

Independent Task Force on Immigration and America's Future

IMMIGRATION BACKGROUND

Documentation Provisions of the Real ID Act

Concern over the security of identity documents grew dramatically in the wake of the September 11, 2001 terrorist attacks and has been reflected in the efforts of lawmakers at both the state and federal levels to produce more secure documents. Observing that “All but one of the 9/11 hijackers acquired some form of US identification document,” the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) recommended in its final report that “the federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers’ licenses.”¹

The most recent expression of this will on the part of the federal government is the REAL ID Act (HR 418) which was passed as part of an emergency supplemental defense appropriation bill (Pub L 109-13) and signed into law by President Bush on May 11, 2005. REAL ID mandates sweeping changes in the ways identity documents, including birth certificates, Social Security Cards, and drivers’ licenses and identity cards, are issued and used.

REAL ID Act Standards

The REAL ID Act contains standards for state-issued drivers’ licenses and identity cards to be acceptable identification for federal agencies.

- They must bear the person’s full name, date of birth, gender, license or ID number, digital photograph, address, and signature, all of which must be digitally encoded in a common machine-readable format on a card possessing physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
- States must employ digital imaging equipment to produce and store, in transferable format, electronic copies of applicant-submitted documents.
- States must subject every applicant to “mandatory facial image capture.”
- States must “verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented” by an applicant for a state-issued driver’s license or identity document.
- States must verify the applicant’s Social Security Number through the Social Security Administration (SSA).
- Applicants for drivers’ licenses and identity cards must furnish evidence of lawful status.
- REAL ID prohibits acceptance of foreign documents other than passports.

¹ National Commission on Terrorist Attacks Upon the United States, *Final Report*. (New York: W. W. Norton, 2004), page 390.

- The legal status of noncitizens must be verified through the USCIS Systematic Alien Verification for Entitlements (SAVE) system.
- REAL ID also obliges states to maintain databases “containing, at a minimum, all data fields printed on drivers’ licenses and identification cards issued by the State; and motor vehicle drivers’ histories, including motor vehicle violations, suspensions, and points on licenses,” and requires that the states “provide electronic access to all other States to information contained in the motor vehicle database of the State.”

States have three years from the date of enactment to comply with the REAL ID Act provisions, after which time, noncompliant identity documents will cease to be acceptable by federal agencies, including for purposes of boarding aircraft and opening bank accounts.

Resource Implications of Implementation

Estimates of the costs to the states associated with implementing the REAL ID Act are a matter of dispute.

The Congressional Budget Office (CBO) projected that it would cost approximately \$100 million over the next five years to implement.² However, that figure is limited to costs over and above the \$100 million CBO estimated it would cost states to implement the document provisions contained in the Intelligence Reform Act. CBO estimates that the REAL ID’s stricter document provisions would add \$20 million and its database-sharing requirement another \$80 million to their cost estimate for the Intelligence Reform Act. So a more complete reporting of CBO’s findings would be closer to \$200 million.

In contrast, the National Conference of State Legislatures (NCSL) initially estimated that it would cost states \$500 million to \$750 million to train workers and upgrade computer systems to digitize documents and share information between the states and the federal government, plus an ongoing annual operating cost between \$50 million and \$75 million.³ At its annual meeting in August 2005, however, NCSL reported that, once indirect costs were factored in, the total cost to the states of implementing REAL ID could rise as high as \$13 billion.⁴

Some states have also produced their own individual estimates of the cost of implementing REAL ID. Virginia transportation officials estimated that it could cost Virginia alone as much as \$237 million to implement the more flexible drivers’ license provisions contained in the Intelligence Reform Act.⁵ The Washington State Department of Licensing estimated that the state of Washington would have to spend \$250 million to implement the REAL ID Act and also hire an additional 500 employees, of which approximately 325 would be needed to verify citizenship and identity documents.⁶

² Congressional Budget Office, “Cost Estimate: HR 418, REAL ID Act of 2005,” February 9, 2005, <http://www.cbo.gov/showdoc.cfm?index=6072&sequence=0>

³ “Anti-Terror Legislation Expected to Lengthen DMV Lines,” *The Washington Post*, May 14, 2005.

⁴ “State rights, authority threatened,” *The Boston Globe*, August 16, 2005.

⁵ “Anti-Terror Legislation Expected to Lengthen DMV Lines,” *The Washington Post*, May 14, 2005.

⁶ “REAL ID’s cost angers state leaders,” *The Seattle Times*, August 17, 2005.

