

ADVISORY No. 2008-29

October 8, 2008

To: All County Boards of Elections

Re: UOCAVA Voters – Uniformed Services and Overseas Absentee Voters

Overview

The *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), 42 U.S.C.A. 1973ff (as modified by the *National Defense Authorization Act for FY 2005*) governs the rights of certain United States citizens to vote in elections conducted in Ohio for the offices of United States president and vice-president, member of the U.S. Senate, and member of the U.S. House of Representatives, even if those citizens do not currently reside in Ohio. This advisory addresses how boards of elections handle voter registration and absentee ballot requests under UOCAVA.

The citizens covered by UOCAVA fall into one of two specific groups:

1. Uniformed services voters – members of the following, and their families (spouses and dependents), who, by reason of active duty service, are absent from the place where they are otherwise qualified to vote: the U.S. Armed Services (Army, Navy, Marines, Air Force and Coast Guard), commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, and the merchant marine;
2. U.S. citizens who reside outside the U.S. and are, or would be, qualified to vote in the last place in which they were domiciled before leaving the United States.

Compliance with UOCAVA is overseen by the Federal Voting Assistance Program (FVAP), a part of the U.S. Department of Defense. The FVAP's Web site (www.fvap.gov) is an excellent source of information and forms useful to UOCAVA voters and local election officials. The UOCAVA law may be viewed at: www.fvap.gov/resources/media/uocavalaw.pdf. The Overseas Vote Foundation also has a useful, accessible website offering registration and absentee ballot application forms that populate online for downloading and printout by UOCAVA voters, which can be viewed at:

www.overseasvotefoundation.org/overseas/home.htm and is available through the Ohio Secretary of State's website at:

www.sos.state.oh.us/sos/elections/voterinformation/uniformoverseascitizens.aspx or
www.sos.state.oh.us/sos/vri.aspx.

Additionally, an entire chapter of the Ohio Revised Code – Chapter 3511 – governs the voting rights of Ohio residents who are on active duty with the U.S. armed services, or are the spouses or dependents of such armed service members, who are away from their qualifying voting addresses in Ohio due to an armed service member's active duty service.

This advisory reviews the provisions of both UOCAVA and Ohio's election laws that govern how Ohio election officials handle voter registration applications and absentee ballot requests received from UOCAVA voters. Unless otherwise noted, these provisions apply to all federal, and many state and local, elections.

To assist in locating the information that applies to a particular situation or question, this advisory is separated into the following categories:

- I. Definitions
- II. Uniformed Services Members, Spouses and Dependents
- III. Overseas Voters
- IV. Federal Write-in Absentee Ballot (FWAB)

I. Definitions

A. "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.

B. "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

C. "Overseas voter" means:

1. A person 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 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.

D. "Federal Post Card Application" ("FPCA") means: A federally prescribed form used by a uniformed services voter or overseas voter to register to vote and/or to request absentee ballots from local election officials. Voters may use either the cardstock FPCA

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. 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.

(obtainable from the Federal Voting Assistance Program, telephone (800) 438-8683 or e-mail vote@fvap.ncr.gov) or the online FPCA, which can be downloaded from www.fvap.gov/pubs/onlinefpcapca.pdf.

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

II. Uniformed Services & Armed Services Members, Spouses and Dependents

A. Eligibility Of Armed Services Voters To Vote Absentee

Members of the U.S. armed services,² and their spouses or 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 following requirements of R.C. 3511.01 for voting in Ohio:

Any section of the Revised Code to the contrary notwithstanding, any person serving in the armed forces of the United States, or the spouse or dependent of any person serving in the armed forces of the United States who resides outside this state for the purpose of being with or near such service member, who will be eighteen years of age or more on the day of a general or special election and who is a citizen of the United States, may vote armed service absent voter’s ballots in such general or special election as follows:

(A) If the service member is the voter, he may vote only in the precinct in which he has a voting residence in the state, and that voting residence shall be that place in the precinct in which he resided immediately preceding the commencement of such service, provided that the time during which he continuously resided in the state immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

