

Provisional Voting

Directive 2015-28

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SECTION 1.01 THE BASICS - WHAT, WHO, WHEN, WHERE, AND HOW

A. What is a provisional ballot?

Provisional voting is a failsafe that allows a voter whose identity and/or eligibility is in question to cast a ballot that is counted after the voter's eligibility is verified. Provisional voting ensures that no eligible elector is denied the opportunity to cast a ballot in an election.

Though Ohio had a form of provisional voting prior to the enactment of the Help America Vote Act of 2002 (HAVA), HAVA requires every state to offer provisional voting in each federal election.¹

B. Who is eligible to cast a provisional ballot?²

The reasons that a voter must cast a provisional ballot are:

1. The voter's name is not in the poll book or on the supplemental voter list.

Note: Before a precinct election official issues a provisional ballot for this reason, he or she must make sure that the voter is in the correct precinct and is not eligible to cast a regular ballot in a different

¹ Section 303(b) of HAVA, 52 U.S.C.A. § 21082.

² [R.C. 3505.181\(A\)\(1\)-\(7\)](#).



precinct or polling location. If the voter is in the wrong precinct, the precinct election official must direct the voter to the correct precinct.³

2. The voter does not provide or is unable to provide proper or valid identification.
3. The voter has changed his or her name and moved to a different precinct without updating his or her address by the voter registration deadline (30 days prior to the election).
4. The voter has moved to a different precinct without updating his or her address by the voter registration deadline (30 days prior to the election).
5. The voter has changed his or her name and does not have proof of the legal name change.

Note: A voter who changes his or her name and fails to update his or her registration may be eligible to cast a regular ballot if that voter presents one of the following to the precinct election officials on Election Day and completes and signs [Form 10-L](#):

- Court order;
 - Marriage license; or
 - Proof of legal name change that includes both the voter's former and current names.⁴
6. The voter's signature does not match the signature on file with the board of elections (i.e., the signature in the poll book or displayed by the electronic poll book).
 7. The voter has been challenged, and the challenge has not been resolved or has been resolved against the voter.

³ [R.C. 3505.181\(C\)\(1\)](#).

⁴ [R.C. 3503.16\(B\)\(1\)\(b\)](#).





8. The notice of registration or acknowledgment notice has been returned to the board as undeliverable.
9. The voter requested an absentee ballot for the election.
10. The voter already has cast a provisional ballot.

For reasons 8, 9, and 10, the voter should be marked or flagged in the poll book as needing to cast a provisional ballot.

C. When and where can a provisional ballot be cast?

When and where an elector is able to cast a provisional ballot depends upon the reason why he or she must cast a provisional ballot.

The following voters can cast a provisional ballot at the board of elections office or at another site designated for early in-person absentee voting beginning the 28th day prior to a general, non-presidential primary, or special election and the 25th day prior to a presidential primary election and ending at the end of in-person absentee voting on the Monday prior to the election:

1. A voter who has moved from one precinct to another within a county and failed to update his or her address by the voter registration deadline.⁵
2. A voter who has moved from one precinct to another within the county and changed his or her name but failed to update his or her voter registration.⁶
3. A voter who has moved outside of his or her county (but still within Ohio) and failed to update his or her address by the voter registration deadline.⁷

⁵ [R.C. 3503.16\(B\)\(2\).](#)

⁶ [R.C. 3503.16\(B\)\(2\).](#)

⁷ [R.C. 3503.16\(C\).](#)





Additionally, a voter who is unable to appear at the board of elections office on account of personal illness, physical disability, or infirmity can request and cast a provisional/absentee ballot beginning the 27th day prior to an election and ending at noon on the Saturday prior to Election Day.⁸ For details on a provisional/absentee voter, please refer to [Chapter 5 Absentee Voting in this manual](#).

If a voter must cast a provisional ballot for any reason other than those listed in this subsection, he or she must cast it in his or her precinct on Election Day.

D. How does a voter cast a provisional ballot?

1. What Each Precinct Needs

A board of elections must supply each precinct with enough of the following for provisional voters:

- The Provisional Ballot Affirmation Statement or provisional ballot envelope containing the affirmation statement ([Form 12-B](#) with the most-recent issue date);
- The provisional ballot notice ([Form 12-H](#) with the most-recent issue date);
- [Form 12-D](#), Provisional Voter Precinct Verification Form;
- [Form 10-L](#) for Change of Name Voters; and
- An optical scan ballot for each ballot configuration within the polling location.

