

**44 CHALLENGED BALLOT PROCEDURE:**

**44.1 Purpose:** Eligibility to vote in any election is based upon the voter's employment in the unit during a specified payroll period and at the time of the election. The challenged ballot procedure affords an individual whose eligibility is an issue the opportunity to vote, while preserving the ballot until a determination is made, if necessary by the Regional Director or the Authority. See *U.S. Department of the Navy, Naval Station, Ingleside, Texas*, 46 FLRA 1011, 1024 n.9 (1992).

**44.2 Filing challenges:** Any party through its authorized observer or the Regional Director, or through his/her agent, may, for good cause, challenge the eligibility of any person to participate in the election prior to the employee voting [§ 2422.24(a)]. [CHM 44.4](#)

**44.3 Basis for challenge:** A party challenges the eligibility of a voter who may not be in the unit or employed during the specified payroll period. Examples of such challenges are based on the following grounds:

- a. Supervisory or managerial status;
- b. Employed in, or transferred permanently to, a classification outside of the unit involved in the election;
- c. Employed in a position not encompassed in the unit;
- d. Hired into the unit after the designated payroll period;
- e. Promoted out of the unit or reassigned after the designated payroll period;
- f. Employee's name is not on the list;
- g. The employee's name is on the eligibility list, but one party contests the voter's eligibility; or
- h. In a mixed pro/nonpro election, the voter insists on voting a professional ballot even though the eligibility list reflects the voter is a nonprofessional employee.

**44.4 Who may challenge:** The agent **may not** make challenges on behalf of the parties, whether or not the parties have observers present at a manual or mail ballot election. The agent makes it very clear to the parties that s/he does not assume responsibility for assuring a voter's ballot is challenged. (see [CHM 28.11.3.2](#)).

**44.4.1 Manual ballot election:**

- a. Any observer at a manual election has the right to challenge a voter for cause.
- b. The Authority agent is required to challenge any employee whose name is not on the eligibility list, regardless of whether the observers know the voter. The agent also challenges a voter if s/he knows, or has reason to believe, that the voter is ineligible to vote, even if none of the observers voices a challenge on that ground.

**44.4.1 Mail ballot election:**

In a **mail ballot election**, a party challenges the eligibility of a voter at the count and only if the ballot is returned (see [CHM 44.10](#)). An observer for the party or the party representative may challenge the eligibility of a voter who returns a mail ballot in one of two ways:

- a. Be present at the count;
- b. Stand by on the phone to answer questions, make challenges and resolve them before the count. A party representative who is on the phone during the count can challenge the eligibility of an employee who returns a ballot in one of two ways:
  - (i) The agent may be required to read the names of all employees who returned a mail ballot so that the party representative makes the challenge as s/he hears the names read; or
  - (ii) The party representative may simply read the names of those employees whom it seeks to challenge after the returned envelopes are checked in and before they are opened.

***NOTE: A party can not send a letter to the Regional Office designating those employees whom it wishes to challenge. In essence, such a request is tantamount to the agent filing the challenge on the party's***

**behalf. It is important to discuss these procedures at the election agreement meeting so that there is no confusion at the count.** See also [CHM 44.10](#).

- 44.5 When to challenge at a manual election:** An observer or the agent challenge(s) a voter's eligibility **before** the voter receives a ballot from the agent. A challenge is made immediately after the voter has given his/her name to the observers. If a party raises a challenge for the first time after the voter receives the ballot, the challenge is not entertained. **Therefore, during the pre-election observer's meeting, the agent instructs the observers carefully on the challenged ballot procedure ([CHM 39.7](#)).** See also *U.S. Army Advanced Ballistic Missile Defense Agency, Huntsville Office, Huntsville, Alabama*, Case No. 40-3672(RO), 1 Ruling on Request for Review 234 (1972), Report on Ruling Number 57, 4 A/SLMR 867 (1972).
- 44.6 Challenge ballot procedure:** An individual whose eligibility to vote is in dispute is given the opportunity to vote a challenged ballot [§ 2422.24(b)].
- 44.6.1 Marking the eligibility list:** The eligibility list is marked in a particular manner to reflect that the voter cast a challenged ballot.
- a. When an observer challenges a voter whose name appears on the included list, the observer making the challenge marks a small "c" beside his/her name. The other observers make their usual mark.
  - b. If the agent is making the challenge or the voter's name is on the excluded list, the observers all mark a small "c" next to the voter's name.
  - c. If the voter's name does not appear on the list, it is added at the bottom of the list or on a supplemental sheet and a "c" inserted by all observers.