(B) If the spouse or dependent of a service member is the voter, he may vote only in the precinct in which he has a voting residence in the state, and that voting residence shall be that place in the precinct in which he resided immediately preceding the time of leaving the state for the purpose of being with or near the service member, provided that the time during which he continuously resided in the state immediately preceding the time of leaving the state for the purpose of being with or near the service member plus the time subsequent to such leaving and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

(C) If the service member or his spouse or dependent establishes a permanent residence in a precinct other than the precinct in which he resided immediately preceding the commencement of his service, the voting residence of both the service member and his spouse or dependent shall be the precinct of such permanent residence, provided that the time during which he continuously resided in the state immediately preceding the commencement of such service plus the time subsequent to such commencement and prior to the day of such general, special, or primary election is equal to or exceeds thirty days.

² Ohio Revised Code Chapter 3511 applies to U.S. armed services (Army, Navy, Marines, Air Force and Coast Guard) members, their spouses and dependents, while UOCAVA is broader, covering uniformed services members as defined in Section I. B., above.

B. Generally

Both federal and state law provide procedures that allow qualified uniformed services/armed services members to register to vote and to vote by absentee ballot. See *generally*, 42 U.S.C. 1973ff-6; R.C. 3509.03 and R.C. 3511.01. Additionally, Chapter 3511 of the Ohio Revised Code contains specific provisions for registration and voting by members of the U.S. armed services.

C. Registering to Vote

Any uniformed services/armed services member who is a resident of Ohio on active duty as a uniformed services/armed services member, or the spouse or dependent of a uniform services/armed services member who is a United States citizen and Ohio resident residing outside of Ohio or in another country to be with or near the service member, may use:

1. SOS prescribed voter registration form (Form #SEC4010). The form may be found 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 may be found on the Elections Assistance Commission Web site at: www.fabnit.com/nvra_update.pdf; or
3. FPCA. The application may be found on the Federal Voting Assistance Program Web site at: www.fvap.gov/pubs/onlinefpcapdf. The application may also serve as a request for an absentee ballot (see below).

Voter Registration (and Requesting an Absentee Ballot) Using FPCA

To register to vote using the FPCA, the uniformed services/armed 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. A FPCA can also be used by the uniformed services/armed services voter to apply for an absentee ballot at the same time he or she registers to vote.

Voter Registration Deadline Waived If FPCA Used

The voter registration deadline is waived for armed services voters who use the FPCA to register to vote. However, an armed services voter must register to vote **before** a board of elections may issue an absentee ballot to that service member.

Note: UOCAVA voters using the FPCA to register to vote and/or to request absentee ballots **do not have to provide proof of identification** otherwise required of voters by Ohio law.

D. Requesting Absentee Ballots

1. To apply to receive an absentee ballot, an armed services voter, or the spouse or dependent of an armed services member, may deliver to the board of elections of the county in which the applicant's voting residence is located a signed application for an armed services absentee ballot using any of the following delivery methods: by U.S. Postal Service or other delivery service (such as UPS or FedEx), via fax, as a file attached to an e-mail, or in person. R.C. 3511.02.

2. An armed services voter who is a resident of Ohio on active duty as a uniformed services member, or the spouse or dependent of a uniformed services member who is a United States citizen and Ohio resident residing outside Ohio or in another country to be with or near the service member, may use the following to request an absent voter ballot for himself/herself:
 - a. SOS prescribed Application for Armed Service Absent Voter Ballot (Form 11-D),
 - b. The Federal Post Card Application (FPCA), or
 - c. A handwritten request for an absentee ballot.

Requesting an Absentee Ballot Using Armed Service Absent Voter Ballot (SOS Form 11-D)

An armed services voter who is already registered to vote in Ohio and only wishes to request an absentee ballot may submit a completed Form 11-D to the appropriate county board of elections so that it arrives not later than noon on the third day before the election.

Requesting an Absentee Ballot Using FPCA

A uniformed services/armed services voter who already is registered to vote in Ohio and wishes only to request an absentee ballot may 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.

R.C. 3511.02 provides that an armed services voter who is registered to vote in Ohio may apply for an absentee ballot using the FPCA. The armed services voter may submit the 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.

