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## **DIRECTIVE 2012-20**

**May 25, 2012**

To: All County Boards of Elections

Re: UOCAVA Voting

### **SUMMARY**

This Directive explains federal and state laws requiring each county board of elections to process uniformed services and overseas voter's absentee ballot applications and absentee ballots by completing these four steps:

- I. Prepare two notices of election for voters using the Federal Write-In Absentee Ballot
- II. Transmit UOCAVA ballots on the 45<sup>th</sup> day before each election
- III. Enter UOCAVA voter data into the Centralized Ballot Tracking Service (CBTS)
- IV. Process and count valid UOCAVA Ballots

**Failure to complete any of these four steps is ground for removal.** To aid in meeting the 45 day requirement, Boards must have personnel onsite to accept UOCAVA applications, review them for validity, and issue ballots on the 45<sup>th</sup> day prior to the election.

This Directive replaces Directive 2010-62, Directive 2010-63, and Advisory 2010-06, which are rescinded.

### **OVERVIEW**

Both federal and state laws govern absentee voting by uniformed services and overseas United States citizens. The *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*<sup>1</sup> and the *Military and Overseas Voter Empowerment (MOVE) Act*<sup>2</sup> are federal laws enacted to protect the rights of United States citizens to vote in federal elections while they are serving in the uniformed services or residing overseas. The Ohio General Assembly has incorporated those federal protections into the Ohio Revised Code and has extended them to state and local elections.<sup>3</sup>

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<sup>1</sup> 42 U.S.C.A. 1973ff (1986)

<sup>2</sup> Subtitle H ("Military Voting") of Title V of the *National Defense Authorization Act for Fiscal Year 2010*, Public Law 111-84 (2010)

<sup>3</sup> Amended Substitute House Bill 48 (2010) and Amended Substitute House Bill 224 (2011)

## **INSTRUCTION**

Each county must complete the following tasks:

### **I. PREPARE TWO NOTICES OF ELECTIONS FOR VOTERS USING THE FEDERAL WRITE-IN ABSENTEE BALLOT**

Each board of elections must prepare two election notices for each precinct for use with the Federal Write-In Absentee Ballot.<sup>4</sup> A uniformed services or overseas voter may request a copy of this notice to be sent via mail, fax, or email. If the board of elections maintains an internet website, the board must post the initial notice and the updated notice on its website.

#### **A. Initial Notice**

The board must make available an *initial notice* at least **100 days** before each regularly scheduled election and as soon as possible before an election that is not regularly scheduled. This initial notice must contain the following:

- a list of all federal, state, and local offices the board expects to be on the ballot;
- a list of all questions and issues the board expects to be on the ballot; and
- specific instructions on how a uniformed services or overseas voter must indicate his or her choice on the Federal Write-In Absentee Ballot.

#### **B. Updated Notice**

After the date on which the ballot form is certified, and no later than **45 days** before each election, the board of elections must make available an *updated notice* with the following information:

- a list of certified candidates for each office on the ballot;
- a list of all certified questions and issues on the ballot; and
- specific instructions on how a uniformed services or overseas voter must indicate his or her choice on the Federal Write-In Absentee Ballot.

Please refer to Secretary of State prescribed form 120 for an election notice template.

### **II. TRANSMIT UOCAVA BALLOTS ON THE 45<sup>th</sup> DAY BEFORE EACH ELECTION**

On the 45<sup>th</sup> day before each election—even if the 45<sup>th</sup> day falls on a day the board is not regularly open for business—each board must transmit an absentee ballot to every UOCAVA voter who has filed a valid application with the board as of January 1<sup>st</sup> of that year or 90 days before the election, whichever is earlier. UOCAVA ballots must be transmitted on the 45<sup>th</sup> day. **This is a**

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<sup>4</sup> RC 3511.16

**mandatory deadline.** Boards must have the necessary personnel on site to accept UOCAVA applications, review them for validity, and issue ballots on the 45<sup>th</sup> day prior to the election.

**A. “UOCAVA Voters:”**

The following voters are UOCAVA Voters:<sup>5</sup>

**A uniformed services voter:**

- a member of the **active or reserve** components of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard;
- a member of the National Guard and the organized militia who is on activated status<sup>6</sup>;
- a member of the merchant marine, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration; or
- a spouse or dependent of any of the above.

**An overseas voter:**

- a person who is considered by Ohio law to be a resident of the state, but currently is living outside the U.S. Before leaving the U.S., the voter was last eligible to vote in Ohio or would have been eligible to vote in Ohio had he or she been 18 years of age or older; or
- a person who was born outside the U.S., but who has a parent or guardian who last resided and was last eligible to vote in Ohio before leaving the U.S.

