



May 8, 2007

Department of Homeland Security
Dockets Management Branch
Attn: NAC 1-12037
Washington DC 20528

Re: Docket No. DHA- 2006-0030
*Minimum Standards for Driver's Licenses and Identification Cards Acceptable
by Federal Agencies for Official Purposes*

On behalf of our 38 million members¹, AARP appreciates the opportunity to comment on proposed rules that would govern the standards and criteria for issuance of driver's licenses and identification cards, document validation and verification, privacy, data security, state certification and target implementation deadlines, compliance, state and national coordination, consumer impact, and related costs – especially as the proposed rules relate to mature and older individuals.

The Department of Homeland Security (DHS) has drafted proposed regulations to implement the REAL ID Act. AARP acknowledges that DHS has made a commendable effort to temper the many complexities entailed in this undertaking and we especially applaud the Department's recognition of the unique burdens that could be imposed on persons aged 70 and over. The efforts of DHS to build upon existing technologies is also to be commended, although the limitations of current technology and interoperability still pose formidable challenges that can severely undermine homeland security and consumer protections. AARP agrees with many concerns raised by other organizations and individuals at the DHS public meeting of its Data Privacy and Integrity Advisory Committee on March 21, 2007. We also urge DHS to establish standards that provide the greatest possible security at the most reasonable cost while protecting individual privacy – especially for older individuals. We also have a variety of concerns about the proposed REAL ID card, the linked national system the rules propose to accomplish its goals and the impact of the costs on states and consumers. A summary of AARP's major concerns are outlined in the discussion below and followed by specific AARP comments and analysis of the proposed regulations to implement REAL ID.

¹ AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. We produce AARP The Magazine, published bimonthly; AARP Bulletin, our monthly newspaper; AARP Segunda Juventud, our bimonthly magazine in Spanish and English; NRTA Live & Learn, our quarterly newsletter for 50+ educators; and our website, www.aarp.org. AARP Foundation is an affiliated charity that provides security, protection, and empowerment to older persons in need with support from thousands of volunteers, donors, and sponsors. We have staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

The context of AARP comments and recommendations is primarily the public information resources provided by DHS, Congressional hearings and an April 2007 national survey conducted by AARP of 1526 persons aged 50 and older [attached as Appendix I]. The survey results reveal the REAL ID views of mature and older citizens and how those views intensify as they learn more about the proposed implementation. These concerns are reflected in the AARP recommendations that follow. AARP urges that all proposed clarification, amendments or expansions of REAL ID rules be part of a formal public rulemaking process and further, that all justifications for final rules be published, and thus, be made available to the public.

I. SUMMARY OF AARP COMMENTS REGARDING PROPOSED REAL ID IMPLEMENTATION

A. Burden to Older Persons and Others

AARP is concerned that the REAL ID implementation process would impose an onerous administrative process on all consumers. In order to obtain a Real ID-compliant license or identity card, individuals will likely face higher fees, longer lines at state motor vehicle offices, and will be unable to obtain same-day licenses. One study estimates that Real ID requirements will more than double the length of time individuals spend at their state motor vehicle agency².

B. Personal Information Privacy and Security

Another area of concern for AARP is the increased risk of identity theft. The creation of an interstate network of databases containing the personal information needed to establish and verify an individual's identity poses a considerable security risk should any of these databases be breached. In addition, the Act requires that copies of the documents used to verify an individual's identity be held for at least 7 years by motor vehicle agencies. This will create a substantial threat of identity theft if these records are compromised through a physical security breach.

C. Potential Impact of State Implementation Costs

Without additional resources from the federal government, the proposed plan would place an unworkable funding burden on states. It is estimated that the cost of implementing the Real ID Act will be more than \$11 billion,³ virtually all of which must be paid by states. Implementation of the Act eventually will require state motor vehicle offices to change all 245 million existing licenses and ID cards that have been issued nationwide. The provisions of the Act also require states to significantly alter the business practices of their motor vehicle agencies. AARP is concerned that compliance with the Act will place

² National Governors Association, National Conference of State Legislatures, American Association of Motor Vehicle Administrators, **The Real ID Act: National Impact Analysis**. (September, 2006).

