

MEMORANDUM OF AGREEMENT

**BETWEEN THE DEPARTMENT OF HOMELAND SECURITY,
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
AND
THE ARKANSAS SECRETARY OF STATE
REGARDING PARTICIPATION IN THE SAVE PROGRAM FOR
VOTER REGISTRATION AND VOTER LIST MAINTENANCE PURPOSES**

I. PARTIES.

The parties to this Systematic Alien Verification for Entitlements (SAVE) Memorandum of Agreement (MOA) are the Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS-USCIS), and the **Arkansas Secretary of State** (User Agency).

II. AUTHORITY.

The authorities governing this MOA include, but are not limited to, the following:

- Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, as amended.
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.
- Section 642 of Div. C, Title VI of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, as amended (8 U.S.C. §1373(c)).
- The Privacy Act of 1974, 5 U.S.C. § 552a, as amended.
- The Inter-Governmental Cooperation Act, 31 U.S.C. § 6501, et seq., as amended.
- The Federal Information Security Management Act of 2014 (Pub. L. 113-283), as amended.
- National Voter Registration Act of 1993, 52 U.S.C. § 20501, Pub. L. No. 103-31, 107 Stat. 77, as amended.
- Help America Vote Act of 2002, 52 U.S.C. § 20901, Pub. L. No. 107-252, § 303, 116 Stat. 1666, as amended.

Additionally, the authorities governing this MOA that are specific to this User Agency's request to use SAVE, include but are not limited to the following:

Arkansas Constitution of 1875, Article 3, Section 1(a)(1).

Arkansas Constitution of 1875, Amendment 51, Sections 6 & 7

Pursuant to the requirements of the Office of Management and Budget (OMB) Circular A-97, which establishes the President's guidelines for implementing the Intergovernmental Cooperation Act, 31 U.S.C. § 6501, et seq., as amended, the User Agency certifies that it cannot procure the naturalized or acquired citizenship information and immigration status information verification services requested pursuant to this MOA reasonably and expeditiously through ordinary business channels.

III. PURPOSE.

The purpose of this MOA is to establish the terms and conditions for the User Agency's participation in SAVE to verify the citizenship and immigration status information of noncitizen and naturalized or acquired U.S. citizen registrants and registered voters within User Agency's jurisdiction for **voter registration and voter list maintenance (benefit)** in the State of Arkansas.¹

SAVE verifies User Agency-provided information against DHS-accessed immigration, naturalization and acquired citizenship records. SAVE does not verify the U.S. citizenship of U.S.-born citizens. SAVE can only verify acquired U.S. citizens in certain situations.²

SAVE will provide information to the User Agency by:

- 1) Initial response (initial verification) to an on-line inquiry by the User Agency; and
- 2) Additional verification procedures, where applicable.

IV. RESPONSIBILITIES.

A. DHS-USCIS agrees to:

- (1) Provide to the User Agency, in a manner determined by DHS-USCIS, an immigration status and naturalized or acquired citizenship information verification system under SAVE;
- (2) Respond to properly submitted verification requests from the User Agency by providing the limited information noted in the **PURPOSE** section above, i.e., a verification case number and U.S. citizenship or immigration status, if any;

¹ "Participation" in SAVE is as described in the DHS/USCIS/SAVE Privacy Impact Assessment - 006. See [Systematic Alien Verification for Entitlements \(SAVE\) Program | Homeland Security \(dhs.gov\)](#).

² "Acquired citizenship" is defined as citizenship conveyed to children through the naturalization of parents or, under certain circumstances, at birth to foreign-born children of U.S. citizens, provided certain conditions are met. SAVE is only able to verify information that relates to information found in the databases accessed by the system. Accordingly, if an individual with acquired citizenship status has not applied for a Certificate of Citizenship with USCIS, the agency may not have that individual's citizenship status in its databases, and SAVE will not be able to confirm that individual's acquired citizenship status.

