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DATE: June 13, 2018

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

FROM: Meagan Wolfe, Interim Administrator
Richard Rydecki, Elections Supervisor
Michael Haas, Staff Counsel

SUBJECT: **Important Ballot Deadlines, Changes to Overseas Voting and Webinar Announcement**

This memorandum outlines two immediate changes that local election officials are required to make pertaining to temporary overseas electors, reviews important absentee ballot deadlines, and outlines additional training resources.

Changes Related to Temporary Overseas Electors

Effective for the 2018 Partisan Primary, temporary overseas electors have the right to receive an absentee ballot electronically and they may also use the Federal Write-In Absentee Ballot (FWAB) to cast their votes. The U.S. Department of Justice has authorized a lawsuit against the State of Wisconsin due to differences in the federal and state statutes related to the definition of overseas electors. To resolve the discrepancy and the litigation, the Wisconsin Elections Commission and the Wisconsin Department of Justice are executing a consent decree with the federal government to permit temporary overseas electors to receive a ballot electronically and to use the FWAB to cast their votes. This will not affect the current statutory distinction which allows temporary overseas electors to vote for all offices while restricting permanent overseas electors to vote only in contests for federal offices.

Additional information regarding recent developments and the legal issues involved is contained in the attached Commission staff memo to the Commission. In short, Wisconsin Statutes create a distinction between Wisconsin voters who are overseas permanently and have no intent to return to Wisconsin, and those who are out of the country on a temporary basis and do intend to return to the state. Temporary overseas electors may be traveling overseas on a short vacation or working on a short- or long-term basis in another country. Regardless of the length of their stay overseas, these voters are considered temporary overseas electors if they have an intent to return to Wisconsin. They may cast votes for all offices on the ballot, unlike permanent overseas electors who may vote only in contests for federal offices.

Temporary overseas electors are currently treated the same as regular absentee voters. There is no space on the voter registration application or the absentee ballot request form to identify themselves as temporary overseas electors and they are not categorized separately in WisVote. Clerks may not even realize these voters are overseas if they have asked for a ballot to be transmitted by fax or email. Under Wisconsin Statutes, clerks may not transmit a ballot to temporary overseas electors electronically, although the federal court order in the *One Wisconsin Institute* case has modified that rule so that clerks have the option to transmit ballots electronically to any absentee voter. Also, they have not been tracked as part of the absentee ballot data that the Commission has collected and transmitted to the U.S. Department of Justice to ensure that military and overseas electors have sufficient time to obtain and return absentee ballots.

Under the new federal court consent decree, if a voter self-identifies as a temporary overseas elector (having an intent to return to Wisconsin), the municipal clerk must transmit an absentee ballot electronically if the elector has requested that method of transmission. Please note that absentee ballots cannot be transmitted to temporary overseas electors through MyVote and WisVote because these voters remain subject to the Photo ID requirement which requires the clerk to first review the photo identification or confirm that one is already on file for that elector. Therefore, absentee ballot can be electronically transmitted to temporary overseas electors only by email or fax.

The second change required by the new federal court consent decree is that temporary overseas electors may now use the Federal Write-In Absentee Ballot (FWAB) to cast their votes, just as permanent overseas electors may now do. The FWAB is a backup ballot which overseas electors may download, write in candidates, and submit to their municipal clerk, and which is counted if the elector does not have time to obtain and return an official ballot. Wisconsin clerks typically receive relatively few FWAB's and temporary overseas electors are currently permitted to use them as an absentee ballot application, but not as an actual ballot. The FWAB may be viewed on the website of the Federal Voting Assistance Program in the U.S. Department of Defense at this link: <https://www.fvap.gov/uploads/FVAP/Forms/fwab2013.pdf>.

Finally, because the federal government's definition of overseas electors includes temporary overseas electors, the requests and absentee ballots of temporary overseas electors must be tracked for federal elections in the same way that ballots for permanent and overseas electors have been tracked in recent elections cycles. The reporting process is outlined below.