³ National Governors Association, National Conference of State Legislatures, American Association of Motor Vehicle Administrators, *op cit*.

an undue burden on states' resources and that the Act's May 11, 2008, deadline will be impossible to meet.⁴

D. Timeline Considerations

The dramatic change in how individuals obtain drivers licenses and official identification cards requires time. DHS must structure appropriate timeframes for developing, testing and verifying the effectiveness of a presently non-existent database network for the implementation, especially as it affects burdens on individuals, budgetary costs to states, and access to facilities, services and benefits – through both public and private venues. AARP, as noted earlier, believes there is considerable merit in the recommendations of the Governors, State Legislators, State Departments of Motor Vehicles (DMVs) and the Government Accountability Office to adjust required timelines for full implementation to avert unnecessary problems and the very real potential for backlash by states, legislators, DMVs and individuals. DHS should:

- Extend the period for re-enrolling all individuals across 10 years;
- Give states the flexibility to manage implementation and timelines; and
- Not require states to comply until database systems are properly online.

II. ANALYSIS AND DISCUSSION OF COMMENTS REGARDING PROPOSED REGULATIONS – SUBPART A – GENERAL

§ 37.1 Applicability & Scope

AARP is concerned that the tone of the introductory analysis of the March 9, 2007, Notice of Proposed Rulemaking, page 10825 stating that no state is required to issue REAL ID driver's licenses and identification cards understates the problem. The explanation can mislead individuals to believe that mere possession of "non-REAL ID driver's licenses and identification cards" – as they are officially termed – will have negligible impact on the quality of their lives, i.e., that there are no real consequences if their ID cannot be accepted by federal agencies for "official purposes." DHS acknowledges that the proposed rule relies on motivating citizens through fear of loss of access to federal agencies to pressure states to absorb the costs, burdens and responsibility for achieving REAL ID compliance. DHS conceded this strategy on p.10849 of the NPRM in its economic impact analysis under subtopic "C. Executive Order 13132, Federalism," subsection 2(b) "Proposed rule does not preempt state law:"

The proposed rule would not formally compel any State to issue driver's licenses or identification cards that will be acceptable for federal purposes. Importantly, under this scheme, "[a]ny burden caused by a State's refusal to regulate will fall on those [citizens who need to acquire and utilize alternative documents for

⁴ Statement of David Quam, National Governors Association, before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, United States Senate, March 26, 2007.

federal purposes], rather than on the State as a sovereign.” In other words, the citizens of a given State – not the Congress – ultimately will decide whether the State complies with this regulation and the underlying statute.

AARP believes that citizens should be made aware of the many ways the lack of access provided through the proposed REAL ID driver’s licenses and REAL ID identification cards could potentially impact their lives in non-federal arenas or in accessing services and conveniences not apparently under federal rules. Further, states should be required to estimate in their certification documents those non-federal venues (facilities, services, products) for which current identification documents will no longer be acceptable along with the numbers of citizens estimated to be denied access. While DHS does not make explicit requirements in these areas, where the practices already exist, citizen consumers will be affected. AARP believes that the lack of full public understanding about how their access may be limited by the implementation of REAL ID could create a class of limited access citizens separate and distinct from those privileged to have a REAL ID.

Another concern regarding “Applicability” is the lack of parameters around the definition, criteria for decision-making and the body of decision makers empowered to declare, expand or shrink the universe of “official purposes.” The April 2007 AARP survey found that, prior to learning about ties between existing drivers licenses and REAL ID, 69.6% of respondents (persons age 50 and older) were “fine” with the process for obtaining drivers licenses; 26.0% thought it too easy and only 4.4% called it difficult. Once informed about the REAL ID implementation process, respondents expressed significant concerns about how the captured personal information might be used – 65% did not trust that their personal information stored for purposes of obtaining a new driver’s license or state ID will not be used for any other purpose; only 27.5% trusted their personal information to be used as intended.

For these and other reasons, detailed more fully in our discussion regarding personal information, privacy and security, AARP urges that the universe of “official purposes” not be expanded without seeking specific authority from Congress – exclusive of national emergency situations. At the very least, we would urge DHS to seek Congressional input and require formal rulemaking before expanding the uses and applications of the REAL ID driver’s licenses or REAL ID identification card.

