

**DIRECTIVE 2010-56**

July 2, 2010

**To:** ALL COUNTY BOARDS OF ELECTIONS

**Re:** Revisions to BMV and SSA Voter Records Information Verification Program; Grounds for Registration Cancellation.

**A. History**

The Help America Vote Act (HAVA) Section 303 (a)(5)(B)(i), 42 U.S.C. 15483(a)(5)(B)(i), requires the chief election official and the official responsible for the state motor vehicle authority to enter into an agreement to “match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.” HAVA also provides that the “State [of Ohio] shall determine whether the information provided by an individual is sufficient to meet the [verification] requirements” of Subparagraph (a)(5) of Section 303 of HAVA. (42 U.S.C. 15483(a)(5)(A)). HAVA provides that “the specific choices on the methods of complying with the requirements of [HAVA] shall be left to the discretion of the State.” (Section 305 of HAVA, 42 U.S.C. 15485).

Similarly, the National Voter Registration Act (NVRA) commonly referred to as the “motor voter law” (see 107 Stat. 77, 42 U.S.C. 1973gg), requires states to protect the integrity of the electoral process and to ensure accurate and current voter registration rolls are maintained.

When this administration began its tenure in 2007, a recently implemented statewide voter registration database system had been developed and was already in place. A review of available documentation concerning its development showed that the system had carried with it a history of difficulties in design and implementation, complicated by the fact that its operation was dependent on the activities of state and federal agencies outside the jurisdiction of the Secretary of State’s office. In 2008, less than one month before the November presidential election and at the suggestion of one or more local election officials, public records requests were made for names of registered voters whose data as supplied on the voter registration form did not match data as contained in the records of the Ohio Bureau of Motor Vehicles (BMV) and/or the U.S. Social Security Administration (SSA).

In attempting to meet the demands of these public records requests, the Secretary of State discovered significant problems with the design, the 2006 alterations to and operation of the entire system, including between agencies, especially in meeting requests that nonmatching data be isolated and produced for public records requests. At the time of the 2008 presidential election, numerous litigation attempts were made to obtain the information in a format not able to be produced by the system as designed, culminating with a unanimous decision by the United States Supreme Court that the requesting political party did not have standing to bring the litigation and halting immediate demands for data configuration that a designer of the system admitted to the U.S. Department of Justice would have harmed the system. Since the 2008 presidential election, the Secretary of State has developed changes to the system, working in cooperation with the Ohio Bureau of Motor Vehicles, and after consulting with boards of elections and voter registration system vendors. A memorandum of understanding was

negotiated and executed with the BMV, followed by a recent addendum to that memorandum, that has permitted both the Ohio Bureau of Motor Vehicles and the Secretary of State to make the necessary changes to their systems to work in concert to produce records of nonmatching data in both an ongoing basis and a one-time bulk process.

Because the system has been changed after its implementation, this directive calls for a one-time comparison of all existing voter registration records in a county database with the BMV database and establishes procedures for how to notify voters if the BMV or SSA databases indicate that clarification or updating may be needed. Thereafter, this directive establishes an ongoing program of data comparison as is contemplated by HAVA.

The goals of the revisions to both the Secretary of State's system and the BMV's system, including the interface between the two systems, have been to better align the data between systems so as not to create an undue number of "false positives" which cause unnecessary administrative burden on boards of elections and unnecessary anxiety for individual voters. Experience shows that minimizing issues regarding the operation of the database should diminish the potential for its operation to be a subject of partisan litigation that has the potential to interfere with the orderly conduct of an election.