- (3) Process and respond to properly submitted additional verification requests³ from the User Agency. Response time to additional verification requests may vary depending upon DHS-USCIS workload, available resources, and the registrant's or registered voter's specific circumstances;
- (4) Provide to the User Agency operating instructions necessary for the User Agency to designate users within the purview of the User Agency;
- (5) Provide to the User Agency SAVE point of contact information for questions or problems regarding the User Agency's participation in SAVE;
- (6) Provide access to training and information regarding the laws, policies, and procedures that govern verifying, safeguarding, using, maintaining, and disclosing certain citizenship and immigration status information;
- (7) Provide the User Agency access to additional verification processes;
- (8) Recover no more than its actual costs. SAVE transaction charges are found on the SAVE website. SAVE transaction charges and methods of payment are subject to change upon prior written notification to the User Agency;
- (9) Bill and collect reimbursements for SAVE usage by submitting invoices to the User Agency's payment office at the address specified in writing by the User Agency, with a copy furnished to the User Agency POC. DHS-USCIS may submit invoices when the work is completed or as otherwise authorized. The User Agency's High Level Identifier, tax identification number, and associated dollar amounts will be referenced on all invoices; and
- (10) Promptly initiate year-end and closeout adjustments once final costs are known.

B. User Agency agrees to:

(1) SAVE System Use.

- (a) Provide the necessary information in the manner SAVE requires to respond to User Agency requests for verification of immigration status or naturalized or acquired citizenship information, including:
 - one or more citizenship or immigration enumerators (for example, Alien Registration Number/USCIS Number, Certificate of Naturalization Number, or Certificate of Citizenship Number);
 - first and last name; and
 - date of birth.

³ "Additional verification" is as described in the DHS/USCIS/SAVE Privacy Impact Assessment - 006. See Systematic Alien Verification for Entitlements (SAVE) Program | Homeland Security (dhs.gov).

User Agency must institute additional verification when required by SAVE for any registrant or registered voter that does not verify as a naturalized or acquired citizen on initial verification, including in all cases where the User Agency receives any SAVE response other than that of naturalized or acquired citizen. If SAVE does not verify the registrant or registered voter as a naturalized or acquired citizen after conducting additional verification, the User Agency must contact the registrant or registered voter to obtain proof of citizenship, if necessary under the circumstances to fulfill the purpose of this MOA and in accordance with the provisions of this MOA and Federal and State law.

User Agency consents to electronic-only submission of all verification requests and additional information, including all information submitted for SAVE additional verification. SAVE will reject non-electronic (i.e., paper or fax) verification requests and information submissions.

(b) Ensure and report to DHS-USCIS that, before using SAVE and whenever subsequently required by DHS-USCIS (e.g., for SAVE system enhancements), all users performing verification procedures complete SAVE-required training, including: reviewing the SAVE Program Guide, taking the latest version of SAVE tutorial(s), and maintaining a working knowledge of requirements contained therein and in this MOA, as updated. These instructional materials will address the policies and procedures governing use of the program, including (1) program access, (2) verification procedures, (3) disclosure of information and privacy protections, (4) non-discrimination requirements, and (5) records correction procedures for registrants and registered voters;

(c) Ensure users are provided with, maintain, and use SAVE User IDs and access SAVE only while they need to perform verification procedures and promptly terminate user access as requested by SAVE, if the user separates from the User Agency, or otherwise no longer needs SAVE access;

(d) Ensure all users performing verification procedures only use SAVE with respect to verification of registrant or registered voter naturalized or acquired citizenship information or immigration status information for the specified benefit and comply with all other requirements contained in the SAVE Program Guide and other SAVE guidance, the SAVE tutorial, and this MOA, and updates to these requirements;

(e) Ensure that all Users performing verification procedures have contact information for SAVE and DHS-USCIS;

(f) Ensure all users perform any additional verification procedures SAVE requires and/or the registrant or registered voter requests after the User Agency initiates a verification request;

(g) Use any information provided by DHS-USCIS under this MOA solely for lawful purposes, namely the purpose above of verifying naturalized or acquired citizenship information and immigration status information of noncitizen and naturalized or acquired U.S. citizen registrants and registered voters within User Agency's jurisdiction for determining eligibility for voter

registration in the State of Arkansas, and limit use of such information in accordance with this and all other provisions of this MOA;

(h) Comply with the requirements of the Federal Information Security Management Act of 2014 (Pub. L. 113-283) and OMB guidance as applicable to access, electronic storage, transport of records between agencies, and the internal processing of records received by either agency under the terms of this MOA;

(i) Maintain physical, administrative and technical safeguards for SAVE information and access methods to ensure that it is not used for any other purpose than described in this MOA and protect its confidentiality, including ensuring that it is not disclosed to any unauthorized person(s) without the prior written consent of DHS-USCIS;⁴