§ 37.5 Deadlines and validity periods for REAL ID driver’s licenses and identification cards

The proposed rules state that any state-issued driver’s license or identification card issued on or after May 11, 2008, is acceptable by Federal agencies for official purposes, if DHS determines that the state is in compliance with the requirements of the REAL ID Act. In addition, driver’s licenses and identification cards issued before May 11, 2008, by a state that DHS determines is in compliance with the Act are acceptable by Federal agencies. REAL ID driver’s licenses and identification cards issued by states in compliance with the Act are valid for up to eight years.

Based on the requirements of the proposed rule, states are likely to generally require renewals of REAL ID driver's licenses and identification cards every eight years. AARP is concerned, however, that many states have requirements for more frequent in-person renewal periods for older persons. As a result, it is imperative that DHS grant states authority to limit the documentation and document verification requirements when renewals of REAL ID licenses are scheduled for shorter periods than eight years.

The timeline issue also has considerable impact on the cost of implementation to states and their citizens. The question raised is whether the DHS' REAL ID implementation process proposal fails cost-benefit analysis⁵ and ultimately imposes unnecessary burdens on citizens. AARP cannot support an implementation process that lacks flexibility to accommodate realistic timelines and reasonable federal funding to lessen fiscal burdens for both states and citizens.

Our recent April 2007 survey revealed that almost 80% of persons aged 50+ were very or somewhat concerned about increased costs to states. An even greater percentage (84%) of respondents was very or somewhat concerned about increased cost to individuals. A majority (58.3%) thought that states would benefit greatly or somewhat from REAL ID implementation compared to 41.7% that reported not much or no benefit to the states. Regarding individuals, the survey found only 44.6% believed individuals would benefit greatly or somewhat compared to a majority of 53.4% who believed individuals would not benefit much or at all. Indeed, those reporting concern that state programs might be cut or scaled back to fund REAL ID were 78.7% very or somewhat concerned while only 21.2% were not that concerned or not at all concerned.

III. SUBPART B – MINIMUM DOCUMENTATION, VERIFICATION, AND CARD ISSUANCE REQUIREMENTS

§37.11 Application and documents the applicant must provide

The draft regulations require applicants for a REAL ID driver's license or identification card to present a series of documents to establish identity, date of birth, Social Security number, address of principle residence, and lawful status in the US. Providing many of the required documents could prove difficult for many individuals, particularly older, lower-income, disabled, minority or rural individuals. AARP is concerned about this undue burden on older persons and other groups.

The disparate impact on many of these groups was demonstrated in a 2006 survey⁶ that found:

⁵ The CATO Institute statement on March 26, 2007, before the Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Government Management, the Federal Workforce and the District of Columbia concluded that the DHS implementation strategy fails its cost-benefit analysis.

⁶ R. Greenstein, L. Ku, and S. Dean, *Survey Indicates House Bill Could Deny Voting Rights to Millions of U.S. Citizens*. Center on Budget and Policy Priorities (September, 2006).

- About 11 million US citizens have neither a birth certificate nor a passport in their home;
- Low-income people are nearly twice as likely to lack these documents as people with higher incomes;
- Residents 65 years of age and older are much more likely to lack these documents than younger residents;
- African-Americans are much more likely to lack these documents than whites; and
- Rural residents are more than twice as likely to lack a birth certificate or passport as non-rural residents.

In the April 2007 AARP survey, 7.5% of respondents stated that they could not readily locate a photo ID (i.e., a U.S. passport), or a non-photo ID that includes their full legal name and birth date, and 16.2% said that they had family, friends or neighbors who might have trouble attaining or readily locating such documents. Some 7.9% stated that they could not readily locate documentation of birth date, i.e., a birth certificate – and 18.4% said that family, friends or neighbors might have trouble attaining or locating such documents. While only 3.2% said that they could not readily locate documentation of a Social Security number (i.e., a Social Security card, W-2 form, 1099 tax form or pay stub), 14.1% said that they have family, friends or neighbors who might have trouble with those documents. Similarly, 12.8% said that family, friends or neighbors might have trouble with documentation showing name and principle residence address (i.e., a utility bill).

