January 17, 2017

County Clerks/Registrar of Voters (CC/ROV) Memorandum #17007

TO: All County Clerks/Registrars of Voters

FROM: /s/ Jana M. Lean
            Chief, Elections Division

RE: Voter Registration: Conditional Voter Registration

Conditional Voter Registration (CVR) was enacted in 2012, to be operative on January 1 following the certification of VoteCal. (Assembly Bill 1436 (Feuer), Chapter 497, Statutes of 2012.) VoteCal was certified on September 26, 2016, therefore CVR became operative January 1, 2017. CVR is found in Elections Code sections 2170 through 2173.

What is CVR?

CVR allows for a registrant to cast a conditional provisional ballot when the registrant delivers to the county elections office a properly executed affidavit of registration during the period of E-14 through and including Election Day. The conditional voter registration must include all of the information required for "regular" registrations. (Elections Code sections 2170(a), 2171(a).)

The registration is deemed effective once the county elections official processes the affidavit, determines the registrant's eligibility to register, and validates the registrant's information before or during the canvass period.

How does CVR Work?

A conditional voter registration shall be processed in the same manner as "regular" registrations. (Elections Code section 2171(b).) For a conditional voter registration to be deemed effective, the information provided by the registrant on the registration affidavit must match information maintained by the Department of Motor Vehicles or the federal Social Security Administration, otherwise the registrant is issued a unique identification number. (Elections Code section 2170(a), (c).)

A person can register to vote and cast a conditional provisional ballot during the period of E-14 through and including Election Day. (Elections Code section 2170(b).) These "CVR provisional ballots" are subject to the same requirements as other provisional ballots. (Elections Code section 2171(c).)

Aside from CVR, only certain military and overseas voters, new residents, and new citizens can register to vote and vote after the 15-day close of registration deadline. (Elections Code sections 3108, 3400, 3500.) And only new citizens and certain military and overseas voters can register and vote up through Election Day. (Elections Code sections 3108, 3500.) The only difference is that these voters are given a regular ballot (i.e., non-provisional ballot) to vote.

Does CVR Apply to All Elections?

Conditional voter registration is available for all statewide elections, and any local elections that are administered by a county elections official. Conditional voter registration is not available in local elections that are administered by a local elections official.

County Duties under the Elections Code

In addition to processing affidavits, determining the registrant's eligibility to register, and attempting to validate the registrant's information before or during the canvass period, county elections officials must provide conditional voter registration and conditional provisional voting at all permanent offices of the county elections official. (Elections Code section 2170(d).) Moreover, the county elections official may offer conditional voter registration and conditional provisional voting at satellite offices of the county elections office. (Elections Code section 2170(e).)

The elections official must advise registrants that a conditional voter registration will be effective only if the registrant is determined to be eligible to register to vote for the election and the information provided by the registrant on the registration affidavit is verified. (Elections Code section 2170(d)(2).)

Additionally, the elections official must handle conditional voter registrations and resulting conditional provisional ballots as they do other registrations and provisional ballots: in a manner that protects the secrecy of the ballot and allows the elections official to process the registration, determine the registrant's eligibility to register, and validate the registrant's information before counting or rejecting the corresponding provisional ballot. If a conditional registration is deemed effective, the elections official shall include the corresponding conditional provisional ballot in the official canvass. (Elections Code section 2170(d).)

If there are duplicate voter registrations that exist as a result of a conditional registration deemed effective, the county elections official shall cancel the previous registration(s) according to normal procedures. (Elections Code section 2172(a).)

Fraud

If it appears that a registrant may have committed fraud within the meaning of Elections Code section 18560, the elections official shall immediately notify in writing both the district attorney and the Secretary of State. (Elections Code section 2172(b).)

Notwithstanding any other law, a person who commits fraud in the execution of a conditional voter registration shall be punishable by imprisonment in the county jail for up to one year, or a fine up to twenty-five thousand dollars ($25,000), or both. Additionally, a person who commits fraud in the execution of a conditional voter registration shall be subject to a civil fine of an amount up to twenty-five thousand dollars ($25,000). An action for a civil penalty may be brought by the Secretary of State or any public prosecutor with jurisdiction. (Elections Code section 2173(a), (b).)

