

AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND
THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY
CONCERNING
STANDARDS AND MONITORING OF COMPLIANCE WITH THE NATIONAL VOTER
REGISTRATION ACT OF 1993

A. INTRODUCTION

On April 8, 2008 the United States Department of Justice ("DOJ") informed the Arizona Department of Economic Security ("DES") 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 Arizona. DOJ believes it has obtained evidence of DES' substantial non-compliance with Section 7 of the NVRA by failing to provide the required voter registration services at DES Family Assistance Administration ("FAA") offices.

DES disputes this contention, and nothing in this Agreement shall be deemed to be a finding or an admission by DES that it has violated the NVRA. 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 DES offices subject to Section 7 of the NVRA 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 the following Agreement Concerning Standards and Monitoring of Compliance with 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 the NVRA, 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. DES is subject to the requirements of the NVRA.
3. DES has the authority to require that all local FAA offices comply with the NVRA.
4. It is DES' goal to ensure that all DES offices subject to the NVRA offer voter registration opportunities in compliance with the NVRA. In an effort to achieve that goal, this Agreement focuses on Section 7 of the NVRA and DES' activities as follows:

- 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 DES 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 DES' benefits or services;
 - c. Provision of assistance in filling out voter registration applications; and
 - d. Acceptance of completed registration applications and the forwarding of the completed registration applications to the County Recorder's Offices of the various counties.
5. Arizona is a covered jurisdiction under Section 5 of the Voting Rights Act and all current policies, procedures, and forms relating to the NVRA, and any changes or additions to such policies, procedures, and forms relating to the NVRA have been and must be precleared by the DOJ prior to implementation under this Agreement. DOJ acknowledges that such preclearance procedure may affect the timeframes set out in this Agreement.
 6. The parties acknowledge that this Agreement is, in and of itself, a change that requires pre-clearance by the DOJ under Section 5 of the Voting Rights Act. DOJ agrees to grant expedited consideration of the pre-clearance submission for this Agreement.

C. DEFINITIONS

"Employee" means a person hired or an agent employed by DES to provide public assistance to residents of Arizona.

"Information about voter registration" or "voter registration opportunities" means information about the opportunity to register to vote, the availability of voter registration applications, and assistance in completing applications.

"Public Assistance" means cash assistance, food stamps, general assistance, and FAA's determinations of eligibility for medical assistance.

D. TERM

This Agreement shall remain in effect through May 1, 2011.

E. ACTION PLAN

Attached to this Agreement as Exhibit 1 is FAA's written plan ("Action Plan") describing in detail the actions DES has taken and intends to take to comply with each of the provisions and requirements of this Agreement. DOJ shall review the Action Plan in accordance with paragraph O.

F. POLICY

Attached as Exhibit 2 is DES' uniform pre-cleared policy pertaining to 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. DES will modify this policy to accurately reflect that it includes all public assistance programs as outlined in this Agreement. DES shall submit any changes to the policy and the DOJ shall review this policy and any changes to this policy, and any new policies and procedures, in accordance with paragraph O.

G. TRAINING

Attached as Exhibit 3 is a description of FAA's mandatory, annual NVRA education and training programs for each DES employee who is responsible for providing public assistance through DES to Arizona residents. DOJ shall review these documents in accordance with paragraph O. In addition, as of April 18, 2008 each employee of FAA on active work status completed and attested to having completed the training module on the NVRA attached as Exhibit 4 (including the attestation page). All employees on annual, sick, or other leave will be trained when they return to active work status.

H. PROVISION OF FORMS

DES 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 DES employees who are responsible for providing public assistance to Arizona residents do not run short of such applications and forms. Provided however, the parties acknowledge that the County Recorders' Offices maintain control and distribute the forms pre-coded as originating from a public assistance office. In the event that any County Recorders' Offices cannot supply DES with an adequate supply of pre-coded forms, DES will store, print, and provide forms that are not pre-coded.

I. ASSISTANCE WITH FORMS

DES shall ensure that DES employees who are responsible for providing public assistance to Arizona residents shall offer the opportunity to register to vote with each application for service or assistance, including each application for recertification, renewal, or change of address. DES employees shall also provide to each applicant (including applicants for recertification, renewal, or change of address), who does not decline to register to vote, the same degree of assistance with regard to the completion of the Voter Registration Application form as is provided by DES 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. TRANSMITTAL TIME LIMITS

DES shall ensure that agency employees who are responsible for providing public assistance to Arizona residents accept completed voter registration applications and transmit them to the appropriate County Recorders Offices no later than 10 days after the date of acceptance, or if a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the

date of acceptance. 42 U.S.C. 1973gg-5(d).

K. APPLICATIONS BY MAIL OR ON-LINE

DES shall ensure that a Mail-in Application for Voter Registration is enclosed along with each application, recertification, or renewal DES sends by mail concerning the provision of public assistance. DES also shall ensure that within 4 months of the execution of this Agreement all on-line applications, recertifications, or renewals concerning public assistance include information regarding voter registration opportunities at DES, including the ability to download a Mail-in Application for Voter Registration. DES also shall ensure that all telephonic applications, recertifications, or renewals concerning public assistance are accompanied by the provision of information regarding voter registration opportunities, such as a message from FAA's interactive voice response (IVR) system as pre-cleared by the DOJ.

L. CHANGE OF ADDRESS

DES shall ensure that all clients who notify DES of a change of address in person at an FAA office receive an Application for Voter Registration, unless the client declines the form. Change of address notifications that are received at the DES/FAA change center will have an IVR system message that advises clients of voter registration opportunities.

