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## REAL ID Act Summary of Issues

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1. Security, Privacy and Information Access Issues – The Act focuses on obtaining, verifying and sharing information, but is silent as to how information will be protected and secured. Lack of ownership by the federal government of the required systems is a concern.

Regulations should authorize the establishment of a working group of states to develop security requirements and standards to protect confidential and personal information submitted by driver's license and identification card applicants. States must be given adequate time to develop the state information systems and infrastructure that will allow us to communicate with other databases.

2. Card Security Features – There needs to be a clear understanding of the threats to driver license and identification card security. Without this basic analysis, it is very difficult to determine which security features will provide the greatest deterrent to altering and/or counterfeiting. To date, there has been no assessment provided to indicate why the features and materials proposed by DHS in mandatory and optional lists were chosen.

There is an inherent risk in requiring all the states to utilize the same security features and card construction material, as it enables counterfeiters to concentrate their efforts on a single set of features, which, once successfully duplicated, has nationwide impact.

Similarly, encrypting the required 2D barcode could pose issues for law enforcement and other government agencies, if devices to read the code are not easily available and affordable, or the encryption code is compromised.

Of further concern is the fact that one of the key materials listed in the required security feature list is not produced in the United States and can only be obtained through foreign sources. This will likely raise concerns from a number of quarters.

California will be participating in the upcoming state working group, chaired by New York, which will further discuss and make recommendations for a comprehensive card security strategy. Given that, we believe the regulations should provide flexibility to allow for further development of a security strategy that meets the goals of protecting against falsification without imposing undue limitations.

3. Social Security Number (SSN) Discrepancies - The Act clearly indicates that it is the states' responsibility to resolve any SSN discrepancies. That language requires states to resolve problems that only the card holder and the Social Security Administration (SSA) can address.

DHS has stated that the responsibility for discrepancies will fall to the individual; however, in light of the clearly stated language in the Act this process needs to be clearly stated in the regulations. California supports the premise that states should only be responsible for verifying that a specific SSN belongs to the applicant that is applying for the card.

4. Re-Credentialing Existing licenses – DHS has indicated that states will have five years from May 11, 2008, to “re-credential” existing DL/ID card holders. This re-credentialing will require an in-person visit to a DMV field office and presentation of required documentation beginning in May of 2008.

California proposes that the regulations clearly indicate that once the initial certification for a REAL ID compliant license or identification card has been accomplished, subsequent renewal of these documents will not require re-certification and can be processed in a manner deemed appropriate by each state.

In the case where an applicant has been issued a “Temporary” card of less than full term, California suggests that a mail renewal process be allowed. The applicant can provide a copy of his/her new Department of Homeland Security Legal Presence document which will be verified through SAVE prior to any extension of the card. This will ensure that the applicant is still legally present and a current residence address is captured without imposing the excessive costs associated with annual in-person visits.

5. Expansion of Full Legal Name – It is our understanding that regulations will require the capture of at least 125 characters in the name field, and perhaps as many as 175 characters. While we understand the need to expand and standardize name collection nationally, these requirements present a significant cost to motor vehicle agencies and those who use the data. In California, the estimated cost to the criminal justice system, including the California Highway Patrol, might be as high as \$80 million for program modifications to read and use the expanded name field.

To reduce some of the impact on states, it is critical that the regulations clarify that they may continue to utilize standard truncation models for the names that appear on the face of the license or identification card. This will mitigate the “real estate” problem that would be created if the full character name were required to be printed on the face of the card.

California is also compiling information to determine the overall cost impact our Motor Vehicle Department and all law enforcement agencies in the state that we may work with other states to submit federal funding requests in amounts sufficient to cover these costs.

6. Verification of Identity Source Documents – DHS has indicated that if a national database containing records of birth is not available for electronic verification in 2008, implementation of the Act may be delayed until such time as that system is operational.

This should be confirmed in the regulations as it will be critical to determining operational deadlines and cost analyses.

California continues to have concerns regarding a number of identity documents that have historically been used to establish true identity of the individual, even though these documents may not be verifiable through an electronic database. Documents such as U.S. Passports, Military IDs, Certificates of Birth Abroad, Certificates of Naturalization, various court documents (e.g. changes of name, divorce decrees) are included in this list.

We understand from DHS that U. S. Passports will be added to the SAVE database by May 2008. However, if the other documents mentioned above are not included, we recommend that states be given latitude in accepting them in certain limited cases provided sufficient

investigation has been done to confirm that these documents appear genuine and the individual has no other acceptable document to prove his or her identity. Otherwise, California anticipates a considerable outcry from persons in such circumstances.