The result of the joint efforts of the Secretary of State and the BMV is a simplified and streamlined process for boards of elections to meet their obligations under HAVA in verifying voter provided information on registration forms and to meet the demands of the public for information specific to nonmatching data. The system and procedures for implementing it have been developed to be consistent with existing procedures required under data verification as required by the NVRA. The purpose of this directive, then, is to implement changes to the statewide registered voter database and its interchange with information contained in and through the record system of the BMV in an orderly fashion, in meeting the two basic goals of an accurate and up-to-date statewide voter registration database and of effectively and properly identifying and removing from the database names of ineligible registrants. Accordingly, the Secretary of State's BMV/SSA Voter Record Information Verification Program has been revised as follows:

## **B. Revisions to the BMV/SSA Voter Record Information Verification Program**

In accordance with HAVA, NVRA and various sections of the Ohio Revised Code, all Ohio boards of elections are required to mail confirmation notices to certain electors as part of a uniform and nondiscriminatory **voter records information verification program** prescribed by the Secretary of State. Accordingly, the BMV/SSA Voter Record Information Verification Program has been revised consistent with its two major purposes under HAVA: to ensure that accurate and current voter registration rolls can be more efficiently maintained and that boards of elections have an effective means to properly identify and cancel the voter registrations of ineligible individuals under the requirements of federal and state laws.

As revised, the Ohio **BMV/SSA Voter Record Information Verification Program** has at the outset **two components** to be deployed for verifying the accuracy of information provided by electors who have completed a voter registration form. The two components are:

### **1. "One-time" BMV Voter Record Information Verification Program:**

This component is a one-time comparison of the existing voter records in the Statewide Voter Registration Database which contain a driver's license number with the 2010 information contained in the Bureau of Motor Vehicles (BMV) identification list to identify electors whose relevant voter record information cannot be verified pursuant to HAVA Section 303, and who may need to be asked to provide further information to clarify or update their status as registered voters.

Upon making the one-time comparison of records, boards of elections are to be notified by the Secretary of State regarding any elector who may be identified as having relevant information that could not be verified. This notification will include information regarding any of the following aspects of the elector's information:

- a. Driver's License Number (DLN) could not be verified,
- b. Last Name (LN) could not be verified,
- c. First Name (FN) could not be verified,
- d. Date of Birth (DOB) could not be verified, and/or
- e. Whether the elector has been recorded as deceased.

To assist Ohio boards of elections with the information they receive from the Secretary of State as a result of this one-time comparison, the Ohio Secretary of State's office will be sending each board a **2010 One-time BMV Voter Record Information Verification Program CD-ROM**. The CD-ROM will include:

- A copy of this directive.
- A data list of your county's electors who had relevant information in their voter records that the BMV could not verify.
- Instructions for what to do using your county's data list to obtain information from voters whose information needs to be clarified or updated.
- A sample Voter Information Confirmation Notice/Voter Information Confirmation Return Notice (SOS Form 10-B or SOS Form 10-C).
- A Program Completion Receipt Form.

How to use each of these items is outlined further within this Directive.

Upon receiving its CD-ROM issued under the one-time comparison component of this program, each board of elections must mail Voter Information Confirmation Notices/Voter Information Confirmation Return Notices (SOS Form 10-B or SOS Form 10-C) to electors so identified within the information contained on the CD-ROM. In 2010, all Voter Information Confirmation Notices/Voter Information Confirmation Return Notices (SOS Form 10-B or SOS Form 10-C) that are mailed pursuant to the program must be mailed no later than **August 15, 2010**.

**Please read the instructions provided on the CD-ROM *before* attempting to process your BMV data file, and follow the instructions provided. Boards may not remove the names of voters from their official list of voters on the sole basis that relevant information in a county's voter registration system does not match identification information maintained by the BMV. Boards may remove the names of ineligible voters from their official list of voters as authorized in this Directive.**

## **2. "Ongoing" BMV/SSA Voter Record Information Verification Program:**

Consistent with the requirements of HAVA this component of the revised program ensures an ongoing comparison of relevant information provided by any new voter registrant (an individual not previously registered to vote in Ohio or an individual who was previously registered to vote in Ohio, but lost his or her registration due to inactivity or moving residence out of Ohio) with information maintained by the Bureau of Motor Vehicles (BMV) or Social Security Administration (SSA) to identify electors whose relevant voter record information cannot be verified pursuant to HAVA Section 303, and who may need to clarify or update his or her voter registration information.

