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DIRECTIVE 2008-109

November 3, 2008

To: ALL COUNTY BOARDS OF ELECTIONS
MEMBERS, DIRECTORS, AND DEPUTY DIRECTORS

Re: Notifying Voters of Absentee Ballot ID Envelope Errors

The purpose of this directive is to provide a uniform process by which absentee voters may be given notice that additional information is required to effectuate their vote on an absent voter's ballot. **This directive applies to when a voter is otherwise eligible, but for deficiencies regarding an absent voter's ballot envelope that may be corrected by the voter appearing in person at the board of elections. In this case, such a voter must be notified as is provided in this directive to permit him or her to timely correct such errors so that the absent voter's ballot may be counted in the official canvass of the election. This will also allow the board of elections to detect irregularities that may be associated with absentee voting or that require further investigation to protect the integrity of the voting process.**

Accordingly, I hereby direct all county boards of election to notify absentee voters of the presence of any deficiency regarding their absent voter's ballot ID envelope that hinders the ballot contained within from being counted, when the voter is otherwise eligible to vote. Once notified, these **absentee voters must be given the opportunity to correct any omission or error regarding their absent voter's ballot ID envelope through the tenth day after the election.**

Many boards of elections have adopted policies to allow absentee voters an opportunity to correct errors on their absentee ballot ID envelope by the close of polls on Election Day. However, under R.C. 3509.05, absentee ballots postmarked by November 3, 2008 (or on the day of the election for overseas voters) will be counted in the official canvass so long as they are received within ten days of the election. When practicable, given that some absent voter's ballots may not be received until ten days after the election, boards must make every effort to allow affected voters the opportunity to correct deficiencies regarding their ID envelopes through the close of business on November 14, 2008.

Under R.C. 3509.07, boards of elections may reject ballots contained within absentee ballot ID envelopes that are insufficient. As discussed in Directive 2008-82, an absentee ballot ID envelope must contain the following minimum required information:

- the voter's name,
- the voter's signature,
- acceptable identification required for an absent voter's ballot.

R.C. 3509.07 provides as follows:

“If election officials find that the statement accompanying an absent voter’s ballot or absent voter’s presidential ballot is insufficient, that the signatures do not correspond with the person’s registration signature, that the applicant is not a qualified elector in the precinct, that the ballot envelope contains more than one ballot of any one kind, or any voted ballot that the elector is not entitled to vote, that Stub A is detached from the absent voter’s ballot or absent voter’s presidential ballot, or that the elector has not included with the elector’s ballot any identification required under section 3509.05 or 3511.09 of the Revised Code, the vote shall not be accepted or counted.”

Under this law, even if the minimum required information has been provided, additional information may be necessary in order for a board of elections to reasonably verify the identity and eligibility of a voter in order to count his or her absent voter’s ballot. In both cases, where either the minimum required information is missing, or where additional information may be necessary to reasonably verify the identity and eligibility of a voter, **a notice must be sent to such voter within six (6) days after the election, which this year is no later than November 10, 2008.**

An absent voter’s ballot ID envelope may be deficient and susceptible to correction and the above required notice in the following situations:

- when the ID envelope does not contain the minimum required information (name, signature or acceptable ID);
- when the ID envelope contains the minimum required information but other information is necessary for the board to reasonably verify the identity and eligibility of the voter;
- when the ID and envelope is not sealed.

In order to inform affected voters of the opportunity to correct deficiencies associated with their absent voter’s ballot ID envelopes, error notifications must be reasonably calculated to reach the affected voter in time to allow them to act. Whenever possible, notice of deficiencies associated with an absent voter’s ballot ID envelope should be sent by postcard or letter using first class, not bulk, postage. However, when an ID envelope containing deficiencies that prevent the ballot contained in it from being counted is received at a point when postal notice would be ineffective, boards should send notice via email if an email address is known. When an email address is known, boards are advised to simultaneously use both email and first class mail notification methods to notify the voter. Boards should consider using telephone notification as a last resort when all other means of communication have failed, or are impracticable or impossible.

Because absentee ballot ID envelopes are signed by the voter under penalty of election falsification, the notification must instruct affected voters to physically appear at the office of the board of elections to correct deficiencies associated with their ID envelope, in addition to informing the voter of the nature of the ID envelope error.

It is of paramount importance that boards of elections ensure that persons appearing at boards of elections’ offices to correct omissions or errors on absent voter’s ballot ID envelopes are, in fact, the persons whom they purport to be. Therefore, before any board of elections permits a voter to correct an omission or error associated with an absent voter’s ballot ID envelope, board staff must require that the voter in question present or provide any one of the forms of ID permissible for absentee voting. Those forms of ID are:

- Last four digits of the voter's Social Security number;
- Ohio driver's license number;
- Copy of driver's license or state ID card;
- Military ID;
- Any of the following showing the voter's name and residence address as appears in the records of the board of elections:
 - Original or copy of a current utility bill;
 - Original or copy of a current bank statement;
 - Original or copy of a current paycheck;
 - Original or copy of a current government check; or
 - Original or copy of a current other government document.

If an elector appears at a board of elections to correct his or her absent voter's ballot ID envelope, and the correction made by the voter permits the board to reasonably verify both the identity and the eligibility to vote of the person who cast the absent voter's ballot in question, then the board is required to count that absent voter's ballot during the official canvass of election returns.

In cases where one of the above forms of ID has been presented and the board is reasonably concerned about the authenticity of the identification presented, the board may request the voter to sign his or her name on a blank voter registration form that contains no other information, so that a board official or employee may compare the signature to the voter's signature contained in his or her voter registration form or in the most recent signature poll book or both. If the board is satisfied that the ID and signature are that of the voter whom the person purports to be, the board shall count the absent voter's ballot as a part of the official canvass of the election. If the board is not so satisfied, the board shall determine whether such irregularities require further investigation by the board, and if so, shall proceed to investigation as is required by Directive 2008-96.

This directive applies only to those absent voter's ballots that could not have been processed and tabulated for the unofficial canvass due to:

- ID envelope omission or error, when the ballot contained in such ID envelope is received by the close of polls on Election Day,
- ID envelope omission or error, when the ballot contained in such ID envelope is postmarked by November 3, 2008 but received no later than ten (10) days after the date of the election.

Pursuant to Directive 2008-108, all absent voter's ballots contained in absent voter's ballot ID envelopes for which the board has verified the identity and eligibility to vote of the person submitting the ballot, and that are received by the close of polls on Election Day, must be counted in the unofficial canvass to be completed no later than noon on Wednesday, November 5, 2008. Moreover, boards must make every effort to verify the identity and eligibility to vote of persons whose absent voter's ballots are received by the close of polls on Election Day.

If you have any questions about the implementation of this directive, please contact the elections attorney assigned to assist your county. Thank you for your cooperation in this matter.

Sincerely,



Jennifer Brunner