

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: September 16, 2014

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Michael Haas
Elections Division Administrator

SUBJECT: Voter Photo ID and Absentee Ballots for 2014 General Election
Voter Photo ID Guidance 2014-1

This memorandum provides guidance and direction to local election officials regarding the processing of absentee ballots which have already been mailed by municipal clerks, and absentee ballot requests which have been received without the elector's photo identification. This guidance takes into consideration the applicable law and the unique circumstances involving the reinstatement of the photo ID requirement after General Election ballots had already been distributed to satisfy requests prior to last Friday's decision of the Seventh Circuit Court of Appeals. At the time, the requests were not required to include the elector's photo ID, and clerks were permitted under existing Statutes to send ballots as soon as they were printed and available.

Neither the Photo ID Law nor the court decisions reinstating the Law specifically addressed how clerks should handle either ballots that have already been issued or absentee requests that have been submitted without a photo ID when the requirement was enjoined. It is necessary, therefore, for the G.A.B. to provide guidance to local election officials that is not specifically outlined by the Statutes. In doing so, the G.A.B. is guided by the principles of adhering as closely as possible to the language and intent of the Photo ID Law, to facilitate the ability of all qualified electors to cast ballots, and to promote orderly processes for both local election officials and voters to the extent possible when the rules have changed in the midst of an ongoing election.

These instructions ensure that the law's basic requirement is upheld so that a ballot will not be counted unless a photo ID has been submitted by each elector who is required to provide a photo ID.

Absentee Ballots Issued Prior to G.A.B. Directive to Cease Ballot Transmission

Late on Friday, September 12, 2014, following the Seventh Circuit Court's Order, the Government Accountability Board issued a communication to local election officials advising

that the G.A.B. would be providing specific instructions regarding the processing of absentee ballots that had already been issued. In the meantime, the G.A.B. advised that local clerks should not send any additional absentee ballots. After reviewing the relevant statutory provisions and considering the related procedures and the factors described above, G.A.B. staff is directing that local election officials process ballots that have already been issued as follows:

1. Determine whether any ballots sent out (including those returned) involve electors who have either submitted photo ID as part of a mail, fax, or email absentee ballot request at the February 2012 election, or who are exempt from the requirement to provide a copy of the photo ID. This latter category includes active military electors, permanent overseas electors, and confidential electors. Additionally, indefinitely confined electors satisfy the photo ID requirement simply by including the witness verification on the absentee certificate envelope.

The clerk needs to indicate on the absentee certificate envelope and the absentee ballot log for each of these electors that photo ID is not required so that election inspectors may determine whether to check for a photo ID. No further communication is required for these voters and the ballots are handled according to the regular procedures for processing absentee ballots.

2. For ballots that have been issued to electors who are required to present photo ID, the clerk must immediately contact the elector and provide notice that a copy of their photo ID must be submitted before the ballot can be processed. The elector may submit their photo ID by email or fax, or by mail with the ballot or separately, or in person at the clerk's office. The G.A.B. has drafted the attached template correspondence to be used for this purpose which will encourage electors to submit the photo ID separately from the ballot so that the clerk may record its submission, simplifying the process for election inspectors at the polling place.

The G.A.B. instructs that the notice should be delivered in writing (by mail, email, or fax), and that as an additional measure the clerk should follow up with a telephone contact. Clerks should also follow up at regular intervals before Election Day with those electors who have not submitted a photo ID for a ballot that has already been issued.

3. Regardless of the method of submission, the clerk is required to retain a copy of the photo ID in the voter's file when the request is made by mail, email or fax. The clerk must also indicate on the absentee certificate envelope and the absentee ballot log that the elector has submitted photo ID and is not required to do so in the future when requesting an absentee ballot by mail, fax, or email, unless the elector moves or changes their name.

The clerk must also keep a record that the photo ID has been submitted for that voter, by using either the Statewide Voter Registration System or other documentation. Attached are more detailed instructions regarding SVRS procedures and tools relating to the absentee ballot process.

4. For the limited number of ballots which have already been issued, G.A.B. staff has determined that the elector should have the ability to submit photo ID with the ballot or after the ballot has already been submitted. This will avoid the need for the clerk to cancel ballots that have already been sent to electors and issuing new ballots, which would result in a significant number of extra ballots being issued and needing to be tracked and accounted for.

However, if the photo ID is not submitted by 8 p.m. on Election Day, the ballot should be processed as a provisional ballot and the elector shall be required to submit the photo ID in person by 4 p.m. on the following Friday rather than by mail, email or fax. Municipal clerks will need to contact any absentee voter that had their ballot processed as a provisional to inform them of the deadline and the requirement to provide their photo ID in person at the clerk's office.

Absentee Ballot Requests Submitted Without Photo ID

Local election officials have received many absentee ballot requests that did not include the elector's photo ID, consistent with the applicable law at the time, but not complying with the reinstated Photo ID Law. Absentee ballot requests have been encouraged by independent efforts of campaigns, political parties, and other organizations. In order to conform these requests to the photo ID requirement and procedures as early in the process as possible, the G.A.B. directs that local election officials must implement the following procedures:

1. No additional ballots may be sent without the elector first submitting an acceptable photo ID. Clerks must follow the same analysis as outlined in paragraph 1.A above to determine which electors are required to submit a photo ID and mark the certificate envelopes and absentee ballot log accordingly.
2. For ballot requests that have been submitted by electors who are required to present photo ID, the clerk must immediately contact the elector and provide notice that a copy of the photo ID must be submitted before the ballot can be issued. The elector may submit the photo ID by email, fax, mail, or in person at the clerk's office. The G.A.B. has drafted the attached template correspondence to be used for this purpose.

The G.A.B. instructs that the notice should be delivered in writing (by mail, email or fax) and that as an additional measure the clerk should follow up with a telephone contact. Clerks should also follow up at regular intervals before Election Day with those electors who have not submitted a photo ID for an absentee ballot application that has already been submitted.

3. Regardless of the method of submission, the clerk is required to retain a copy of the photo ID in the voter's file. The clerk must also indicate on the certificate envelope and the absentee ballot log that the elector has submitted photo ID and is not required to do so in the future when requesting an absentee ballot by mail, fax, or email unless the elector moves or changes their name.

The clerk must also keep a record that the photo ID has been submitted for that voter, by using either the Statewide Voter Registration System or other documentation. Attached are more detailed instructions regarding SVRS procedures and tools relating to absentee ballot.

When processing absentee ballots, please keep in mind that the certificate envelopes are to be opened by election inspectors at the polling place or central count location, not by the clerk before the election.

The G.A.B. is updating forms and information as quickly as possible and will post them as soon as we can. The uniform instructions that are enclosed with the absentee ballot are undergoing

final editing and will be posted tomorrow morning. We will also continue to provide more specific reminders and guidance regarding issues related to the Photo ID Law. If you have any questions regarding these procedures, please contact the G.A.B. Help Desk at gabhhelpdesk@wi.gov or (608) 261-2028. Thank you.