

# **Administrative Burdens on the States Imposed by the REAL ID Act**

The Real ID Act was slipped through Congress in an Iraq War/Tsunami relief supplemental bill in May 2005. Cutting off a “negotiated rulemaking” that had included the ACLU and other key stakeholders from Homeland Security to state officials as part of a process to update the nation’s driver’s licenses, Real ID imposes a clumsy and burdensome set of requirements on states as part of its aim to definitively turn Americans’ driver’s licenses into a true national identity card system.

This Act is a giant unfunded federal mandate that will create enormous initial and ongoing administrative burdens and costs for states. It will also create burdens for individual citizens including a higher cost and longer wait for licensing. And it is far from clear that these extraordinary costs will bring any benefits in preventing terrorism. Before states spend the substantial resources Real ID will require, they owe it to their citizens to seriously question the necessity and efficacy of implementing the Real ID Act.

Ultimately, Real ID changes the very nature and mission of DMVs, from agencies responsible primarily for ensuring the safe operation of vehicles on state roadways, into a wide-ranging enforcement agent of the federal government in areas from immigration rules to Social Security fraud. Given that far more Americans die on our roads every year than have ever fallen victim to terrorism, diluting and confusing the mission of our DMVs would seem to be unwise indeed.

Congress has charged the Department of Homeland Security (DHS) with issuing regulations spelling out the details of these and other requirements. In some cases, the administrative burdens faced by the states will depend greatly on exactly what requirements DHS decides to impose. Nevertheless, the outlines of the burdens it will impose are clear from the statute itself.

## **Remaking The Card**

The Real ID Act requires the inclusion of particular features on each driver’s license or identity card, each of which may entail significant burdens on the states.

- **Common data elements.** Real ID requires that ID’s contain standard information such as full legal name, gender, address, date of birth, photograph and signature. While many of these data elements already exist on many states’ IDs, any state that does not currently incorporate any of these elements will have to add them – and while it sounds simple, that may be a complicated project requiring reprogramming of multiple interlocking state databases, computer entry screens, communications protocols, and paper forms.
- **Physical security features.** The Act also requires “physical security features designed to prevent tampering, counterfeiting, or duplication.” Even those states that currently include physical security features of one kind or another on their

licenses may well need to overhaul those features to bring them into compliance with the standards set by the forthcoming Real ID regulations.

- **Machine-readable technology.** Real ID mandates “a common machine-readable technology” such as a bar code, magnetic stripe, or RFID chip that holds the information printed on the front of the ID (and possibly more) in order to allow computerized scanning of the IDs by a standard reader. This requirement will force most states to create a new physical license that contains one of these technologies. Few if any states are likely to already incorporate such a technology on their licenses that will match the standard promulgated in the DHS regulations.
- **Address shielding.** Another administrative headache for the states will stem from the Act’s requirement that IDs include each person’s “address of principle residence.” Currently, many states have chosen to shield the addresses of certain individuals, such as judges, police officers and victims of criminal harassment or stalking. The Act does not contain any measure to exempt those individuals or others like them from being forced to disclose their home address, yet states will come under enormous pressure to do so.

## **New Information Technology Infrastructures**

Real ID will also require many or all states to build new computer and communications systems, or rebuild existing systems. The new requirements will likely include:

- **Database changes.** The requirement that ID cards include a machine-readable component will likely involve further changes to state databases. That is because in order for information to be commonly accessible, not only must the physical technology be the same, but the information must be stored in the same format.
- **Interstate sharing.** Real ID requires that each state construct the ability to provide all the other states with access to the information contained in its motor vehicle database – creating, in effect, a single national distributed database operated by the states. The statute is vague on implementation of this distributed database, but it will almost certainly require fundamental and costly changes to state motor vehicle databases. ID data elements will likely have to be reconfigured so that they are displayed and stored in the same format from state to state. States will need to buy new software and hardware and convert their existing databases to the new standard. If a dedicated communications network is necessary, states may also need to build fiber optic links with other states.
- **Records handling.** Some states outsource the maintenance of their records to private third parties, and may have to break existing contracts in order to bring such records in house so that they can be searchable as part of the larger national database. Others will need to engage in significant technological upgrades; some still do not employ digital technology for photo capture, for example.
- **Document storage.** Real ID also requires the states to retain a digital scan of source identity documents like birth certificates for at least 10 years (or a paper copy for 7 years). That means a DMV worker must scan and store three or four

source documents for each applicant. States will have to purchase, install and maintain scanners and other hardware, computer storage space, retrieval and transmission mechanisms and other software for running these systems.