[Form 12-D](#) is used only when a voter insists on casting a provisional ballot in the wrong precinct within the polling location after being directed to the correct precinct within the polling location.⁹

⁸ [R.C. 3503.16\(G\)](#).

⁹ [R.C. 3505.181\(C\)](#).





2. What Each Provisional Voter Needs

After it has been determined that a voter must cast a provisional ballot, the voter must be given the following three items:

- A Provisional Ballot Affirmation Statement or provisional ballot envelope containing the affirmation statement ([Form 12-B](#) with the most-recent issue date).
- The provisional ballot notice ([Form 12-H](#) with the most-recent issue date).
- The appropriate optical scan ballot.

The provisional ballot notice ([Form 12-H](#)) is required both by state and federal law.¹⁰ It provides information on provisional voting and applicable deadlines, as well as a toll-free number that the voter may call to learn the status of his or her provisional ballot.

3. What Each Provisional Voter Must Do

The voter is responsible for completing and signing the Provisional Ballot Affirmation Statement ([Form 12-B](#)).¹¹

The voter must provide five items on the provisional ballot affirmation in order for the ballot to be eligible to be counted. The required five items are:

- The voter's printed name;
- The voter's valid signature;
- The voter's date of birth;
- The voter's current address; and
- An acceptable form of identification.

¹⁰ 52 U.S.C.A. § 21082; [R.C. 3505.181\(B\)](#).

¹¹ [R.C. 3505.182](#).





A provisional voter must print and sign his or her name. If a voter fails either to print or sign his or her name on the affirmation statement, the provisional ballot cannot be counted.¹² Ohio law does not permit a voter to appear at the board of elections office after the election to print and/or sign his or her name on the affirmation statement.

A provisional voter must provide his or her date of birth and current address on the affirmation statement.¹³ Ohio law does not permit a voter to appear at the board of elections office after the election to provide his or her date of birth or current address on the affirmation statement.

The month and day of the voter's date of birth on the affirmation statement must match the month and day of the voter's date of birth in the voter registration database unless one of the following two exceptions applies:

- The voter's date of birth in the database is 1/1/1800, or
- The board of elections finds by a vote of at least three members that the voter has met all of the other requirements of division (B)(3) of [R.C. 3505.183](#).¹⁴

Note: The requirements of division (B)(3) of [R.C. 3505.183](#) are:

- The provisional voter is registered to vote;¹⁵
- The provisional voter is eligible to cast a ballot in the precinct and for the election in which the individual cast the ballot;¹⁶

¹² [R.C. 3505.183\(B\)\(1\)\(a\)](#).

¹³ [R.C. 3505.183\(B\)\(3\)](#).

¹⁴ [R.C. 3505.183\(B\)\(3\)\(e\)](#).

¹⁵ [R.C. 3505.183\(B\)\(3\)\(a\)](#).

¹⁶ [R.C. 3505.183\(B\)\(3\)\(b\)](#).





- The provisional voter provided all of the information required (i.e., printed name, signature, date of birth, and current address and provided identification on Election Day or during the seven days following the election)¹⁷;
- If the provisional voter provided his or her Social Security number, driver's license, or state identification number, that number is not different than the number contained in the Statewide Voter Registration Database;¹⁸
- The provisional voter provided his or her current address;¹⁹ and
- If the provisional voter has been challenged, he or she provided information necessary to resolve the challenge during the seven days following the election or the board resolved the challenge in favor of the voter at a hearing.²⁰

A provisional voter must provide an acceptable form of identification either on Election Day or during the seven days following the election.²¹ Acceptable identification to cast a provisional ballot includes the following:²²

- The last four digits of the voter's Social Security number;
- The voter's driver's license or state identification card number;
- A current and valid photo identification;
- A military identification; or

¹⁷ [R.C. 3505.183\(B\)\(3\)\(c\).](#)

¹⁸ [R.C. 3505.183\(B\)\(3\)\(d\).](#)

¹⁹ [R.C. 3505.183\(B\)\(3\)\(f\).](#)

²⁰ [R.C. 3505.183\(B\)\(3\)\(g\) & \(h\).](#)

²¹ [R.C. 3505.181\(B\) \(6\) & \(7\).](#)

²² [R.C. 3505.181\(B\)\(6\).](#)





- A copy of a current²³ utility bill (including cell phone bill), bank statement, government check, paycheck, or other government document that shows the voter's name and current address.