**B. The Federal Post Card Application (FPCA) and SOS Form 11-E**

UOCAVA voters may apply for absentee ballots using the Federal Post Card Application (FPCA) or by filing a written request with the board containing all the following required information:

1. the voter’s name;
2. signature;
3. address at which registered to vote in Ohio;
4. date of birth;
5. acceptable form of identification;
6. the election(s) for which the voter is requesting ballots;
7. statements that the voter is a qualified elector, an absent UOCAVA voter, and that the voter or the voter’s parent or guardian, if applicable, resided in Ohio for at least 30 days prior to commencing service or leaving the U.S.;
8. the voter’s party affiliation (primary elections only);
9. the method by which the voter wishes to receive a ballot (mail, email, or fax); and
10. the mailing, email address, or fax number at which the voter wishes to receive the ballot.<sup>7</sup>

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<sup>5</sup> RC 3511.01

<sup>6</sup> The Ohio organized militia consists of Ohio citizens who are members of the Ohio National Guard, the Ohio naval militia, and the Ohio military reserve. RC 5923.01.

<sup>7</sup> RC 3511.02(A)

The FPCA serves both as a voter registration form if the voter is not already registered or needs to update his or her registration *and* a request for absentee ballots. If a voter applies for an absentee ballot using a FPCA, that request is a request for absentee ballots for every election in that year, unless the voter specifically notes that he or she is requesting a ballot only for a single election in the year.<sup>8</sup> If the board receives an absentee ballot application that is not an FPCA, and it is clear that the applicant is a UOCAVA voter under Ohio law, the board must provide the voter the same accommodations as if the voter had applied using an FPCA.<sup>9</sup>

Relatives of UOCAVA voters may apply for absentee ballots on the UOCAVA voter's behalf if the UOCAVA voter is already registered to vote by using the Secretary of State prescribed form 11-E or the FPCA.<sup>10</sup> A relative must submit the form on behalf of the registered UOCAVA voter in person or by mail to the county board of elections office.

UOCAVA voters may submit FPCAs by mail, email, or fax.<sup>11</sup> If the UOCAVA voter is using the FPCA to register to vote or to update his or her registration, an emailed or faxed copy of a signed form is acceptable under the law to register an eligible voter. In the event that an FPCA is missing some of the required information or that the board of elections is unable to open the file in which the voter transmitted the FPCA, the board must contact the voter immediately, using the quickest and most effective available means of communication. Boards must attempt to contact the voter using all the contact information provided on the form and ask the voter to resubmit a complete application containing all required information. Election officials may not complete missing information on insufficient absentee ballot applications on a voter's behalf.

The declaration accompanying a Federal Write-In Absentee Ballot, discussed in Section D below, may be used to register a voter for the next election if the board of elections receives it by the 30<sup>th</sup> day before Election Day.<sup>12</sup>

Applications by mail, email, or fax for absentee ballots must be received by the board by twelve noon on the Saturday before the election.<sup>13</sup> An application delivered in person to the office of the board of elections must be received by the close of polls on Election Day.<sup>14</sup>

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<sup>8</sup> RC 3511.02

<sup>9</sup> RC 3509.10

<sup>10</sup> RC 3511.02(C) Relatives include "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, daughter-in-law, son-in-law, uncle, aunt, nephew, or niece."

<sup>11</sup> RC 3503.191(B) and 3511.021(A)(2)

<sup>12</sup> RC 3511.14(B)

<sup>13</sup> RC 3511.04(B)

<sup>14</sup> RC 3511.10. In instances where UOCAVA applications are received on or close to Election Day pursuant to this section, the board of elections must make best efforts to transmit the ballot to the voter in order for the voter to complete and return it such that it may be counted.

### C. Transmitting Ballots

UOCAVA voters may receive absentee ballots by mail, email, or fax. Each UOCAVA voter should designate on the application form the manner in which he or she prefers to receive the ballot. If the UOCAVA voter does not express a preference on the application, the board of elections must deliver the absentee ballot via standard mail.<sup>15</sup>

**All uniformed services and overseas voters may vote a complete ballot—all federal, state, and local candidate and issue contests—of the Ohio precinct in which the voter resided immediately before leaving Ohio for military service or to reside overseas.** A person who moves from Ohio to a location outside the United States without becoming a resident of another state does not lose Ohio residency, and is therefore eligible to vote on all candidate and issue contests.<sup>16</sup>

When the board transmits a ballot to a UOCAVA voter, it must provide the following items:

- ballot with stub attached;
- identification envelope with Statement of Voter;
- Secretary of State prescribed form 12-K (Instructions to Uniformed Services or Overseas Voters); and
- Secretary of State prescribed form 12-J (Ballot Tracking for Military and Overseas Voters-Notification of PIN).