**Comment [j1]:** What about someone who moves out of state, has his voter registration canceled and then moves back. Many boards keep records of these, at least in hard copy. Are there any special instructions in this case? See my language to try to accommodate this.

To assist Ohio boards of elections with their ongoing 2010 BMV/SSA Voter Records Information Verification Program, the Ohio Secretary of State's office will be electronically sending each board via its secure T-1 line a **BMV/SSA Voter Record Information Verification XML Packet**. This electronic XML packet will allow the board to regularly learn regarding new voter

registrations<sup>1</sup> whether any of the following information in a new registration is subject to clarification or updating:

- a. Driver's License Number (DLN) could not be verified,
- b. Last Name (LN) could not be verified,
- c. First Name (FN) could not be verified,
- d. Date of Birth (DOB) could not be verified,
- e. Last Four Digits of Social Security Number (SSN4) could not be verified, and/or
- f. Whether the elector has been identified as deceased.

Boards of elections must use the information contained in the electronic XML packet to mail a Confirmation Notice, along with Confirmation Return Notice form to electors identified as part of the ongoing BMV/SSA Voter Information Verification Program. The Notice and accompanying Return Notice must be sent **within ten days** of receipt of the XML packet or notification that further clarification or updating is needed for a particular voter registrant. Voter Information Confirmation Notices and Return Notices issued under the ongoing verification program must be on forms prescribed by the Secretary of State (SOS Form 10-B or SOS Form 10-C).

**Please read the instructions provided with your electronic XML packet *before* attempting to contact voter registrants that their information must be clarified or updated, and follow the instructions provided. Boards may not remove the names of voters from their official list of voters on the sole basis that relevant information in a county's voter registration system does not match identification information maintained by the BMV or SSA. Boards may remove the names of ineligible voters from their official list of voters as authorized in this Directive.**

### C. BMV/SSA Voter Record Information Verification Program Processing Details

Listed below are the details for each of the one-time and ongoing components of the BMV/SSA Voter Information Verification Program:

#### 1. How to Perform the "one-time" BMV Voter Record Information Verification Program Process

Each board must first process its BMV data file according to the instructions provided on the BMV Voter Information Verification Program CD-ROM. Each board is reminded that when voter registration records contain relevant information that cannot be verified by the BMV, the following must be done: (a) indicate or "flag" these records in the county voter registration system, (b) mail a Voter Information Confirmation Notice that includes either a separate or detachable Voter Information Confirmation Return Notice, to the address in the county's voter registration records, (c) note the date on which a Voter Information Confirmation Notice is mailed to the elector in the county's voter registration records,<sup>2</sup> and (d) note the date on which the board receives a completed Voter Information Confirmation Return Notice in response to that mailing.

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<sup>1</sup> Updated voter registrations (i.e. involving a change of address or a change of name) do not need to be submitted for comparison through BMV/SSA Voter Record Information Verification Program, since they will have been checked through the one-time component of the program at the outset of this directive implementation period. Therefore, only new registrations are subject to the ongoing component of the program.

<sup>2</sup> This notation is essential for establishing the four-year anniversary date for when each Voter Information Confirmation Notice, along with the Voter Information Confirmation Return Notice, was mailed.

**Neither state nor federal law call for a complete mailing to all registered electors in the county, and this directive should not be construed as requiring such a mailing. This directive addresses electors' and voter registrants' records whose relevant information (a. through f. above in divisions B.1. and 2.) cannot be verified by the BMV or SSA and for whom clarification or updating is needed under HAVA.**

**Mailing the Voter Information Confirmation "Notice" and "Return Notice:"**

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

**What to Do When Board Receives a Completed "Return Notice" of Voter Information Confirmation that CONFIRMS the Elector's Information as Contained in the Board's Records:**

- a. The board of elections should remove the mark or "flag" on the voter's record and retain the completed return notice for a period of at least 4 years, in accordance with the Secretary of State's Retention Chart.

