

**MEMORANDUM OF AGREEMENT**

**BY AND BETWEEN**

**THE UNITED STATES**

**AND**

**THE STATE OF ILLINOIS, DEPARTMENT OF HUMAN SERVICES**

This Memorandum of Agreement is made and entered into on this 15<sup>th</sup> day of December, 2008, by and between the Illinois Department of Human Services and the United States. Pursuant to this Agreement, the Parties agree as follows:

**A. INTRODUCTION**

On September 23, 2008 the United States Department of Justice ("DOJ") informed the Illinois Department of Human Services ("DHS") by letter of its intent to file an action pursuant to the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg *et. seq.*, and 28 U.S.C. §2201. The threatened action is based on an investigation by the United States of the State of Illinois. DOJ believes it has obtained evidence of DHS' substantial non-compliance with Section 7 of the NVRA ("Section 7") by failing to provide the required voter registration services at DHS' Human Capital Development ("HCD") Family Community Resource Centers ("FCRCs"). DHS represents that it has taken actions to achieve compliance and that it is committed to complying fully with Section 7. The United States acknowledges that DHS has engaged in efforts to ensure compliance and accepts as true DHS' commitment to fully comply with Section 7.

The parties, through counsel, have conferred extensively and agreed that it is in the best interest of all parties that this action be resolved without the expense of protracted, costly and potentially divisive litigation. Moreover, the parties seek to ensure that all FCRCs subject to Section 7 offer voter registration opportunities in compliance with the NVRA. Accordingly, in consideration of the DOJ's forbearance of suit and the other listed consideration, the parties have entered into this Memorandum of Agreement concerning standards and monitoring of compliance with Section 7 of the National Voter Registration Act of 1993 ("Agreement") as an appropriate resolution of the threatened action.

**B. RECITALS**

The parties agree that:

1. The Federal Court has jurisdiction to enforce the provisions of Section 7 and the Federal Court would have jurisdiction of an action brought by the United States to enforce any of the terms of this Agreement pursuant to 28 U.S.C. §§1331, 1345, and 2201, and 42 U.S.C. §1973gg-9.
2. DHS is subject to the requirements of Section 7.
3. DHS has the authority to require that all FCRCs comply with Section 7.

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4. It is DHS' goal to ensure that all FCRCs subject to Section 7 offer voter registration opportunities in compliance with Section 7. In an effort to achieve that goal, this Agreement focuses on Section 7 of the NVRA and DHS' responsibilities under that statute to perform the following activities:
  - a. Distribution of applications for voter registration for elections for Federal office with each application, recertification/renewal or change of address;
  - b. Provision of a form to applicable DHS clients that contains the information required by Section 7(a)(6)(B) of the NVRA with each application, recertification/renewal or change of address concerning DHS' provision of public assistance and services to persons with disabilities;
  - c. Provision of assistance in filling out voter registration applications; and
  - d. Acceptance of completed voter registration applications and the transmittal of the completed voter registration applications to the appropriate election authorities.

**C. DEFINITIONS**

1. "Employee" means a person hired or an agent employed by DHS to provide public assistance services to residents of Illinois, but excludes DHS contractors who are not based at an FCRC.
2. "Information about voter registration" or "voter registration opportunities" means information about the opportunity to apply to register to vote, the availability of voter registration applications, and assistance in completing applications.
3. "Public Assistance" means cash or financial assistance, food stamps, general assistance, and DHS' determinations of eligibility for medical assistance.

**D. TERM**

This Agreement shall remain in effect through December 31, 2010.

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**E. ACTION PLAN**

DHS will create a written Action Plan describing in detail the actions DHS has taken and intends to take to comply with each of the provisions and requirements of this Agreement. The Action Plan shall include, among other things:

1. A description of the measures to be undertaken by DHS to comply with the monitoring requirements of Paragraph N;
2. Relevant forms; and
3. A mechanism to be used by FCRC Office Administrators ("Office Administrators") to verify individual employees' compliance with Section 7.

DHS will provide its Action Plan to DOJ within sixty (60) days of signing this Agreement and DOJ shall review the Action Plan in accordance with Paragraph Q.