- **Security.** The Real ID Act requires that states ensure the physical and electronic security of identification materials. The act does not set standards for that security, but with millions of individuals' sensitive personal information – a goldmine for identity thieves – slated to be digitally scanned and stored by DMVs, and shared with counterparts across the continent through the distributed database, security will need to be tight indeed. Encryption systems, customized access control applications, firewalls, and secure physical locations for the production of cards will all be expensive and difficult to administer.<sup>1</sup> As always, internal security will be one of the most difficult and burdensome – yet vital – components of this system, especially in light of the fact that numerous DMV workers around the nation have been caught engaging in identity theft or other abuses.

## Document verification

What may prove to be the most significant burden that Real ID will impose on DMVs is the requirement that states “shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented” to get a Real ID identity card. Such verification will be enormously time and labor intensive and may force DMVs to greatly expand their conception of their mission.

The required documents that will need to be verified include a photo identity document, proof of date of birth, proof of social security number (or proof of lack of eligibility for same), proof of address, and proof of citizenship or lawful immigration status. Each presents problems:

- **Birth certificate.** The process for verifying a birth certificate, perhaps the core identity document in the United States, provides a good example of the administrative burdens that Real ID will create:
  1. A DMV will need to contact the municipality that issued the license and ask them confirm that they have a certain birth certificate on file. Over 6,000 different jurisdictions issue birth certificates within the United States alone.<sup>2</sup>

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<sup>1</sup> Thieves in Las Vegas recently targeted a local motor vehicle department by driving a car through a wall of the department and absconding with the equipment necessary to make Nevada licenses. It is not clear what level of security would be sufficient to prevent future thefts of this type. For a survey of press reports documenting problems see Center for Democracy and Technology, “Unlicensed Fraud: How bribery and lax security at state motor vehicle offices nationwide lead to identity theft and illegal driver’s licenses,” January 2004, pp. 5-7; online at <http://www.cdt.org/privacy/20040200dmv.pdf>.

<sup>2</sup> “Birth Certificate Fraud,” Office of Inspector General, U.S. Department of Health and Human Services, September 2000; online at <http://oig.hhs.gov/oei/reports/oei-07-99-00570.pdf>.

2. Because many of these files are not computerized, this will often require a clerk to locate the document from within paper files stretching back over many decades.
  3. Because birth certificates are not standardized, the DMV employee and the local clerk will likely need to compare copies of the certificate in order to verify the “issuance, validity and completeness” of the document as the law requires.
  4. The motor vehicle employee will then have to certify completion of this verification process. This process must be completed for each of the more than 190 million US license holders.<sup>3</sup>
  5. In some cases, birth certificates will not be able to be verified. Over the better part of a century, records are lost, accidentally destroyed or rendered suspect due to fraud or malfeasance. A few people are not sure where they were born. The Act is silent on how individuals in this situation would verify their birth certificate.
- **Other IDs.** Similar burdens will exist in verifying other documents like military and other federal IDs, US and foreign passports and student IDs.
  - **Proof of Social Security Number.** States are required to verify that an individual has a valid social security number. The Act further requires that “In the event that a social security account number is already registered to or associated with another person . . . the State shall resolve the discrepancy and take appropriate action.” What “appropriate action” entails is strikingly ambiguous.
  - **Proof of address.** The requirement that states verify a document “showing the person's name and address of principal residence” is also problematic. That is currently done by presenting a utility bill or other third-party document (individuals who have just moved into a state will not likely have any other proof of address). Yet utility companies have no incentive to spend money answering queries from the DMV all day. In addition, many individuals who are legally eligible for a license will not be able to meet this requirement, such as teenagers seeking their first license, college students or others living in temporary housing, or individuals who do not keep any bills in their name. States will have to figure out how to deal with such individuals.
  - **Immigration status.** Verification of immigration documents is likely to provide one of the most significant sets of challenges for DMVs. The complexity of our immigration laws rivals that of our tax code, and the variety of legal categories that allow an individual to obtain legal status in the United States is large – as are the types of documents that verify that status.<sup>4</sup> This verification requirement will