(j) Comply with the Privacy Act of 1974, 5 U.S.C. § 552a, as amended, and other applicable laws, regulations, and policies, including but not limited to all OMB and DHS privacy guidance, in conducting verification procedures pursuant to this MOA, and in safeguarding, maintaining, and disclosing any data provided or received pursuant to the MOA. Information shared as a result of this MOA shall be considered DHS-USCIS information. Responses to third party requests for such information should be consistent with federal law and DHS policy, including but not limited to the provisions of the Freedom of Information Act, 5 U.S.C. § 552;

(k) Comply with federal laws prohibiting discrimination against registrants or registered voters and discriminatory use of the SAVE Program based upon the national origin, color, race, sex, religion, age or disability of the registrant or registered voter, including but not limited to the National Voter Registration Act, 52 U.S.C. § 20501 et seq., as amended; the Help America Vote Act, 52 U.S.C. § 20901, as amended; the Voting Rights Act, 52 U.S.C. § 10301 et seq., as amended; and the Civil Rights Act, 52 U.S.C. § 10101 et seq., as amended. In accordance with the Rehabilitation Act of 1973, as amended, and related agency implementing regulations, User Agency will provide reasonable modifications for individuals with disabilities to ensure effective communication;

(l) Comply with the requirements of Executive Order 13166 ("Improving Access to Services for Persons with Limited English Proficiency," 65 Fed. Reg. 50,121 (Aug. 16, 2000)), to take reasonable steps to provide limited English proficiency (LEP) persons interacting with their respective agency with meaningful access to federally conducted programs and activities, including services and benefits, in accordance with LEP guidance set forth by the U.S. Department of Justice and any other applicable authorities;

(m) Provide written notice to registrants and registered voters that any information they provide may be subject to verification. User Agency will inform in writing each registrant or registered voter covered by this Agreement that their citizenship or immigration status may be verified against federal immigration records;

⁴ Each registrant or registered voter seeking access to information regarding themselves may do so by submitting a written signed request to DHS-USCIS. Instructions for submitting such requests may be found on the Freedom of Information/Privacy Act page of www.uscis.gov.

(n) Provide all registrants or registered voters who are not verified as citizens based solely or in part on the SAVE response with the opportunity to use the User Agency's existing process to appeal the denial and to contact DHS-USCIS to correct their records prior to a final decision, if necessary; and

(o) Provide or cause to be provided to all individuals with respect to whom User Agency or another agency intends to deny registration or proceed with any action removing or limiting the right to vote of an individual from the official list of registered voters, or with civil or criminal enforcement action, because or based in whole or in part upon any information received pursuant to this MOA, with any right to notice and hearing or other due process available under Arkansas or other applicable law;

(p) Refrain from using SAVE, or assisting any person or entity, to comply with the employment eligibility verification requirements of section 274A of the Immigration and Nationality Act, 8 U.S.C. § 1324a.

(2) Monitoring and Compliance.

(a) Provide DHS-USCIS with the current e-mail, U.S. postal service address, physical address, name, and telephone number of the User Agency authorized representative for any notifications, questions or problems that may arise in connection with the User Agency's participation in SAVE and with notification of changes in the use of SAVE by the User Agency;

(b) Notify DHS-USCIS immediately whenever there is reason to believe a violation of this MOA has occurred;

(c) Notify DHS-USCIS immediately whenever there is reason to believe a breach of personally identifiable information has occurred as a result of User Agency action or inaction pursuant to OMB Memorandum M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information" or successor guidance;

(d) Allow DHS-USCIS to monitor and review all records and documents related to the use, abuse, misuse, fraudulent use or improper use of SAVE by the User Agency, including, but not limited to original registrant or registered voter consent documents required by the Privacy Act, 5 U.S.C. § 552a or other applicable authority;

(e) Allow DHS-USCIS to conduct desk audits and/or site visits to review User Agency's compliance with this MOA and all other SAVE-related policies, procedures, guidance and laws applicable to conducting verification and safeguarding, maintaining, and disclosing any data provided or received pursuant to this MOA;

(f) Allow DHS-USCIS to perform audits of User Agency's user IDs use and access, SAVE Training Records, SAVE financial records, SAVE biographical information, system profiles and usage patterns and other relevant data;

(g) Allow DHS-USCIS to interview any and all User Agency SAVE system users and any and all contact persons or other personnel within the User Agency regarding any and all questions or problems which may arise in connection with the User Agency's participation in SAVE;

(h) Allow DHS-USCIS to monitor system access and usage and to assist SAVE users as necessary to ensure compliance with the terms of this MOA and SAVE requirements by its authorized agents or designees; and

(i) Take corrective measures in a timely manner to address all lawful requirements and recommendations on every written finding including, but not limited to, those of DHS-USCIS regarding waste, fraud, and abuse, and discrimination or any unauthorized use or misuse of the SAVE system or SAVE data, non-compliance with the terms, conditions and safeguards of this MOA, SAVE procedures or other applicable law, regulation or policy.

