

REAL ID ACT
STATE IMPLEMENTATION RECOMMENDATIONS
Provided to the U.S. Department of Homeland Security, by
National Governors Association
National Conference of State Legislatures
American Association of Motor Vehicle Administrators

Executive Summary

Enacted in May of 2005, the REAL ID Act of 2005 (REAL ID) requires certain state standards, procedures and requirements for issuing drivers licenses and identification cards (DL/ID) if they are to be accepted as identity documents by the federal government. As passed, the statute will have a wide-reaching impact on citizens and states because it will require changes to all 240 million existing licenses and IDs, and alter the business practices of every state motor vehicle agency.

Implementation of REAL ID now rests with the Department of Homeland Security (DHS). States' ability to meet the requirements of REAL ID by the statutory deadline of May 2008 will directly depend on how much deference DHS is willing to grant to states to comply with the statute and the federal government's commitment to assist states and establish necessary verification systems.

This document summarizes a joint section-by-section review of the REAL ID Act by the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA). This cooperative effort was designed to determine whether the Act could be implemented in a practical, economic and efficient manner and to provide guidance to DHS in developing its regulations. The review includes a detailed section-by-section description of the issues raised by the statute; critical concerns of states stemming from a particular section; states' recommendations for effective implementation; and identification of federal actions required to facilitate implementation.

Despite state efforts to develop workable standards for implementing REAL ID, several critical concerns remain:

- Even with the most advantageous construction of the regulations, according to the survey responses, the Act could increase equivalent visits to State Motor Vehicle agencies by over 75% annually.
- Implementing REAL ID requirements will require additional staff, facilities, training and equipment, including the development, expansion and deployment of the five verification systems required by the Act.
- Because driver licensing is a state function, each jurisdiction will face the challenges of implementation from a different demographic, operational, legislative, technological and fiscal status. Regulations must therefore provide maximum flexibility to ensure compliance can be achieved.
- There is simply not sufficient time to implement the requirements as defined by the statute. The absence of timely regulations, systems and resources will ultimately overwhelm all good intentions and desire for swift implementation, and must be acknowledged and addressed.

- Implementation costs will be significant and potentially problematic. States are in the process of conducting a fiscal impact survey to accurately and credibly define the level of resources needed to meet federal standards.

State engagement and interest in this issue is universal. Every jurisdiction participated in the initial analysis or follow up surveys that support the attached recommendations. States remain committed to increasing the security and integrity of their state drivers license and identification card processes and look forward to working with DHS and Congress to establish reasonable and workable regulations to implement the objectives of REAL ID.

Summary Recommendations

Definition of “Official Purpose”

The first major issue in the REAL ID Act is the definition of “official purpose.” This definition will determine when and where a REAL ID compliant document will be required for admissions to federal facilities, commercial aircraft and other purposes as determined by the DHS Secretary. Because the term is undefined, regulations clarifying “official purpose” could significantly affect the scope of the statute. For example, individuals who do not drive and choose not to obtain an ID card could be prohibited from access to federal buildings, access to post offices, social security offices, or even voting in federal elections depending upon the definition of what constitutes an “official purpose.”

The regulations must clarify the definition of official purpose consistent with the underlying legislative intent. Regulations should also establish an official process for allowing state input should the Secretary decide to alter the scope of the definition at a later date.

Timeframe for Implementation

The deadline for complying with REAL ID is May 11, 2008, the date when federal authorities may only accept a REAL ID compliant DL/ID for an official purpose. States believe that this timeframe is unreasonable, costly and potentially impossible to meet. The underlying problem is that the statute could be read to require that all DL/IDs be REAL ID compliant as of May 11, 2008. Such an interpretation would require the “reenrollment” of all existing DL/IDs. It is logistically impossible to re-process all current license holders (some 240 million) by May 11, 2008. The regulations and the required systems for verifications will not be in place early enough to process all DLs/IDs by that date.

Furthermore, the May 11, 2008 deadline provides insufficient time, following the ultimate release of final regulation, for states to adopt conforming legislation, receive federal funding, and honor procurement processes to implement the far-reaching changes of the Act. To logistically manage the changes required by REAL ID, states must be given at least 8 years to renew all DLs/IDs (May 11, 2016). In addition, states should be allowed to grandfather citizens having a pre-existing DL/ID with the state for at least ten continuous years.

Determination of State Compliance

The REAL ID statute gives the DHS Secretary, in consultation with the Secretary of the Department of Transportation, the authority to determine whether a state is meeting the requirements set forth in the REAL ID statute. States believe that the process should be one of self-certification of federal requirements, such as that used for commercial driver licensing. States recommend participation with DHS in the development of a streamlined self-certification process to meet the requirement of the Act.