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<sup>3</sup> According to the U.S. Department of Transportation there were 190,625,023 licensed drivers in the United States in 2000, <http://www.fhwa.dot.gov/ohim/onh00/onh2p4.htm>. The Act requires that drivers who have already been licensed participate in the verification process when they renew their licenses. Section 202 (d)(4).

<sup>4</sup> The categories listed in the Act itself include verification that a person is:

effectively force local motor vehicle departments to expand their expertise to include this tangled area of American law.

### Major problems

The above makes it clear that there are at least two additional major problems with the verification provisions of Real ID:

- **Investigative ability.** States will in many circumstances be forced to either deny Real ID-compliant identity cards to a large number of their citizens (potentially stranding them without any means to obtain a federally recognized ID) or attempt to resolve verification difficulties. Persons whose birth certificates cannot be verified, whose Social Security Numbers show as being “associated with” another person, or who do not have the means to supply a proof of address, must either be denied a Real ID or somehow subject to further investigation to ascertain the legitimacy of their documents. Aside from the disturbing implications of creating a corps of government investigators probing through the backgrounds of innocent individuals, such labor-intensive investigative functions are not within the capacity of existing DMVs, and would have to be built from the ground up or outsourced to external entities most likely at significant expense.
- **A major conceptual flaw.** The document-verification provisions of the act require DMVs to ask for help from other organizations throughout the US – local cities, towns, and counties, government agencies, bureaucracies, and private companies such as utilities – without giving DMVs any way to force those organizations to actually take on the burden and expense of complying with those requests. The Act provides no method for the state or federal government to compel compliance. The predictable result will be that these organizations will drag their feet and cooperate, if at all, by devoting the fewest possible personnel and other resources to such tasks. Slow, sloppy, and inefficient results will inevitably follow.

### Personnel

One of the most significant new burdens on states will be the additional personnel that they will have to hire to perform the many new required functions described above:

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- (ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
  - (iii) has conditional permanent resident status in the United States;
  - (iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;
  - (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
  - (vi) has a pending application for asylum in the United States;
  - (vii) has a pending or approved application for temporary protected status in the United States;
  - (viii) has approved deferred action status; or
  - (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States. Section 202 (c)(2)(B)

Immigration advocates have already stated that this list is not exhaustive and would exclude individuals legally residing in the United States.

- **Document scanning & storage.** The requirement to scan and store applicants' source documents for 7 years will demand not only new hardware and software, but also I.T. workers to maintain this technology, new front-line employees to make up for the additional time each worker spends performing these functions, and additional managers to coordinate all of this. Other I.T. mandates such as the requirement to interconnect state databases will impose similar personnel demands.
- **Document verification.** The Act's document-verification requirements promise to be the most labor-intensive part of compliance. No one really knows what it will take to comply with this mandate, whether it be more front-line DMV clerks spending hours on the phone trying to reach registrar's offices in small towns, a back-office army of investigators and document researchers, more I.T. personnel to build and run automated account-verification systems set up with a state's utilities, or all of the above.
- **Security.** Computer security is an increasingly specialized field, and the heavy security needs that come with handling and storing so many people's sensitive documents and information will require each state to buy and administer considerable additional security expertise.
- **New clearance requirements.** Real ID requires that state employees who are authorized to manufacture ID cards must be subject to "appropriate security clearance requirements."
- **New training requirements.** The Act also requires relevant state employees to undergo "fraudulent document recognition training programs."