

**State of California  
Department of Motor Vehicles**

# **REAL ID Act Report to the Legislature**

**December 31, 2008**

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## **Preface**

Pursuant to a legislative request, the REAL ID Legislative Report is being submitted for the period of July 1, 2008 to December 31, 2008. This report follows the REAL ID Quarterly Reports required by language contained within the Supplemental Report of the 2007 Budget Act.

In April 2008, the Department of Homeland Security (DHS) granted an extension to all states until January 1, 2010, to achieve “material compliance” with REAL ID. Due to the extension, states have been provided with additional time to satisfy the minimum benchmark requirements of the REAL ID Act by that date. Upon meeting the requirements for “material compliance”, an extension to meet the additional “full compliance” requirement can be requested.

Although the direction the new federal administration will be taking with REAL ID is still unknown, the nomination of Arizona Governor Janet Napolitano as the new Secretary of the Department of Homeland Security presents an opportunity for the administration to revisit the direction of the REAL ID program. As the twice elected Governor of Arizona and as the past Chairperson of the National Governor’s Association (NGA), Governor Napolitano has been an active participant in the debate over REAL ID.

The end goal for California remains the same; that state-issued Driver License/Identification Cards are issued in a secure manner to ensure personal identity information is protected. California continues to have principal concerns related to a number of issues including the lack of sufficient federal funding; and the development of several national electronic verification systems, including issues surrounding the accuracy, privacy and security.

## **California Activities and Approach**

The Department of Homeland Security (DHS) granted all states an extension until January 1, 2010, to comply with the “material compliance” provisions of the REAL ID Act. Notably, the Department of Motor Vehicles (DMV) will be able to use the current procedures for license issuance and renewals until that date. The extension will also provide DMV with the extra time needed to perform impact assessments and make determinations that are consistent with departmental objectives, and in the best interest of security for California and its drivers.

California has continuously invested in improving procedures and technologies that are designed to make the state’s driver license and identification cards amongst the most secure in the nation. This approach has brought California to at least 90% of the provisions for material compliance. California has used discretion with the use of available resources and focused on those efforts where there are sound business investments that preserve personal identity and privacy; make licenses more secure; and deter fraud.

California is preparing for legislative approval to move towards material compliance by authorizing the issuance of two card types, a California compliant DL/ID Card and a REAL ID compliant Card. On a day-forward basis, new customers will be required to meet requirements set forth in the REAL ID Act. Existing cardholders interested in obtaining a REAL ID material compliant DL/ID Card will be required to meet the REAL ID Act requirements.

California has continued its efforts with the DHS and continued to elevate those issues of federal funding, privacy and security, and electronic verification systems development. California continues to advocate that all states reach a common level of program readiness from a technical, privacy, and security standpoint.

At this time, all states that plan to issue REAL ID cards must meet the material compliance requirements by January 2010. Upon being materially compliant, the states can request for an extension for full compliance to May 11, 2011. At this time, California is not advocating full compliance until ongoing issues of funding, privacy and security, design of the three new verification systems have been addressed.

## **Federal Legislation**

The Department of Motor Vehicles monitors federal legislation pertaining to the REAL ID Act to determine how it may impact California residents or whether it mandates changes to departmental processes and procedures. Although numerous federal bills were introduced during the 110<sup>th</sup> legislative session (January 3, 2007 – January 3, 2009), only two were enacted that were specific to REAL ID. Both bills (H.R.2638 and H.R.2764) were related to federal REAL ID grant funding.

It is common for federal legislation to be introduced and analyzed by Congressional staff, but not progress to formal committee review. As with many other federal bills, this was also the case with REAL ID legislation. Legislation that did not pass was primarily directed toward funding issues; establishing criteria to verify the legal status of applicants for a state-issued driver licenses or identification cards; or to amend specific terms of the act or repeal it entirely. The following represents the federal legislative activity for the 110<sup>th</sup> Congressional Session related to the entire REAL ID Act or various aspects of it:

### **ENACTED LEGISLATION**

#### **H.R.2638: Price (North Carolina)**

This bill provides appropriations for the Department of Homeland Security for the fiscal year that ends on September 30, 2008, and for other purposes.

#### **Status**

- June 18, 2007 – introduced.
- September 30, 2008 - became Public Law No: 110-329.

#### **H.R.2764: Lowey (New York)**

This legislation proposes appropriations for the federal fiscal year that ends on September 30, 2008. The funds will be directed to the Department of State, foreign operations and associated programs and purposes. The bill includes \$50 million in grant monies for the REAL ID Act of 2005.

