

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 4006.1: Development and Approval of Information Sharing and Access Agreements

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Superseded: None.

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** Pursuant to U.S. Department of Homeland Security (DHS) policy, U.S. Immigration and Customs Enforcement (ICE) is required to promulgate consistent processes as well as identified roles when developing, coordinating, formalizing, and approving agreements involving the sharing of ICE information and data.¹ This Directive and accompanying handbook define the stakeholder responsibilities and strategy for establishing a consistent information sharing and access agreement (ISAA) process for the purpose of sharing ICE information and data with parties external to DHS.
2. **Policy.** It is ICE policy to ensure transparency and manage risk associated with information sharing. This Directive establishes ICE policy regarding the process to develop, review, and approve ISAAs with external parties. The Office of Information Governance and Privacy (IGP) provides oversight to Executive Agents developing ISAAs to ensure consistency and compliance with privacy, recordkeeping, and data security requirements. This Directive also identifies relevant stakeholders and their responsibilities during the development, coordination, formalization, and approval of ISAAs where ICE information or data is being shared with parties external to DHS.
 - 2.1. **Scope.** This Directive applies only to information sharing and access agreements in which one or more parties external to DHS² are given or provided access to ICE information or data.³ Types of ISAAs include, but are not limited to, Memoranda of Understanding (MOU), Memoranda of Agreement (MOA), Memoranda of Cooperation (MOC), Letters of Intent (LOI), or pilot projects.

Certain information sharing agreements are exempt from the requirements of this Directive. These include, but are not limited to, Interconnection Security Agreements (ISA), Interface Control Agreements (ICA), Service Level Agreements (SLA), Interagency Agreements (IAA), Customs Mutual Assistance Agreements (CMAA),

¹ DHS Management Directive No. 262-05, *Information Sharing and Safeguarding* (Sept. 4, 2014).

² Parties external to DHS include domestic or foreign entities, such as foreign governments, entities in the private or public sector and government agencies at the Federal, State, local, or tribal level.

³ ISAAs through which external Party information or data is accessed by or shared with ICE and there is no exchange of ICE information or data are outside the scope of this directive. However, it is good practice to include ICE subject-matter experts when developing such agreements to assess potential legal, policy, civil rights and civil liberties, classification, technical, and data breach risks prior to finalization of the ISAA.

287(g) agreements, court orders and civil and criminal discovery, requests for specific information in the process of advancing a case during the course of routine operational or law enforcement activities or litigation, sensitive law enforcement activities and/or agreements, transfers of authorized information or knowledge through an established liaison arrangement, regulatory compliance, exigent threats, information that falls under the Third Agency Rule, individual requests made under the Freedom of Information Act (FOIA) or Privacy Act, transactions with contracted vendors, individual *ad hoc* requests for information such as those from Congress, the White House, and the media, or individual *ad hoc* requests for information related to agencies, entities, and persons in order to comply with Executive Orders, laws, and regulations.⁴

3. Definitions. The following definitions apply for the purposes of this Directive only.

3.1. Executive Agent. The ICE Executive Associate Director (EAD) aligned with the category of information addressed by the ISAA, responsible for overseeing the development and signing of the respective ISAA. For law enforcement information the Executive Agents are the Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO) EAD. For homeland security information, the Executive Agent is the HSI EAD. For immigration administration information, the Executive Agent is the ERO EAD. For ICE business operations information, the Executive Agent is the Management and Administration (M&A) EAD.

3.2. Information Sharing and Access Agreement (ISAA). An agreement that is used to facilitate the exchange of information between the Department (or any element or entity within the Department) and one or more outside parties. Agreement types include, but are not limited to, Memorandums of Understanding (MOU), Memorandums of Agreement (MOA), Memorandums of Cooperation (MOC), Letters of Intent (LOI), or agreements related to pilot projects. Parties include domestic or foreign entities in the private or public sector and government agencies at the Federal, state, or local level.

3.3. Letter of Intent (LOI). A document with and between DHS and a domestic or foreign partner, including governmental and private entities, expressing a desire to enter into an MOU, MOA, or other form of agreement or arrangement at a future date. An LOI signifies the genuine interest of all parties in reaching a final agreement contingent upon more detailed due diligence and negotiations. If applied to data and information exchanges, an LOI can be a type of ICE ISAA.

3.4. Memorandum of Agreement (MOA). A document that describes in detail the specific responsibilities of, and actions to be taken by DHS and a domestic or foreign partner, including governmental and private entities, so that their goals may be accomplished. A MOA may also indicate the goals of the parties, to help explain their actions and responsibilities. MOAs are regularly used for, but not limited to, financial types of transactions and interagency data sharing.

⁴ More specific information and examples for these exemptions are found in the ISAA Handbook.