These survey results suggest that significant numbers of older persons would have difficulty meeting the documentation requirements of DHS' Draft Regulations. Moreover, 62.9% of survey respondents stated that they were concerned about possible problems with the REAL ID system's stricter documentation requirements. Over seventy percent (73.7%) of respondents supported changes in the law to accommodate unique circumstances and disasters, while only 26.3% felt changes should not be made to accommodate obtaining a new driver's license or state identification card. The background to the rules at 10831-2 suggests that states grant an exception to the birth certificate requirement for persons born before 1935. However, an important exception of this nature should not be left to the discretion of the states – DHS should incorporate such a requirement into the rules themselves. Also, AARP questions the cut-off date of January 1, 1935. Many individuals born after this date also lack birth certificates or may be unable to obtain documentation of birth information from their states, and they should be similarly able to come within a state's exception process.

§ 37.11 (c) Identity

The Draft Regulations specify nine documents that meet the requirement for establishing identity. As stated above, many citizens have neither a birth certificate nor a passport. DHS notes in the analysis of the proposed rule, at page 10828, that passports are currently held only by an estimated 25 percent of Americans. Many Americans are equally if not more likely to lack the remaining seven documents, as all of these (except a prior REAL ID) are documents generally held only by non-citizens or naturalized

citizens, a small subset of those who will apply for REAL ID licenses or identification cards.

An older person born at home who has never traveled outside the United States may well lack all nine of the acceptable documents. Such an individual has no way to obtain a REAL ID, unless his or her state elects to have an exceptions process, has its exceptions process approved by DHS, and has an exceptions process that covers this person's circumstance. AARP believes that it is unfair to deny access to air travel and federal facilities for individuals who find themselves in this situation through no fault of their own. AARP urges requiring reasonable exceptions in both federal and state guidelines.

§ 37.11 (d) Date of birth

Documentation of date of birth is limited to the same nine documents listed in subsection (c) for identity. Again, the same hardships will result as described above. There is no exceptions process for this requirement. Therefore, AARP again urges requiring exceptions procedures.

§ 37.11 (e) Social security number

The Draft Regulations require an individual to present a Social Security card, a W-2 form, an SSA-1099 form, a non-SSA 1099 form or a pay stub to establish an Social Security number. Individuals who have lost their original Social Security card and have no employment or Social Security income are unlikely to be able to meet this requirement. Again, there is no exceptions process for this requirement despite a very apparent and practical need.

§ 37.11 (h) Exceptions process

In this subsection, DHS proposes that “State DMVs may choose to establish a written exceptions process in order to provide REAL ID driver’s licenses and identification cards to persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity.”

AARP believes that states should be *required* to have an exceptions process, since a significant number of older Americans and others will be unable to meet the requirements for establishing identity. While the exemptions provisions for persons born before 1935 are a start they are not adequate to give relief to all the classes of persons unduly burdened through no deficiency of their making.

In addition, the proposed rule requires a state to have its exceptions process approved by DHS but provides no criteria for acceptable exceptions processes. DHS should provide guidance for the states on what constitutes a reasonable exceptions process, and should officially publish the standards for the approval process – including a public rulemaking process – to avoid arbitrary disapprovals by the agency. Exceptions processes should not be limited to extraordinary circumstances, as many ordinary people living ordinary lives may lack these documents through no fault of their own. This recommendation is

supported by our survey data, which shows that while the vast majority of respondents can reasonably access some key documents, around 10% cannot do so personally or have relatives friends or neighbors who cannot. This holds across all socio-economic sub-groups, thereby suggesting that millions of ordinary citizens could be adversely affected by the lack of adequate exceptions processes. DHS should defer to state efforts to ensure that burdens on individuals applying for REAL ID licenses or identification cards are minimized; however, such deference cannot responsibly extend to permitting states to have inadequate exceptions processes, or no exceptions processes whatever.

§ 37.13 Document verification requirements

States are required to adopt procedures that permit them to verify required documentation with the issuing agency before an individual is eligible for a REAL ID driver's license or identification card. AARP is concerned that until all of the verification systems are in place, the need to make one or more trips to the DMV will be extremely burdensome on older persons. We believe the requirements under this rule should be such that consumers should not need to make multiple trips to the DMV to obtain a single license. For this reason, AARP recommends that compliance by states with the REAL ID Act not be required until such date as all the verification systems are in place.

AARP applauds the requirement that consumers who have a REAL ID driver's license or identification card do not need to produce other verifiable documentation for every subsequent renewal. The state only needs to verify the REAL ID driver's license or identification card.