Faced with these burdens, states could choose not to comply with REAL ID, in which case their residents would need to find alternative identity documents, such as a passport, for flying, entering federal buildings, etc.⁷ Alternatively, states could preserve their normal drivers' licenses and offer as a separate option REAL ID-compliant identity cards to persons who need to travel or interact with federal agencies on a regular basis.

REAL ID and Employer Verification

REAL ID demands attention in the context of employment verification because current proposals to upgrade the Basic Pilot verification program, including the McCain/Kennedy and Cornyn/Kyl bills presently before Congress, place great emphasis on the use of machine-readable documents to save time and reduce data entry errors during the verification process. Should REAL ID produce a uniform standard for machine-readable, state-issued drivers' licenses and identity documents, federal employment authorization verification would almost certainly incorporate or adopt that standard to establish a card holder's identity.

In addition, the stricter security provisions described in the REAL ID Act would address concerns about the document fraud that undermines the existing verification process. Yet REAL ID drivers' licenses are not designed to definitively establish whether or not an individual is authorized to work in the United States, so machine-readable REAL ID cards would still need to be supplemented by upgraded Social Security cards or machine-readable visas issued to immigrants.

Concerns about REAL ID

Criticism of the REAL ID Act has been vocal and widespread, calling into question how it will fare in implementation. States have charged that the REAL ID Act constitutes an unfunded mandate for states, for which neither adequate technical guidance nor financial support has been provided. In a joint letter submitted to the US Senate prior to passage of the act, the National Governors Association, NCSL, the Council of State Governments, and the American Association of Motor Vehicle Administrators alleged that the Real ID Act would "impose technological standards and verification procedures on states, many of which are beyond the current capacity of even the federal government. Moreover, the cost of implementing such standards and verification procedures for the 220 million drivers' licenses issued by states represents a massive unfunded federal mandate."⁸ NCSL has been in the vanguard of opposition to REAL ID: "The REAL ID Act threatens to handcuff State officials with impossible, untested mandates, such as requiring instant verification of birth certificates without providing the time or resources needed to bring 200 million-plus paper documents into the electronic age."⁹

⁷ National Immigration Law Center, "Questions and Answers about Drivers' Licenses under REAL ID," June 2005.

⁸ Letter dated March 17, 2005, reported in the *Congressional Record*, April 20, 2005, S3978.

⁹ "Congress Urged to Reject Drivers' License Measures," NCSL press release, February 8, 2005.

Besides questions about the costs of implementation, state officials, civil liberties advocates and libertarians, privacy advocates, immigrants' rights groups, and others have raised additional concerns, including:

- The charge that REAL ID Act inappropriately transfers federal functions to state officials;
- The charge that the REAL ID Act would create a de facto national ID card;
- Questions about what other purposes REAL ID could be put to other than those for which it was intended;
- The threat that REAL ID's inter-connected databases will become an attractive target for hackers and identity thieves;
- The threat of "mission drift," whereby enforcement officials seeking specific information on an individual may become alerted to other suspicious activity and thus bypass the Fourth Amendment's prohibition on unreasonable search and seizure;
- The potential conflict between REAL ID's data-sharing provisions and state-level privacy laws;
- The likelihood that denying drivers' licenses to some immigrants will cause an increase in drivers who lack auto insurance;
- The special burdens REAL ID imposes on asylees and refugees, who may flee their homes without an opportunity to assemble formal travel documents, as well as the burden it imposes on immigrants from countries in which formal documents such as birth certificates and passports are simply not available;
- Potential problems for US citizens born outside the US, including the children of US military personnel or diplomatic officials serving overseas and US business people working abroad, whose children possess foreign birth certificates, which are not acceptable under REAL ID; and
- Ambiguity about how persons born in US territories such as the Virgin Islands or American Samoa, who are legally US nationals but not US citizens, would establish their eligibility for identity documents.

In addition to concerns regarding identity verification elements of Real ID, there are concerns about provisions that would exempt DHS from environmental regulations and other kinds of oversight in building a border fence.

The Real ID Act seeks to meet the US security imperative to have a reliable system for confirming and individual's identity, prevent fraud through counterfeit-proof identification cards, and capitalize on possible gains from information-sharing among multiple federal and state law enforcement agencies. However, concerns range from cost issues to the difficulty of constructing safeguards against misuse of the data by both criminal elements and the government. Additionally, it does not address problems of non-secure "breeder" documents (e.g., Social Security cards). In terms of worksite enforcement, it is a missed opportunity because despite compromising individuals' privacy, it does not provide any additional benefit in determining their work eligibility.

This information was compiled by Kevin Jernegan, a former MPI Associate Policy Analyst, in September 2005. For more information about the Migration Policy Institute, please visit www.migrationpolicy.org.