#### **Status**

- June 18, 2007 – introduced.
- December 26, 2007 - became Public Law No: 110-61.

**PENDING LEGISLATION****S. 563: Collins (Maine)**

This bill amends the REAL ID Act of 2005 to extend the deadline by which state driver license/identification (DL/ID) cards must meet certain minimum federal standards for acceptance; and establishes when a state must meet certain minimum electronic verification standards before issuing DL/ID cards due to the non-availability of electronic systems to verify such documents.

If passed, the bill directs the Secretary of Homeland Security (Secretary) to reconvene the negotiated rulemaking committee established pursuant to the 9/11 Commission Implementation Act of 2004, with the addition of any new interested parties, to review the proposed regulations to implement the minimum requirements and the provisions of the REAL ID Act of 2005 and submit recommendations to the Secretary regarding appropriate modifications to such regulations and such Act.

**Status**

- February 13, 2007 – introduced; read twice; referred to Senate Committee on Homeland Security and Governmental Affairs.
- No other action taken.

**S. 717: Akaka (Hawaii)**

This legislation repeals Title II of the REAL ID Act of 2005. In addition, it reinstates section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, thereby providing additional regulatory flexibility and funding authorization. Also, this bill allows states to rapidly produce tamper-proof and counterfeit-resistant driver licenses and protect privacy and civil liberties by providing guidance to stakeholders through negotiated rulemaking to achieve improved 21st century licenses that will support national security.

**Status**

- February 28, 2007 – introduced; read twice; referred to Senate Committee on Judiciary.
- April 29, 2007 – hearings were held for the Committee on Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, Federal Workforce, and the District of Columbia.
- No other action taken.

**S. 1639: Kennedy (Massachusetts)**

This bill provides for comprehensive immigration reform.

Status

- June 18, 2007 – introduced.
- June 28, 2007 – Senate floor; returned to Calendar.
- No other action taken.

**S. 2356: Coleman (Minnesota)**

This legislation amends the REAL ID Act of 2005 by establishing the Prevention of Unsafe Licensing Act. The bill restricts access to driver license/identification (DL/ID) cards by prohibiting a state from issuing a DL/ID card to a person unless the state has complied with certain citizenship or lawful immigration verification requirements.

Status

- November 14, 2007 – introduced; read twice; referred to Senate Committee on Judiciary.
- No other action taken.

**S. 2711: Sessions (Alabama)**

The Secretary of Homeland Security shall establish the State Records Improvement Grant Program. Under this program, the Secretary may award grants to states that display the intent to advance the purposes of this Act and to issue, or implement plans to issue, driver licenses and identification cards that comply with the State license requirements in accordance with the REAL ID Act of 2005. This legislation currently appropriates \$300 million for each of the fiscal years 2009 through 2013 to carry out the provisions of the bill.

Status

- March 5, 2008 – introduced; read the first time; placed on Senate Legislative Calendar under Read First Time.
- March 6, 2008 – read the second time; placed on Senate Legislative Calendar under General Orders.
- No other action taken.

**S. 2718: Barrasso (Wyoming)**

If passed, this bill would withhold 10 percent of the funding for highway construction and maintenance to states that issue driver licenses to individuals without verifying the legal status of those individuals. Although the bill does not affect state requirements, it would impact states if legal status is not verified consistent with REAL ID.

**S. 2718: Barrasso (Wyoming) - continued**Status

- March 5, 2008 – introduced; read the first time; placed on Senate Legislative Calendar under Read First Time.
- March 6, 2008 – read the second time; placed on Senate Legislative Calendar under General Orders.
- No other action taken.

**S. 3181: Byrd (West Virginia)**

This bill makes appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2009. Included within the amount recommended by the Committee is \$50 million to assist with implementing the REAL ID Act. Specifically, funds would allow states to verify document information with the federal and state source agency for driver licenses or identification cards and enable states to share information.

Status

- June 18, 2008 – Committee on Appropriations Subcommittee on Homeland Security, approved for full committee consideration without amendment favorably.
- June 19, 2008 – Committee on Appropriations, ordered to be reported without amendment favorably.
- June 23, 2008 – introduced; referred to Committee on Appropriations; reported to Senate by Senator Byrd (with written report); placed on Senate Legislative Calendar under General Orders.
- No other action taken.

**H.R. 1117: Allen (Maine)**

This legislation repeals Title II of the REAL ID Act of 2005. In addition, it reinstates section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, thereby providing additional regulatory flexibility and funding authorization. Also, this bill allows states to rapidly produce tamper-proof and counterfeit-resistant driver licenses and protect privacy and civil liberties by providing guidance to stakeholders through negotiated rulemaking to achieve improved 21st century licenses that will support national security.