**What to Do When Board Receives a Completed "Return Notice" of Voter Information Confirmation that INDICATES CHANGES ARE NEEDED to the Elector's Information as Contained in the Board's Records:**

- b. If a completed Return Notice confirms **the relevant information must be updated/changed**, the board of elections should update the relevant information consistent with the information provided by the voter on the Voter Information Confirmation Return Notice. The board of elections must then ensure the mark or "flag" on the voter's record is removed and retain the completed Return Notice for a period of at least 4 years, in accordance with the Secretary of State's Retention Chart.
- c. If a completed Return Notice confirms a **new address within the county**, the elector's registration record must be updated by the board of elections with the new address and the date the Voter Information Confirmation Return Notice was received by the board. The board of elections must then ensure the mark or "flag" on the voter's record is removed and the completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State's Retention Chart. The board must then send the elector an Acknowledgement Notice (SOS Form 10-J) informing the elector of the registration update and the location of his or her new polling place.
- d. If a completed Return Notice confirms a **new address outside the county but still in Ohio**, the board of elections that mailed the Voter Information Confirmation Notice must cancel the elector's registration and make a notation on the elector's registration record of the date the return notice was received by the board and the date of cancellation. The board must send to the Secretary of State's office copies of the Voter Information Confirmation Return Notices for electors who have moved from the county but still reside in Ohio, so that the Secretary of State may provide to such canceled electors a voter registration form for them to have an opportunity to register to vote in their new county of residence. Copies of the Voter Information Confirmation Return Notices may be sent via e-mail in PDF format or by regular mail at no less than weekly and no more than monthly intervals. The completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State's Retention Chart.

Comment [j2]: Does the flag stay in or out of the record? Need to inform them.

- e. If a completed Return Notice confirms a **new address outside the State of Ohio**, the board of elections must cancel the elector's registration and make a notation on the elector's registration record of the date the Voter Information Confirmation Return Notice was received by the board and the date of cancellation. The completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State's Retention Chart.

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

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

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

NOTE: If a Voter Information Confirmation Notice or Return Notice is sent to an elector to whom the board already has sent such a notice under the NVRA (see Directive 2009-5, issued May 11, 2009), the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent Notice under this directive is mailed and not returned.

**What to Do When Board Receives Information on the CD-ROM that the Voter May Be Deceased:**

- g. If BMV records indicate that an elector is deceased, the board of elections must check with the chief health officer in the county and with the Ohio Department of Health to confirm a report of a deceased elector. County boards of elections should compare the information provided in the voter record (name, date of birth, etc.) with the same information provided in county and state health records to verify that the elector indicated in BMV records as deceased, is in fact, deceased. A voter registration record shall be cancelled by the board of elections upon performing such a comparison and making an affirmative finding that the voter is deceased. Boards may not cancel a voter registration record on the sole basis that the BMV has indicated that the voter may be deceased. If BMV records indicate that an elector is deceased, but the board of elections is unable to confirm the report of the deceased elector by comparing information in its records regarding the elector with the chief health officer in the county and the Ohio Department of Health, the board must send a letter addressed to the elector. The letter shall request that the elector confirm his or her voter registration information as a way to help the board of elections determine if the deceased status indicated in the BMV is in error. The letter shall be accompanied by a postage paid return envelope. If there is no response to the letter or otherwise no confirmation that the elector is or is not deceased, then the board of elections should leave the mark or "flag" on the voter's record.

Once an elector's voter registration record is flagged for failure to respond to the letter seeking confirmation of the records of the BMV or otherwise fails to confirm, whether or not through an executor, he or she is or is not deceased, the board must maintain its records with the elector's information flagged in the county voter registration database

with a notation in its records of the date the notice was mailed to the elector so that if the elector fails for a period of four years (that includes two federal elections, occurring in November of even-numbered years) to update his or her registration or vote, then the board shall cancel the elector's registration and make a notation of the date of cancellation.