Address of Principal Residence

The statute requires states to include a person's full name, date of birth, gender, and DL/ID number, along with a digital photograph, address of principal residence, physical security features to prevent tampering, and a common machine-readable technology on the DL/ID. The biggest issue for states in this section is the definition of "address of principal residence," which has no defined standard. State laws vary widely on how to define residency/domicile because the mobile society allows frequent relocations, ownership of multiple properties, as well as lifestyles that include no fixed address. Address changes are a normal, frequent occurrence and constitute the largest driver record change transaction.

Card Design

States are concerned about placing certain information required in this section of the Act on the DL/ID card because a majority of states and the federal government have laws that protect the identity and security of certain classes of individuals, e.g., victims of domestic violence, judges, witness protection, law enforcement personnel.

To address these concerns, states recommend minimum card design specifications as applied to the nine items enumerated in this section of the REAL ID statute. States may opt to incorporate higher levels of technology. Also, states recommend that the machine-readable technology requirements be defined as an unencrypted two dimensional bar code, with a name database standard of 125 characters. In addition, states should be allowed to propose interim methods of tracking address changes without the requirement for the full issuance of a replacement credential. Furthermore, depending on state laws addressing special privacy concerns of certain individuals, licenses should be allowed to display an alternative address, while the address of principal residence, as defined by state law, must be captured and maintained in the database.

Definition of "Full Legal Name"

There is wide inconsistency as to how agencies document a person's full legal name. There is a need for acceptable common business practice among issuing agencies on what is captured on the face of documents, what is recorded in the database, included in common machine-readable technology, as well as the hierarchy of use when inconsistent documentation is discovered. Documents such as passports, immigration cards, and social security cards can all have different names for the same individual, e.g. James Earl Jones, Jimmy Jones, J. E. Jones. Requirements imposed on states for full legal name capture should equally apply to the federal identity document issuing agencies.

Verification of Eligibility Documents

States are concerned that many of the database systems they will be required to use will not be functional by May 11, 2008. Although most states currently use the social security number online verification (SSOLV) to verify an individual's social security number (SSN), this database should be enhanced to accommodate the increased use under the REAL ID Act.

Further, states must verify that an individual SSN has not already registered to or associated with license or ID issued by any other State. The two currently available systems cover only a limited number of all licensed drivers. The Commercial Driver License Information System (CDLIS), can point to the driver record of holders of commercial driver licenses in the state where they are licensed, and the Problem Driver Pointer System (PDPS), is able to flag only those license holders potentially subject to a suspension or revocation. There is no comparable system for the majority of the non-commercial, non-problem driver population.

States are also required to check the legal status of individuals applying for a license, using the Systematic Alien Verification for Entitlements (SAVE) system. The system was not designed for this purpose. SAVE currently lacks the real-time functionality to provide truly integrated verification for the full range of applicants in all state Departments of Motor Vehicles (DMV) simultaneously.

Likewise, states are required to verify vital records (birth/death certificates) using the Electronic Verification of Vital Events (EVVE) system that is not fully functional. State and local vital record agencies are the key to creating the EVVE system, and resources are needed to make sure that the system is functional and can respond in real time. States are also concerned about the requirement that limits foreign documents to a foreign passport, unless it is presumed to include the associated U.S. immigration documents that accompany the foreign passport. Otherwise, there is no practical or reliable way for DMV agencies to verify the accuracy of each passport with the issuing agency, i.e. source country.

Regarding the verification of all documents and eligibilities, states recommend that DHS only require verification through systems that are fully developed, operational in real time, and accessible to all jurisdictions. The federal government should fund the upgrade of these systems, as well as the cost of states use of the database. States should continue and enhance their manual verification and fraudulent documents detection methodologies pending the availability of the required verification systems.

Identity Source Document Retention

The requirement to employ technology to capture digital images of identity source documents will be very costly. The Act requires images be retained in a transferable format, which should be clarified and defined based on need and use.

Many states have prescribed record retention laws that may not conform to this requirement. States must be given sufficient time to change conflicting record retention laws.

Renewals/Address Changes

States need to have the ability to renew REAL ID-compliant licenses and IDs through mail or the internet. In addition, an individual should be allowed to change their address during the license validity period without being required to obtain a new credential.

Security and Training

Under REAL ID, states must ensure the physical security of locations where DLs/IDs are produced. States are acutely aware of the need to protect the raw materials used to produce DLs/IDs. States should be allowed to describe their risk assessment and mitigation plans as part of their self-certification. Similarly, self-certification should be used to identify those staff involved in the manufacture of DLs/IDs that are subject to state and federal background checks. Flexibility in meeting security clearance requirements will be necessary to accommodate existing state personnel laws and regulations. Finally, states should identify the appropriate employees to receive training in fraudulent document recognition and describe their training curriculum as part of the self-certification process.

Data Access and Privacy

The requirements of REAL ID contemplate capture and exchange of driver identity data, document imaging, digital photographs and driver record information between all states. The Driver Protection Privacy Act includes strict controls on driver data. States recommend that access to the information in

such a system be defined as query and response, versus wholesale access to inter-jurisdictional databases, and that it be accompanied by proper restrictions on any outside access or improper usage.