



DIRECTIVE 2018-20

July 9, 2018

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: 2018 General Voter Records Maintenance Program – Supplemental Process

BACKGROUND

Since 1995, Ohio’s General Voter List Maintenance Program has included two distinct, but equally important components: the National Change of Address (NCOA) process and the Supplemental Process. Because some Ohio electors who move do not file a change of address notification with the U.S. Postal Service, the second part of the general voter records maintenance program seeks to identify those electors whose lack of voter activity indicates that they might have moved and need to update their voter registration information. Both the NCOA Process and the Supplemental Process are conducted annually.¹

Ohio did not conduct the Supplemental Process in 2017, because litigation challenging the process was pending before the United States Supreme Court on a Writ of Certiorari, *Husted, Ohio Secretary of State v. A. Philip Randolph Institute, et al.* On June 11, 2018, the United States Supreme Court decided the case in favor of the Secretary of State and upheld the State of Ohio’s use of the supplemental process to identify electors whose lack of voter activity indicates that they might have moved and need to update their voter registration address.² The Court held that Ohio’s Supplemental Process:

* * * does not violate the Failure-to-Vote Clause or any other part of the NVRA * * * Ohio’s removal process follows subsection (d) to the letter: It does not remove a registrant on change-of-residence grounds unless the registrant is sent and fails to mail back a return card and then fails to vote for an additional four years.³

SUMMARY

Earlier this year, boards of elections conducted the NCOA component of the 2018 General Voter Records Maintenance Program, as required by federal and state law. This Directive contains instructions for completing the remainder of the 2018 General Voter Records Maintenance Program, the Supplemental Process.

¹ R.C. 3503.21(D); *Judicial Watch, Inc. & True the Vote v. Husted*, Case 2:12-cv-00792, Settlement Agreement.

² https://www.supremecourt.gov/opinions/17pdf/16-980_f2q3.pdf.

³ *Husted v. A. Philip Randolph Institute, et al.*, Slip Opinion, p. 2.

All notices that are mailed pursuant to the Supplemental Process of the 2018 General Records Maintenance Program must be mailed no later than August 6, 2018.

It is important to note that no voter’s registration will be cancelled in 2018 as a result of the 2018 General Voter Records Maintenance Program or any other year’s general voter records maintenance program. No voter registration shall be cancelled as a result of a general voter records maintenance program during the 90 days immediately preceding any federal primary or general election.⁴ Further, no voter’s registration will be cancelled prior to the November 2022 General Election as a result of this Supplemental Process.

INSTRUCTIONS

I. The Automatic Confirmation of Address Safeguard

Prior to mailing confirmation notices for the 2018 Supplemental Process, each board must logon to the Portal, retrieve, and review its “Automatic Confirmation of Address Safeguard” list. (*See*, Directive 2018-21). The board must exclude from its 2018 Supplemental Process any voter in “active” or “active-active” status who appears on the list. The board must indicate in the voter’s record that the voter appeared on the list and therefore was excluded from the 2018 Supplemental Process.⁵

Following the board’s mailing of confirmation notices pursuant to the 2018 Supplemental Process, the board must logon to the BOE Portal, retrieve, and review its county’s list at least once per month. Any voter who appears on the list and who appears in “active-confirmation” or “confirmation” status pursuant to any year’s general voter records maintenance program must be returned to “active” or “active-active” status.

II. Conducting the Supplemental Process

Boards of elections must generate a list of voters to receive a confirmation notice (SOS Form 10-S-1) under the Supplemental Process using the following criteria: the voter (a) did not vote in an election during the period beginning with the March 15, 2016 Primary Election and ending with the May 8, 2018 Primary Election, (b) did not engage in any other voter-initiated activity (e.g., submitting a voter registration form to update his/her name or address) during that same time period, (c) did not receive a confirmation notice pursuant to the 2017 or 2018 NCOA process, and (d) does not appear on your counties “Automatic Confirmation of Address” list on the BOE Portal for July 2018..

Under the 2018 Supplemental Process, do not send a confirmation notice to an elector to whom the board already has sent such a notice. Boards of elections must use only the data contained in the county’s voter registration database to mail a confirmation notice (SOS Form 10-S-1) to electors identified as part of the Supplemental Process. **To prevent confusion, the front side of the SOS Form 10-S-1 must include only the address at which the elector is registered to vote.**

⁴ 52 U.S.C.A. §20507(c)(2)(A).