NOTE: If a letter seeking confirmation of the records of the BMV of the death status of an elector is sent to an elector to whom the board already has sent such a notice under the NVRA (see Directive 2009-5), the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent letter regarding death status under this directive is mailed and does not receive a response.

**Please note that state and federal laws prohibit election officials from canceling any voter registration solely because the elector has not voted or solely because the voter has not provided updated information, or solely because the voter provided information on his/her voter registration form that did not match the information on file with the BMV or SSA. This means that, unless a voter is deceased or there is a court order requiring removal, his or her name cannot be removed from the voter registration database without first being sent a notice as required by this directive under the Help America Vote Act and/or Directive 2009-5, pursuant to the National Voter Registration Act.**

## **2. "Ongoing" BMV/SSA Voter Record Information Verification Program Processing Details:**

This component is the ongoing comparison (following the one-time comparison [see B.1. above] of a county's entire database with BMV records) of the information provided by any new voter registrant (an individual not previously registered to vote in Ohio or an individual who was previously registered to vote in Ohio, but lost his or her registration due to inactivity or moving residence out of Ohio) with the Bureau of Motor Vehicles (BMV) and Social Security Administration (SSA) identification list to identify whether the relevant information supplied by a voter registrant cannot be verified pursuant to HAVA Section 303, and who may need to clarify or update his or her voter registration information.

As with the one-time component of the program, for voter registration records for which relevant information cannot be verified by the BMV or SSA, the following must be done: (a) indicate or "flag" these records in the county voter registration system, (b) mail a Voter Information Confirmation Notice that includes either separately or which may be detachable, a Voter Information Confirmation Return Notice, to the address in the county's voter registration records, (c) note the date on which a Voter Information Confirmation Notice is mailed to voter registrant in the county's voter registration records,<sup>3</sup> and (d) note the date on which the board receives a completed Voter Information Confirmation Return Notice in response to that mailing.

**Neither state nor federal law call for a complete mailing to all registered electors in the county, and this directive should not be construed as requiring such a mailing. This directive addresses electors' and voter registrants' records whose relevant information (a. through f. above in divisions B.1. and 2.) cannot be verified by the BMV or SSA and for whom clarification or updating is needed under HAVA.**

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

**Mailing the Voter Information Confirmation “Notice” and “Return Notice:”**

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

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

- a. The board of elections should remove the mark or “flag” on the voter’s record and retain the completed return notice for a period of at least 4 years, in accordance with the Secretary of State’s Retention Chart.

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

- b. If a completed Return Notice confirms **the relevant information must be updated/changed**, the board of elections should update the relevant information consistent with the information provided by the voter on the Voter Information Confirmation Return Notice. The board of elections must then ensure the mark or “flag” on the voter’s record is removed and retain the completed Return Notice for a period of at least 4 years, in accordance with the Secretary of State’s Retention Chart.
- c. If a completed Return Notice confirms a **new address within the county**, the voter registrant’s registration record must be updated by the board of elections with the new address and the date the Voter Information Confirmation Return Notice was received by the board. The board of elections must then ensure the mark or “flag” on the voter’s record is removed and the completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State’s Retention Chart. The board must then send the voter registrant an Acknowledgement Notice (SOS Form 10-J) informing the voter registrant of the registration update and the location of his or her new polling place.
- d. If a completed Return Notice confirms a **new address outside the county but still in Ohio**, the board of elections that mailed the Voter Information Confirmation Notice must cancel the voter registrant’s registration and make a notation on the voter registrant’s registration record of the date the return notice was received by the board and the date of cancellation. The board must send to the Secretary of State’s office copies of the Voter Information Confirmation Return Notices for voter registrants who have moved from the county but still reside in Ohio, so that the Secretary of State may provide to such canceled voter registrants a voter registration form for them to have an opportunity to register to vote in their new county of residence. Copies of the Voter Information Confirmation Return Notices may be sent via e-mail in PDF format or by regular mail at no less than weekly and no more than monthly intervals. The completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State’s Retention Chart.
- e. If a completed Return Notice confirms a **new address outside the State of Ohio**, the board of elections must cancel the voter registrant’s registration and make a notation on the voter registrant’s registration record of the date the Voter Information Confirmation Return Notice was received by the board and the date of cancellation. The completed Return Notice should be retained for a period of at least 4 years, in accordance with the Secretary of State’s Retention Chart.