**F. POLICY & PROCEDURES**

DHS will provide to DOJ its policies and procedures (*i.e.*, online manuals, bulletins, etc.) pertaining to the provision of voter registration information and the distribution, collection, transmission, and retention of voter registration applications and forms containing the information required by Section 7(a)(6)(B) of the NVRA within sixty (60) days of signing this agreement. DOJ shall review DHS' policies and procedures in accordance with Paragraph Q. During the term of this Agreement, DHS shall submit to DOJ any changes to its policies and procedures and DOJ shall review any changes, and any new policies and procedures, in accordance with Paragraph Q.

**G. TRAINING**

DHS will provide for mandatory, annual NVRA education and training materials for each DHS employee who is responsible for providing public assistance services through DHS to Illinois residents.

DHS will provide a description of its training procedures as well as its training materials to DOJ within sixty (60) days of signing this agreement. DOJ shall review these documents in accordance with Paragraph Q. In addition, as of June 1, 2009, DHS will ensure that each employee on active work status shall complete and attest to having completed a Section 7 training module. All employees on annual, sick, or other leave will be trained when they return to active work status. DHS shall conduct training for newly hired employees upon commencement of their employment.

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**H. PROVISION OF FORMS**

DHS shall ensure that voter registration applications and forms described by Section 7(a)(6) of the NVRA are made available on a regular basis in adequate numbers so that DHS employees who are responsible for providing public assistance to Illinois residents do not run short of such applications and forms. Wherever DHS provides applications for public assistance, recertification/renewal and changes of address forms in public areas, it shall also make available voter registration forms in the same fashion.

**I. ASSISTANCE WITH FORMS**

DHS shall ensure that DHS employees offer the opportunity to apply to register to vote with the distribution and processing of each application for public assistance, including each application for recertification/renewal or change of address. DHS employees shall also provide to each applicant (including applicants for recertification/renewal or change of address) who chooses to apply to register to vote the same degree of assistance with regard to the completion of the Voter Registration Application form as is provided by DHS with regard to the completion of its own forms, unless the applicant refuses such assistance. 42 U.S.C. §1973gg-5(a)(6)(c).

**J. MINORITY LANGUAGE FORMS**

DHS shall ensure, in any jurisdiction to which the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973 *et seq.*, are applicable, the availability of minority language versions of the voter registration applications and forms described by Section 7(a)(6) of the NVRA in the manner detailed in Paragraph H of this Agreement.

**K. MINORITY LANGUAGE ASSISTANCE**

DHS shall ensure, in any jurisdiction to which the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973 *et seq.*, apply, that DHS offices shall have available bilingual staff or contractors, as necessary and appropriate, to provide assistance in applying to register to vote in the manner required by Paragraph I of this Agreement. Trained bilingual staff and contractors must demonstrate proficiency, and ability to communicate information accurately, in both English and the applicable minority language. Trained bilingual staff and contractors must also have knowledge in both languages of voter registration terms and concepts.

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**L. TRANSMITTAL TIME LIMITS**

DHS shall ensure that HCD offices responsible for providing public assistance to Illinois residents accept completed voter registration applications and transmit them to the appropriate election authorities no later than ten (10) days after the date of acceptance or, if a registration application is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate election authorities no later than five (5) days after the date of acceptance. 42 U.S.C. §1973gg-5(d).

**M. MAIL, ON-LINE AND OTHER APPLICATIONS**

DHS shall ensure that a Mail-in Application for Voter Registration is distributed with each application for public assistance, as well as each recertification/renewal or change of address form sent by mail. DHS shall ensure that within ninety (90) days of the execution of this Agreement all on-line applications, recertifications/renewals or changes of address concerning public assistance shall include information regarding voter registration opportunities at DHS and also the ability to download a Mail-in Application for Voter Registration. DHS shall ensure that all clients who apply for public assistance or notify DHS of a recertification/renewal or change of address through any means (including, telephonically, by e-mail or by fax) are offered the opportunity to apply to register to vote.

**N. TRACKING**

DHS shall develop methods of tracking, in detail, the extent to which local, on-site agency counselors, employees, and representatives who are responsible for providing public assistance to Illinois residents are complying with Section 7 and with the individual provisions of this Agreement, along with methods of notifying such persons when it is perceived that they are not so complying, and methods of disciplining such persons when it is perceived that they have consistently or wilfully failed to comply.