Status

- February 16, 2007 – introduced; referred to the (1) Committee on Oversight and Government Reform and (2) Committee on Judiciary for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- March 23, 2007 – referred to Subcommittee on Government Management, Organization and Procurement.
- No other action taken.

**H.R.1314: Blackburn (Tennessee)**

This bill creates the Photo Identification Security Act, and restricts individual identification documents that may be accepted by the federal government or by financial institutions: (1) Social Security card accompanied with a photo identification card issued by the federal or a state government; (2) a driver license or identification card issued by a state that is in compliance with the REAL ID Act of 2005; (3) a passport issued by the United States or a foreign government; and (4) a photo identification card issued by the Secretary of Homeland Security (acting through the Director of the United States Citizenship and Immigration Services).

**Status**

- March 5, 2007 – introduced; referred to the (1) Committee on Oversight and Government Reform and (2) Committee on Financial Services for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- March 14, 2007 – Sponsor introductory remarks.
- March 26, 2007 – Sponsor introductory remarks.
- March 27, 2007 – referred to House Subcommittee on Government Management, Organization and Procurement.
- No other action taken.

**H.R.1684: Thompson (Massachusetts)**

This legislation authorizes grant appropriations of \$120 million for fiscal 2008; \$100 million for fiscal year 2009; and \$80 million for fiscal year 2010, to develop databases, and technology and security plans as required by the REAL ID Act. The bill also sets priorities for awarding grants; prohibits the Secretary from using federal monies designated for any other DHS grant program in order to fund expenses related to the REAL ID Act; and finds that the federal government should set standards for the issuance of birth certificates and sources of identification, such as driver licenses.

**Status**

- March 26, 2007 – introduced; referred to House Committee on Homeland Security.
- March 27, 2007 – committee consideration and mark-up session held; ordered to be reported by yeas and nays.
- May 4, 2007 – amended by Committee on Homeland Security; placed on Union Calendar.
- May 8, 2007 – Rules Committee Resolution reported to House.
- May 9, 2007 – passed by recorded vote; technical changes made.
- May 11, 2007 – referred to Senate Committee; read twice; referred to Committee on Homeland Security and Governmental Affairs.
- No other action taken.

**H.R.3982: Boswell (Iowa)**

This bill would prohibit the hiring, recruitment or referral of unauthorized aliens and conforms to certain documents used to establish the identity of individuals in accordance with the REAL ID Act.

Status

- October 29, 2007 – introduced; referred to (1) Committee on Judiciary, (2) Committee on Ways and Means, and (3) Committee on Education and Labor for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- November 2, 2007 – referred to Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.
- November 9, 2007 – referred to Subcommittee on Social Security.
- January 15, 2008 – referred to Subcommittee on Workforce Protections.
- No other action taken.

**H.R.4065: Sensenbrenner (Wisconsin)**

This bill creates the Border Enforcement, Employment Verification, and Illegal Immigration Control Act. If passed, it would increase border security and conform to certain elements of the REAL ID Act.

Status

- November 1, 2007 – introduced; referred to (1) Committee on Judiciary and (2) Committee on Homeland Security for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- December 3, 2007 – Referred to (1) Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and (2) Subcommittee on Crime, Terrorism, and Homeland Security.
- January 31, 2008 – referred to Subcommittee on Border, Maritime, and Global Counterterrorism.
- No other action taken.

**H.R.4160: Fossella (New York)**

If states do not comply with certain requirements for the issuance of DL/IDs, this bill would allow for the withholding of federal funds.

Status

- November 13, 2007 – introduced; referred to (1) Committee on Transportation and Infrastructure and (2) Committee on Oversight and Government Reform for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.

**H.R.4160: Fossella (New York)-continued**

- November 14, 2007 – referred to Subcommittee on Highways and Transit.
- No other action taken.

**H.R.4176: King (New York)**

To enhance national security, this bill would restrict the access of illegal aliens to driver licenses and State-issued identification cards.

Status

- November 14, 2007 – introduced; referred to (1) Committee on Transportation and Infrastructure and (2) Committee on Oversight and Government Reform for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- November 15, 2007 – referred to Subcommittee on Highways and Transit.
- No other action taken.

**H.R.4192: Tancredo (Colorado)**

This bill would amend the REAL ID Act by limiting the maximum period of validity for state licenses and identification documents to five (5) years instead of eight (8) years.