When using the FPCA to request an absentee ballot, the armed 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 FPCA can also be used by the armed services voter to register to vote **at the same time** as requesting an absentee ballot. Although Ohio waives the 30-day voter registration deadline for armed services voters, they must be registered to vote in Ohio **before** absentee ballots can be issued to them.

A uniformed services/armed services voter may use the FPCA to register to vote and/or to request an absentee ballot for one or more election(s). A uniformed services/armed services voter may use a single FPCA to request 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 that contain a federal office on the ballot.

Note: UOCAVA voters using the FPCA to register to vote and/or to request absentee ballots **do not have to provide proof of identification** otherwise required of voters by Ohio law.

Note: An FPCA is valid **only** if used by a UOCAVA (uniformed services or overseas) voter, as defined in Sections I.A. & I.C., above. If a board of elections has personal knowledge that an elector whose FPCA is on file with the board no longer qualifies as a UOCAVA voter, then that FPCA is no longer valid. If the FPCA is no longer valid, then

the board of elections should notify the elector of his or her precinct polling location in the county.

Requesting an Absentee Ballot Using a Handwritten Request

An armed services voter who is already registered to vote in Ohio and wishes only to request an absentee ballot may submit a handwritten request to the appropriate county board of elections so that it arrives not later than noon on the third day before the election.

A handwritten request for an absentee ballot must contain **all** of the following:

1. A request for an absentee ballot;
2. The election(s) for which ballot(s) is/are requested and, if the election is a partisan primary election, the applicant's political party affiliation;
3. A statement that the applicant is serving in the U.S. armed services, or is the spouse or dependent of a person serving in the U.S. armed services;
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 name;
8. The applicant's birth date;
9. 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, or
 - a copy of a current and valid military identification, or
 - a current utility bill, bank statement, government check, government paycheck, or other government document that shows the applicant's name and address;
10. The address to which the absentee ballot is to be mailed or, if the ballot is to be faxed to the applicant, the fax number; and
11. The applicant's signature.

Request for Absentee Ballot Made by Relative for Armed Services Member, Spouse or Dependent

A relative of an armed services voter may request a ballot for an armed services voter by using SOS prescribed "Application by Relative for Armed Service Absentee Voter Ballot" (Form 11-E). The application may be obtained from a county board of elections or the Secretary of State's office. R.C. 3511.02(C).

A "relative" includes 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 armed services voter.

The relative of an armed services voter must deliver in person or mail, but may not fax or email, the completed and signed form not later than noon the third day before the

election to the board of elections in the county in which the armed services voter's qualifying voting address is located. However, to ensure that the armed services voter receives the ballot in a timely manner, the request should be received as early as possible before the election to allow for sufficient time for processing the request and returning the voted ballot by the armed services voter. (See below for deadlines for return of voted ballots.)

E. When to Request Absentee Ballot(s)

An absentee ballot for a uniformed services/armed services voter may be requested no earlier than January 1 of the year in which the election is held, or 90 days before the election – whichever is earlier – and, if the ballot is to be mailed to the armed services voter, not later than noon on the Saturday immediately prior to the election.

F. Incomplete Applications

If a board of elections receives an absentee ballot request from an armed services voter that does not contain all of the required information, then the board shall promptly notify the armed services voter of the additional information required to be provided by the applicant to complete the application. R.C. 3511.04(A).

G. Transmitting Blank Absentee Ballot to Armed Services Voters

A board of elections may transmit the armed service absentee ballot to the voter in one of three ways:

1. In person;
2. By U.S. Postal Service; or
3. By fax, upon request by the armed services voter.

Note: A board **cannot** transmit a blank absentee ballot **by e-mail**.

H. Return of Voted Armed Services Absentee Ballots

1. In person or by U.S. Postal Service

Voted armed services absentee ballots must be returned to the appropriate board of elections office in person, by U.S. Postal Service or by other delivery service (such as UPS or FedEx). Ohio law **does not allow** voted absentee ballots to be returned electronically (e.g., via fax, e-mail or other form of electronic transmission).