For additional information and definitions on acceptable identification for voting purposes, please see [Chapter 7 of this manual](#) and [Directive 2008-80 in the resources section](#).

SECTION 1.02 PROVISIONAL BALLOTS CAST IN THE WRONG PRECINCT

A. The Importance of the Correct Precinct

When an individual registers to vote in Ohio, he or she is placed within a precinct based upon his or her residential address and is eligible to vote in all elections held in that precinct.²⁴ A voter must be a resident of the precinct in which he or she offers to vote.²⁵

B. Provisional Ballot Cast in the Wrong Precinct of a Single-Precinct Polling Location

Because Ohio law requires a voter to be a resident of the precinct in which he or she offers to vote, a provisional ballot cast in the wrong precinct cannot be counted unless it falls under the exception outlined in subsection (c), below.

C. Provisional Ballot Cast in Wrong Precinct of Multi-Precinct Polling Location

Under Ohio law, a provisional ballot cast in the wrong precinct of a multi-precinct polling location may be eligible to be counted if the precinct election official did not notify the voter that he or she was in the wrong

²³ "Current" means that the document contains a date within the last 12 months or an expiration date that has not passed.

²⁴ [R.C. 3503.01\(A\)](#).

²⁵ [R.C. 3503.01\(A\)](#).





precinct. A precinct election official must notify and direct a voter to the correct precinct.²⁶

If a voter refuses to cast a ballot in the correct precinct, he or she must be permitted to cast a provisional ballot and advised that a ballot cast in the wrong precinct cannot be counted.²⁷ To document the fact that the voter was directed to the correct precinct but opted to cast a provisional ballot in the wrong precinct, a precinct election official must complete [Form 12-D](#) and attach it to the provisional voter's provisional ballot envelope.²⁸

If a precinct election official does not complete and attach [Form 12-D](#) to the provisional envelope, the board must remake and count the provisional ballot for any contest in which the voter would be eligible to vote if the voter were to cast a ballot in the correct precinct.

Details on processing a provisional ballot cast in the wrong precinct but correct polling location are contained in [Section 1.04](#), Step-by-Step Process For Determining Eligibility.

SECTION 1.03 PROCESSING PROVISIONAL BALLOTS

A. Examination of Provisional Affirmations Prior to Official Canvass

Board staff, working in bipartisan teams, may begin examining provisional ballot envelopes the day after the election,²⁹ as long as the board has adopted a provisional ballot policy allowing its staff to do so. The bipartisan teams may categorize provisional ballots into groups of like ballots (e.g., ballots that have been verified and eligible to be counted, provisional affirmations that are missing the voter's signature, etc.) for the board to consider.

²⁶ [R.C. 3505.181\(C\)\(1\)](#).

²⁷ [R.C. 3505.181\(C\)\(1\)](#).

²⁸ [R.C. 3505.181\(C\)\(2\)](#).

²⁹ [R.C. 3505.183\(G\)\(1\)](#).





B. Supplemental Information during Seven-Day Period

A provisional voter who failed to provide identification on Election Day may appear at the board of elections and provide identification during the seven days following the election.³⁰

A provisional voter who has been challenged and needs to provide information to resolve the challenge also may appear at the board of elections and provide information during the seven days following the election.³¹

C. Board Members Vote on Eligibility

It is important to remember that only the board members themselves can determine the validity of each provisional ballot. The board must, by a majority vote, determine whether to accept and count – or whether to reject and not count – each and every provisional ballot in a properly-noticed, public meeting.

D. Opened and Counted in Official Canvass

No provisional ballot envelope may be opened and no provisional ballot may be counted until the board has voted on the eligibility of each and every provisional ballot cast in the election.³²

The opening of provisional ballot envelopes and the counting of provisional ballots cannot begin until the start of the official canvass, which may begin no earlier than the 11th day following the election.³³

A board must complete the counting of provisional ballots and the official canvass no later than the 21st day after the election.³⁴

³⁰ [R.C. 3505.181\(B\)\(7\).](#)

³¹ [R.C. 3505.181\(B\)\(7\).](#)

³² [R.C. 3505.183\(F\).](#)

³³ [R.C. 3505.32\(A\).](#)

³⁴ [R.C. 3505.32\(A\).](#)





E. Mandatory Step-by-Step Process for Determining Eligibility

Each board is required to follow the step-by-step instructions outlined below to determine the eligibility of a provisional ballot to be counted.

