

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into between the United States of America, through the Civil Rights Division of the U.S. Department of Justice, and the State of Arkansas, the Arkansas Secretary of State, and the Arkansas Department of Finance and Administration (“DFA”).

I. Statement of the Parties

The United States and the State of Arkansas hereby recognize the following:

1. By letter dated November 22, 2019, the United States notified the State of Arkansas that the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice had authorized litigation against the State of Arkansas and appropriate State officials to enforce Section 5(d) of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20504.
2. The Assistant Attorney General authorized litigation following an investigation in which the United States gathered evidence that established noncompliance with Section 5(d) of the NVRA.
3. The United States and the State of Arkansas share the goals of ensuring that the requirements of Section 5(d) of the NVRA are met and ensuring that Arkansas’s citizens enjoy the benefits envisioned by that provision.
4. The United States and the State of Arkansas have negotiated in good faith and hereby agree to this MOU as an appropriate means to further their shared goals.

II. National Voter Registration Act of 1993

5. The National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20501-11, includes certain requirements with respect to voter registration procedures for elections for Federal office for States covered by the Act.
6. The State of Arkansas is covered by the NVRA and is obliged to ensure compliance with its requirements. 52 U.S.C. §§ 20502(4), 20503.
7. Section 5(d) of the NVRA requires that any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license must serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved, unless the registrant states on the form that the change of address is not for voter registration purposes. 52 U.S.C. § 20504(d).

8. The NVRA defines “motor vehicle driver’s license” to include “any personal identification document issued by a State motor vehicle authority.” 52 U.S.C. § 20502(3).
9. In Arkansas, the Office of Driver Services within DFA is the State motor vehicle authority. Ark. Code § 27-16-402(a).
10. The Office of Driver Services issues two types of personal identification documents: driver’s licenses and identification cards. Ark. Code §§ 27-16-701, -805.
11. The Secretary of State is the chief election officer of the State of Arkansas. Ark. Const. amend. LI, § 5(b)(1). The Secretary is responsible for coordinating Arkansas’s responsibilities under the NVRA. 52 U.S.C. § 20509.
12. DFA is responsible for integrating voter registration into motor vehicle driver’s license transactions, including in-person and remote changes of address. Ark. Const. amend. LI, §§ 5(b)(2), 6(a), 6(b)(1)(B).

III. Terms of Agreement

NOW, THEREFORE, for full and adequate consideration given and received, the United States, through the Civil Rights Division of the U.S. Department of Justice, and the State of Arkansas, the Arkansas Secretary of State, and the Arkansas Department of Finance and Administration, agree as follows:

A. General Provisions

13. The Secretary of State and DFA shall develop and implement uniform forms, policies, and procedures to ensure that any change of address form shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes, in accordance with 52 U.S.C. § 20504(d).
14. For purposes of this MOU, the term “form” includes any process or procedure by which an Arkansas resident may change the address associated with a driver’s license or identification card.

B. Online Changes of Address

15. Within 90 days of the effective date of this MOU, in consultation with the Secretary of State, DFA shall update the change of address application on the Arkansas myDMV website to serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved, unless the registrant states that the change of address is not for voter registration purposes.

16. Within 90 days of the effective date of this MOU, the Secretary of State and DFA shall develop and implement a mechanism to transfer voter registration change of address information submitted on the Arkansas myDMV website to appropriate State election officials.
17. Within 90 days of the effective date of this MOU, in consultation with the United States, the Secretary of State and DFA shall develop and implement uniform policies and procedures necessary to comply with Paragraphs 15 and 16.