If the board receives more than one absentee ballot request from a UOCAVA voter and has already issued that voter a ballot, the board may not transmit another ballot to the same voter unless the voter's subsequent request states the voter submitted an initial request more than 30 days before the election, but has not received a ballot as of the 15<sup>th</sup> day before the election. The board must also ensure that it has not received a voted ballot from that voter.<sup>17</sup>

### D. FEDERAL WRITE-IN ABSENTEE BALLOT (FWAB)

The Federal Write-In Absentee Ballot (FWAB) may be used by a UOCAVA voter when the voter has timely requested, but has not received, an absentee ballot. Previously used only for federal offices, the FWAB now may be used to vote for all federal, state, and local offices, questions, and issues in every election.<sup>18</sup>

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<sup>15</sup> 3511.021(A)(2)

<sup>16</sup> RC 3503.02(G) amended in Amended Substitute House Bill 224 (2011). Note: A non-UOCAVA voter who moves from Ohio to another state within the U.S and resides there for four years or more still is deemed to have lost his or her residence in Ohio. RC 3503.32(F). In the Classification portion of the FPCA, there are five separate checkboxes. Under Ohio law, all UOCAVA voters are treated similarly and are issued a complete ballot, regardless of which box they check.

<sup>17</sup> RC 3511.08

<sup>18</sup> RC 3511.14

In order to use the FWAB, the UOCAVA voter must have requested an absentee ballot by the applicable deadline, noon on the Saturday before the election, but not yet received an absentee ballot.<sup>19</sup> The voter will download the FWAB from the Federal Voting Assistance Program website at [www.fvap.gov](http://www.fvap.gov) and complete the ballot with the information the board provides in the election notices prepared pursuant to Section 1 of this Directive.

If, after mailing the FWAB to the board of elections, the voter receives the absentee ballot he or she had requested, the voter may vote the ballot and return it to the board of elections. If the board receives the voter's valid absentee ballot by the 10<sup>th</sup> day after the election, it must count the absentee ballot and not the FWAB.

The declaration accompanying a FWAB may be used simultaneously to register the person to vote for the next election if it is received no later than 30 days before the election. If the UOCAVA voter who submits a FWAB to the board of elections after that point and is not already a registered Ohio voter, the ballot cannot count. However, the declaration will serve to register an otherwise eligible voter to vote in future elections.<sup>20</sup>

### **III. ENTER UOCAVA VOTER DATA INTO THE CENTRALIZED BALLOT TRACKING SYSTEM (CBTS)**

The Centralized Ballot Tracking System (CBTS) allows UOCAVA voters to track the status of their absentee ballots.<sup>21</sup> When the board receives a valid FPCA or SOS form 11-E, it must enter the voter into the CBTS to create a voter record. The CBTS will automatically generate a unique, personal identification number (PIN) for the voter. The board must provide the voter notification of the assigned PIN, which the voter will use to log in and view ballot status. Secretary of State prescribed form 12-J may be used to notify a voter of his or her assigned PIN and to inform the voter how to access the CBTS website and track the ballot.

Once the board creates a voter record, it is required to update and maintain the accuracy of that record. Each absentee ballot record must be updated with the following information:

- date the board received the FPCA or SOS form 11-E;
- date the board transmitted the blank absentee ballot to the voter;
- date the board received the voted absentee ballot;
- what errors, if any, the board detected on the absentee ballot ID envelope; and
- whether the absentee ballot was counted.

**All CBTS records must be updated completely before the official canvass is completed.**

If you do not have a copy of the CBTS manual, please contact Matt Masterson.

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<sup>19</sup> 42 USCA 1973ff-2(b)(2)(A)

<sup>20</sup> RC 3511.14(B)

<sup>21</sup> RC3511.021(B)

#### IV. PROCESS AND COUNT VALID UOCAVA BALLOTS

All absentee ballots must be returned by mail or in person to the office of the board of elections. No ballot may be returned by fax or email. **Ohio law prohibits the electronic return of an absentee ballot and the processing or counting of any ballot returned electronically.**<sup>22</sup>

Upon receiving an absentee ballot from a UOCAVA voter, the board must take the following steps:

- Confirm that the UOCAVA voter signed the ballot and submitted it for mailing not later than 12:01 a.m. on Election Day.<sup>23</sup> If the board receives the ballot within the timeframe discussed in the next section, it shall be deemed to have been submitted for mailing by 12:01 a.m. on Election Day.
- Confirm that the board received the ballot by the close of polls on Election Day at the office of the board of elections if delivered in person, or by the 10<sup>th</sup> day after Election Day if delivered by mail. **Please note that a postmark is no longer required in order for a UOCAVA ballot to be valid.** The board must count an otherwise valid ballot regardless of whether it contains a timely postmark, a late postmark, or no postmark.<sup>24</sup>
- Open the return envelope. If the enclosed ballot is not sealed in the identification envelope, avoid looking at the markings on the ballot, place the ballot in the identification envelope, and seal it.<sup>25</sup>

After completing those steps, the board must consider and count all UOCAVA absentee ballots in the same manner as other, non-UOCAVA absentee ballots.

If you have questions concerning UOCAVA Voting, please contact the Secretary of State's elections attorney assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

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<sup>22</sup> RC 3511.021(A)(4)

<sup>23</sup> RC 3511.11(C)

<sup>24</sup> RC 3511.11(C)

<sup>25</sup> RC 3511.11(A)