Ballots Based on Questionnaire Responses

1. Generally

If the applicant does not return a completed questionnaire, and the board is otherwise unable to determine the person's eligibility to vote, the ballot should not be counted.

2. Federal Elections

a. Absentee civilian voters living outside the United States

If a civilian absentee voter living outside the United States responds that he or she is a U.S. citizen and was a resident of the county before leaving the country, the voter's otherwise valid absentee ballot should be counted in the federal election. If the voter answers "no" to either question, the ballot should not be counted for the federal election.

b. Absentee civilian voters living within the United States

If a civilian living within the United States answers that he or she (1) is a U.S. citizen, (2) had resided in the county immediately prior to leaving Ohio, and (3) is temporarily out of Ohio, the ballot should be counted for the federal election. If the absentee voter answers "no" to any of these questions, the ballot is not to be counted for the federal election.

3. State and local elections

If a civilian absentee voter answers on the questionnaire 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 ballot should be counted in the local and state elections as well as the federal election. If the answer to any of those questions is "no," the ballot may be included only in the federal election.

4. Federal and State Government Employees

Notwithstanding any of the provisions listed above, a U.S. citizen does not lose either elector status or the right to vote as the result of leaving his or her Ohio county of residence due to employment with federal or state government. *See* R.C. 3503.02(G). However, if that person goes from Ohio to another state and votes in that other state, the person is considered to have lost his or her Ohio residency. *See* R.C. 3503.02(H).

5. Mailing Absentee Ballots to Civilians

Absentee ballots mailed to civilians must be sent by not less than first class service. There currently is no provision in state law that authorizes Ohio election officials to fax blank ballots to non-military absentee voters.

VI. Absentee Voting by Members of Ohio's Organized Militia

R.C. 3509.031 sets forth the procedure by which any qualified elector who is a member of Ohio's "organized militia" called to active duty within the state who will be unable to vote on election day on account of that active duty may vote by absentee ballot.

The organized militia is defined in R.C. 5923.01 to include all citizens of Ohio between the ages of 18 and 66 who are not permanently handicapped and who are members of the Ohio air national guard, army national guard, naval militia, and the Ohio military reserve.