Comment [j3]: Does the flag stay in or out of the record? Need to inform them.

**What to Do When Board DOES NOT Receive a Completed “Return Notice” of Voter Information Confirmation:**

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

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

NOTE: If a Voter Information Confirmation Notice or Return Notice is sent to a voter registrant to whom the board already has sent such a notice under the NVRA (see Directive 2009-5), the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent Notice under this directive is mailed and not returned.

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

- g. If BMV records indicate that an elector is deceased, the board of elections must check with the chief health officer in the county and with the Ohio Department of Health to confirm a report of a deceased elector. County boards of elections should compare the information provided in the voter record (name, date of birth, etc.) with the same information provided in county and state health records to verify that the elector indicated in BMV records as deceased, is in fact, deceased. A voter registration record shall be cancelled by the board of elections upon performing such a comparison and making an affirmative finding that the voter is deceased. Boards may not cancel a voter registration record on the sole basis that the BMV has indicated that the voter may be deceased. If BMV records indicate that an elector is deceased, but the board of elections is unable to confirm the report of the deceased elector by comparing information in its records regarding the elector with the chief health officer in the county and the Ohio Department of Health, the board must send a letter addressed to the elector. The letter shall request that the elector confirm his or her voter registration information as a way to help the board of elections determine if the deceased status indicated in the BMV is in error. The letter shall be accompanied by a postage paid return envelope. If there is no response to the letter or otherwise no confirmation that the elector is or is not deceased, then the board of elections should leave the mark or “flag” on the voter’s record.

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

NOTE: If a letter seeking confirmation of the records of the BMV of the death status of an elector is sent to an elector to whom the board already has sent such a notice under the NVRA (see Directive 2009-5), the original four-year period from the mailing of the prior notice is used to compute the retention period for the county voter database, even though a subsequent letter regarding death status under this directive is mailed and does not receive a response.

**Please note that state and federal laws prohibit election officials from canceling any voter registration solely because the voter registrant has not provided updated information, or solely because the voter provided information on his/her voter registration form that did not match the information on file with the BMV or SSA. This means that, unless a voter is deceased or there is a court order requiring removal, his or her name cannot be removed from the voter registration database without first being sent a notice as required by this directive under the Help America Vote Act and/or Directive 2009-5, pursuant to the National Voter Registration Act.**

### **3. Handling “No Forwarding Address” Returns for both Components of the BMV/SSA Voter Information Records Verification Program**

All Voter Information Confirmation Notices must be:

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

Sometimes the U.S. Postal Service (USPS) will return this type of mail to the board as non-deliverable, because the USPS does not have a forwarding address for the addressee (the elector or voter registrant). The board should record that fact in its records (e.g., in the comments section of that voter’s file) and retain the undeliverable confirmation notice for four years. This will enable the board to document its compliance with this Directive as well as the **general voter records maintenance program (Directive 2009-05)**.

### **4. BMV/SSA Voter Record Information Verification Program is Prospective in Nature**

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

- Returns the Voter Information Confirmation **Return Notice** card (originally sent with the Voter Information Confirmation Notice) confirming the accuracy of the previously outlined relevant information [see divisions B. 1. and 2.] contained in his or her voter record at the board of elections.
- Clarifies or updates his or her voter registration and submits it to the board of elections via the Return Notice or otherwise.
- Votes before that four-year period ends.