7. Authentication of Foreign Passports – Regulations should clearly indicate that states shall not be required to verify the authenticity of foreign issued passports. Further, these documents would only be used to assist in confirming the name and other identifying information regarding the applicant. Foreign passports will not be valid to confirm identity and legal presence, but will only be accepted if presented in conjunction with another acceptable legal presence document(s) issued by the United States government which can be verified through an electronic data file (i.e. SAVE).
8. Verification of Residence Address – DHS has clarified that the authenticity of the applicant's residence address will be accomplished through the presentation and visual verification of two documents presented in-person by the applicant. California agrees that this process will serve the purpose in the majority of circumstances. However, there are many groups of individuals that will not be able to meet this requirement. Applicants such as the homeless, minors residing with parents or guardians, individuals living in multi-family residences where only one person appears on the documents (e.g. utility bills), and victims of disasters (Hurricane Katrina) will find it difficult if not impossible to comply.

California strongly recommends that states be given some discretion in the number and types of documents that may be accepted in order to accommodate such situations. California has long used a system where the permanent license or identification card is mailed from a central processing area to the address provided by the applicant. When documents are returned by the post office because the addressee is unknown, or if the address does not exist, the Motor Vehicle Department will not release that document until a new, valid address is provided.

9. Confirmation of Cancellation of Other States' Licenses– As no system exists, it is imperative that the electronic verification system required to comply with this provision be available prior to implementation of the Act. As the federal government has asked states to take the lead in the development of this database, a significant amount of planning and resources will be required to meet the May 2008 implementation date. The regulations should clearly acknowledge that this is a critical piece in the implementation of the Act, and as long as reasonable progress is being made in the development, a delay in implementation of the Act shall be granted.
10. Employee Background and Credit Checks – We understand that a federal and state criminal background check will be required and that the regulations will provide a list of specific disqualifying offenses. In addition, a credit history check will be conducted, but regulations will not include disqualifying factors based on credit history.

California is concerned that DHS has included such a diverse group of employees in determining who will be subject to the background checks. It would seem that DHS intends to establish these requirements for any employee that deals in the physical manufacturing of the card, those engaged in the processing applications, and those who have any influence in the decisions whether or not to issue a card. This interpretation exceeds the specific authority contained in the Act and creates significant expense with little security value.

We recommend, at the very least, that credit history check requirements be omitted from the final regulations.

11. Acceptable Identity Source Documents – There appears to be no provision for those individuals that do not have acceptable documents due to circumstances beyond their control (i.e. natural disasters, born in a time or area where birth documents were not issued, etc.). Regulations must provide latitude for states to adopt procedures that allow for exception processing for these individuals.

DHS has indicated they intend to allow states a wide degree of latitude in handling persons born before 1935, provided that person has a “pre-existing relationship with the state.” A definition of what would constitute such a pre-existing relationship should be provided and, beyond that, DHS should consider pre-existing relationships with the federal government as an acceptable option.

California suggests that the regulations provide the state reasonable latitude in issuing REAL ID-compliant documents to persons of any age who have had a long-standing relationship with the state. For example, if a person has held a driver’s license for 10 years and has lived in the same residence for at least 5 years, there is every expectation that this person’s identity as contained on the state’s records is genuine. This is merely an example and does not represent a suggestion for specific criteria. However, it does indicate our strong belief that bringing all of our 24 million licensed drivers and identification card holders into a Motor Vehicle office to renew their documents in-person represents an unnecessary expense for the state and is an unnecessary inconvenience for a great many of these individuals.

12. Address of Principal Residence on Front of DL/ID Card – California believes it is important to clarify in the regulations that the residence address collected in connection with the issuance of a REAL ID-compliant document shall be maintained on the state’s electronic data file and accessible within the 2-D bar code on the reverse of the license or identification card. However, due to the privacy, confidentiality, and safety concerns raised in our earlier discussions, states should be allowed to show a “mailing address” on the face of these documents. The actual residence address would be available only on the department’s database.
13. Systematic Alien Verification for Entitlements (SAVE) Database – The SAVE system must be able to provide electronic status verification information for *all* persons that will be issued a REAL ID-compliant license (regular or “Temporary”) under the Act.

California recommends that the rules clearly state that persons having any of the pending applications specified in the Act must have progressed to a point where the basic identifying information contained on the application has been confirmed by immigration authorities and that the individual’s data has been entered into the SAVE system. Unless a state can confirm the status of the pending application in SAVE, no temporary license may be issued. This action must be taken to avoid a complete breakdown in the reliability of temporary licenses.