

MEMORANDUM OF UNDERSTANDING

Creation of System for Sharing of Lists of Registered Voters and Those Who Voted for Maintenance of Voter Registration Systems

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made between the Commissioner of the Virginia Department of Elections and West Virginia Secretary of State (“WVSOS”).

This MOU constitutes the terms by which the Commonwealth of Virginia, through the Virginia Department of Elections, and WVSOS (collectively referred to as “the States”) will establish a system to share lists of registered voters and those who voted (“the Lists”) for the purpose of maintenance of the States’ voter registration systems.

Legal Authority

Virginia

Pursuant to the Code of Virginia § 24.2-404, the Virginia Department of Elections must operate and maintain a voter registration system, which includes the cooperation with other states and jurisdictions to develop systems to compare voters, voter history, and voter registration lists to ensure the accuracy of the voter registration rolls, to identify voters whose addresses have changed, to prevent duplication of registration in more than one state or jurisdiction, and to determine eligibility of individuals to vote in Virginia.

West Virginia

Pursuant to West Virginia Code § 3-2-4a, the Secretary of State shall implement and maintain an official statewide voter registration database of every legally registered voter in the state, which shall be regularly maintained to include only names of voters eligible to vote in West Virginia. The Secretary of State, in cooperation with local election officials, shall perform such maintenance necessary to ensure that voter registration records in the state are accurate and updated regularly, including through participation in programs across state lines to share data specifically to ensure that records of voters that have moved to another jurisdiction, have duplicate/multiple registrations, or which are otherwise ineligible, are removed from West Virginia voter rolls in accordance with state and federal law. Furthermore, pursuant to West Virginia Code § 3-1A-6, the Secretary of State is broadly authorized to investigate the administration of election laws, frauds, irregularities in any registration or election, illegal voter registration (§ 3-2-32), and illegal voting (§ 3-9-17), through, in part, participation in data-sharing programs with other states and authorized service providers (§§ 3-2-4a(e)(2) and 3-2-30(g)).

List of Registered Voters

Under this MOU and any agreement regarding a reasonable fee, the States will provide each other with a list of registered voters on an agreed upon frequency for the purpose of maintaining voter registration systems.

The list of registered voters will include the following data elements: full name, residence and mailing addresses, gender, date of birth, registration date, date last registration form was received, current registration status, and the voter's jurisdiction, precinct and voting districts.

List of Those Who Voted

Under this MOU and any agreement regarding a reasonable fee, Virginia will transmit voter history lists following the federal general elections in 2024 and 2026.

The list of those who voted will include the following data elements: full name, residence and mailing addresses, gender, date of birth, registration date, date last registration form was received, current registration status, the locality, precinct and voting districts, voter identification number, election date and type, and whether the voter voted in-person or absentee.

List Transfer

The States acknowledge that the Lists will be provided by electronic means and will be encrypted, using a mutually agreed upon method in accordance with the National Institute of Standards and Technology (NIST) cryptographic standards and guidelines, to ensure security and integrity of the data, including the voter's date of birth.

Data Use Limitations

The States agree that the use of data received pursuant to this MOU is limited solely to the maintenance of voter registration systems and records, and agree that the data will be used for no other purpose.

Subject to applicable state and federal law, the States agree to refrain from (1) releasing the information contained on the Lists, and (2) publishing any of the information contained in the Lists online in any searchable form or providing information contained in the Lists to a third party for such purpose. The States acknowledge that the failure to comply with these prohibitions may result in the immediate termination of this MOU. The States agree to promptly notify each other upon receipt of a request for records that may include data from the Lists, as well as written notice of any response to the records request.

Secure Storage, Destruction and Confirmation

The States shall demonstrate the successful implementation of physical, technical, administrative, and managerial security controls to restrict access to data from the Lists to only authorized officials with a legitimate business need to access the data to maintain voter registration lists.

The States agree to confidential destruction of voter data from the Lists after the data has been used for the match, or within 30 days of receipt, whichever is shorter. The States acknowledge this obligation and understand the requirement to confidentially destroy the data after use, or within 30 days of receipt, whichever is shorter, using minimum sanitation methods that purge or destroy the data in compliance with NIST SP 800-88 Guidelines for Media Sanitization.

The States shall provide each other with written confirmation of confidential destruction through a NIST SP 800-88 Certificate of Sanitization within 30 days of receiving the list.

Social Security Numbers

The States agree that social security numbers, or any parts thereof, will only be shared on the Lists if the States are both permitted to use social security numbers, or parts thereof, in voter registration under their laws. The States agree that no social security numbers (full or partial) will be included with the data on the Lists unless the States each execute an SSN Addendum attesting the use of social security numbers on applications for voter registration.

Disclosure

The States agree to provide to each other immediate notice of any incident or data breach involving the impermissible disclosure of or access to data from the Lists for any other reason than maintenance of voter registration systems. If an incident or data breach occurs, the States agree to provide a written description of the incident, and how it was cured or mitigated, within 90 days of the incident or data breach.

Effective Date and Termination

This MOU is effective upon signature of the representatives of the States, and shall remain in effect, unless it is amended or rescinded, until January 1, 2028. Either state may terminate this MOU upon providing written notice of its intent to terminate at least thirty (30) days before the desired termination date. Upon such termination, the States shall be relieved of all further obligations and liabilities under this MOU. Either of the States that terminates this MOU (“Terminating State”) shall provide a NIST SP 800-88 Certificate of Sanitization for any data that did not originate within the Terminating State within fourteen (14) days or at the earliest possible time pursuant to that state’s public records law, whichever is sooner.

Waiver and Modification

A state’s waiver of any breach of the provisions of this MOU shall not be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

The States may amend or modify this MOU at any time through an agreement in writing with the written concurrence of the other state, signed by a duly authorized representative.

Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either: via certified or registered United States mail, return receipt requested; by personal delivery; by expedited delivery service; or by e-mail with acknowledgement of receipt of the notice.

Such notices shall be addressed as follows or to such different addresses as the States may from time-to-time designate:

Commonwealth of Virginia

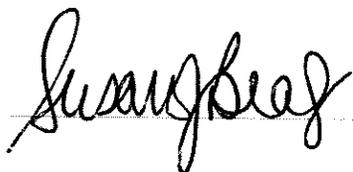
Name: Susan Beals
Title: Commissioner, Virginia Department of Elections
Address: 1100 Bank Street, Washington Bldg., 1st Floor, Richmond, VA 23219
Phone: (804) 864-8903
E-Mail: Susan.Beals@elections.virginia.gov

West Virginia

Name: Chuck Flannery
Title: Deputy Secretary of State, Chief of Staff
Address: State Capitol, Bldg. 1, Ste. 157-K, Charleston, WV 25305
Phone: (304) 558-6000
E-Mail: CFlannery@wvsos.gov

COMMONWEALTH OF VIRGINIA

By:



Name:

Susan J. Beals

Title:

Commissioner

Date:

August 23, 2023

WEST VIRGINIA

By:



Name:

CHUCK FLANNERY

Title:

DEPUTY SECRETARY & CHIEF OF STAFF

Date:

AUG 23, 2023