IV. SUBPART B – §37.11 AND §37.17 SOME GENERAL DIFFICULTIES WITH RELIANCE ON BIRTH CERTIFICATES AND PASSPORTS.

A recent decision of the Missouri Supreme Court, *Weinschenk v. State*, 203 S.W.2d 201, 206-10 (Mo. 2006) (Case No. SC88039, decided October 16, 2006) [see Appendix II attached hereto, containing relevant passages of *Weinschenk* decision], identified strong evidence of difficulties older, low-income, minority and disabled persons face in obtaining a photo ID. That decision invalidated a state law restricting the rights of citizens to vote without a photo ID.⁷ Despite the different context, AARP submits that the court's conclusions are very useful in evaluating challenges of implementing REAL ID.

In particular, the *Weinschenk* decision noted that many women, whose names have changed from those on their birth certificates, due to marriage or other reasons, are likely

⁷ AARP filed a "friend of the court" brief in this case successfully urging the court that the Missouri voter photo ID law should be enjoined, because of undue burdens on the right to vote for many older, disabled, female, low-income and minority voters likely to face great difficulties securing photo ID.

to encounter great difficulty obtaining a photo ID even if they are able to secure an original birth certificate. In addition, the *Weinschenk* court discussed difficulties faced by persons whose state of birth does not possess, or cannot locate an original birth certificate. The first of these problems reflects a rather widespread social phenomenon. The latter poses an especially significant problem for many African-Americans, Native Americans, and Latinos. These groups are disproportionately likely to lack reliable, official birth records since they may not have had the option of being born in a hospital, whether due to Jim Crow (or other discriminatory) laws and practices, or very limited healthcare resources for persons born outside the US.

§ 37.17 (a) Full Legal Name

The NPRM states: “*The name on the face of the card must be the same as the name on the document presented by the applicant to establish identity.*” This establishes a problem for many persons, principally women, whose legal name does not conform to the name on their birth certificate which will be the document used to establish identity for the vast majority of people because their name has been legally changed, whether because of marriage or other reasons. Currently the explanatory text associated with the proposed rule, *see* 72 Fed. Reg. 10827-28, neither acknowledges this problem nor requires states to address it. Either this and related provisions of the rule, *see* 37.11(c), should acknowledge this problem, or, at the very least, DHS guidance regarding implementation of identity verification procedures should require states to have procedures whereby persons whose names have changed may secure an amended certified birth certificate reflecting their current “full legal name.”

§ 37.17 (f) Address of principal residence

This requirement creates serious problems, as the explanatory text associated with the proposed rule acknowledges. In particular, the text states: “a mobile society leads to frequent relocations, ownership of multiple properties, as well as lifestyles that include no fixed address.” Moreover, DHS notes that some individuals, such as the homeless, do not have a fixed address. *Id.* at 10830. AARP lauds DHS for acknowledging this difficulty, but also urges that the Department further acknowledge the truly enormous scope of the problem. That is, nationwide, millions of persons, most of them individuals or members of households with low-income, do not own their own home. These are persons of all ages, many of whom are over age 50; some change their legal address frequently, as many as several times in a single year.

In light of the severity of this problem, AARP further urges DHS to strengthen several aspects of the proposed rule. Explanatory text associated with the proposed rule, 72 Fed. Reg. at 10830, states:

Individuals who do not have a fixed address, such as the homeless, may still obtain a REAL ID driver’s license or identification card if they otherwise can produce the documents a State must possess and verify prior to issuing a REAL

ID For such individuals, a State may issue REAL ID ... by adhering to a written exceptions policy described in section II.F. below.

Further the text states elsewhere, 72 Fed. Reg. 10836:

b. No Fixed Address. DHS recognizes that some people do not have a fixed address and that States have exceptions process in place to address this situation. DHS believes that each State should continue to address these situations through a written and documented exceptions process. For example, in some States homeless people may use addresses of accredited organizations on the local or State level. A State can address such circumstances through a written exceptions process, and States must document each use of such a process.

First, this issue is important enough for many persons, given their significant numbers in every state, that it should be included in the text of the rule. In particular, AARP lauds DHS for specifically approving the idea of permitting persons without a fixed legal address to use “addresses of accredited organizations on the local or State level.”

Second, DHS’ language regarding this issue is somewhat vague in its wording and should be clarified to make clear that the requirement of a “fixed” legal address will be waived so long as a REAL ID applicant can make a showing that they have none, and further, that they can comply with other documentation requirements.