SECTION 1.04 STEP-BY-STEP PROCESS FOR DETERMINING ELIGIBILITY

Step 1:

Determine whether the affirmation statement on the provisional ballot envelope contains each of the following five items: 1) voter's printed name, 2) voter's valid signature, 3) voter's date of birth, 4) voter's current address, and 5) voter's identification.

- If the affirmation statement contains all five of the required items, proceed to Step 2.
- If the affirmation statement does not contain both the voter's printed name and valid signature, then the board must reject the provisional ballot.³⁵
- If the affirmation statement does not contain the voter's date of birth or it does not fall into the exception below, then the board must reject the provisional ballot.³⁶
 - Exception: If the affirmation statement contains the voter's date of birth but the month and day are different from the month and day in the Statewide Voter Registration Database, the board must reject the provisional ballot unless 1) the voter's date of birth in the database is 1/1/1800; or 2) the board of elections finds by a vote of at least three of its members that the voter has met all of the other requirements

See also Chapter 8: [Canvassing the Vote, Section 1.03](#)

³⁵ [R.C. 3505.183\(B\)\(4\)\(a\)\(iii\)](#).

³⁶ [R.C. 3505.183\(B\)\(4\)\(a\)\(ix\)](#).





of division (B)(3) of [R.C. 3505.183](#).³⁷ If the ballot falls into this exception, proceed to Step 2.

- Step 2:** Determine whether the provisional voter indicated on the affirmation statement that he/she showed an acceptable form of identification to the precinct election official or whether the provisional voter provided at least one of the following on the affirmation statement: The last four digits of the voter's Social Security number, the voter's driver's license number, or state identification card number.
- If the voter indicated on the affirmation statement that he/she showed the precinct election official one of the acceptable forms of identification, proceed to Step 3.³⁸
 - If the voter provided identification on the affirmation statement, and the number (or, if a driver's license or state identification card number, the combination of letters and numbers) provided is not different from the number that is contained in the Statewide Voter Registration Database, proceed to Step 3.³⁹
 - If the voter provided identification on the affirmation statement but that identification is different from what is contained in the Statewide Voter Registration Database (i.e., the number or, if a driver's license or state identification card number, the combination of letters and numbers, provided is different), the board must reject the provisional ballot.⁴⁰
 - If the voter did not provide identification on the affirmation statement or did not indicate that he/she showed an acceptable form of identification to the precinct election official

³⁷ [R.C. 3505.183\(B\)\(4\)\(a\)\(ix\)](#).

³⁸ [R.C. 3505.181\(B\)\(6\)](#).

³⁹ [R.C. 3505.183\(B\)\(3\)\(d\)](#).

⁴⁰ [R.C. 3505.183\(B\)\(4\)\(a\)\(viii\)](#).





but returned to board of elections within seven days after the election and provided one of the acceptable forms of voter identification, proceed to Step 3.⁴¹

- If the voter did not provide identification on the provisional ballot affirmation, did not indicate on the affirmation statement that he/she showed the precinct election official an acceptable form of identification, and did not return to the board within the seven days after the election to remedy the missing item, the board must reject the provisional ballot.⁴²

Step 3: Determine whether the board can verify the identity of the voter based on the information provided on the provisional ballot affirmation or provided by the voter within the seven-day period.

- If the board can verify the identity of the voter based upon the information provided on the provisional ballot affirmation and/or provided by the voter within seven days of the election, proceed to Step 4.
- If the board cannot verify the identity of the voter based upon the information provided on the provisional ballot affirmation and/or the information provided by the voter within seven days of the election, the board must reject the provisional ballot.⁴³

Note: To verify identity, the board must 1) conduct at least one “wildcard” search of the county’s local voter registration database, if available, 2) conduct a voter query of the Statewide Voter Registration Database using ‘Search by Driver License Number’ and 3) conduct at least one voter query of the Statewide Voter Registration Database

⁴¹ [R.C. 3505.183\(B\)\(3\)\(g\)](#).