(3) Reimbursement.

(a) The User Agency certifies that, each fiscal year, it will obligate funds sufficient to reimburse DHS-USCIS under a current appropriation for the coming year.

(b) Pay the transaction charges reflected on the SAVE website, which along with methods of payment are subject to change upon prior written notification to the User Agency.

(c) Pay in full within 30 days of the invoice date. The User Agency will pay any applicable sales, use, excise, and like taxes, where required by law, that are stated on each invoice. Regardless of payment type, the User Agency will clearly indicate the User Agency High Level Identifier with remittance; and

(d) Promptly discuss and resolve issues and questions with DHS-USCIS regarding payments. Delinquent payments shall be handled in accordance with the Debt Collection and Improvement Act of 1996, 31 U.S.C. § 3701. Interest on all unpaid balances shall be charged at the rate of the current value of funds to the United States Treasury effective on the date of the invoice. The rate is the Treasury tax and loan rate. It is published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Handling charges will accrue at monthly rates of \$5.00 for each of the first two months of delinquency and \$10.00 for each month thereafter. In addition to interest and handling charges, if DHS-USCIS does not receive payment within 90 days of the invoice, 6% per annum additional interest will be assessed. Charges will be computed from the date of the invoice and will accrue monthly with the applicable interest and handling charges. In the case of any late payment, the amount received will be applied in this sequence: (1) to any accrued penalty and handling charges; (2) to any accrued interest; and (3) to outstanding principal. Failure to timely pay may result in suspension or termination of services.

V. POINTS OF CONTACT.

USCIS SAVE

U.S. Citizenship and Immigration Services
Department of Homeland Security

Attn: SAVE Operations
5900 Capital Gateway Drive, Mail Stop 2620
Camp Springs, MD 20588-0009
Phone: (877) 469-2563
E-mail: SAVeregistration@uscis.dhs.gov

USER AGENCY

Spencer Ammons
Election Security Specialist
Arkansas State Capitol, Suite 256
500 Woodlane St.
Little Rock, Arkansas 72201
501-682-6792
Spencer.ammons@sos.arkansas.gov

VI. OTHER PROVISIONS.

A. MOA Responsibilities. Consistent with applicable laws, regulations, and policies, and the availability of User Agency resources, User Agency will commit personnel and resources sufficient to support this MOA. Only authorized employees, agents, or designees of DHS-USCIS and the User Agency will carry out the requirements of this MOA. In carrying out these responsibilities, they will operate within the scope of applicable regulations, specifically delegated authorities, the program authorities and funding limitations and terms and conditions of this MOA. The User Agency will also ensure that all local officials responsible for voter registration use information obtained from SAVE and provided by the User Agency in accordance with the terms and conditions of this MOA.

B. Determining Benefit Eligibility. This MOA is limited to the provision of verification services. DHS-USCIS will verify limited citizenship and immigration status information but will not recommend to the User Agency whether to issue the benefit. The DHS-USCIS response is not intended to be, and should not be construed as, an opinion on the part of DHS-USCIS or the United States regarding any right or benefit under any program administered by the User Agency. The User Agency has the responsibility to determine the registrant's or registered voter's eligibility for the benefit.

C. Criminal Penalties.

(1) DHS-USCIS reserves the right to use information from the User Agency for any purpose permitted by law, including, but not limited to, the prosecution of violations of Federal administrative or criminal law.

(2) The User Agency acknowledges that the information it receives from DHS-USCIS is governed by the Privacy Act of 1974, 5 U.S.C. Section 552a(i)(1), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOA may be subject to criminal penalties.

D. Third Party Liability.

(1) Each party to this MOA shall be solely responsible for its own defense against any claim or action by third parties arising out of or related to the execution and/or performance of this MOA, whether civil or criminal, and retain responsibility for the payment of any corresponding liability.

(2) Nothing in this MOA is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees or the User Agency.