C. Change of Address by Mail

18. Within 60 days of the effective date of this MOU, in consultation with the Secretary of State, DFA shall update the Change of Address Form for Motor Vehicle and Driver's License to serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved, unless the registrant states on the form that the change of address is not for voter registration purposes.
19. Within 60 days of the effective date of this MOU, the Secretary of State and DFA shall develop and implement a mechanism to transfer voter registration change of address information submitted by mail to appropriate State election officials.
20. Within 60 days of the effective date of this MOU, DFA shall ensure that prior versions of the Change of Address Form for Motor Vehicle and Driver's License that do not comply with NVRA requirements are no longer available at state offices or on state websites.
21. Within 60 days of the effective date of this MOU, in consultation with the United States, the Secretary of State and DFA shall develop and implement uniform policies and procedures necessary to comply with Paragraphs 18 through 20.

D. Remedial Recapture

22. Within 60 days of the effective date of this MOU, DFA shall compile a list of individuals who have submitted changes of address for driver's license or identification card purposes using the myDMV online process since January 1, 2016 and transmit this list to the Secretary of State.
23. Within 90 days of the effective date of this MOU, the Secretary of State shall filter the list developed pursuant to Paragraph 22, to the extent technically feasible, to include only those individuals registered to vote at an address other than the current address associated with the voter's driver's license or identification card.
24. Within 120 days of the effective date of this MOU, the Secretary of State shall contact all voters identified pursuant to Paragraph 23 at the current address associated with each voter's driver's license or identification card, inform each voter of the discrepancy between records, and provide each voter with an application to register to vote by mail or other appropriate form that allows the voter to correct his or her address for voting purposes.

E. Reporting and Monitoring

25. Beginning on July 15, 2020, and continuing on January 15 and July 15 of each year that this MOU remains effective, the Secretary of State and DFA shall submit to the United States a compliance report for the six-month period ending December 31 and June 30, respectively.
26. The compliance report required by Paragraph 25 shall include the following components:
 - a. A summary of efforts to implement this agreement;
 - b. Copies of all new or revised NVRA policies or procedures, rules or regulations, forms, websites, advertisements, notices, and training materials updated, produced, or promulgated during the reporting period.
 - c. The number of changes of address submitted by individuals who hold an Arkansas driver's license or identification card, broken down by submissions online and all other submissions.
 - d. The number of changes of address transmitted to appropriate State election officials for voter registration purposes originating from changes of address submitted to DFA for driver's license or identification card purposes, broken down by submissions online and all other submissions.

F. Deadlines

27. Any deadline in this MOU may be extended by the consent of the parties. The United States shall not unreasonably withhold consent following a showing of good cause by the State, the Secretary of State, or DFA.

G. Enforcement

28. If at any time the United States obtains information that the State of Arkansas is, or is about to be, in breach of any of the terms of this MOU, the United States shall advise the Secretary of State, DFA, and the Arkansas Attorney General. The State shall have five business days following transmittal of such notice to respond to the United States and shall reasonably endeavor to address the full scope of the potential breach. The parties shall thereafter attempt immediately to resolve any issue of potential noncompliance.
29. If the parties are unable to agree on a resolution of the issue under the procedures set out in Paragraph 28, the United States may take appropriate action to enforce the terms of this MOU.
30. Nothing in this MOU shall prevent the United States from taking any actions required to enforce any and all other applicable provisions of the NVRA.

31. Any legal proceeding arising in connection with this MOU may be brought only in the United States District Court for the Eastern District of Arkansas, and all parties consent to venue in that court.

32. Any legal proceeding to enforce this MOU may seek specific performance of the terms therein.

H. Effective Date

33. This MOU shall be effective immediately upon the execution of the last signatory.

I. Termination

34. This MOU shall terminate 23 months from its effective date, unless extended by consent of the parties.

35. Any legal proceeding to enforce the terms of this MOU brought before the MOU's termination date shall toll the termination of the specific provisions of the MOU at issue in the enforcement proceeding during the pendency of such proceeding.

The undersigned agree to execution of this MOU.

For the United States:

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/s/ Daniel J. Freeman _____

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May 1, 2020

For the State of Arkansas, the Arkansas Secretary of State, and the Arkansas Department of Finance and Administration:

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