⁴² [R.C. 3505.183\(B\)\(4\)\(a\)\(vii\)](#).

⁴³ [R.C. 3505.183\(B\)\(4\)\(b\)\(i\)](#); *State ex rel. Skaggs v. Brunner* (2008), 120 Ohio St. 3d 506.





by entering as much or as little information as is available using 'Search by Name.' Once a board has successfully identified a voter with one search, it is not necessary to conduct the additional queries.

- Step 4:** Determine whether the voter is a registered voter anywhere in the State of Ohio at least 30 days before the election.
- If the voter was registered to vote anywhere in the State of Ohio at least 30 days before the election, proceed to Step 5.
 - If the voter was not registered to vote anywhere in the State of Ohio at least 30 days before the election, then the board must reject the provisional ballot.⁴⁴
- Step 5:** Determine whether the voter is a resident of the county and precinct in which the voter offers to vote.⁴⁵
- If the voter is a resident of the county and precinct in which the provisional ballot was cast, proceed to Step 6.
 - If the voter moved and provided a new address within the precinct on the affirmation statement, then the voter is considered a resident of the new precinct and the board must proceed to Step 6.
 - If the voter cast the provisional ballot in the wrong precinct, but in the correct polling location, including the board of elections office, and a precinct election official did not complete and attach [Form 12-D](#) to the provisional ballot envelope, the board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.⁴⁶

⁴⁴ [Ohio Constitution Article V, Section 1; R.C. 3505.183\(B\)\(4\)\(a\)\(i\).](#)

⁴⁵ [R.C. 3503.01\(A\).](#)

⁴⁶ [R.C. 3505.183\(D\)\(1\).](#)





- If the voter cast the provisional ballot in the wrong precinct, but in the correct polling location, including the board of elections office, and a precinct election official did complete and attach [Form 12-D](#), but the board verified that the precinct to which the precinct election official directed the voter was the incorrect precinct, the board must remake and count the provisional ballot for only those contests for which the voter was otherwise eligible to vote.
- If the voter cast the provisional ballot in the wrong precinct, but correct polling location, including the board of elections office, and 1) a precinct election official completed [Form 12-D](#) and 2) the board verified that the precinct to which the precinct election official directed the voter was the correct precinct, the board must reject the provisional ballot.⁴⁷
- If the voter cast the provisional ballot in the wrong precinct and wrong polling location the board must reject the provisional ballot.⁴⁸

Step 6: Determine whether the voter already requested and cast a ballot in the election.

- If the voter has not cast another ballot, proceed to Step 7.
- If the voter has requested and cast an absentee ballot but either of the following exceptions apply, proceed to Step 7.
 - Exception 1: The board of elections shall count the provisional ballot, instead of the absentee ballot, if the board determines that the absentee ballot is invalid because the elector's signature on the absentee voter's identification envelope does not match the signature on file with the board of

⁴⁷ [R.C. 3505.183\(D\)\(1\)](#).

⁴⁸ [R.C. 3505.183\(D\)\(3\)](#).





elections, and the elector cast the provisional in the voter's precinct on Election Day.⁴⁹ If the ballot meets this exception, proceed to Step 7.

- Exception 2: The board of elections does not receive the voter's absentee ballot by the 10th day following the election, and the elector cast the provisional in the voter's precinct on Election Day.⁵⁰ If the ballot meets this exception, proceed to Step 7.
- If the voter has cast another ballot, or requested and cast an absentee ballot and the exceptions above do not apply, the board must reject the provisional ballot.

Step 7: If you have completed Steps 1 through 6 and determined that the provisional ballot should be rejected, you must consider and apply the consent decree issued by the federal court in *Northeast Ohio Coalition for the Homeless v. Brunner*, S.D. Ohio No. 2:06-cv-896, ("NEOCH"), which is copied in full in Section 1.06, below.

SECTION 1.05 REGISTERING TO VOTE / UPDATING ADDRESS FROM AFFIRMATION

A board cannot count a provisional ballot cast by an individual who is not registered to vote in Ohio by the voter registration deadline for that election. However, a completed Provisional Ballot Affirmation Statement (envelope) also serves as a voter registration form, change of address, and/or change of name form. Even if the provisional ballot envelope is not opened and the ballot counted, the board must use the information on the application to enter the person as a new registered voter, or update the voter's address and/or name.