CVR Guidance Document

The VoteCal team, with the assistance of the CACEO Business Process Committee, created and finalized a CVR guidance document, which outlines the business processes associated with VoteCal and CVR. The CVR guidance document is attached to this CCROV.

CACEO CVR Committee's FAQs

The CACEO CVR Committee gathered together to work through the Elections Code and numerous scenarios under CVR. The end result was a deeper understanding of how CVR will work in a single county election (i.e., a municipal election conducted by a county) in comparison to an election covering more than one county (i.e., a multi-jurisdictional municipal election conducted by more than one county and a statewide election). This committee created Frequently Asked Questions (FAQs) that are attached to this CCROV.

Other Issues

Some issues that were not addressed in the FAQs are set forth below:

- **Q:** Will CVR voters use the same Voter Registration Form as other voters?

  A: Yes.

- **Q:** Will the CVR provisional ballot envelopes look different than other provisional ballot envelopes?

  A: The CVR provisional ballot envelopes should look visibly different from other provisional ballot envelopes. Ideally, the CVR provisional ballot envelope would be a different colored envelope, however, a stamp or other marking mechanism would work in the short-term.

- **Q:** If there are satellite locations, would there need to be print-on-demand ballots and precincting abilities/access to the county's local Election Management System (EMS)?

  A: Yes, otherwise, the satellite location must have all ballot styles available in addition to the county EMS to conditionally register a voter.

  If a county intends to use a satellite office(s) for CVR, the county should notify the Secretary of State no later than 14 days prior to the election. The Secretary of State will post that information on the Secretary of State website.

If you have any questions regarding implementation, please contact Rachelle Delucchi at Rachelle.Delucchi@sos.ca.gov or Robbie Anderson at Robbie.Anderson@sos.ca.gov.

If you have any technical questions, please contact the VoteCal Help Desk at (888) 868-3225 or via email at VoteCalHelp@sos.ca.gov.

Frequently Asked Questions
CACEO CVR Committee

General

1.   What is the definition of a CVR voter?

     Answer: A CVR voter is someone who registers and is issued a CVR provisional ballot E-14 through Election Day in the office of the county elections official or at a satellite location designated by the county elections official.

2.   Can a polling place be a satellite location designated by the county elections official for CVR?

     Answer: No.

3.   Is CVR allowed at a polling place?

     Answer: No. CVR voters must register and vote a CVR provisional ballot at the permanent office of the county elections official or a designated satellite office. However, pursuant to Elections Code section 14311(a), a voter who has moved from one address to another within the same county and who has not reregistered to vote at that new address may cast a vote (i.e., polling place provisional) at the polling place at which he or she is entitled to vote.

4.   Should a CVR voter ever be added to the polling place official roster?

     Answer: No. The CVR voter must vote a CVR provisional ballot in the office of the county elections official or at a satellite location designated by the county elections official.

5.   The voter registration for a CVR voter has not been verified through VoteCal/EMS. Should the CVR voter be issued a CVR provisional ballot without verification?

     Answer: Yes. The CVR provisional ballot will not be counted until the verification process is complete and all voter eligibility requirements are met.

6.   Is a person allowed to take the voter registration form with them to complete and return at a later date?

      Answer: Yes. If the person returns the voter registration form in person by Election Day, it will be processed and a CVR provisional ballot will be issued at that time. If the person returns the voter registration form after Election Day, the registration will be processed for future elections.

7.   Can a person register by any means, including online, E-14 through Election Day at home and then come into the county elections office and request a CVR provisional ballot?

      Answer: Yes. Elections Code section 2170(a) requires the CVR registrant to deliver a properly executed affidavit of registration to the county elections official. A registrant who registers online is effectively delivering the affidavit to the county elections official. As long as the county elections official has the properly executed affidavit of registration, a CVR provisional ballot can be issued.

      If the person submitted the application online and it is has been not been processed, is pending a signature, or is otherwise not readily accessible to the county elections official when the person goes into the county elections office, the elections official may ask the person to complete a paper application in the office.

8.   Can a person register online E-14 through Election Day and request a CVR provisional ballot be sent to them in the mail (similar to a voter already registered requesting a VBM ballot)?