The agent has discretion to maintain a separate list of voters challenged to facilitate obtaining information from the activity and to expedite resolving challenged ballots before the count. In large elections where there may be a significant number of challenged ballots, the list of challenged voters may be forwarded to the activity representative periodically during the election so that the information can be retrieved and made available as soon as possible after the close of the election.

**44.6.2 Completing the challenged ballot envelope:** The agent at the check-in table (or at a large election, at a separate table) fills out the information on the challenged ballot envelope, FLRA Form 1279. This information includes the voter's name, identification number, job title and reason for the challenge, the identity of the challenger and the agent's initials. If time permits, the agent may elicit specific information surrounding the voter's status. The voter initials any supplementary information.

***NOTE: In busy elections, the agent has discretion to allow the observers to fill out the challenged ballot envelope and then hand it to the agent. The agent ensures that the information is complete and accurate before allowing the voter to vote.***

**44.6.3 Instructing the voter:** The agent hands the voter the challenged ballot envelope, a secret ballot envelope and a ballot. The following is a suggested procedure to follow:

The agent instructs the voter to enter the booth and:

- a. Mark the ballot;
- b. Fold the ballot and seal it in the secret ballot envelope;
- c. Place the secret ballot envelope in the challenged ballot envelope and return to the agent without sealing it.

When the voter emerges from the voting booth, the agent asks the voter to confirm that the ballot was sealed in the secret ballot envelope and placed in the challenged ballot envelope. The agent explains to the voter that by sealing his/her ballot in the secret ballot envelope, the sanctity of the ballot is secured while allowing the parties to resolve the voter's eligibility status. **The agent responds to any concerns raised by the voter and then asks the voter to seal the challenged ballot envelope and deposit it in the ballot box.**

**44.7 Voter's name found already marked:** An employee may appear at the check-in table to vote and it is found that the name of that person has already been marked off on the eligibility list as having voted. If the employee asserts that s/he did not previously vote, the employee is allowed to cast a challenged ballot. The circumstances under which the name was marked off earlier can be determined, if necessary, in a post-election investigation. The observers add the voter's name to the list, mark it as a challenged ballot and note that there is a claim of duplicate voting.

- 44.8 Notation of potential challenges:** Observers may bring lists to the election of employees they intend to challenge. The observers may not place any marks on these lists to denote if an employee actually voted. The agent collects all lists when the polls close.
- 44.9 Merit of challenge or eligibility may not be argued:** Arguments on the merits of a challenge or a voter's eligibility are not permitted (see [CHM 39.7](#)). The challenge steps outlined above are taken quietly and quickly, and the agent makes every effort to ensure that the regular voting flow is not impeded. If an employee who is clearly ineligible insists on voting, it is easier to have the employee vote a challenged ballot rather than engage in a debate that could disrupt the election. See also [CHM 45](#) - *handling challenging situations*.
- 44.10 Mail ballot voting:** In mail ballot elections, an employee's eligibility may be challenged by a party when a ballot is returned. However, the challenge is only resolved if the ballot is returned and the challenging party is available at the count (either in person or via phone) to resolve the challenge. Thus, the actual challenge occurs when the return envelope, containing the ballot, is checked off against the eligibility list.
- 44.11 Mixed mail/manual ballot election:** In a mixed mail/manual election, if any employee to whom a mail ballot has been sent seeks to vote in the manual portion of the election, s/he may be permitted to do so, but only by challenged ballot, i.e, not on the list. In resolving the latter type of challenged ballot, if examination of the returned mail ballots reveals that the challenged voter did not vote by mail ballot, the challenge to the manually-cast ballot is withdrawn and the ballot counted. If a voter casts both a mail ballot and a challenged manual ballot, the mail ballot is declared void by the agent. The mail ballot envelope is marked "void" and the reason is noted on the envelope. The challenged manual ballot is declared valid and opened and counted.
- 44.12 Resolving challenged ballots:** The agent makes every effort to resolve challenged ballots. Challenged ballots are resolved **after the polls close and when the parties gather for the tally, but before the actual count of the ballots**. See [CHM 47.6](#) for procedures for resolving challenged ballots before the count.