E. Disputes. Disagreements on the interpretation of the provisions of this MOA that cannot be resolved between SAVE and the User Agency point of contact should be provided in writing to the authorized officials at both agencies for resolution. If settlement cannot be reached at this level, the disagreement will be elevated to the next level in accordance with DHS-USCIS procedures for final resolution.

F. Conflicts. This MOA constitutes the full MOA on this subject between DHS-USCIS and the User Agency. Any inconsistency or conflict between or among the provisions of this MOA will be resolved in the following order of precedence: (1) this MOA and (2) other documents incorporated by reference in this MOA (e.g., transaction charges).

G. Severability. Nothing in this MOA is intended to conflict with current law or regulation or the directives of DHS, DHS-USCIS, or the User Agency. If a term of this MOA is inconsistent with such authority, then that term shall be invalid but, to the extent allowable, the remaining terms and conditions of this MOA shall remain in full force and effect. In the event of a conflict that prevents either party from fulfilling its obligations, this MOA may be immediately canceled without providing the 30-day notice period referenced in Section IX.

H. Assignment. The User Agency may not assign this MOA, nor may it assign any of its rights or obligations under this MOA. To the extent allowable by law, this MOA shall inure to the benefit of, and be binding upon, any successors to DHS-USCIS and the User Agency without restriction.

I. Waiver. No waiver by either party of any breach of any provision of this MOA shall constitute a waiver of any other breach. Failure of either party to enforce at any time, or from time to time, any provision of this MOA shall not be construed to be a waiver thereof.

J. Compliance with Other Laws. Nothing in this MOA is intended or should be construed to limit or affect the duties, responsibilities, and rights of the User Agency under the National Voter Registration Act, 52 U.S.C. § 20501 et seq., as amended; the Help America Vote Act, 52 U.S.C. § 20901 et seq., as amended; the Voting Rights Act, 52 U.S.C. § 10301 et seq., as amended; the Civil Rights Act, 52 U.S.C. § 10101 et seq., as amended; and all applicable state law.

VII. EFFECTIVE DATE.

This MOA shall be effective when the DHS-USCIS authorized official and User Agency authorized official have both signed the MOA. This MOA shall continue in effect until and unless modified or terminated in accordance with the provisions of this MOA.

VIII. MODIFICATION.

A. This MOA is subject to periodic review by DHS-USCIS, its authorized agents or designees, and, if necessary, periodic modification and/or renewal to assure compliance with current law, policy, and standard operating procedure(s). This MOA constitutes the complete MOA between the parties for its stated purpose, and no modification or addition will be valid unless entered into by mutual consent of both parties evidenced in writing and signed by both parties and appended to this agreement.

B. DHS-USCIS may accomplish unilateral administrative modifications to revise transaction charges and methods of payment, effective upon prior written notification to the User Agency. Either party may accomplish a unilateral administrative modification to change POC information. A written bilateral modification (i.e., agreed to and signed by authorized officials of both parties) is required to change any other term of this MOA.

IX. TERMINATION.

Either party may terminate this MOA at any time by providing 30 days written notice of intent. DHS-USCIS and User Agency, when feasible, will consult with the other party and attempt to reconcile issues before terminating this MOA. Notwithstanding any other provision in the MOA, DHS-USCIS may suspend or terminate this MOA, and thereby the Agency's use of SAVE for voter registration and voter list maintenance purposes, without prior notice if deemed necessary because of a requirement of law or policy, upon a determination by DHS-USCIS that there has been a breach of system integrity or security by the User Agency or a failure by the User Agency to comply with established procedures or legal requirements, including but not limited to failure to pay.

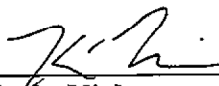
Written notices shall be sent to the addresses of the POCs listed herein and shall be effective upon receipt. Either party may change its POC by written notice to the other party.

The foregoing, in conjunction with the incorporated references, constitutes the full agreement on this subject between DHS-USCIS and the User Agency. This MOA supersedes all previous agreements governing the provision of verification services related to voter registration and voter list maintenance. Those agreements are explicitly acknowledged to be null and void.

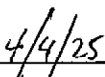
The undersigned represent that they are authorized to enter into this MOA on behalf of DHS-USCIS and the User Agency, respectively.

Amy J. Wheelock
Chief, Verification Division
U.S. Citizenship and Immigration Services
Department of Homeland Security

Date



Kevin Niehaus
Chief Deputy Secretary of State
Arkansas Office of the Secretary of State
State of Arkansas



Date