      Answer: No. The CVR voter must be issued a CVR provisional ballot in the office of the county elections official or designated satellite location on or before Election Day.

9.   A person submits a registration containing a residence address that can't be immediately precincted. This scenario could include voters who do not have a permanent residence (e.g., homeless). How does the county elections official determine the correct ballot type to issue?

      Answer: This scenario could occur now for a voter registering and requesting a VBM ballot at E-29 through E-15. County elections officials should already have an internal procedure established to cover this scenario. If the correct precinct can't be immediately established, the county elections official may determine the ballot type based on the

general location within the county of the voter's residence address (this assumes the voter is at the counter to question).   Prior to the CVR provisional ballot being counted, the county elections official must determine the correct precinct and the CVR provisional ballot verified pursuant to Elections Code section 14310.

10.   A CVR voter is currently registered at a different address in the same county or in another county. Is this a failsafe voter under the provisions of Elections Code section 14311, which allow provisional voting at a polling place or the county elections office on Election Day?

Answer: No. Any voter that registers E-14 through Election Day in the office of the elections official or satellite location is a CVR voter. A CVR voter that registers for any reason is given a CVR provisional ballot at the office of the county elections official or designated satellite location.

11.   A CVR voter's record is identified in VoteCal/EMS and the record has been appropriately canceled. Should a CVR provisional ballot be issued?

Answer: Yes. If the only record on the voter is a canceled record, it is as if the voter was not registered. Any voter who has a registration in canceled status may register E-14 through Election Day at the office of the county elections official or a designated satellite location and receive a CVR provisional ballot.

12.   With voter registration now being continuous E-14 through Election Day – what is the need for the 15-day cutoff for regular registrations?

Answer: The 15-day cutoff is still important for determining which voters are to be included on polling place rosters. Voters who register by the 15-day close of registration will be included on the official roster and are allowed to vote at the polls. Voters who register at the county elections office or a designated satellite location E-14 through Election Day are CVR voters and must vote a CVR provisional ballot.

13.   A voter is issued a Democratic party VBM ballot at E-29 days and that ballot has an "Accepted"[1] ballot return status in VoteCal/EMS. At E-14 the voter completes a CVR changing their party to Republican in the same

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[1] For purposes of this memo, when indicating that a ballot has been accepted, the term "accepted" is when a ballot is returned and is essentially ready to be opened and counted. A vote-by-mail ballot/provisional ballot is considered "accepted" when it is returned in a signed envelope and the signature is deemed valid/good. As a rule, the first ballot in and "accepted" will be counted; all subsequent ballots will be rejected.

county.   This scenario could also occur when a CVR voter changes their party registration in another county. Should the elections officials retrieve the "Accepted" Democratic ballot and clear/void the "Accepted" ballot return status in VoteCal/EMS?

Answer: No. Once the voter has an "Accepted" ballot return status in any county, that ballot has been cast and cannot be retrieved.   This process is consistent with voters processed at the polling place. Once the ballot has been dropped in the ballot box - the ballot cannot be retrieved.

14. A CVR voter completes a voter registration and the VoteCal/EMS indicates that the voter has been issued a Vote-by-Mail (VBM) ballot in County A. Should County B issue a CVR provisional ballot to the voter?

Answer: Yes. Many voters have permanent VBM status and these ballots are mailed as early as E-29.

15. A CVR voter has a VBM ballot return status of "Accepted" in VoteCal/EMS from County A. Should County B issue the voter a CVR provisional ballot?

Answer: County B should tell the voter that they have already voted in County A. If the voter insists – County B may issue a provisional ballot to the voter – but it will not be counted.

Elections Code section 14312 states, "this article shall be liberally construed in favor of the voter." County election officials have relied on this section to lean in favor of the voter by providing a provisional ballot and making the final determination during the official canvass. This eliminates unnecessary confrontation and reduces the potential for disenfranchising a voter. This is how poll workers have been instructed. This practice should be extended to the voters at county elections office counters or designated satellite locations for CVR provisional ballots.

16. A CVR voter has multiple CVR registrations across different counties at E-14 through Election Day. When will the older registrations be canceled?