- 3.5. **Memorandum of Cooperation (MOC).** A document that describes the terms of the relationship between DHS and a domestic or foreign partner, including governmental and private entities. MOCs are regularly used with foreign entities.⁵
- 3.6. **Memorandum of Understanding (MOU).** A document that describes very broad concepts of mutual understanding, goals, and plans shared between the parties.
- 3.7. **Personally Identifiable Information (PII).** Information that permits the identity of an individual to be directly or indirectly inferred, including other information that is linked or linkable to an individual. “Individual” includes, but is not limited to, U.S. citizens, lawful permanent residents, visitors to the United States, and DHS employees and contractors.
- 3.8. **Third Agency Rule.** A principle that restricts the release of shared information. Information originating in one U.S. agency cannot be disseminated by another agency to which the information has not been made available without the consent of the originating agency. It is DHS policy that information from another government agency is subject to that agency’s policy and regulations concerning dissemination of the information unless other arrangements have been made. For ICE, the third agency rule is also applied to data originating with external parties or foreign partners, thus restricting further dissemination of ICE information and data without prior approval. It is also important to note, as established in the One DHS Rule, DHS components are not separate agencies for the purpose of information sharing. Thus, the third agency rule may not be used to restrict sharing within DHS components.
4. **Responsibilities.**
- 4.1. **EADs** are responsible for ensuring compliance with the provisions of this Directive within their Directorate.
- 4.2. **The ICE Chief Data Officer/Assistant Director for the Office of Information Governance and Privacy** is responsible for:
- 1) Advising on the governance of ICE information and data sharing policies, standards, and guidance. This includes overseeing implementation of and monitoring compliance with this Directive;
 - 2) Reviewing ICE ISAAs to: a) ensure compliance with Federal privacy and records requirements and policies, b) verify that the authority to share PII is in place and that the PII is properly processed, and c) provide or validate that records disposition and auditing requirements are identified and followed;

⁵ Please note that a MOC may be titled a MOU or MOA at the request of the foreign partner.

- 3) Advising ICE Directorates and Program Offices on appropriate strategies to identify and mitigate privacy and records risks that are posed by the implementation of ISAAs, including the completion of privacy compliance documentation; and
- 4) Developing and maintaining a protected, searchable, central, electronic repository for ICE ISAAs and related documents covered by this Directive.

4.3. The Executive Agent is responsible for:

- 1) Facilitating the development of the ISAA through collaboration with relevant ICE Program Offices to ensure potential legal, policy, civil rights and civil liberties, classification, technical, and data breach risks are addressed prior to finalization of the ISAA; and
- 2) Developing and maintaining standards, developing training programs, coordinating administrative support, and providing ICE-wide visibility of the designated activity.

5. Procedures/Requirements. See the *ICE Information and Data Sharing Agreements Handbook* for procedures and requirements.


6. Recordkeeping. ICE ISAAs covered by this ICE Directive shall be maintained in an electronic repository in accordance with their corresponding General Records Schedule.

7. Authorities/References.

- 7.1. Title 5, U.S. Code, Section 552a, Privacy Act of 1974, as amended.
- 7.2. DHS Delegation Number 23014, *Delegation to the Assistant Secretary for Policy Regarding Information Sharing*, dated January 3, 2017, or as updated.
- 7.3. DHS Directive Number 262-05, *Information Sharing and Safeguarding*, dated September 4, 2014, or as updated.
- 7.4. DHS Policy Directive Number 262-15, *The Department of Homeland Security's Federal Information Sharing Environment Privacy and Civil Liberties Policy*, dated June 5, 2009, or as updated.
- 7.5. DHS Directive Number 0450.1, *Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA)*, dated January 24, 2003, or as updated.
- 7.6. DHS Instruction Number 262-05-001, *DHS Information Sharing Environment*, dated September 12, 2014, or as updated.
- 7.7. DHS Secretary Chertoff Memorandum, *DHS Policy for Internal Information Exchange and Sharing* (commonly known as the One DHS Memorandum), dated February 1, 2007, or as updated.

- 7.8. Under Secretary for Intelligence and Analysis Allen Memorandum, *Policy Guidance: Implementation of the One DHS Information Sharing Memorandum—Information Sharing Access Agreements*, dated February 6, 2008, or as updated.
- 7.9. Privacy Policy Guidance Memorandum 2017-01, *DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information*, dated April 25, 2017, or as updated.
- 7.10. DHS Information Sharing and Safeguarding Governance Board Charter, as amended, dated June 16, 2015, or as updated.
- 7.11. DHS Data Access Review Council Charter, dated February 09, 2015, or as updated.
- 7.12. DHS Handbook for Safeguarding Sensitive Personally Identifiable Information, revised December 2017, or as updated.
- 7.13. ICE Delegation Order 0001, *Delegation of Authority to the Directors, Detention and Removal and Investigations, and to Field Office Directors, Special Agents in Charge and Certain Other Offices of the Bureau of Immigration and Customs Enforcement*, dated June 6, 2003, or as updated.
- 7.14. ICE Delegation Order 73008.1, *Authority to Sign Law Enforcement Information Sharing and Access Agreements*, dated September 2, 2009, or as updated.
- 7.15. ICE Directive 2-8.0, *Service Level Agreement Policy*, dated February 1, 2008, or as updated.
- 7.16. ICE Directive 4003.2, *Safeguarding Law Enforcement Sensitive Information*, dated May 20, 2014, or as updated.
- 7.17. ICE Directive 12002.2, *Non-Routine Assistance Requested by the U.S. Intelligence Community*, dated September 11, 2015, or as updated.
- 7.18. HSI Delegation Order 10001.1, *Authority to Sign Memoranda of Understanding and Memoranda of Agreement Within Homeland Security Investigations*, dated June 3, 2011, or as updated.
- 7.19. ERO Delegation Order 130002, *Authority to sign and enter into cooperative agreements, such as Memoranda of Understanding, Memoranda of Agreement, and Memoranda of Cooperation, with foreign government agencies as it pertains to the Criminal History Information Sharing initiative within Enforcement and Removal Operations*, dated June 21, 2018, or as updated.
- 7.20. ERO Delegation Order 130003, *Authority to sign Memoranda of Agreement and Memoranda of Understanding within Enforcement and Removal Operations*, dated February 21, 2020, or as updated.

8. **Attachment.** *ICE Information and Data Sharing Agreements Handbook.*
9. **No Private Right Statement.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

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Tony H. Pham
Senior Official Performing the Duties of the Director
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