Please note that the rules regarding the type of ballot issued to permanent and overseas electors are not changing. Permanent overseas electors are still restricted to the federal-only ballot, while temporary overseas electors and military electors are entitled to vote for all offices.

As part of the consent decree, the WEC will provide guidance to clerks and voters, alter forms and instructions, and publicize the changes on the agency website and through a press release distributed to organizations which work with overseas electors. The changes required under the consent decree were included in legislation which passed the Assembly but did not pass the Senate in the last legislative session. The Commission will work with the Legislature and expects that the terms of the consent decree will be incorporated into future legislation.

Upcoming Ballot Deadlines for Military and Overseas Voters

Federal and state law require that you send absentee ballots to your military and overseas electors with requests on file in accordance with the deadlines set forth below. Military, Temporary Overseas and Permanent Overseas voters may request to receive their ballot via email or fax and clerks are required to honor those requests. Military and Permanent Overseas voters may also request to receive their ballot online via the MyVote Wisconsin website (myvote.wi.gov). Any requests received after the federal deadline on June 30, must be honored within 24 hours and the ballot must be sent by the method requested by the voter.

REMINDER:

- 1) If a Military, Temporary Overseas, or Permanent Overseas voter makes a request for an absentee ballot on or before Thursday, June 28, 2018, you MUST send them the requested ballot no later than
Thursday, June 28, 2018**
- 2) If a Military, Temporary Overseas, or Permanent Overseas voter makes a request for an absentee ballot on June 29 or June 30, 2018, you MUST send them the requested ballot no later than
Saturday, June 30, 2018**

In the past, there were lengthy absentee ballot reporting requirements that municipalities and the State were required to complete for the U.S. Department of Justice (USDOJ). The reporting requirements were a result of legal action taken by a federal court due to non-compliance with the deadlines by numerous Wisconsin municipalities. While we are not currently subject to these same reporting requirements, the USDOJ has again asked Wisconsin, along with all other states, to track and report information concerning all military and overseas (both permanent and temporary) absentee ballots to ensure that they are issued in accordance with the federal deadlines. Strict compliance with ballot delivery and ballot tracking deadlines will increase our ability to avoid future legal action.

Whenever any absentee ballot is requested, issued, or received, municipalities must record this information in WisVote within 48 hours. Relier municipalities have 48 hours to forward absentee ballot information to their WisVote Provider, who has an additional 24 hours to record the information. These requirements mean it is no longer sufficient to only enter absentee ballot data into an absentee log. The data must be entered into WisVote within the required timeframes.

Military and Overseas Voting Webinar

Wisconsin Elections Commission staff will be hosting a training webinar on June 20, 2018 to discuss the details of changes made to the Temporary Overseas elector procedures and outline the ballot transmission deadlines for the August 14, 2018 Partisan Primary. The webinar details are as follows:

August Primary Ballot Deadlines and Changes to Overseas Voting

June 20, 2018, 10:00 a.m. – 11:00 a.m.

Registration Link:

<https://attendee.gotowebinar.com/register/3288575898407084033>.

The Partisan Primary is a federal election that requires strict adherence to federal and state laws regarding absentee voting by military and overseas voters. Recent legal action by the federal government now requires clerks to honor requests from voters who are temporarily overseas to receive a ballot via email or fax. Temporary Overseas voters can also use the Federal Write-in Absentee Ballot (FWAB) as both a ballot request and a write-in ballot. This webinar will also discuss clerk responsibilities for the upcoming June 2018 ballot deadlines for military and overseas voters and provide information about ballot delivery methods and instructions for sending ballots via email and fax.

Thank you for your assistance in this matter. We know that you take very seriously your role in ensuring that military and overseas electors can cast their ballots. We feel confident, that with your cooperation, all military and overseas voters from Wisconsin will receive their ballot on or before the deadlines for the August 14, 2018 Partisan Primary and that we will be able to promptly submit the required absentee ballot data to the USDOJ.

If you have any questions about the changes to the requirements, or anticipate any problems with meeting the UOCAVA absentee ballot deadlines, please contact the WEC helpdesk at elections@wi.gov or (608) 266-8005.