Answer: Previous registrations are cancelled in VoteCal/EMS immediately. VoteCal/EMS only allows a single record per voter and records are updated in real time.

CVR Provisional Ballot Return

17.   When should CVR provisional ballot returns be entered into VoteCal/EMS?

       <u>Answer</u>: CVR provisional ballots should be entered into VoteCal/EMS immediately upon return by the voter.

18.   A voter returns a VBM ballot from County A and a CVR provisional ballot from County B. Which ballot should be counted?

       <u>Answer</u>: The first county with the ballot return status of "Accepted" in VoteCal/EMS will count that ballot.

       <u>Scenario 1</u>: If the VBM ballot is returned before the voter's registration has moved from County A to B, then the VBM ballot will be marked accepted in the County A's EMS and its status sent to VoteCal. This accepted ballot then causes the CVR provisional ballot to be challenged when it is received in County B.

       <u>Scenario 2</u>: If the VBM ballot is returned after the voter's registration has moved from County A to County B, then the VBM will be flagged by the EMS when it is processed because the voter's registration in County A is now cancelled. County A can then investigate whether the voter has already cast a ballot in County B. If not, County A can accept the VBM ballot; if a ballot has already been accepted in County B, then the VBM ballot in County A is voided and cannot be accepted in County A.

       <u>Scenario 3</u>: Once the voter's registration has moved to County B, then County B will have all of the voter participation history and will be able to make a determination of whether or not to accept the CVR provisional ballot when it is received.

19.   A voter in County A is issued and votes a VBM ballot. The voter moves to County B at E-14 and registers as a CVR voter and is issued a CVR provisional ballot. The voter insists that his/her ballot in County B be counted (wants to vote on the issues in his/her new county).   Can the CVR provisional ballot in County B be counted instead of the VBM ballot in County A?

       <u>Answer</u>: Yes - if the CVR provisional ballot in County B is entered with an "Accepted" ballot return status in VoteCal/EMS prior to the VBM ballot in County A being entered with an "Accepted" ballot return status. These ballots follow the same scenarios detailed in Question/Answer 18.

20.   A voter is registered in County A and is not a VBM voter. County A generates the official roster for their polling places. The voter's name is included on the roster for County A. Subsequently the same voter registers in County B at E-6 and is issued a CVR provisional ballot. The CVR provisional ballot is returned by the voter and entered into VoteCal/EMS in County B. How will election officials ensure that the voter does not return to County A and cast a second ballot by voting at the polls?

Answer: When the voter returns the CVR provisional ballot in County B, and the return information is entered into the county's EMS, the EMS in County B will flag the returned CVR provisional ballot as challenged (red light) with a possible duplicate voting status. County A will receive a report of all poll based voters (non-VBM) who have reregistered in another county and had their registrations cancelled in County A. In this scenario, County A should establish internal procedures to remove the voter's name from the roster index at the polls whenever possible. The frequency and timing of this procedure should be determined by the county elections official.

During the canvass, County B will need to research voter activity in County A to confirm that a ballot was not cast at the polls and make the determination of whether to count the CVR provisional ballot. Once voter history is final statewide, VoteCal/EMS will identify the voters who have voted twice.

21.   Under what scenarios will a county elections official be required to conduct further research in order to accept a CVR provisional ballot?

Answer:
- The voter is listed on an official roster in the same or other counties.
- The CVR provisional ballot envelope is not signed.
- The voter is not a high confident match in VoteCal.

22.   Under what scenarios will a county elections official not accept a CVR provisional ballot?

Answer:
- The voter has already returned an "Accepted" VBM or CVR provisional ballot in the same or other counties.
- The voter voted at a poll in the same or other county.
- The signature on the CVR provisional envelope does not match the signature on the registration affidavit.

- The voter's record is in a pending status pursuant to California Administrative Code section 20108.25 (Deficient Registration Records) and Elections Code section 2150, which means that the registration does not contain the facts necessary to determine eligibility to vote, including name, place of residence and date of birth.
- A provisional ballot was processed and accepted in the same or another county.

