

The REAL ID Act of 2005



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issue brief

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The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,066 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money. For more information about NACo, visit www.naco.org.

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This issue brief is based on an examination of various government documents, newspaper articles and websites relating to the REAL ID Act of 2005. The brief is intended to provide a concise explanation of the identification aspect of this legislation, how implementing it will affect county governments and their employees, and the current status of implementation at the state level.

What is the REAL ID Act of 2005?

The title of the section of the bill pertaining to identification cards is “Improved Security for Driver’s Licenses and Personal Identification Cards.” The full bill was signed into law by President Bush on May 11, 2005 as a part of P.L. 109-13¹. The REAL ID Act² was written to prevent terrorism by making the veracity and accuracy of identification documents more reliable, and by strengthening of U.S. borders against illegal entry by unlawful aliens and terrorists. The logic behind this is the recommendation of the 9/11 Commission that “For terrorists, travel documents are as important as weapons ... All but one of the 9/11 hijackers acquired some form of identification document, some by fraud. Acquisition of these forms of identification would have assisted them in boarding commercial flights, renting cars, and other necessary activities³.” Along these lines, the REAL ID Act has statutes affecting two main policy areas: illegal immigration and standardization of identification cards. However, this brief will focus solely on the section pertaining to the standardization of identification cards.

Identification Cards

The Department of Homeland Security has unequivocally stated on its website regarding the REAL ID Act that the act does not create a national identification card system. The Department has stated that the states can continue issuing their own driver’s licenses and ID cards, but must meet certain federally mandated standards. The following must appear on a compliant ID:

- legal name;
- address;
- digital photograph;
- gender;
- date of birth;
- signature;
- document number;
- physical security features for prevention of tampering; and
- machine readable technology such as a barcode.

Any ID that is noncompliant as of the deadline will not be acceptable proof of identity for what DHS deems “federal purposes.” These include: accessing any federal facility, boarding a federally regulated commercial aircraft, entering a nuclear power plant, and any future activity DHS decides to include in the definition of “federal purposes.” Any state wishing to issue noncompliant IDs must make sure that the ID clearly states that it is not acceptable identification for federal purposes, and it must have a unique design or color so that law enforcement officials may discern the noncompliance. All states have been granted an extension for compliance until December 31, 2009, and are eligible for a further extension if they meet certain benchmarks, which will give them until May 10, 2011 to be fully compliant. All current licenses must be replaced by December 2014, except for individuals 50 years of age or older who have until 2017. To receive a full extension, a state must meet the following criteria in their licensing procedures:

- presentation of at least one source document;
- verify lawful status and social security number;
- cards must have overt, covert, and forensic security features;
- photographs of all applicants must be saved, even if they are not issued ID; and
- reasonable efforts must be made to be certain an applicant does not already have a license of ID card.

In order to obtain a REAL ID, an applicant must now provide their State Department of Motor Vehicles (DMV) with more proof of their identity than previously required. To be certain of the document’s validity, the DMV must verify the identification with the agency that issued the document. No documents from foreign agencies are deemed acceptable save official passports. Subsequent renewal is required at least once every eight years. The following documentation is required in order to obtain a driver’s license or ID card that is compliant with the REAL ID Act:

- a photo identity document;
- proof of date of birth;
- proof of social security number (or verification that the person is ineligible for social security); and
- documentation displaying both name and permanent address.

Additionally, DHS requires each state to maintain a database that includes all information from an individual’s ID, as well as their driving history. All state databases will eventually be linked to one another, to allow for a seamless identification process between states and to avoid dual licensing.

¹ The Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief, 2005.

² Introduced by Representative James Sensenbrenner of Wisconsin.

³ DHS | REAL ID. Department of Homeland Security. http://www.dhs.gov/xprevprot/programs/gc_1200062053842.shtm (Accessed November 28, 2007).

What Does This Mean for Counties?

Although this legislation is directed toward states, implementation of the REAL ID Act also relies on the work of local government officials at the county level. Many of the documents required to prove identification are ones often stored by county clerks and recorders, such as birth certificates, wedding licenses, and real estate records. County clerks and recorders will now have to certify these documents. There is also currently contention over whether paper copies will also be required in the certification process, which would generate further financial and infrastructural burdens for county governments. This may lead to a time consuming process that could potentially tie up county employees and hinder their ability to carry out other duties. In several states, county clerks also issue driver's licenses. For example, in New York State, county clerks act as "statutory agents of the DMV commissioner" by issuing licenses on behalf of the state⁴. County treasurers in Iowa fill a similar role; both issuing and renewing driver's licenses for the state DMV⁵. Other states that have many rural counties, such as Montana, Kansas, Texas, and Nebraska also have much of their driver's license issuing and renewal handled at the county level, due to the otherwise long distances drivers would have to travel to reach state DMV offices. These rural county treasurer's offices will therefore be required to take steps to comply with REAL ID.

Some counties will also be disproportionately affected in the implementation process due to responsibilities assigned to them by state governments. For example, Honolulu County in Hawaii issues 70 percent of Hawaii's driver's licenses. This means that it will be shouldering 90 percent of the \$25.55 million dollar cost that Hawaii believes it will need to spend to comply. Mayor Hanneman of Honolulu also pointed out in Congressional testimony that the county will face larger long term costs as well, due to the shorter amount of time allowed before a compliant license must be renewed⁶. Implementation of the REAL ID Act will have financial and human resource costs for county governments, and it is worthwhile for counties to be cognizant of these dimensions as they consider compliance.

What is the Status of Implementation?