The tracking discussed in this paragraph shall include, but not be limited to:

1. Inclusion of NVRA compliance in DHS' ongoing and continuous evaluation of FCRCs;
2. Random calls by DHS to a sample of clients and staff on a quarterly basis to determine compliance with DHS' NVRA policies and procedures; and
3. Auditing procedures to determine compliance with DHS' NVRA policies and procedures, including the FCRC Office Administrator's verification of each employee's understanding of and compliance with Section 7. Non-compliance

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with Section 7 is considered a failure to perform the employee's job responsibility and will be handled as appropriate under applicable State personnel law.

**O. REPORTS AND MONITORING**

On June 1 and December 1 of each year this Agreement is in effect, beginning with June 1, 2009, DHS shall submit to DOJ, via Federal Express at the address listed at the end of this Agreement, a report, including:

1. A general summary of compliance efforts described in the Action Plan, detailing all steps taken to implement each of the provisions and requirements of this Agreement listed in the Action Plan;
2. The results of the tracking described in Paragraph N;
3. Copies of any NVRA educational and training materials, in addition to those provided under Paragraphs E, F, and G, that were used in the preceding period or that will be used in the next period of this Agreement; and
4. A numerical count, for each FCRC, of:
  - a. The number of submitted applications, renewals/recertifications or changes of address for that FCRC (an estimate is acceptable so long as the methodology is explained);
  - b. The number of completed voter registration applications transmitted from that office to the appropriate election authorities offices; and
  - c. The number of declination forms collected at that office on which an Illinois resident:
    - i. Indicated that he or she would like to register to vote;
    - ii. Indicated that he or she would not like to register to vote;  
or
    - iii. Did not indicate whether he or she would like to register to vote (included in the declination number).

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**P. DOJ AUDITING**

No sooner than ninety (90) days after the execution of this Agreement, the DOJ may audit DHS' compliance with Section 7. DOJ may conduct a second audit no sooner than ninety (90) days after it notifies DHS of the results of the first audit. Thereafter, the DOJ shall conduct such audits no more than two times in every subsequent calendar year.

1. DOJ shall notify DHS of the results of any audit it performs under this Agreement within thirty (30) days after completion of the audit. DOJ shall, in good faith, provide to DHS non-confidential information it obtains during the course of these audits in order to effectuate the purposes of and DHS' compliance with this Agreement.
2. DHS authorizes DOJ to:
  - a. Conduct these audits without prior notice to DHS;
  - b. Directly contact DHS employees involved in activities covered by Section 7; and
  - c. Call or visit FCRCs providing services covered by Section 7 undercover and without identifying its staff as DOJ investigators.

**Q. DOJ REVIEW**

DOJ agrees to review any document, report, process, or procedure, including the materials required by Paragraphs E, F and G (referred to collectively as "documents") submitted pursuant to this Agreement within twenty-one (21) days of its receipt of the documents. If DOJ has an objection to any document submitted under this Agreement, DOJ shall notify DHS within the twenty-one-day period and shall follow the process in Paragraph R below.

**R. BREACH**

If, at any time after the ninetieth (90<sup>th</sup>) day following the execution of this Agreement, DOJ acquires evidence, by any means, establishing:

1. A material breach by DHS of this Agreement, or;
2. Substantial non-compliance by DHS with Section 7;

DOJ may commence a lawsuit against the appropriate parties alleging such breach or non-

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compliance upon thirty (30) days' notice, during which time the parties reasonably shall endeavor to reach an amicable resolution of said allegation of breach or non-compliance. Provided, however, that a substantial breach of Paragraph O shall, without limitation or exclusion, be deemed to be material.

**S. COSTS AND ATTORNEYS' FEES**

Each party shall bear all of its own costs, expenses and attorneys' fees in any litigation arising out of a material breach of this Agreement under Paragraph R(1). Paragraph S does not apply in the case of a lawsuit brought by the United States to enforce Section 7 under Paragraph R(2).

**T. GENERAL PROVISIONS**

This Agreement is binding on the parties and their successors in office. The parties agree to the admissibility of this Agreement without objection in any subsequent proceeding for its enforcement. No oral modification or oral waiver of this Agreement shall be effective. The parties agree that this Agreement may be signed in counter-parts and that a faxed, copied, or PDF signature on shall be deemed as valid and binding as an original.

FOR THE UNITED STATES:



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