⁵ If the board is unable to insert this information into a voter’s record, it may retain this information in a spreadsheet.

A board may work with its printing vendor on solutions for inserting a voter's mailing address (if different from the voter's registration address) on the back of the form (to show through a window on an envelope) or on a separate label or mailing envelope.

All boards of elections must use the current version (with the issue date of June 2018) of the Confirmation Notice (SOS Form 10-S-1) and include a postage-paid return envelope with each notice.⁶ The notice must be sent to the elector's current address as recorded on the board of elections voter registration records.

All electors identified as a part of the 2018 Supplemental Process must be sent a Confirmation Notice (SOS Form 10-S-1) no later than August 6, 2018.

- The confirmation notice must be sent by forwardable mail to the voter's current address (as recorded on the board of elections voter registration record).
- The board must record in its county voter registration system the date that it mailed the confirmation notice to the voter and, if the voter responds to the notice, the date on which the voter responded.
- The board of elections must make appropriate arrangements for the return of the completed confirmation notice portion by the elector to be postage pre-paid by the board.⁷
- The board must place the elector in "active-confirmation" status.⁸

III. Responses to the 2018 Supplemental Process

Electors can complete and return the "Confirmation Notice" (SOS Form 10-S-1) by mail in order to update the elector's voter registration information (e.g., residential address). An elector receiving the confirmation notice also may choose to use the online change of address system to update his or her address instead of completing and returning the "Confirmation Notice" (SOS Form 10-S-1) by mail.

⁶ R.C. 3503.21(D).

⁷ 52 U.S.C.A. §20507(d) and R.C. 3503.21(D).

⁸ As a reminder, **a voter placed in "active-confirmation" status under the general voter records maintenance program must appear in the poll list at the polling place where the voter is registered to vote and is not flagged to cast a provisional ballot** (unless flagged for some other reason). If a voter placed in "active-confirmation" status under the general voter records maintenance program appears at the voter's assigned polling place to vote, states to the precinct election officials that the voter resides at the same address printed in the poll list, provides valid identification for voting purposes, and is not required to cast a provisional ballot for any other reason, the voter must be permitted to cast a regular ballot. R.C. 3505.18(B); R.C. 3505.181. Remember that a military identification or Ohio driver's license or state identification card does not need to include the voter's current address to be valid for voting purposes, and a military identification does not need to include any address. Likewise, if a voter placed in "active-confirmation" status under the general voter records maintenance program submits an application for absent voters ballot, provides the same address on the application at which the voter is registered to vote, and the application is in all other respects complete and valid, the board shall issue the absentee ballot to the voter (whether by mail or in person). R.C. 3509.03.

A. Change of Address to Another Ohio County: If the elector provides a new residential address in another Ohio county:

1. **Online:** The board of elections in the elector’s new county shall accept the elector into its voter registration system using the date provided by the online change of address system as the elector’s registration date in that county.

The board of the new county shall 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 and list this elector as “active-active” in its voter registration database.

A duplicate record will be created in the statewide voter registration database between the elector’s new and former counties that must be promptly resolved following the normal business procedures established by the Secretary of State and the local boards of elections.

Note: The online change of address system does not permit the user to provide a new permanent residential address outside the State of Ohio.

2. **Return of Confirmation Notice:** If the elector completes and returns the confirmation notice and provides a new residential address in a different Ohio county, the board of elections that mailed the confirmation notice to the elector shall cancel the elector’s registration in that county and make a notation on the elector’s registration record of the date the confirmation notice was received by the board and the date of cancellation.

The issuing board shall keep a copy of the completed confirmation notice from the elector and mail the original to the board of elections for the elector’s new county, so that the new board can enter the elector into its voter registration database as an active voter. Completed confirmation notices returned under this section must be forwarded to the appropriate board of elections at least every week.

When the issuing board of elections cancels the record in its voter registration database, and after the board of elections for the new county has entered the record into its county voter registration database, a duplicate record will be created in the statewide voter registration database that must be promptly resolved following the normal business procedures established by the Secretary of State and the local boards of elections.

B. Change of Address to Another State: If an elector completes and returns the confirmation notice and provides a new residential address in a different state, the board of elections that mailed the confirmation notice to the elector shall mail SOS Form 10-A to the elector, so the elector may cancel his or her voter registration in Ohio.