Status

- November 15, 2007 – introduced; referred to Committee(s) (1) on Judiciary, (2) Oversight and Government Reform, (3) Ways and Means, (4) Education and Labor, (5) Foreign Affairs, and (6) Energy and Commerce for a period to be determined by the Speaker; for consideration of provisions that fall within the jurisdiction of the committee concerned.
- November 15, 2007 – referred to Subcommittee on Health.
- January 31, 2008 – referred to Subcommittee on Border, Maritime, and Global Counterterrorism.
- February 5, 2008 – referred to Subcommittee on Workforce Protections.
- February 25, 2008 – referred to Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law.
- No other action taken.

**H.R.6947: Price (North Carolina)**

This would provide appropriations for the Department of Homeland Security for the fiscal year that ends on September 30, 2008, and for other purposes.

Status

- September 18, 2008 – introduced; The Committee on Appropriations reported an original measure; placed on the Union Calendar.
- No other action taken.

## **Federal Regulations**

The REAL ID Act was passed by Congress in 2005, as Public Law 109-13, 119 Statute 231, 302, and codified as Title 49 U.S.C. 30301. On January 29, 2008, the final regulations were published in the Federal Register.

The Act establishes minimum requirements for state-issued driver licenses and identification (DL/ID) cards that federal agencies will accept for official purposes on or after May 11, 2008. Using standards established by the Secretary of the Department of Homeland Security (DHS), the REAL ID Act requires that states issue driver licenses and identification (DL/ID) cards which comply with the provisions of the REAL ID Act if the documents are used for federal purposes. Changes related to the issuance of California DL/ID cards would be necessary if California is to comply with the provisions of the REAL ID Act.

In contrast to the original proposed regulations, DHS addressed a number of concerns in the final REAL ID regulations that California and other states and organizations had presented. However, there continues to be serious concerns pertaining to a significant lack of federal funding, the non-existence of national electronic verification systems, and ongoing privacy and security issues.

## **Federal Funding**

On June 20, 2008, the Department of Homeland Security (DHS), Federal Emergency Management Agency, announced a \$3.2 million grant was awarded to California under the 2008 REAL ID Demonstration Grant Program. Subsequently, grant recipients provided input related to use of the grant funds and acceptance of criteria to accept the funds. On October 6, 2008, the DHS sent a REAL ID Grant Adjustment Notice (GAN) advising grantees of changes to the conditions for acceptance of the funds. The GAN stated the drivers' license issuing authority could use grant funding "towards securing their driver's licenses consistent with REAL ID requirements and prioritizing 15 of the 18 benchmarks" (also known as benchmarks for material compliance), as specified by DHS. In addition, the GAN also noted grant recipients must agree to work towards the 15 benchmarks by December 31, 2009.

On December 16, 2008, the DHS opened the grant application period for \$48.6 million under the 2009 Driver's License Security Grant Program. The manner in which the funds are awarded will differ from the 2008 grant funds. Instead of using a competitively awarded process, the 2009 Driver's License Security Grant Program will allocate funds to applicants based on a formula basis that is dependent on the number of DL/IDs issued in each state/territory. Accordingly, the pre-determined target for California will be \$1.6 million. Eligible applicants are identified as state motor vehicle/driver's license issuing authorities.

Funds from the 2009 Driver's License Security Grant Program are to be used to "...prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents that states and territories issue." To receive the funds, the California must submit a grant proposal to the 2009 Driver's License Security Grant Program no later than March 2, 2009. Currently, California is developing a grant proposal.

**Appendices**

1. Analysis of the Regulations to the Legislature – dated April 23, 2008

**Appendix 1****Analysis of the Regulations**

The Department of Motor Vehicles (DMV) has performed a review of the final rules for the REAL ID Act, Docket number DHS-2006-0030, Minimum Standards for Drivers' Licenses and Identification (DL/ID) Cards acceptable by Federal Agencies for Official Purposes. The REAL ID Act creates new policies and processes which will require extensive training for DMV employees and will increase the processing time for all DL/ID card applications. Implementation of the REAL ID Act requires legislative action and either appropriations through the budget cycle or cost recovery from cardholders. The following comments represent the issues surrounding the final rules and their impact on California DMV and all California cardholders:

**Compliance Checklist**

The Department of Homeland Security (DHS) has developed a compliance checklist that will allow DHS to assess and track the states relative to becoming compliant with the REAL ID Act. Two separate checklists have been developed by DHS:

- *Material Compliance* – States must become materially compliant no later than January 1, 2010, if the state has been provided an extension by DHS. This means that all first-time applicants will be issued materially compliant DL/ID cards
- *Full Compliance* – States must become fully compliant no later than May 10, 2011, if the state is materially compliant and has been provided an extension by DHS.