Currently, all states, regardless of whether or not they initially applied for one, have received an extension from DHS, valid until December 31, 2009. However, there is considerable controversy regarding compliance, and 17 states have passed legislation rejecting the REAL ID Act outright or re-

fusing to comply with some or all of its mandates⁷. As it stands, after December 2009, states must show marked progress toward compliance based on specific criteria outlined by DHS in order to receive the next possible extension of May 11, 2011.

States have identified many reasons for their refusal to implement the act. There is a general disagreement over estimates of the cost of implementation, with DHS projecting \$3.9 billion nationally. However, based on a survey of 47 states, organizations such as the National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators are projecting costs as high as \$11 billion. This difference in estimates suggests that there will be more discussion about how implementation should be funded, and how much of that funding will be derived from federal sources.

There is a provision within the act stating that 20 percent of a state's homeland security grant can be used to achieve compliance, and the state must cover the remainder. Critics view the legislation as an unfunded mandate since states currently bear the brunt of the burden. The disparity between federal and state cost expectations is so large that Senator Olympia Snowe of Maine, for example, has stated that the federal government has provided only 3 percent of what it will actually cost her state to conform to the act. Additionally, a 2006 report published by the California DMV states that "Implementation of the act presents significant challenges to all states". An unfunded mandate is not simply shouldered by the states but also tends to be passed on to county and other governments. Since the focus of the act is on states, any funding will go from the federal government to the states, and states will likely have the discretion to share federal funds with local governments. Still, there is a strong potential for under-funding at the local level. Ideology aside, existing financial arrangements make implementation of the act a contentious issue.

Critics also claim that the consolidation of identity information creates a serious potential for abuse and could actually cause an increase in identity theft. It also raises serious privacy concerns, and led to DHS releasing a Privacy Impact Assessment (PIA) in January 2008 addressing the following concerns:

"(1) whether the act and the implementing regulations will result in the creation of a national identity card or database; (2) whether and how the personal information associated with implementation of the act will be protected from unauthorized access or use; (3) whether and how the personal information stored in the machine readable zone (MRZ) on the cards will be protected against unauthorized use; (4) the pro-

4 www.ny.gov -Frequently Asked Questions Regarding New Driver's License Program. NY.gov. www.state.ny.us/governor/press/100507DMV.html (Accessed April 15, 2008).

5 Iowa State County Treasurers Association. Iowa State County Treasurers Association. www.iowatreasurers.org/iscta/access/countyService.do?ID=1&ParentPage=08 (Accessed April 15, 2008).

6 Hanneman, Mufi. 2007. REAL ID Act.

7 States- AK, CO, GA, HI, ID, IL, ME, MO, MT, NE, NV, NH, ND, OK, SC, TN- EPIC - National ID and REAL ID Act. Electronic Privacy Information Center. <http://epic.org/privacy/id-cards/> (Accessed February 19, 2008).

posed requirement that a photograph and address appear on the credential; and (5) the proposed requirement that DMVs conduct a financial history check on covered employees⁸”.

DHS claims that this act does not create a de facto national ID card, and that the system for collecting and verifying information is transparent and secure. The PIA also states that the information is only for a specific stated purpose, and that by including all information in a secure MRZ, privacy is actually improved; there would be no need for a national database and card numbering system if the information was contained therewithin as opposed to utilizing a system of electronic pointers leading to a consolidated database. The PIA offers that states may pass laws restricting third party access to MRZs and, if they can afford it, may employ encryption technology. Applicants may also now provide an alternative address in cases where their address need be suppressed for state or national protection purposes. The need for financial background checks was also dropped for DMV employees. DHS is also offering a *Best Practices* guide to provide states with information regarding the most secure methods of implementation of the regulations. The PIA, coupled with this *Best Practices* guide, is intended to assuage the key privacy concerns raised over the REAL ID Act⁹.

Although not required, it is expected that some states will integrate Radio Frequency Identification (RFID)¹⁰ into their IDs. This creates concerns about abuse through random screening of personal data, as well as theft of all of that information by individuals possessing specialized technology. Other states, such as Oklahoma, have elected to use biometric features such as retinal scans placed directly on their cards. Such a feature has tripled the cost for people to obtain the new license¹¹. This technological consolidation of personal information, coupled with the mandated sharing of data between states, makes many lawmakers uneasy. At the national level, dissatisfaction with the REAL ID Act was expressed in the form of Senate Bill 717¹². This would repeal Title II of the REAL ID Act, which is the section regarding identification cards. It would also reinstate the section of the Intelligence Reform and Terrorism Prevention Act of 2004, which previously addressed the concept of standards in licensing before being repealed by the REAL ID Act.

Conclusion

Despite the far-reaching impact of this legislation, the REAL ID Act has received relatively little attention at the local level. Much of the time, exhaustive work required for verification and certification of documents will be implemented at the county level. For this reason it would behoove county government officials who manage departments that work with vital records to become familiar with the REAL ID Act. Counties would also benefit from dialogue among county officials. Inter-county dialogue is essential to understanding effective implementation models, discovering unfunded mandates, or effectively lobbying in opposition to this legislation.

8 Williams, Darrell, and Hugo Teufel III. Privacy Impact Assessment for the REAL ID Final Rule. Department of Homeland Security, January 11, 2008. www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf.

9 Ibid.

10 Information storing technology consisting of an embedded chip and a scanner which can retrieve stored information from such chips from up to several meters away.

11 Chip Kenneth, and Jeremy Meadows. 2008. National Association of County Recorders, Election Officials and Clerks Presentation on the REAL ID Act.

12 Introduced by Senator John E. Sununu of New Hampshire.

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