If an elector or voter registrant fails to both:

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

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

Please note that, if a Voter Information Confirmation Notice sent pursuant to the BMV/SSA Voter Information Confirmation Program, is sent to an elector to whom the board already has sent a confirmation notice pursuant to Directive 2009-5, the mailing of this notice does not begin or "reset" the four year anniversary period for that elector.

#### **5. Deadlines for Completing Components of the BMV/SSA Voter Record Information Verification Program**

As noted in Section B above, the deadline for completing the **one-time** component of the BMV Voter Record Information Verification program is **August 15, 2010**; and the deadline for the **ongoing** component of the BMV/SSA Voter Record Information Verification program, is **10 days** within receiving the electronic XML packet via the T-1 line transmission from the Secretary of State.

In the event of a hardship in meeting this deadline for the one-time component of the Program, a board must request additional time no later than July 30, 2010, and no more than one ten (10) calendar day extension may be granted beyond the **August 15, 2010** deadline.

#### **6. Secretary of State Reimbursement to Boards of Elections for Postage for One-time Component of BMV/SSA Voter Information Verification Program**

The Secretary of State plans to reimburse the state's 88 county boards of elections for their postage spent for the one-time component of the BMV/SSA Voter Information Verification Program, including the costs for the prepaid postage that is required to be on the envelopes or cards used by electors to return their information to the boards of elections. A separate form for reimbursement will be supplied after the deadline to complete the one-time component of the program. Reimbursement will require verification of the number of one-time component of the BMV/SSA Voter Information Verification Program Notices required to be sent to electors and the number of electors who returned their completed Return Notices for the one-time component. The Secretary of State may require that these numbers be verified in addition to any application form. Reimbursement is not provided for postage for any portion of the ongoing component of the program. All reimbursements will be from HAVA funds and are subject to audit by the Election Assistance Commission as well as the Ohio Auditor of State.

## **7. Boards to Send Receipt to Secretary of State when One-Time Component of BMV Voter Information Verification Program Is Completed**

For the purposes of this directive, “completed” means that all Notices meeting the requirements of division C.3. above have been mailed to all electors as required by this directive. “Completed” does not include cancellation of electors’ records, as federal law and the contents of this directive require that a four-year period that includes two federal general elections and no response or voter activity must first occur or that other information returned by an elector indicating he or she is no longer eligible to be registered is a necessary prerequisite for cancellation. (For more specific information, please see division C.7. below.)

Each board of elections must provide written notice to the Secretary of State’s office that the one-time component of the BMV/SSA Voter Record Information Verification program has been completed. **The Program Completion Receipt Form**, provided with the 2010 One-Time BMV Voter Records Information Verification Program CD-ROM, must be completed by the **director or deputy director** and returned by one of the methods below to the Secretary of State’s Elections Division promptly after the One-Time process has been completed, but no later than **August 15, 2010**.

Return via US Mail: Ohio Secretary of State’s Office – Elections Division  
Attn: Denise Sherrod  
PO Box 2828  
Columbus OH 43216

Return via fax: Ohio Secretary of State’s Office - Elections Division  
Attn: Denise Sherrod  
(614) 752-4360

Return via e-mail: dsherrod@sos.state.oh.us

## **8. Grounds for Cancellation of a Registration**

If an elector or voter registrant fails to both respond to a Voter Information Confirmation Notice **and** update his or her voter registration or vote by the appropriate four-year anniversary date (established under a mailing pursuant to the NVRA and Directive 2009-05 or pursuant to this directive) that includes two federal general elections, the registration of the elector *shall be cancelled* by one of the following dates, whichever is later:

1. not later than one hundred twenty (120) days after the date of the second federal general election in which the elector fails to vote; *or*
2. not later than one hundred twenty (120) days after the expiration of the four-year period in which the elector fails to vote or respond to a Voter Information Confirmation Notice/Voter Information Confirmation Return Notice.