⁴⁹ [R.C. 3509.09\(C\)\(2\)](#).

⁵⁰ [R.C. 3509.09\(C\)\(3\)](#).





If the board needs information in addition to that provided on the Provisional Ballot Affirmation Statement in order to register the individual to vote, the board must contact the individual and request the information needed.

SECTION 1.06 NEOCH

Boards of elections are instructed to comply with the injunctive relief cited below as provided in the April 19, 2010 Consent Decree and modified by the Court on October 26, 2012 and November 2, 2012.

Additionally, each board of elections must post the notice, which was updated in 2014 following amendments to the statutes governing the casting and counting of provisional ballots, that contains the text of the injunctive relief granted in a conspicuous place in every location in which provisional ballots are processed after an election.

Notice Issued Pursuant Court Order

III. GENERAL INJUNCTIVE RELIEF.

4. THE COURT ADOPTS AND ANNEXES HEREAFTER DIRECTIVE 2008-80 AS AN ORDER OF THIS COURT.
5. DEFENDANT SECRETARY OF STATE, HER AGENTS, EMPLOYEES AND REPRESENTATIVES WILL INSTRUCT OHIO'S COUNTY BOARDS OF ELECTIONS TO ADHERE TO THE FOLLOWING RULES REGARDING THE CASTING AND COUNTING OF PROVISIONAL BALLOTS FOR PERSONS WITHOUT IDENTIFICATION OTHER THAN A SOCIAL SECURITY NUMBER:
 - a. BOARDS OF ELECTIONS MUST COUNT THE PROVISIONAL BALLOT CAST BY A VOTER USING ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:
 - i. THE INDIVIDUAL WHO CAST THE PROVISIONAL BALLOT IS REGISTERED TO VOTE;





- ii. THE INDIVIDUAL IS ELIGIBLE TO CAST A BALLOT IN THE PRECINCT AND FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT;
- iii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES A STATEMENT THAT THE INDIVIDUAL IS REGISTERED TO VOTE IN THE PRECINCT IN WHICH THE PROVISIONAL BALLOT WAS CAST AND A STATEMENT THAT THE INDIVIDUAL IS ELIGIBLE TO VOTE IN THE ELECTION IN WHICH THE PROVISIONAL BALLOT WAS CAST;
- iv. THE INDIVIDUAL'S NAME AND SIGNATURE APPEAR IN THE CORRECT PLACE ON THE PROVISIONAL BALLOT AFFIRMATION FORM;
- v. THE SIGNATURE OF THE VOTER SUBSTANTIALLY CONFORMS TO THE SIGNATURE CONTAINED IN THE BOARD OF ELECTION'S RECORDS FOR THAT VOTER;
- vi. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE INDIVIDUAL'S DATE OF BIRTH, AND THE MONTH AND DAY OF THE DATE OF BIRTH ARE NOT DIFFERENT FROM THE DAY AND MONTH OF THE INDIVIDUAL'S DATE OF BIRTH CONTAINED IN THE STATEWIDE VOTER REGISTRATION DATABASE; OR, THE INDIVIDUAL PROVIDED HIS OR HER DATE OF BIRTH, AND THE MONTH AND DAY OF THE DATE OF BIRTH ARE DIFFERENT FROM THE DAY AND MONTH OF THE INDIVIDUAL'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE, BUT THE INDIVIDUAL'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE IS JANUARY 1, 1800 OR THE BOARD OF ELECTIONS HAS FOUND, BY A VOTE OF AT LEAST 3 OF ITS MEMBERS, THAT THE INDIVIDUAL HAS MET ALL OTHER REQUIREMENTS OF DIVISION (B)(3) OF [R.C. 3505.183](#);
- vii. THE INDIVIDUAL PROVIDED HIS OR HER CURRENT ADDRESS;