2. Deadlines

a. Armed service absentee ballots returned from within the United States

To be included in the official canvass, otherwise valid armed service absentee ballots voted by service members, or the spouse or dependent of an armed service member, living outside Ohio but within the United States (including Alaska and Hawaii) must meet one of the following deadlines:

- **Returned in person:**

Must be received by the appropriate county board of elections no later than 7:30 p.m. on Election Day.

- **Returned by delivery service other than the U.S. Postal Service:**
Must be received by the appropriate county board of elections no later than 7:30 p.m. on Election Day.
- **Returned via the U.S. Postal Service:**
Any return envelope containing an armed service absent voter's ballot that is postmarked **within the United States prior to the day of the election** shall be delivered to the director no later than the 10th day after the election.

Additionally, R.C. 3511.11 (D)(1) provides that otherwise valid armed service absentee ballots delivered in envelopes postmarked prior to the day of the election that are received after the close of the polls on Election Day through the 10th day thereafter shall be included in the official canvass. However, this provision shall not apply to any mail that is postmarked using a postage evidencing system, including a postage meter, as defined in the relevant federal law (i.e., 39 C.F.R. 501.1). R.C. 3511.11(E)(3).

b. Armed service absentee ballots returned from outside the United States

A return envelope that indicates that the voter (an armed service member, or the spouse or dependent of a armed service member) will be or was outside of the United States on the day of an election is **not required to be postmarked** in order for an armed service absent voter's ballot contained in it to be valid.

Whether or not the return envelope containing the ballot is postmarked or if the envelope contains an illegible postmark, an otherwise valid armed service absent voter's ballot that is:

1. received after the close of the polls on Election Day through the 10th day after the Election Day or, if the election was a presidential primary election, through the 20th day after the day of the presidential primary election, and
2. delivered in a return envelope that indicates that the voter will be outside the United States on the day of the election,

shall be included in the official canvass.

However, if a return envelope containing an armed service absent voter's ballot is postmarked or the identification envelope in it is signed **on or after Election Day**, the armed service absent voter's ballot shall not be counted.

III. Overseas Voters

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

A. Generally

Both federal and state law contain procedures that allow overseas U.S. 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.* For the definition of “overseas voters,” see Section I.C., above.

B. Registering to Vote

If an overseas voter did not register to vote prior to moving outside of the United States, the person may use the FPCA to register. The application may be found on the Federal Voting Assistance Program Web site at: www.fvap.gov/pubs/onlinefpcapdf. The application may also serve as a request for an absentee ballot (see below).

1. Voter Registration (and Requesting an Absentee Ballot) Using FPCA

To register to vote using the FPCA, the overseas voter must submit a properly completed FPCA to the board of elections in the county in which the person’s qualifying voting address is located. A FPCA can also be used by the overseas voter to apply for an absentee ballot at the same time as registering to vote.

Note: UOCAVA voters using the FPCA to register to vote and/or to request absentee ballots **do not have to provide proof of identification** otherwise required of voters by Ohio law.

2. Voter Registration Deadline NOT Waived for Overseas Voters

The voter registration deadline is **not waived** for overseas voters who use the FPCA to register to vote. Therefore, if the overseas voter was not registered before he or she moved outside the United States, the properly completed FPCA must be received no later than 30 days before the election if delivered in person. If the FPCA is mailed to the board of elections, then it must be postmarked no later than the thirtieth day before the election. However, if the FPCA is mailed but 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 twenty-fifth day before the election. R.C. 3503.19(A).

C. Requesting Absentee Ballots

Whether or not the overseas voter currently maintains a qualifying Ohio residence determines what method the voter may use to request an absentee ballot.

1. If the overseas voter currently maintains a qualifying Ohio voting address

An overseas voter who maintains a qualifying Ohio voting address as defined in R.C. 3503.02, may use the following to request an absentee ballot for himself/herself:

- a. SOS prescribed Application for Absent Voter Ballot (Form 11-A),
- b. the Federal Post Card Application (FPCA) as provided in R.C. 3509.03, or
- c. A handwritten request for an absent voter’s ballot.

i. Requesting an Absentee Ballot Using Application for Absent Voter Ballot (SOS Form 11-A)

An overseas voter who is already registered to vote in Ohio and wishes to request an absentee ballot may submit a completed Form 11-A to the appropriate county board of elections so that it arrives not later than noon on the third day before the election.

ii. Requesting an Absentee Ballot Using FPCA

An overseas voter who already is registered to vote in Ohio and wishes to request an absentee ballot may 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.