M. TRACKING

DES shall track, in detail, the extent to which employees who are responsible for providing public assistance to Arizona residents are complying with the NVRA and with the individual provisions of this Agreement. DES shall also notify such employees when DES determines that they are not so complying, and shall take appropriate personnel action against such persons when DES determines that they have consistently or willfully failed to comply. DES shall track this compliance as follows:

1. The Office of Program Management and Evaluation ("OPE") staff will include NVRA compliance in its ongoing and continuous evaluations of FAA local offices;
2. DES will conduct random calls to clients and staff on a quarterly basis to determine compliance with DES policy and procedures on the NVRA;
3. Annual formal auditing by Audit Management Services ("AMS") to determine compliance with DES NVRA policy and procedures; and
4. FAA requires that all FAA local office managers conduct a random Standard Operations Procedures Check (attached as Exhibit 5) on all FAA employees who provide assistance directly to clients to determine, among other things, compliance with the NVRA. Non-compliance with the NVRA is considered a failure to perform the employee's job responsibility and will be handled as appropriate under applicable state personnel law.

N. REPORTS AND MONITORING

1. On April 1 of each year this Agreement is in effect, beginning with April 1, 2009, DES shall submit to DOJ, at the address listed at the end of this Agreement, a report, including:
 - a. 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;
 - b. The results of the tracking described in paragraph M in an annual report to the DOJ at the address listed in this Agreement. The report shall contain the results of the OPE report, the Formal Audit, the results of the random calls, and employee compliance;
 - c. Copies of any NVRA educational and training materials in addition to those in Exhibit 3 that were used in the preceding period or that will be used in the next period of this Agreement pursuant to Paragraph G; and
 - d. A numerical count, for each local FAA, Vocational Rehabilitation Administration, and Division of Developmental Disabilities office of:
 - i. The number of completed voter registration applications transmitted from that office to the appropriate County Recorders offices; and
 - ii. The number of declination forms collected at that office on which an Arizona resident:
 - a) Indicated that he or she would like to register to vote,
 - b) Indicated that he or she would not like to register to vote, or did not indicate whether he or she would like to register to vote (included in the declination number).
2. Subject to paragraph P(3), within 120 days of the execution of this Agreement DES shall submit to DOJ an interim report containing the information in N(1) except for the Formal Audit referenced in M(3) and N(1)(b).
3. No sooner than 60 days after the execution of this Agreement, the DOJ may audit DES' compliance with Section 7 of the NVRA. DOJ may conduct a second audit no sooner than 90 days after it notifies DES of the results of the first audit. Thereafter, the DOJ shall conduct such audits no more than two times in every subsequent calendar year.

a. DOJ shall:

- i. Notify DES of the results of any audit it performs under this Agreement within 14 days after completion of the audit;
- ii. The notification shall specify: the location of the offices; the names and addresses of DES employees contacted; the substance of any client statements (without identifying the clients); any alleged violations of the NVRA as to each office and individual; whether the person was contacted personally or by phone; the dates of the contacts; and
- iii. In good faith provide to DES any other information it obtains during the course of these audits in order to effectuate the purposes of and DES' compliance with this Agreement.

b. DES authorizes DOJ to:

- i. Conduct these audits without prior notice to DES;
- ii. Contact DES employees, involved in activities covered by the NVRA, directly; and
- iii. Call or visit local offices providing services covered by the NVRA, undercover and without identifying its staff as DOJ investigators.

O. DOJ REVIEW

DOJ agrees to review any document, report, process, or procedure, including the training materials required by paragraph N(1)(c) (referred to collectively as "documents"), submitted pursuant to this Agreement within 14 days of its receipt of the documents. The parties shall work in good faith to obtain any required preclearance so that it is not an impediment to DES' compliance with this Agreement. If DOJ has an objection to any document submitted under this Agreement, DOJ shall notify DES within the 14-day period and shall follow the process in paragraph P below.

P. BREACH

If, at any time after the sixtieth day following the execution of this Agreement, DOJ acquires evidence, by any means, establishing (a) a material breach by DES with this Agreement, or (b) substantial non-compliance by DES with Section 7 of the NVRA, or any combination of these, DOJ may commence a lawsuit against the appropriate parties alleging such breach or non-compliance upon 30 days notice, during which time the parties reasonably shall endeavor to reach an amicable resolution of said breach or non-compliance. Provided however, that: (1) a substantial breach of paragraph N(1) shall, without limitation or exclusion, be deemed to be material; (2) DES' failure to comply with the provisions of paragraph K shall not be considered evidence of breach or non-compliance until 4 months have elapsed since the signing of this Agreement; and (3) DES's failure to comply with any provision of this Agreement because it has not received DOJ's pre-clearance under Section 5 of the Voting Rights

Act shall not be deemed a breach or non-compliance under this Agreement. DES shall have at least sixty days after receiving the pre-clearance before DOJ can audit DES on DES' compliance under this Agreement based on DES' implementation of the pre-cleared materials.

Q. COSTS AND ATTORNEY FEES

In any litigation arising out of a breach of this Agreement, each party shall bear all of its own costs, expenses, and attorneys' fees in the case.

R. GENERAL PROVISIONS

1. No provision of this Agreement shall be deemed a waiver by DES of its rights under the Eleventh Amendment to the United States Constitution.
2. This Agreement is final and binding upon the parties, their successors, and assigns. The parties agree that a faxed, copied, or emailed signature on this agreement shall be deemed as valid and binding as an original signature.

FOR THE DEPARTMENT OF JUSTICE:



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