*Analysis:* California would be required to implement the provisions of the material compliance checklist no later than January 1, 2010. There are 18 specific items on the material compliance checklist that require states to implement before being considered materially compliant. Currently, California has in place or will have in place many of the requirements identified in the final regulations. An additional 21 items are provided on the full compliance checklist that states must meet in order to be considered fully compliant to the REAL ID Act. California must meet the requirements of full compliance no later than May 10, 2011, provided an extension was granted by October 11, 2009. The items of the checklist are discussed further in this section. DHS' approach of developing a material and full compliance checklist provides the states with an opportunity to prioritize the changes that will lead to greater overall compliance.

**State Requirements**

1. *Imaging of Identity/Lawful Status Documents* – Documentation presented by the applicant for purposes of identity and/or lawful status must be digitally imaged and stored for a minimum of 10 years. If the documents are not digitally imaged, hard copies must be retained for a period of seven years.

*Analysis:* Identity/lawful status documents are considered the source documents received from applicants and are not imaged or retained for any period of time. DMV anticipates a new DL/ID Card contract in 2009, which includes provisions for the technology to image the documents for long term retention. The department supports this requirement as it establishes a good business practice by retaining the image of the document that was used to establish the identity of the applicant. Retaining an image of the source document will provide the department with additional information and audit tracking when investigating fraud cases. The regulations do provide allowance for only the control number from the source document to be collected if State law prohibits the retention of the image. Current California law allows the department the authority to retain the scanned image; however, the department may want to seek legislation to control access to the source document.

2. *Limited Term for Legal Presence* – The REAL ID Act establishes that if an applicant presents a non-permanent, DHS-issued immigration document, the applicant's REAL ID card must expire on the same day as the DHS-issued immigration document. If the DHS document does not contain an expiration date, the REAL ID must expire within a period of no longer than one year.

*Analysis:* Currently, when an original applicant presents a non-permanent, DHS-issued immigration document as part of the DL/ID card application, the issued DL/ID card must contain an expiration date that coincides with the DHS-issued document. Establishing a limited term for legal presence requirement for all applicants who present a non-permanent, DHS-issued immigration document helps to ensure that the applicant's DL/ID card is only valid during the period of approved stay in the United States and assists in discouraging applicants from overstaying the approved stay. DMV will be required to modify programs and require *all* applicants with a non-permanent, DHS-issued immigration document to possess a DL/ID card where the expiration coincides with the DHS-issued document or, if no date is stated, a card that expires within one year. Previously only original applicants were handled in this manner, which will now include renewals.

3. *Only One REAL ID Card May be Held* – An applicant may hold only one REAL ID card at any time.

*Analysis:* California law allows individuals to possess both a driver license and an identification card at the same time. Approximately 2.4 million individuals have both a driver license and identification card. California law also establishes that an applicant may only hold one valid DL from any jurisdiction at one time. The regulations will require an amendment to California law to ensure that an applicant can hold only one REAL ID card (driver license or identification), regardless to state of issuance, at any given time. The regulations do allow for states to issue an individual with a REAL ID card (DL) and a non-REAL ID card (ID). This could be confusing for the individual as well as the accepting entity that is verifying the card for identity, whether it is for official federal purposes or being accepted at a retail store or bar.

4. *Re-Issuance of REAL ID Cards* – At any time after the initial REAL ID card issuance, if a card is re-issued, the Social Security Number (SSN) and the lawful status of the applicant must be re-verified through the use of the Social Security Online Verification (SSOLV) and Systematic Alien Verification for Entitlements (SAVE) electronic verification systems, respectively.

*Analysis:* Currently, the department does not re-verify previously verified SSNs or legal presence documents at card renewal or reissuance. DMV programming must be developed that re-verifies the SSN and the lawful status document at every card reissuance. Re-verification of the SSN will assist DMV's in reducing the number of cases where identity theft may occur after the death of the cardholder. However, with the DHS proposing to increase their SAVE electronic verification fees, a cost/benefit analysis should be conducted on any business value resulting from re-verification.

## **Customer Requirements**

1. *Customer Impact* – Although most of the regulations will impact the California citizen either directly or indirectly, the regulations are restrictive in requiring the applicant to appear in person and provide specific documentation. In order to meet the requirements of the REAL ID Act, many existing cardholders will have to expend time and money to gather and present the necessary identity documentation required by the REAL ID Act. In some cases, the applicants may not be able to provide the documents required by the REAL ID Act.
  - Proof of Identity/Lawful Status for Material and Full Compliance –
    - Applicants must present one of eight documents to establish identity and lawful status. These acceptable documents are a U.S. Passport, U.S. Birth Certificate, Consular Report of Birth Abroad, a Permanent Resident Alien Card, and Employment Authorization Document, a

foreign passport with a valid visa and an I-94 document, a Certificate of Naturalization, or a Certificate of Citizenship.

- States may choose to accept additional documents for proof of identity. If a state chooses to exercise this option, the exception process must be documented and the information on any additional documents accepted must be listed in the certification package to DHS.
- Proof of Social Security Number (SSN) is needed for Material and Full Compliance
  - Applicants will be required to present an SSN card, or a W-2 form, or a paystub with the SSN listed, or an SSA-1099 form.
- Proof of Residence Address is needed for Material and Full Compliance
  - An applicant will be required to present two documents to establish their residence address. The state may determine the types of documents that will be acceptable under this requirement.

*Analysis:* California currently requires that original applicants for a DL/ID card provide proof of identity and legal presence; as such, the documents specified in the REAL ID Act are already accepted. California also accepts other documents not specified by the REAL ID Act. A decision must be made on the types of documents, if any, the department will continue to accept under the exception process. An analysis should be done on the reliability and integrity of any additional documents that would be considered for exception processing.

For purposes of proof of SSN, applicants for commercial driver licenses are required to present actual documentation containing the SSN; non-commercial applicants are only required to disclose their SSN on the application. California must require that all applicants provide an acceptable document to prove the SSN. Since the department electronically verifies the SSN with the Social Security Administration, having the applicant present actual documentation of the SSN seems excessive and only increases the types of documents the field office employee must visually inspect.

Currently no proof of residence address is required by DMV, except for commercial drivers who must be a California resident in order to receive a California commercial driver license. The applicant is only required to write in the address on the application form. The regulations require applicants provide two documents for proof of residence address.

A determination must be made on the types of documents that will be acceptable as proof. Without an electronic means to verify the residence address, having the applicant demonstrate proof as suggested in the regulations does not provide much value. Introducing more documents for field office employees to verify will introduce more risk in accepting fraudulent

documents. Even the most diligent and trained employees should not be expected to verify literally thousands of different documents and inspect them for authenticity and validity.

2. *Age-Based Re-certification Timelines for Full Compliance –*

- On or after December 1, 2014, federal agencies cannot accept a state issued DL/ID card, unless it meets the requirements of the REAL ID Act, for an “official federal purpose,” as defined in the REAL ID Act, from individuals born after December 1, 1964.
- On or after December 1, 2017, federal agencies cannot accept a state issued DL/ID card, unless it meets the requirements of the REAL ID Act, for an “official federal purpose,” as defined in the REAL ID Act, from individuals born on or before December 1, 1964.

*Analysis:* DHS took a risk-based approach in allowing the states to defer enrollment of the proportion of the population that statistically represents a lower risk for obtaining false or fraudulent identification. According to DHS, only three percent of identification fraud is committed by someone older than 50 years of age. Further, as an extension period from May 11, 2008, to January 10, 2010, is provided in the regulation, the longer enrollment period benefits California as well as other states by reducing the cost incurred by having to bring a customer in for a REAL ID compliant license prior to their normal renewal cycle when they are required to come into a field office. A driver in California with a good driving record only has to appear every 15 years for an in-person renewal. The ten-year time period for REAL ID compliance will still require a third of our cardholders (up to 8 million) to come into a field office with their identity documents and proof of address, who would otherwise renew their licenses by mail or Internet. This additional visit to the office would take approximately 7.5 minutes per transaction for an additional up to 8 million customers over eight years, or 500,000 to 1 million applicants per year.

### **National Database Systems Requirements**

*National Database Systems –* The development of a national DL/ID verification system is required to achieve full compliance of the final REAL ID regulations. This system would be used to ensure the applicant has terminated, or is terminating, the DL/ID card issued by another state prior to the issuance of a new DL/ID card.

*Analysis:* The regulations fail to fully address the cost, logistical burdens, privacy and security issues that exist with the development of the national verification systems. To date the total cost of these systems has not been identified nor who will fund and be responsible for the oversight and administration. In addition to the substantial up-front costs, there will be significant ongoing expenses for charges for the use of the systems.

DHS has proposed that states work with the American Association of Motor Vehicle Administrators (AAMVA) to receive the \$80 million available in grant money to develop the required verification systems. However, this funding is only a small portion needed in order to develop the infrastructures and does not address any ongoing costs to the states. DHS said that the states could join in the organization of a governance structure in conjunction with AAMVA to address issues such as funding, systems development, privacy and security standards, and transaction fees to access data.

Since the final rules do not specify the actual requirements for security and privacy standards, there is no guarantee that all states will meet the California standards, as California has some of the most stringent privacy and information security protections in the United States. Because the REAL ID Act requires states to share sensitive personal identifiable information, states with weaker security protections would make other states' systems vulnerable to unauthorized access, disclosure, or modifications. As the REAL ID Act requires state motor vehicle agencies to collect, store, and exchange personal identifiable information beyond current practices, it is imperative that sufficient privacy and security requirements are delineated for all complying states to meet. If the goal of the REAL ID Act is to establish baseline standards for the issuance of DL/ID cards, then alternatively, this effort should include baseline requirements for the protection of information on the cardholders it seeks to certify. Several aspects of the electronic verification systems are still in question. As three of the five systems do not exist today, it is unknown what requirements to protect the privacy and security of the information will be put into place. Again, the final rules do not sufficiently address the development of these databases or the responsibility requirements if any system becomes compromised.

Neither the REAL ID Act nor the final rules define the standards of governance for this exchange of information. Due to the lack of specific requirements in the REAL ID Act and in the final rules to protect all personal identifiable information, California must continue to influence the development of any systems used to exchange information to protect the California cardholder whose information would be at risk. For further discussion, see Electronic Verification Systems listed in this section.

1. *Systematic Alien Verification for Entitlements (SAVE)* – The use of the SAVE database for the verification of DHS-issued immigration documents is required by both the REAL ID Act and associated regulations.

*Analysis:* REAL ID requires states to issue compliant cards to only those applicants that are lawfully present in the United States. This assists national security by only allowing lawfully present persons to have a federally recognized identity document. The SAVE system uses information contained on the immigration document to verify the authenticity of the data collected by

the department to ensure the legal status of the applicants. Although California has been utilizing the SAVE system since 1995, REAL ID will require inquiring the system for both original and renewal applications. The system costs approximately \$0.26 per initial inquiry and \$0.48 per secondary inquiry. Based on current information from the Department of Homeland Security, SAVE Program, the fees will double for initial inquiries.

2. Use of the Social Security Online Verification (SSOLV) system – The use of the SSOLV system for the verification of Social Security Numbers is required by both the REAL ID Act and the associated regulations.

*Analysis:* California began performing on-line, real time verifications of SSNs in January 2002. This process allows technicians to verify the information while the applicant is in the office and helps to resolve issues with the verification of the SSN. Between January 2002 and December of 2005 all active records on the department's database had a verified SSN.

This system is currently operational and is maintained by the United States Social Security Administration and provides on-line SSN verification of information submitted by a state. California is assessed a fee of \$.32 per inquiry, and there is no indication that fee will increase after REAL ID implementation.

Based on the final regulations, California will now be required to re-verify an applicant's SSN at each card issuance. This will create additional costs for the state based solely on the impact of the REAL ID Act and the associated regulations.

3. *U.S. Passport Electronic Verification* – Use of the United States Department of State database for the verification of U.S. Passports is required.

*Analysis:* No system exists today to verify United States issued passports. The information related to passports is maintained on a Department of State (DoS) Database. DHS is in negotiations with the DoS to put information into the SAVE database related to the United States passports so that the authenticity of the data can be certified through existing systems. Based on the recent discussions, the passport data may be available for use through the SAVE system within the year and will cost the same as any other verification performed through SAVE.

In 1994, when California passed laws to require acceptable proof of identity and legal presence, a United States Passport was deemed an acceptable document. Original applicants that present United States Passports for proof of identity and legal presence represent approximately 10 percent of the total number of original applications. According to DHS, as of 2008, 30 percent of

U.S. citizens have a valid passport and the number of citizens requesting this document continues to increase.

4. *Electronic verification of Birth Certificate Information* – Use of the Electronic Verification of Vital Events Records (EVVER) system for the verification of U.S. Birth Documents.

*Analysis:* No national system exists today; as such, California does not currently electronically verify birth certification information. In the regulations, full compliance requires that states use the system when available. California should continue to participate in working groups to help influence the development of the system in a manner consistent with the needs of the state. Using all available electronic verification systems would allow the states access to verify the most relevant identity and/or legal presence information ensuring that the information provided by the applicant is as accurate as possible. This issue is further discussed under the significant issue section.