- C. Confirmation of Current Address:** If the elector uses the online system or returns the confirmation notice confirming that the elector still resides at the same address on file with the board of elections, the board shall indicate on the elector’s registration record the date that notice was received by the board and note that the address on file with the board of elections is correct. The board should list this elector as “active-active” in its voter registration database.
- D. Confirmation Notice NOT Returned:** If the elector fails to return the confirmation notice and otherwise fails to either 1) update his or her registration or 2) vote or engage in other voter activity, the elector shall continue to be listed as “active-confirmation” in the county’s voter registration database. **Unless and until the elector’s registration is cancelled as described below, or as otherwise may be permitted by law, the elector shall maintain all the rights of an otherwise qualified elector, subject to Ohio’s laws governing provisional voting.**
- E. Handling “No Forwarding Address” Returns:** Confirmation notices must be sent by forwardable mail. However, the USPS sometimes will return to the board a confirmation notice that is non-deliverable, because the USPS does not have a forwarding address for the addressee (the elector). The board shall record that fact (e.g., in the comments section of that elector’s record) and keep the undeliverable confirmation notice for four years.

III. The 2018 Supplemental Process is Prospective in Nature

If an elector contacted pursuant to the 2018 Supplemental Process:

- Responds to the 2018 confirmation notice (either via mail or using the online change of address system); or
- Updates his or her voter registration; or
- Appears on the county’s Automatic Confirmation list; or
- Votes or engages in voter activity, then

the elector’s voter status shall be changed from ‘active-confirmation’ to ‘active-active,’ and the elector shall not be cancelled pursuant to this general voter records maintenance program.

All other electors contacted pursuant to the 2018 Supplemental Process shall be cancelled during 2022, by one of the following dates, whichever is later:

- 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
- Not later than one hundred twenty (120) days after the expiration of the four-year period that begins on the date the confirmation notice is mailed pursuant to this Directive; but

- **No voter registration shall be cancelled as a result of the general voter records maintenance program during the 90 days immediately preceding any federal primary or general election.**⁹ Accordingly, no voter's registration will be cancelled prior to the November 2020 General Election as a result of this Supplemental Process.

IV. Deadline for Completing the Supplemental Process

As was stated at the beginning of this Directive, the deadline for completing the 2018 General Voter Records Maintenance program is August 6, 2018.

V. Boards of Elections to Archive and Make Available for Public Inspection or Copying under Ohio's Public Records Laws Records of the 2018 General Voter Records Maintenance Program

The board of elections must maintain and make available for public inspection and copying at a reasonable cost all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of voter registration lists, including the names and addresses of all registered electors sent confirmation notices and whether or not the elector responded to the confirmation notice. The board must maintain all records described in this paragraph for a period of five years.¹⁰

Boards of elections must make the list (in electronic form) available to individuals requesting the data under Ohio's public records laws and maintain the data for at least five years (until 2023).¹¹

The board must record in its county voter registration system the date that it mailed a confirmation notice (SOS Form 10-S-1) to a voter and, if the voter responds to the notice, the date on which the voter responded.

VI. Boards to Send Receipt to Secretary of State when 2018 Supplemental Process is Complete

Each Board must provide notice to the Secretary of State's Office that the 2018 Supplemental Process is complete. The 2018 Supplemental Process Completion Form, which will be sent under separate cover, must be completed by the director and deputy director and returned to the SOS Elections Division by August 6, 2018.

VII. Postal Information

As a possible method to reduce mailing costs and save taxpayer funds, boards of elections are encouraged to consult with their local Postmaster or regional business mail analyst regarding the use of nonprofit permit postage rates for the mailing of outbound confirmation notices and business reply mail permits for the return of completed confirmation notices from electors. Because both have an application and permitting process, boards are encouraged to evaluate these options as quickly as possible.

⁹ 52 U.S.C.A. §20507(c)(2)(A).

¹⁰ 52 U.S.C.A. §20507(i); R.C. 3503.26(B); CBE-45A & CBE-46, Secretary of State Retention Schedule.

¹¹ CBE-46, Secretary of State Retention Schedule.

For more information on qualifying for nonprofit mail rates, go to <https://www.usps.com/gov-services/election-mail.htm> and <http://pe.usps.com/text/dmm300/703.htm#1114977>.

You are strongly encouraged to contact your local Postmaster or the Business Mail Unit assigned to your region.

Please direct any questions concerning this Directive to the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted