

Questions & Answers about Driver's Licenses Now That the REAL ID Act Has Become Law

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HISTORY AND TIMELINE

■ What is the history of the REAL ID Act?

- Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (HR 1268), and the president signed it into law on May 11, 2005.
- The REAL ID Act, with its sweeping driver's license provisions, became law without hearings, testimony, or public discussion, even though it:
 - repeals the driver's license provisions enacted just a few months ago — in Dec. 2004 — as part of the Intelligence Reform and Terrorism Prevention Act;
 - tramples on states' rights to decide what makes their highways safer;
 - will make it harder and slower for everyone to get a license; and
 - will prevent many U.S. citizens and lawful residents from being able to get a driver's license.

■ Does the REAL ID Act force states to immediately change their driver's licenses?

- No. It provides that beginning 3 years after the REAL ID Act's enactment (May 2008), driver's licenses cannot be accepted by federal agencies for any "official" purpose unless they meet the requirements of the act.
- The requirements do not cause any immediate change in state laws or administrative procedures.
- Driver's licenses already issued remain valid, despite the REAL ID Act.
- States may choose not to have their driver's licenses meet the REAL ID Act's requirements, for reasons of public safety, cost, or other public policy reasons. Their residents may present alternative documents for federal official purposes. Moreover, many states may be unable to meet the act's requirements, and their residents likewise will be able to present acceptable documents for federal official purposes, such as a passport or military ID.

■ What timeline will the states follow?

- That will differ from state to state, depending on states' legislative schedule and whether changes can be made administratively rather than legislatively.
- States will have 3 years (until May 2008) to make their licenses and the issuance process



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conform to the REAL ID Act's requirements. The 3-year deadline may be extended by the Dept. of Homeland Security (DHS).

- No later than Sept. 11, 2005, states must enter into a memorandum of understanding (MOU) with the secretary of DHS to routinely use the Systematic Alien Verification for Entitlements (SAVE) automated system to verify the legal presence status of non-U.S. citizen driver's license applicants.

■ **Does the requirement that states enter into an MOU with DHS by Sept. 2005 mean that states must immediately begin verifying driver's license applicants' immigration status with DHS?**

- No. States must enter into an MOU with DHS by Sept. 11, 2005. No date is set for use of the system.

■ **Should states move quickly to enact laws implementing the REAL ID Act?**

- No. Changes, if made, should be implemented in a thoughtful, deliberate manner.
- DHS is required to issue regulations to implement the REAL ID Act. States that implement the act before the regulations are issued will likely have to make revisions later. This would pile additional expense on top of the initial implementation costs.
- No money has yet been appropriated to assist states in shouldering the costs of implementation.
- Limiting or denying access to driver's licenses will have serious ramifications. For example, denial of state ID may interfere with U.S. citizens' right to vote, as well as their access to benefits and services. Immigrants who are unable to obtain a license because their legal status makes them ineligible or because they cannot present required documents will be unable to drive legally. States need to move cautiously to make sure they do not interfere with the constitutional rights of citizens and immigrants alike.
- There may be alternatives in implementation of REAL ID that states should consider.

IMPLEMENTATION OF THE REAL ID ACT

■ **What is an "official" federal purpose?**

- Under REAL ID, an official federal purpose includes accessing federal facilities, boarding commercial aircraft, entering power plants, and any other purpose the secretary of DHS shall determine.

■ **Doesn't the REAL ID Act just prevent states from issuing driver's licenses to undocumented immigrant drivers?**

- No. The REAL ID Act covers all aspects of driver's license issuance: the information on the license; technology; acceptable documentation to obtain a license; and storage and sharing of personal information. Proof of citizenship or lawful immigration status is just one of the many requirements that states will have to meet for their licenses to be acceptable to federal agencies.
- The one-size-fits-all rules are so comprehensive that no state currently complies with all of them. All states will have to change their driver's license rules if they want their driver's licenses to be accepted by the federal government for any official purpose.

■ **Will unexpired licenses remain valid until renewal even if state laws change?**

- Most likely yes. We do not expect most states to recall licenses that have not expired if state laws change to comply with the REAL ID Act. Apart from questions of legality, this would be administratively burdensome and prohibitively expensive.

■ **How much flexibility do the states have in implementing the REAL ID Act?**

- Advocates are beginning to consider alternatives for states to consider, such as:
 - States could choose not to implement REAL ID's requirements. People would need to find alternative forms of ID for flying, entering federal buildings, etc., such as a passport or military ID.
 - A state driver's license could remain as is, and REAL ID's requirements would be implemented on a state ID card. People who need ID for flying, entering federal buildings, etc., could either use a passport or military ID or get a state ID card.
 - A state could implement REAL ID requirements for driver's licenses and create a separate driving certificate for those who can't satisfy REAL ID's requirements. Two sub-options are that the state could make the certificate available to undocumented immigrants and lawful immigrants made ineligible for driver's licenses under REAL ID (e.g., applicants for adjustment of status under the Violence Against Women Act); or the state could make the certificate available to undocumented immigrants and lawful immigrants made ineligible for driver's licenses under REAL ID and also to nonimmigrants (under REAL ID they *could* be eligible for a temporary license instead).
 - In a state that creates a driving certificate, U.S. citizens and lawful residents would have the option to "opt-in" to the certificate. If they needed an ID for federal purposes, they would use a passport, military ID, or other acceptable identification.
- These alternatives must be thoroughly researched, and there may well be other alternatives that states can consider.

■ **What effect will the REAL ID Act's requirements have on U.S. citizens and legal immigrants?**

- They will be at risk of identity theft as information is electronically shared by the states.
- Citizens who cannot prove their U.S. citizenship, and citizens and immigrants who cannot use their foreign documents or whose documents are insufficient or cannot be verified will be denied licenses.
- Presenting the state department of motor vehicles with documents that prove the applicant's identity, date of birth, citizenship or immigration status, Social Security number, legal name and physical residence won't be enough. DMVs won't be able to issue a license until the agency that issued the documents verifies their authenticity. These documents include birth certificates, documents that prove physical residence (such as leases, utility bills, bank statements, or telephone bills), court documents, Social Security cards, U.S. and foreign passports, and immigration documents.
- Instant or electronic or manual verification of the authenticity of all these documents is simply not feasible.
- Denials, delays, and repeated trips to the DMV will be the norm. Lines will be longer at DMVs as staff verify documents of citizens and immigrants alike and as drivers with temporary licenses have to renew their licenses more frequently.

ELIGIBILITY RULES FOR CITIZENS AND IMMIGRANTS

■ Who is eligible for a driver's license under the REAL ID Act's rules?

- States must require documentary evidence that an applicant is a citizen or national of the U.S. or is a noncitizen who:
 - is lawfully admitted for permanent or temporary residence;
 - has conditional permanent resident status;
 - is an asylee or refugee;
 - has a valid, unexpired nonimmigrant visa or nonimmigrant visa status;
 - has a pending asylum application;
 - has a pending or approved application for temporary protected status (TPS);
 - has deferred action status; or
 - has a pending application for adjustment of status to lawful permanent residence.
- A noncitizen in the nonimmigrant, asylum applicant, TPS, deferred action, and adjustment applicant categories may receive only a temporary license. It can be valid only for the period of the applicant's authorized stay in the U.S. or one year if there is no definite end to the authorized stay. It must state that it is "temporary," and it must state its expiration date.
- If a state issues a driver's license that does not satisfy the REAL ID Act's requirements, the license must say on its face that it cannot be accepted by the federal government as ID, and it must have a unique design and color.

■ Won't it be easy for DMV employees to check citizenship and immigration status?

- No. Many U.S. citizens do not have birth certificates or other evidence of U.S. citizenship. Birth certificates often cannot be electronically verified.
- Our immigration system is disorderly, and not every legal immigrant has the same immigration document to prove status.
- Visas and immigration statuses can be proved by myriad documents and do not have simple expiration dates. Many noncitizens are still lawfully in the country even though their immigration document may have expired.
- DHS is hopelessly behind on processing immigration applications and changes in or extensions of status. Many noncitizens won't be able to obtain or prove their lawful immigration status.

IMPACT ON STATES

■ How extensive are the REAL ID Act's requirements?

- Very. Under the requirements, states must:
 - Include specified information on the driver's license.
 - Issue licenses with a common machine-readable technology, with defined minimum data elements.
 - Require documentary proof that the DL applicant is a citizen or falls within certain categories of lawful immigration status.
 - Only issue a temporary DL to certain lawfully present immigrants, with specific requirements: the DL must expire with the person's authorized stay in the U.S. or after one

year; the license must clearly indicate it is temporary and state the expiration date; the license can only be renewed upon proof that the person's lawful immigration status has been extended.

- Verify with the issuing agency the issuance, validity, and completeness of each document required to be presented to prove identity, full legal name, date of birth, Social Security number, address of principal residence, citizenship, and immigration status.
- Not accept foreign documents, other than a passport, to prove identity, legal name, and date of birth.
- Enter into a memorandum of agreement by Sept. 11, 2005, with the secretary of DHS to verify legal status of noncitizen applicants.
- Use technology to capture digital images of identity source documents so they can be retained in electronic storage in a transferable format.
- Retain paper copies of source documents for a minimum of 7 years or images of source documents for a minimum of 10 years.
- Subject all DL applicants to mandatory facial image capture.
- Confirm Social Security numbers with the Social Security Administration and resolve discrepancies.
- Refuse to issue a DL without confirmation that the applicant has terminated a DL issued in another state.
- Enhance the physical security of locations where DLs are produced and the security of document materials and papers from which they are produced.
- Subject persons authorized to manufacture or produce DLs to appropriate security clearance requirements.
- Establish fraudulent document recognition programs for employees engaged in DL issuance.
- Limit the validity of nontemporary DLs to 8 years.
- If they issue a driver's license that doesn't comply with REAL ID, say on the license's face that it cannot be accepted by the federal government as ID and use a unique design and color for the license.
- Provide electronic access to all other states to information contained in the state's motor vehicle database.
- Maintain a motor vehicle database that contains all the information printed on the DL and motor vehicle drivers' histories.