23. A voter is issued a VBM ballot in County A. This voter then registers as a CVR voter in County B and votes the CVR provisional ballot. The CVR provisional ballot in County B is accepted and counted as the registration in County A is cancelled and the unreturned VBM ballot is voided. The voter then returns to County A on Election Day, goes to the polls, surrenders the VBM ballot and votes a live ballot. What should be done in this situation?

    Answer: The voter should be referred to the District Attorney for voting twice.

24. If a CVR voter attempts to vote twice, does County A or County B make the referral for prosecution?

    Answer: The County in which the voter cast the second ballot would make the referral.

25. After the close of registration, the elections official continues to process timely registrations that are received in the office of the county elections official on or before E-15 or that are postmarked by E-15. The county elections official generates official rosters for polling places sometime between E-14 and Election Day. If the registrations for CVR voters are being processed E-14 through Election Day, how does VoteCal/EMS ensure that the names of the CVR voters are not included in the official rosters for polling places?

    Answer: The EMS can then provide a list of cancelled registrations to be removed from the official poll rosters prior to Election Day. Voters who re-register on Election Day may still be on the official roster for the poll on Election Day. These voters' CVR provisional ballots will need to be researched as indicated directly above.

26. Can a county begin processing and counting CVR provisional ballots prior to Election Day in a manner similar to how VBM ballots are processed prior to Election Day?

Answer: Yes. Current law allows for CVR provisional ballots to be processed and counted in accordance with the vote-by-mail provisions of the Elections Code commencing with section 15100, which allows for vote-by-mail ballots to be processed beginning on the 10th business day prior to the election.

27. Can cities/municipalities who conduct their own election do CVR?

    Answer: No. Elections Code section 2170 specifically refers to the county elections official.

28. A permanent VBM voter is issued a VBM ballot at E-29 in a presidential primary election. The voter returns the VBM ballot and it is entered into VoteCal/EMS with an "accepted" ballot return status at E-20. The voter then reregisters (in the same county) at E-14 under a different political party and insists that he/she be allowed to cast a ballot with the new political party status. Should the county elections official attempt to retrieve the previously voted and accepted VBM ballot and have it voided so that the E-14 CVR provisional ballot can be counted?

    Answer: No. The VBM ballot received at E-20 has already been cast and should not be removed from the population of received ballots. The voter may be issued a CVR provisional upon registering at E-14, but the ballot will not be counted as the voter has already cast a ballot in this election.

On January 1, 2017, Assembly Bill (AB) 1436, the conditional voter registration (CVR) law, goes into effect. CVR allows a person to register to vote between E-14 through Election Day and to cast a CVR provisional ballot that will only be counted if the conditional voter registration is deemed effective. Registrants may visit a county election official's permanent office through (and including) Election Day to conditionally register to vote, obtain, and cast a CVR provisional ballot. Additionally, on Election Day county election officials may also offer conditional voter registration and voting at satellite offices (a polling place is not considered a satellite office).

The California Association of Clerks and Elections Officials (CACEO) developed a CVR FAQ (frequently asked questions) document providing additional information and highlighting specific scenarios for processing conditional voter registrations and provisional ballots. Please reference the FAQ document for additional information on CVR processing.

CVR Implementation Schedule

The CACEO CVR subcommittee, VoteCal Business Process Committee (BPC), VoteCal project team, and Election Management System (EMS) vendors have collaborated on an implementation plan for CVR. The proposed approach and schedule for implementing CVR occurs over three phases:

- Phase I – January 1, 2017. Phase I includes the minimum requirements to comply with AB 1436.
- Phase II – estimated completion by June 2017. It is anticipated Phase II will include a method of determining ballot adjudication status for other counties and a validation check from the EMS to VoteCal to determine if a CVR provisional ballot should be accepted.
- Phase III – estimated completion by December 2017. It is anticipated that Phase III will include:
    - o A validation check to VoteCal to determine if a ballot has been issued/accepted for a voter.
    - o Preventing a ballot from being issued should a ballot already been issued/accepted for a voter.
    - o Modifying the EMSs to display a message indicating a ballot has been issued/accepted for the voter.

Phase I Implementation

This document provides guidance on Phase I. Additional guidance documents for Phases II and III will be provided closer to their completion dates.