Please note that state and federal laws prohibit election officials from canceling any voter registration solely because the elector has not voted or solely because the voter has not provided updated information, or solely because the voter provided information on his/her voter registration form that did not match the information on file with the BMV or SSA as provided by the information in the revised BMV/SSA Voter Information Verification Program.

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

**D. Other, Additional Grounds for Cancellation of a Registration**

In addition to the reasons for cancellation outlined in this directive, there are other grounds for cancellation of an elector's registration. Those grounds include:

1. **The filing by a registered elector of a signed written request with a board of elections, that the elector's registration be cancelled.**

The filing of such a request does not prohibit an otherwise qualified elector from reregistering to vote at any time.

2. **The verification of the death of the registered elector.**

When the board verifies with the chief health officer of a political subdivision or the director of the Ohio Department of Health the names, dates of birth, dates of death and the residences of all persons over 18 years of age who have died within the subdivision, this state or another state, the registration shall be cancelled.

3. **The conviction and incarceration of the registered elector for the commission of one or more felony offenses under the laws of this state, any other state, or the United States as provided in section 2961.01 of the Revised Code.**

The clerk of the common pleas court of each county shall notify the board of elections of the names and addresses of persons convicted of felonies as provided in R.C. 3503.18. If the report contains the address of an elector from another county, the director shall promptly notify the appropriate board. The notice of felony convictions in federal courts is provided to the Secretary of State's office and forwarded to the appropriate county boards of elections. Notice of a conviction, alone, without information that the conviction has resulted in incarceration, shall not constitute a basis to cancel a voter's registration.

Only persons convicted of felonies who are **actually incarcerated** for those felonies (local jail time, prison or incarceration for felony probation or parole violation) lose their rights as electors. If the list received from the clerk of common pleas court does not indicate the reason for an incarceration or if the list simply states persons who were convicted of felonies but does not state whether the sentence imposed included incarceration, then the voter should not be removed from the voter registration system. Felony convictions that result in the imposition of community control (probation) do not serve to disenfranchise or make ineligible an elector who has been convicted of a felony. Also note that the reversal of a felony conviction, a pardon or the granting by a court of post-conviction relief removes the ineligibility to be an elector for the period of incarceration. Finally, if the elector has served his or her sentence and has been released at the time the board learns of the felony incarceration, no cancellation should occur solely on the basis of the conviction and prior incarceration. Persons who have been convicted of felonies, incarcerated and released and who are under post-release control supervision (parole) are eligible to be electors.

4. **A registered elector whom a Probate Court judge has ruled "incompetent for the purpose of voting" as provided in R.C. 5122.301.**

The probate judge shall file once a month the names and residence addresses of all persons over the age of 18 who have been found to be incompetent for voting purposes in accordance with R.C. 3503.18.

**5. An elector who has been permanently disenfranchised for violations of election laws.**

The registration of an elector may also be cancelled if a board of elections holds a hearing in accordance with R.C. 3503.24, and the board determines the person is not entitled to be an elector.

**6. An elector who has moved outside the county.**

The registration of an elector may also be cancelled upon the receipt of a signed change of address form or new registration form containing a current residence address in a county other than the elector's current county of registration. The board of elections cancelling the elector's registration shall notify the elector that his or her registration has been cancelled.

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

**Questions**

- Please direct any questions concerning this directive to your assigned attorney in the Secretary of State's office or to Pat Wolfe, Elections Administrator.
- Please direct questions about the One-Time BMV CD-ROM, including computer file processing instructions, or electronic XML packets to the Secretary of State HELP Desk at (614) 466-8467 or [HELP@sos.state.oh.us](mailto:HELP@sos.state.oh.us).

Thank you for your cooperation with this important responsibility. We believe that your efforts in implementing this revised program will assist you in your future work as you maintain your voter registration database and prepare for and administer elections now and in the future. We also believe that voters will benefit in confidence and voter satisfaction as this system operates with the careful planning and preparation that has enabled these changes to take place. Again, thank you.

Sincerely,

Jennifer Brunner