Third, this issue is important enough that it further demonstrates the need for DHS to require states to provide an “exceptions process” whereby, *inter alia*, persons without a “fixed” legal address nonetheless may obtain a REAL ID. Explanatory text associated with the proposed rule now says that states “may” and “should” address the needs of such persons through an “exceptions process.” Either the rule should require that states provide an exceptions process to address access to a REAL ID for persons without a “fixed” legal address, or the rule should require that states use an exceptions process to this end, but in any event provide some process that assures access to a REAL ID for persons without a “fixed” legal address.

§ 37.17 (h) Signature

The requirement of a signature may pose a problem for some persons with disabilities affecting their upper extremities, depending on state procedures for implementing the requirement. The regulations should be amended to require states to address this issue in their implementations procedures, their exceptions processes or both. Still other persons, including some older persons and others with progressive limitations in use of their upper extremities, can make a signature but may be unable to reproduce their *prior* signature (i.e., their signature on record or on a prior REAL ID). If states use or require a signature “match” to establish identification, they should be required to provide a process whereby an applicant with difficulties making a (and thus reproducing a prior) signature can demonstrate his/her identity without a signature match.

V. SUBPART B – PRIVACY CONCERNS

AARP is concerned that the implementation of the Real ID Act would create an increased risk of identity theft for the 245 million Americans who currently hold a state-issued driver's license or identification card. This is a particular concern to the 50+ population, since according to figures from the Identity Theft Assistance Center (ITAC),⁸ 55 percent of the verified identity theft victims processed by ITAC were age 50 or older. As such, preventing identity theft is a primary concern for AARP.

AARP is also concerned that the NPRM does not establish any limit on what sensitive personally identifiable information (PII) is collected. While minimum required elements are prescribed in 37.11, there is no regulation which would prevent additional elements from being required by states. This could create a greater risk of harm should a security breach occur. We urge establishing a limit on what information can be collected by state DMVs in order to prevent unnecessary PII from being collected and put at risk.

Questions have been raised as to whether the REAL ID implementation proposal can demonstrate a positive cost-benefit analysis or rigorous risk-management analysis.⁹ Consumer and other groups opposing the lack of adequate privacy protections and technological security most frequently cite the lack of specificity regarding security within this national network of state-based data facilities. The criticism is mirrored in reports and recommendations by the Government Accountability Office, which stated in a recent report on information cyber security before the House Committee on Homeland Security (April 17, 2007) on p. 12 [GAO-07-751T]:

However, DHS has not yet fully implemented our original recommendations, particularly in implementing such a capability beyond the federal government.

AARP believes that critique of the state of information security compels extreme caution in exposing personal information to the risks of untested information databases. The April 2007 AARP survey affirms the fear older persons have about the security and privacy of their personal information in this network of state databases. Prior to the survey, 10.4% of respondents over age 50 had heard of the REAL ID Act while 89.6% had not. Before learning of REAL ID implementation proposals, when asked about their level of trust that State DMVs would safeguard their personal information, over 61% trusted somewhat or a great deal, while just over 32% did not trust much or at all. When asked about their trust in the security of the computers used by State DMVs to safeguard their personal information, 53% trusted somewhat or a great deal, and 41.5% did not trust much or at all.

⁸ Identity Theft Assistance Center Press Release, March 29, 2007.

⁹ See footnote 5.

In contrast, when asked “How serious is the risk of identity theft to you personally?,” 84% said very or somewhat serious, while only 16% said not that serious or not at all serious. When asked in follow-up (after learning about the REAL ID Act), would you favor or oppose a plan that compiles or gathers your personal information into a national database, 31.6% would favor while 68.4% would oppose such a plan.

The proposal at §37.11 also lays out the minimum documentation requirements, but it does not establish any limit on what sensitive PII is collected. This open-ended acquisition of personal information, combined with the requirement in §37.31 that states retain copies of the source documents, could create a greater risk of harm to the individual if a security breach occurs. AARP therefore recommends that §37.11 be amended to include limits on what PII states may collect.

§37.19 Machine readable technology on the driver’s license or identification card

Proposed rules at §37.17 require the use of a Machine Readable Zone (MRZ), and at §37.19 delineate the technological standards for the MRZ. These subsections create several privacy and security concerns.