- viii. THE PROVISIONAL BALLOT AFFIRMATION INCLUDES THE LAST FOUR DIGITS OF THAT VOTER'S SOCIAL SECURITY NUMBER, WHICH IS NOT FOUND TO BE INVALID;
 - ix. THE INDIVIDUAL'S RIGHT TO VOTE WAS NOT SUCCESSFULLY CHALLENGED;
 - x. THE INDIVIDUAL DID NOT ALREADY CAST A BALLOT FOR THE ELECTION IN WHICH THE INDIVIDUAL CAST THE PROVISIONAL BALLOT; AND
 - xi. PURSUANT TO R.C. 3505.183(B)2, THE BOARD OF ELECTIONS DETERMINES THAT, IN ADDITION TO THE INFORMATION INCLUDED ON THE AFFIRMATION, THERE IS NO ADDITIONAL INFORMATION FOR DETERMINING BALLOT VALIDITY PROVIDED BY THE PROVISIONAL VOTER OR TO THE BOARD OF ELECTIONS DURING THE SEVEN DAYS AFTER THE DAY OF THE ELECTION THAT CASTS DOUBT ON THE VALIDITY OF THE BALLOT OR THE INDIVIDUAL'S ELIGIBILITY TO VOTE.
- b. BOARDS OF ELECTIONS MAY NOT REJECT A PROVISIONAL BALLOT CAST BY A VOTER, WHO USES ONLY THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER AS IDENTIFICATION, FOR ANY OF THE FOLLOWING REASONS:
- i. THE VOTER PROVIDED THE LAST FOUR DIGITS OF A SOCIAL SECURITY NUMBER BUT DID NOT PROVIDE A CURRENT DRIVER'S LICENSE, STATE ISSUED IDENTIFICATION, OR OTHER DOCUMENT WHICH SERVES AS IDENTIFICATION UNDER OHIO LAW;
 - ii. THE MONTH AND DAY OF THE VOTER'S DATE OF BIRTH ARE DIFFERENT FROM THE DAY AND MONTH OF THE VOTER'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE, BUT THE VOTER'S DATE OF BIRTH IN THE STATEWIDE VOTER REGISTRATION DATABASE IS JANUARY 1, 1800 OR THE BOARD OF ELECTIONS HAS FOUND, BY A VOTE OF AT LEAST 3 OF ITS





- MEMBERS, THAT THE VOTER HAS MET ALL OTHER REQUIREMENTS OF DIVISION (B) (3) OF [R.C. 3505.183](#);
- iii. THE VOTER DID NOT PROVIDE AN ADDRESS THAT IS TIED TO A HOUSE, APARTMENT OR OTHER DWELLING PROVIDED THAT THE VOTER INDICATED THAT HE OR SHE RESIDES AT A NON-BUILDING LOCATION, INCLUDING BUT NOT LIMITED TO A STREET CORNER, ALLEY OR HIGHWAY OVERPASS LOCATED IN THE PRECINCT IN WHICH THE VOTER SEEKS TO CAST A BALLOT AND THAT THE NON-BUILDING LOCATION QUALIFIES AS THE INDIVIDUAL'S VOTING RESIDENCE UNDER [R.C. 3503.02](#);
 - iv. THE VOTER INDICATED THAT HE OR SHE IS HOMELESS;
 - v. IN LIGHT OF THE INJUNCTION ISSUED IN SEIU LOCAL 1 V. HUSTED, SECTION III (5) (b) (v) OF THE APRIL 19, 2010 CONSENT DECREE HAS BEEN REMOVED FOR THE PURPOSES OF THE NOVEMBER 6, 2012 ELECTION. COUNTY BOARDS OF ELECTION ARE ORDERED TO COMPLY WITH THE DIRECTIVES THAT GOVERN THE COUNTING OF PROVISIONAL BALLOTS CAST IN THE CORRECT POLLING LOCATION, BUT IN THE WRONG PRECINCT;
 - vi. THE COURT HAS REMOVED THIS PROVISION OF THE CONSENT DECREE. SEE NEOCH V. HUSTED FIRST ORDER ISSUED OCTOBER 26, 2012; OR
- c. BOARDS OF ELECTIONS MUST OBSERVE THE FOLLOWING RULES REGARDING THE DELEGATION OF PROCESSING PROVISIONAL BALLOTS, AND DETERMINING THEIR VALIDITY, TO BOARD STAFF:
- i. ULTIMATELY, THE MEMBERS OF BOARDS OF ELECTIONS MUST DETERMINE THE VALIDITY OF ALL VOTES CAST IN AN ELECTION AND MUST CERTIFY THE RESULTS OF ALL ELECTIONS. HOWEVER, NOTHING IN OHIO LAW REQUIRES THAT THE MEMBERS OF A BOARD OF ELECTIONS MUST PERSONALLY COMPLETE ALL TASKS ASSOCIATED WITH PREPARING FOR THAT CERTIFICATION.