■ **What will states have to do to meet these requirements?**

- These are major changes to driver's licenses and the issuance process, and they will be expensive for states to implement. For example,
 - States do not currently use common machine readable technology for their licenses.
 - Many states have exceptions to their requirement that DL applicants provide their current address (the address of their current principal residence), in order to protect victims of crime or accommodate homeless people — exceptions that would not be permitted under the REAL ID Act.
 - States have their own definitions of the legal immigration presence requirement or have no legal presence requirement at all.
 - Most states do not issue temporary licenses that comply with the statute.
 - States accept a variety of domestic and foreign documents from DL applicants to prove their identity, legal name, and date of birth, many of which documents will be unacceptable under the statute.

- States do not require verification with the issuing agency of all documents presented to prove applicants' identity, date of birth, citizenship or immigration status, Social Security number, legal name and physical residence verifies its authenticity. These will include birth certificates, utility bills, Social Security cards, and both U.S. and foreign government-issued passports. Electronic verification is not available for many of these documents.
- Few states now verify immigration status with DHS.
- States do not generally store paper or electronic copies of documents presented to obtain a license and do not have the facilities or staff to store these documents.
- State DMV employees do not have security clearances that the REAL ID Act will require.
- Some states issue licenses for more than 8 years — the limit under the REAL ID Act.
- States do not provide all other states with electronic access to their databases, which is mandated by the REAL ID Act.

■ **Will these changes be easy for states to make?**

- No. The National Conference of State Legislatures (NCSL) calls the REAL ID's driver's license provisions unworkable. According to the NCSL, 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." See NCSL statement at <http://www.ncsl.org/programs/press/2005/pr050208.htm>.
- The National Governors Association (NGA) and the American Association of Motor Vehicle Administrators (AAMVA) opposed the REAL ID Act because it will "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 driver's licenses issued by states represents a massive unfunded federal mandate."

■ **Who will pay the costs for states to comply with the REAL ID Act?**

- No money has yet been appropriated by the federal government to reimburse the costs of compliance. If money is appropriated, it will likely only partially compensate the states.
- The NCSL earlier estimated that REAL ID will cost states \$500 to \$750 million over 5 years, plus an annual ongoing cost of \$50 to \$75 million to operate.
- The NCSL now believes that figure will be far higher, perhaps in the billions, as more accurate estimates are obtained.
- Virginia has estimated that REAL ID Act implementation will cost the state \$237 million (or \$45 per licensee).

PRIVACY ISSUES

■ **Does the REAL ID Act provide any exceptions for states that have laws to protect the privacy of information, such as the addresses of victims of violence, or does it provide for special procedures for homeless people?**

- No. The REAL ID Act requires that the address of principal residence be printed on the DL. If states continue to require all this information to be confidential, or provide alternatives for the homeless, their licenses may not comply with REAL ID Act's requirements.

■ **Does the REAL ID Act protect the confidentiality and security of personal information in state motor vehicle databases?**

- No. The REAL ID Act requires that states have electronic access to information contained in the motor vehicle databases of all other states, with:
 - no confidentiality or security protections;
 - no limits on what information must be shared;
 - no limits on who has access to the information;
 - no limits on use or re-use of the information; and
 - no penalties for misuse.

ADVOCACY

■ **Is there more that advocates interested in driver's license issues can do?**

- Absolutely. Many in Congress did not recognize how irrational many of REAL ID's requirements are and how complex they would be to implement. They need to hear from their constituents.
- It will be crucial for advocates to monitor and challenge changes in state driver's license laws. We will need to know how driver's license laws are functioning on the ground, both for immigrants and citizens. We will need to present evidence about the degree to which the rules Congress has passed are dysfunctional. State advocates are in the best position to do this.
- Advocates need to continue to find new allies. REAL ID's requirements that driver's license applicants prove U.S. citizenship or lawful immigration status and that the authenticity of documents be verified with issuing agencies will burden everyone. They will prevent many people from getting driver's licenses. Advocates need to join forces with others, such as privacy advocates, states' rights advocates, and civil rights advocates, who will be affected by the new requirements.

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