Phase I CVR VoteCal system updates include:

- Addition of a new voting method, "Conditional Voter Registration (CVR)"
- Implementation of standard CVR ballot reject reasons:
    - o Voter already voted
    - o No voter signature

- o   Non-matching signature
  - o   Ballot missing from envelope
  - o   Envelope was incomplete and/or illegible
  - o   Please contact your county for further information
  - o   (Other codes with multiple reasons)
  - o   In Review
- Addition of a new message on the online registration confirmation page of the VoteCal public access website advising voters registering between E-14 and E to visit their local county elections office to obtain a CVR provisional ballot.
- Addition of CVR provisional ballots as a voting method on the Secretary of State's My Voter Status Page
- Addition of CVR provisional ballot status and reasons on the provisional ballot page of the VoteCal public access website.

Phase I CVR EMS updates include:

- Addition of a report that identifies all CVR voters moving in or out of the county during the CVR timeframe. This report provides a list of voters who were registered in one county on E-15; then between E-14 and E they registered and cast a CVR provisional ballot in another county. Counties should generate and provide this list to the polling places as close to the election as possible so CVR provisional ballot voters are crossed off the rosters.
- The ability to send ballot processing status information to VoteCal in near real time (immediately)
- Addition of conditional voter registration voting method for EMS users for ballot status and voter participation
- Immediately store and send to VoteCal accepted and rejected status for CVR provisional ballots
- Immediately store and send to VoteCal reject reasons for rejected CVR provisional ballots
- The ability to view ballot status, for a voter, when conducting a statewide search (DIMS)
- The ability to store ballot status information for a voter, for an election (DFM)

Guidance

Voters requesting to register and vote beginning E-14 through E can register online and walk into the county elections office or they can complete a hardcopy affidavit and bring it into the county elections office or a designated satellite location. Staff enters/reviews the conditional voter registration and determines if the voter is eligible to receive a CVR provisional ballot. If the registrant is provided with and returns the CVR provisional ballot, the CVR provisional ballot should be entered into VoteCal/EMS immediately upon its return by the voter. If the ballot is returned on Election Day, the CVR provisional ballot should be held and not processed until all counties have posted poll book history.

Before providing a CVR provisional ballot, county staff should perform the following assessment:

	Yes	**No**
Is the registrant known to the local EMS?	Advise registrant of current voter status and follow local procedures	Determine if the registrant exists in VoteCal
Is the registrant known to VoteCal?	Perform list maintenance activities as necessary and verify the voter has not already returned a vote-by-mail ballot and/or does not have voter participation history prior to processing a CVR ballot (see chart below)	Provide CVR ballot.

(Review the CVR FAQ for specific scenarios documenting when it is appropriate to provide a CVR provisional ballot)

VoteCal provides an opportunity to prevent the processing of a second ballot by researching the voter's participation history before processing the ballot. If the research reveals an accepted ballot or voter participation history, for the current election, the ballot being researched should NOT be counted. In other words, the first ballot sent up to VoteCal for a particular voter should count ("First-in wins").

In order to facilitate accurate and timely processing of CVR provisional ballots, the BPC and the SOS recommend county elections officials:

1. Immediately process and send vote-by-mail (VBM) ballot history to VoteCal
2. Complete processing poll book history on or before E+14

Before processing and accepting a CVR provisional ballot that was cast on Election Day, verify that polling place history for any county the voter was previously registered in has been processed. County elections officials should perform the following assessment prior to processing a CVR provisional ballot:

Assessment	**Yes**	**No**
1. Are there any VoteCal messages for the voter? (Potential deceased, felon, or duplicate match or merge voter determine survivor)	Perform list maintenance activities, when complete go to #2.	Go to #2

Assessment	Yes	No
2. Is there voter participation history? (A polling place ballot, accepted or counted vote-by-mail ballot, accepted CVR provisional ballot in another county, or accepted provisional ballot in another county for this election)	Reject the CVR provisional ballot and identify reason in EMS.	As long as the county has verified there is not polling place history, accept the CVR provisional ballot and identify CVR as the voting method.

VoteCal Contact Information

For questions or to report issues contact the SOS VoteCal Help Desk at 888-868-3225 or email VoteCalHelp@sos.ca.gov.