When using the FPCA to request an absentee ballot, the overseas voter must submit a properly completed FPCA to the board of elections in the county in which the overseas voter's qualifying Ohio voting address is located. The FPCA can also be used by the overseas voter to register to vote at the same time as requesting an absentee ballot. Overseas voters must be registered to vote in Ohio **before** absentee ballots can be issued to them.

An overseas voter may use the FPCA to request an absentee ballot for one or more election. An overseas voter may use a single FPCA to request 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 that include a federal office on the ballot.

Note: UOCAVA voters using the FPCA to register to vote and/or to request absentee ballots **do not have to provide proof of identification** otherwise required of voters by Ohio law.

Note: An FPCA is valid **only** if used by a UOCAVA (uniformed services or overseas) voter, as defined in Sections I.A. & I.C., above. If a board of elections has personal knowledge that an elector whose FPCA is on file with the board no longer qualifies as a UOCAVA voter, then that FPCA is no longer valid. If the FPCA is not longer valid, then the board of elections should notify the elector of his or her precinct polling location in the county.

iii. Requesting an Absentee Ballot Using a Handwritten Request

To receive an absentee ballot using a handwritten request, an overseas voter who is already registered to vote in Ohio must deliver a signed application for an absentee ballot to the board of elections of the county in which the overseas voter's qualifying Ohio voting residence is located. The application need not be in any particular form, though the voter may use Form 11-A; however, 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 name;

5. The applicant's qualifying Ohio voting residence address;
6. Applicant's birth date;
7. As proof of the applicant's identity, one of the following:
 - a. The applicant's current Ohio driver's license number,
 - b. The last four digits of the applicant's social security number,
 - c. A copy of the applicant's current and valid photo identification,
 - d. A copy of the applicant's current and valid military identification, or
 - e. A copy of a current utility bill, bank statement, government check, government paycheck, or other government document that shows the applicant's name and address;
8. The address to which the ballot shall be sent via U.S. Postal Service; and
9. The applicant's signature.

2. If the overseas voter does not have a qualifying Ohio voting address

An overseas voter who does not have or maintain a qualifying Ohio voting address as defined in R.C. 3503.02 **must use the FPCA** to request an absentee ballot for himself/herself as provided in R.C. 3509.03.

Requesting an Absentee Ballot Using FPCA

An overseas voter who already is registered to vote in Ohio and wishes to request an absentee ballot may 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.

When using the FPCA to request an absentee ballot, the overseas voter must submit a properly completed FPCA to the board of elections in the county in which the overseas voter resided immediately before leaving the United States to live in another country. The FPCA can also be used by the overseas voter to register to vote at the same time he or she requests an absentee ballot. Overseas voters must be registered to vote in Ohio **before** absentee ballots can be issued to them.

An overseas voter may use the FPCA to request an absentee ballot for one or more election(s). An overseas voter may use a single FPCA to request 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 that include a federal office on the ballot.

Note: UOCAVA voters using the FPCA to register to vote and/or to request absentee ballots **do not have to provide proof of identification** otherwise required of voters by Ohio law.

Note: An FPCA is valid **only** if used by a UOCAVA (uniformed services or overseas) voter, as defined in Sections I.A. & I.C., above. If a board of elections has personal knowledge that an elector whose FPCA is on file with the board no longer qualifies as a UOCAVA voter, then that FPCA is no longer valid. If the FPCA is no longer valid, then the board of elections should notify the elector of his or her precinct polling location in the county.

D. When to Request Absentee Ballot

An absentee ballot for an overseas voter may be requested no earlier than January 1 of the year in which the election is held, or 90 days before the election – whichever is earlier – and, if the ballot is to be mailed to the overseas voter, not later than noon on the Saturday immediately prior to the election.

E. Method of Delivery of Absentee Ballot Request

An overseas voter may request an absentee ballot from the appropriate board of elections using U.S. mail or another delivery service (such as UPS or FedEx). The use of a delivery service other than U.S. mail by an overseas voter is **not a reason for rejecting** an otherwise valid absentee ballot application under R.C. 3509.03 or R.C. 3509.04.

F. Incomplete Applications

If a board of elections receives an absentee ballot request from an overseas voter that does not contain all of the required information, then the board shall promptly notify the overseas voter of the additional information required to be provided by the applicant to complete the application. R.C. 3509.04(A).

G. 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 overseas voter’s residency status:

1. If the overseas voter currently maintains a qualifying Ohio voting address

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

a. “Full” Ballot Eligibility

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 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.

If an overseas voter who has lived outside Ohio for **less than four years** responds to a questionnaire sent by a board of elections 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.

b. Federal and State Government Employees

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

2. If the 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

- a.** 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.** If the overseas voter indicates, in response to a questionnaire sent by the board of elections, 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.** 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.** 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).

Note: 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 federal elections.

Note: 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 thirty days** at some period in 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 thirty days at some period in the child’s life.

3. If a 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 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 (such as by e-mail if the applicant provided an e-mail address) the person a questionnaire as described below 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 a questionnaire 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.

Content of Questionnaire

A board of elections sending an overseas voter 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 Ohio/the United States?
3. When did you most recently reside in _____ County?
4. Between what dates did you live in _____ County?
5. Were you a registered voter in _____ County before leaving Ohio/the United States?
6. Do you intend to return to _____ County?
7. Have you registered to vote in any other jurisdiction since leaving Ohio?
8. Is your absence from Ohio/the United States due to your state or federal employment?

The board should note which absentee ballot was sent with a questionnaire because the board should not count the ballot if a questionnaire was sent but not returned to the board **and** if the board is still unable to determine a person’s qualifying Ohio address or eligibility to vote in Ohio as an overseas voter.

Note: NEVER send a questionnaire to uniformed services voters.

H. Transmitting Blank Ballot to Overseas Voters

A board of elections may transmit the absentee ballot (and questionnaire, if necessary) to the overseas voter one of two ways:

1. In person; or
2. By U.S. Postal Service.

Note: Absentee ballots mailed to overseas voters must be sent by not less than first class service. However, a board cannot transmit blank absentee ballots by e-mail or fax to overseas voters.

Enclose Form 12-I with Blank Absentee Ballots

Pursuant to R. C. 3509.03, when mailing an absentee ballot to an overseas voter who applied for it using the FPCA, the board of elections shall enclose a form prescribed by the Secretary of State (Form 12-I) to notify to the voter that he or she must report to the board any subsequent changes in his or her voting status or his or her subsequent intent to vote in any such election in the precinct in this state where he or she is registered to vote.

I. Deadline for Overseas Voter's Voted Absentee Ballot

The return envelope containing a ballot voted by an overseas voter 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 no later than the 10th day 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 of elections after the tenth day after the election.

Note: An overseas voter's use of a delivery service (such as UPS or FedEx) rather than mail to return an absentee ballot is **not** a reason to reject an otherwise valid absentee ballot under R.C. 3509.06 or 3509.07.

J. Processing Voted Absentee Ballots When Questionnaire is Received Back with Voted "Full" Ballot

1. If an overseas 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,then the vote(s) cast on the 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 remade 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 remade ballot.
3. 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**.
4. If the applicant does not return a completed questionnaire along with the "full" ballot that was voted, AND the board is otherwise unable to determine the person's eligibility to vote, 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. In Ohio, the FWAB may be used 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 addresses outside the United States.
2. The voter's application to have a regular absentee ballot mailed or, pursuant to R.C. 3511.02, faxed to the voter is received by the appropriate board of elections after the statutory deadline of noon on the third 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.

Note: Boards of elections sometimes receive *FWABs* from persons who are not registered to vote and/or have not applied for a regular absentee ballot. These *FWABs* cannot be counted, nor 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.

Any board of elections having questions concerning this advisory may contact the elections attorney assigned to your county at 614-466-2585.

Sincerely,

Jennifer Brunner