- ii. THUS, BOARDS OF ELECTIONS MAY, UNDER A POLICY ADOPTED BY THE BOARD, DELEGATE THE PROCESSING AND SOME ASPECTS OF COUNTING PROVISIONAL BALLOTS TO BOARD STAFF. SUCH PROCESSING MUST BE DONE IN BIPARTISAN TEAMS.
- iii. IF A BOARD OF ELECTIONS DELEGATES THE PROCESSING OF PROVISIONAL BALLOTS, IT MUST FIRST ADOPT A POLICY SETTING FORTH PROCEDURES FOR THE PROCESSING OF PROVISIONAL BALLOTS. UNDER THAT POLICY, BOARD STAFF RESPONSIBLE FOR PROCESSING PROVISIONAL BALLOTS MUST MAKE A RECOMMENDATION TO THE BOARD AS TO THE ELIGIBILITY OF EACH PROVISIONAL BALLOT CAST IN THE COUNTY, EITHER ON AN INDIVIDUAL BASIS, OR AS TO GROUPS OR CATEGORIES OF SIMILARLY SITUATED PROVISIONAL BALLOTS.
- iv. ULTIMATELY, THE MEMBERS OF BOARD OF ELECTIONS MUST DETERMINE THE ELIGIBILITY OR INELIGIBILITY OF ALL PROVISIONAL BALLOTS CAST WITHIN THE COUNTY IN ACCORDANCE WITH OHIO LAW. BOARDS MAY NOT DELEGATE THIS TASK.
- v. EACH BOARD OF ELECTIONS MUST THEN CAUSE THE BALLOTS TO BE COUNTED BY BOARD STAFF, AND MUST INCLUDE THE TABULATION OF THAT COUNT IN ITS OFFICIAL CANVASS OF THE ELECTION RESULTS AND, TO THE EXTENT REQUIRED, ITS CERTIFICATION OF THE ELECTION RESULTS TO THE SECRETARY OF STATE.

SECTION 1.07 FREE ACCESS SYSTEM

Both Ohio and Federal law require the state to establish a free access system, in the form of a toll-free number, which enables a provisional voter to call and learn whether his or her provisional ballot was counted.⁵¹ If the provisional

⁵¹ [R.C. 3505.181\(B\)\(5\)](#); 52 U.S.C.A. § 21082.





ballot was not counted, the individual can ascertain why the ballot was not counted and how to register to vote or resolve any issues with his or her voter registration.⁵²

Each provisional voter must be given [Form 12-H](#), which contains the toll-free number for the free access system and the deadline by which the voter can appear at the board of elections office to provide identification.

Only the provisional voter can access information about his or her provisional ballot.⁵³ A board of elections is prohibited from releasing information on a provisional ballot through the free access system to anyone other than the provisional voter.⁵⁴

SECTION 1.08 PUBLIC RECORDS

A. When Provisional Ballot Affirmation Statements Can Be Disclosed

Provisional ballot affirmation statements are public records. However, they are not subject to disclosure or inspection pursuant to a request for public records until after the time period for any recount or elections contest has passed.⁵⁵ As with all requests for public records, the board might want to consult with its legal counsel if it receives a request for Provisional Ballot Affirmation Statements.

The Secretary of State's retention schedule sets forth the retention period for Provisional Ballot Affirmation Statements/envelopes. The retention schedule is available in the resources section of this manual.

⁵² [R.C. 3505.181\(B\)\(5\)\(b\)](#).

⁵³ [R.C. 3505.181\(B\)\(5\)\(b\)](#).

⁵⁴ [R.C. 3505.181\(B\)\(5\)\(b\)](#); [2011 OAG 012](#).

⁵⁵ [2011 OAG 012](#).





B. Provisional Ballot Affirmation Statement as Voter Registration Forms

If a Provisional Ballot Affirmation Statement is used to register an individual to vote, it must be retained permanently, because it serves as the individual's voter registration application.