5. *National Pointer System* – Use of a National Pointer System to identify all cardholders at the time of application.

*Analysis:* No national system exists today; as such, California does not currently use a National Pointer System. In the regulations, full compliance requires that states use the system when available. California should continue to participate in working groups to help influence the development of the system in a manner consistent with the needs of the state. Using all available electronic verification systems would allow the states access to verify the most relevant identity and/or legal presence information ensuring that the information provided by the applicant is as accurate as possible. This issue is further discussed under the significant issue section.

### **Driver License Card Requirements**

1. *DL/ID Card Requirement* –
  - The state-issued REAL ID card must contain a level 1 (overt), a level 2 (covert), and a level 3 (forensic) security feature.
  - The card must include adequate features to detect forgery/counterfeiting and provide an adequate level of confidence, and facilitate detection of fraudulent cards.

*Analysis:* California currently issues DL/ID cards with at least one of each of the levels of security features required by the regulations. DMV anticipates a new DL/ID Card contract in 2009. The department is supportive of identifying minimum card security specifications for all states to discourage shopping between multiple DMV's to establish fraudulent identities. Additionally, the regulations allow states with an opportunity to exceed the minimum specifications. California intends on exceeding the minimum established

specifications that will establish California as a leader in DL/ID card technology with the issuance of a state-of-the-art DL/ID card.

2. *Machine Readable Technology, PDF-417 (2D Bar code)* – The card must include a 2D bar code as part of the Machine Readable Technology.

*Analysis:* California utilizes a magnetic stripe on all DL/ID cards to satisfy the use of machine readable technology. Machine readable technology is a proven, effective and accurate method of storing minimal information that can be used in such instances as age verification or automated citations. DMV anticipates a new DL/ID card contract in 2009, having both the magnetic stripe and 2D bar code. By having two types of machine readable technology on the DL/ID card, it allows industry to utilize either magnetic stripe or 2D bar code technology.

3. *DHS Approved Security Marking* – The card shall bear a DHS-approved security marking.

*Analysis:* Until DHS provides the specifics of the security marking, California is unable to comply. DMV anticipates a new DL/ID Card contract in 2009, and may require a modification to the contract at a later date to meet this requirement. Additional, analysis may be necessary to assess the cost/benefit value of the security marking, the strategic location of the marking on the DL/ID card, the level of security the marking will provide, and the efficiency and effectiveness of the security marking against any existing card security features.

4. *Security Processes for Card Production and Departmental Employees* – The state must have a security plan that addresses the physical security of the facilities, protection of information, privacy policies, release of information, access control, card security, training requirements, security awareness, emergency/incidence response, internal audit controls, and an affirmation that the state possess the authority and the means to protect the REAL ID card information. The security plan must be included as part of the state's certification package to DHS.

*Analysis:* California has many of these requirements in place but does not have one comprehensive document that meets the requirements set in the regulations. California will be required to prepare a security plan that meets the requirements of the regulations and the plan must be supplied to DHS with the compliance package.

As California laws are some of the most stringent in the country as related to the collection, maintenance, and release of personal identifying information, California must continue to influence DHS in the area of privacy and security

of personal identifying information. The regulations are vague at best and do not ensure a high level of privacy and security for all states.

5. *Employee Background Checks* – The REAL ID Act and associated regulations require that all employees that can impact the information on the card or who produce or manufacture the card be subject to a background history check that consists of a fingerprint and name-based, state and federal criminal background check. Criminal offenses that appear on the background check must be reviewed, and any felonies set forth in 49 CFR 1572.103(a) are disqualifying.

*Analysis:* California state employees hired to positions of trust at DMV are required to submit to background checks. California DMV has been utilizing the LiveScan automated fingerprint and name-based state and criminal history checks since 2002. DMV must ensure that all existing background check provisions meet the requirements of the REAL ID Act. Based on the regulations we anticipate that all existing employees in covered positions will be required to re-submit to a background check if the last check was performed prior to 2002. Also, a review of the currently disqualifying offense must be performed to ensure that the felony disqualifications set forth by the regulations are consistent with our current practice. California law currently prohibits the re-processing of background checks on existing employees. This will be an issue that requires new legislation and development of union contracts.

The DL/ID card production vendor subjects all of their employees to a background check that meets and exceeds those provisions set for state employees. The background check requirements established in the REAL ID Act and regulations have been incorporated into the provisions in the new DL/ID Card contract.

– NOTES –