First, the rule includes no required minimum security standards for the MRZ. As a result, the PII in the MRZ could potentially be read by anybody with access to the technology required to read the MRZ. We therefore recommend that the rule be amended to include minimum security standards for the MRZ.

Second, although §37.19 details the information that the MRZ must contain, it places no limits on the amount of information that states may place on the MRZ. This can result in the inclusion of other sensitive data on the MRZ that could unnecessarily lead to greater risk of harm from identity theft. AARP therefore recommends that DHS amend §37.19 to state that only information listed in the final version of §37.19 may be included in the MRZ.

Third, the proposed rule does not limit who may gain access to the information contained on the MRZ and under what circumstances they may do so. Information on the MRZ should be available only to those who expressly need it, such as law enforcement officers and DMV officials. AARP therefore recommends that the rule add a new subsection limiting who may gain access to the information on the MRZ.

§37.41 Comprehensive securities plan

The interconnectivity of the state databases established in §37.33 could give identity thieves access to much more PII, because breaking into one database might enable them to gain access to PII in all other states’ databases. As a result, the security of these databases is of paramount importance.

§37.41 requires states to prepare a “comprehensive security plan for all State DMV offices and driver’s license/identification card storage and production facilities,” yet this security plan is not subject to federal minimum standards. Since each state is required to give every other state electronic access to their DMV databases, by not establishing minimum security standards the rule creates a “weak link” system. Under such a system, states with strong security measures might be at risk as a result of states with weaker security measures. When the threat of these “weak links” are combined with the very strong lack of trust among our survey respondents, AARP is compelled to urge that §37.41 be amended to require clear, strong and verifiable minimum security standards.

§37.45 Background checks for covered employees

§37.45 establishes background checks for “covered employees,” as defined in the rule. Nowhere does the NPRM, however, limit who may have access to the databases containing PII. Similarly, the NPRM does not limit who may gain access to the repositories of stored source documentation that are required to be maintained by DMVs under the REAL ID Act. Once again, this may lead to greater incidences of identity theft and a greater likelihood of harm when identity theft does occur. Given our survey feedback regarding trust of DMV staff to safeguard their personal information, AARP recommends that DHS add a subsection to the proposed rule that limits who may gain access to PII and under what circumstances they may do so.

VI. SUBPART E – PROCEDURES FOR DETERMINING STATE COMPLIANCE

§ 37.51 Compliance – General requirements

In order for a state to be in compliance with the REAL ID Act, it must meet each and every standard required by the Act. States must submit an initial certification of program compliance and specified documentation to DHS no later than February 10, 2008. In subsequent years, each state must submit an annual certification demonstrating ongoing compliance with the Act prior to January 1. The February 10, 2008, date is fixed, unless a state requests a deadline extension based on the lack of a final REAL ID regulation to guide implementation by October 1, 2007. Such an extension request will be considered justified and an extension will be granted until no later than December 31, 2009. During the extension period, states will be requested to provide a compliance plan six months from the date the extension is granted.

AARP believes that without a final regulation available at this time, the requirement to request an extension will be an undue burden on the states, particularly if it is going to be liberally granted. The regulation should simply grant the states until December 31, 2009, to submit their initial certification of program compliance. This would permit states to move forward at a pace that will allow them to meet the May 11, 2013, deadline for compliance.

VII. CONCLUDING REMARKS

AARP's policy regarding implementation of the Real ID Act is strongly reaffirmed by the many public information sources cited above, and also by the current survey data recently collected by AARP. These comments elucidate what has consistently been AARP policy in support of our members, persons aged 50+, and American citizens in general:

- When implementing the Real ID Act, federal and state authorities should ensure that the physical, technical, and administrative security of records containing sensitive personal information is maintained. The implementation of the Act should also provide states with sufficient time and resources to create appropriate procedures and systems to protect the personal information of consumers as required under the Act and any associated regulations.
- Congress, state legislatures, and federal and state administrative agencies should devise requirements that address eligibility and security concerns but are not so restrictive as to hamper access to government-issued identification or government programs and services by otherwise-eligible individuals.

Thank you for this opportunity to share our views on this important issue. If you have any questions regarding these comments, please contact Larry White of our Federal Affairs staff at (202) 434-3813, or DaCosta Mason of our State Affairs staff at (202) 434-3956.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy