

**REPORT OF THE
DEPARTMENT OF MOTOR VEHICLES**

The REAL ID Act

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH of VIRGINIA

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To: Members of the General Assembly of Virginia

In accordance with Item 435(D) of the 2006 Appropriations Act, I am submitting this report, titled "Report to the General Assembly Regarding the REAL ID Act." Item 435(D) directed the Department of Motor Vehicles to address the issues raised in the Report of the Governor's Task Force on the Real ID Act issued December 29, 2005 and to develop a plan for implementing the Task Force's recommendations.

A definitive plan for Virginia's implementation and administration of the REAL ID Act cannot be made until the Department of Homeland Security (DHS) regulations are promulgated. As of the date of this report, DHS has not yet published a first draft of the regulations. As a result, this report highlights the issues facing Virginia and the actions that should be taken at this time.

Sincerely

A handwritten signature in black ink, appearing to read "D.B. Smit".

D.B. Smit

DBS/rh

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	1
INTRODUCTION	3
BACKGROUND.....	3
IMPLEMENTATION OF TASK FORCE RECOMMENDATIONS	5
Task Force Recommendation regarding Advocacy Strategy	5
Task Force Recommendation regarding Change Management Strategy	6
Task Force Recommendation regarding Compliance	8
Task Force Recommendation regarding Grandfathering	9
Task Force Recommendation regarding Minimum Document Requirements	10
Task Force Recommendation regarding “Temporary” Indicator on Credentials	11
Task Force Recommendation regarding Verification of Source or Proof Documents	12
Task Force Recommendation regarding Effective Procedure to Verify/Confirm Credential Holders’ Information Upon Renewal	13
Task Force Recommendation regarding Confirmation Out-of-State License Has Been or is Being Terminated	13
Task Force Recommendation regarding Providing Other States With Access to Driver’s License and ID Card Records	14
Task Force Recommendation regarding SSN Discrepancies and Letters of SSN Ineligibility	15
Task Force Recommendation regarding Acceptable Proof or Source Documents	16
Task Force Recommendation regarding Costs of and Funding for Implementation	16
CONCLUSION	18
APPENDICES	
Appendix A: Text of the REAL ID Act	19
Appendix B: Members of the Governor’s Task Force on the REAL ID Act	24
Appendix C: Sample Limited Duration Driver’s License	25

EXECUTIVE SUMMARY

The REAL ID Act of 2005 establishes certain standards, procedures, and requirements for the issuance of driver's licenses and identification cards. Pursuant to Sec. 202(a)(1) of the Act, as of May 11, 2008, federal agencies "may not accept" State-issued driver's licenses or identification cards "for any official purpose" unless the issuing State is in compliance with the standards and requirements of the Act.

The Governor's Task Force on the Real ID Act, established in September, 2005, issued its report on December 29, 2005, identifying as key issues the short timeframe provided for implementation, the lack of infrastructure and technology needed for implementation, the costs associated with implementation of the Act and lack of funding, and the impact on individuals, service, security, and privacy. The Task Force also focused on the need for regulatory guidance and the actions and position Virginia should take in seeking regulations that would facilitate feasible, efficient, and economical implementation of the Act.

This report is issued in accordance with the directive of the 2006 Session of the General Assembly requiring the Commissioner of the Virginia Department of Motor Vehicles (DMV) to address implementation of the recommendations of the Task Force.¹

While a definitive plan for the implementation and administration of the REAL ID Act in Virginia can not be made until the Department of Homeland Security (DHS) regulations are promulgated, DMV has identified some steps that Virginia can and should pursue in furtherance of its efforts to comply with the mandates of the REAL ID Act.

In the interim, Virginia DMV has taken a number of steps designed to prepare it for the demands and requirements of the Act. These include:

- Initiating the process to implement centralized issuance of driver's licenses and identification cards, through which requirements of the REAL ID Act regarding the composition, design, and security of compliant credentials will be met;
- Replacing the dumb terminals used by Customer Service Center staff with personal computers and installing scanners, which will allow Customer Service Center personnel to scan applicants' documentation into DMV's computer system and return the documents to the applicants before they leave the Customer Service Center;

¹ Item 435(D) of the Appropriations Act for the 2006-2008 biennium: "At the direction of the Secretary of Transportation, the Commissioner shall submit a plan to the General Assembly by December 1, 2006, to address the issues raised in *The Governor's Task Force on the Real ID Act* issued December 29, 2005 and to implement the Task Force's recommendations. The plan shall include legislative proposals and executive actions necessary to carry out the Task Force recommendations, to effectively execute the federal law, and to minimize the cost to the Commonwealth and her citizens."

- Including in the planned redesign of its operating systems elements that will facilitate DMV's ability to comply with the requirements of REAL ID;
- Entering into a Memorandum of Understanding with DHS regarding use of the automated system known as Systematic Alien Verification for Entitlements system, as required by Sec. 202(c)(3)(C) of the Act; and
- Implementing fraudulent documentation recognition training, which is required by the Act.

Virginia should continue its advocacy for the regulatory and statutory provisions that are essential to a feasible, efficient, and economical implementation of the Act. In addition, Virginia should prepare to mitigate the negative impact of REAL ID on customer service by exploring the various ways to improve service delivery and reduce operational costs. Lastly, Virginia should be prepared to respond to the DHS draft regulations once they are published and, if no delayed implementation is included, Virginia should be prepared to seek an extension of time from the Secretary of DHS.

INTRODUCTION

This report was prepared pursuant to the mandate of item 435(D) of the Appropriations Act for the 2006-2008 biennium, which states:

“At the direction of the Secretary of Transportation, the Commissioner shall submit a plan to the General Assembly by December 1, 2006, to address the issues raised in *The Governor’s Task Force on the Real ID Act* issued December 29, 2005 and to implement the Task Force’s recommendations. The plan shall include legislative proposals and executive actions necessary to carry out the Task Force recommendations, to effectively execute the federal law, and to minimize the cost to the Commonwealth and her citizens.”

When DMV first became aware of this directive, it was assumed that, at a minimum, the Department of Homeland Security (DHS) draft regulations would be published in time to enable DMV to develop a fairly substantive plan for the implementation of the Act. However, DHS has not yet published the draft regulations, and little more is known at this time regarding the details which are needed before definitive plans can be made to implement the Act.

As a result, this report endeavors to highlight the issues facing Virginia and the actions that should be taken at this time.

BACKGROUND

The REAL ID Act of 2005 was passed as part of a comprehensive \$82 billion emergency spending package to provide money for the military, for tsunami relief, and for other areas.²

Effective May 11, 2008, the REAL ID Act prohibits Federal agencies from accepting, “for any official purpose,” State-issued driver's licenses or identification cards unless the issuing State is in compliance with the requirements set forth in the Act.³

States are not required to comply with the Act per se. However, residents of non-compliant States will not be able to use their driver’s licenses or State-issued identification cards to board commercial airline flights, enter federal buildings, or for such other purposes as are to be determined by the Secretary of the Department of Homeland Security.⁴

² The provisions of the REAL ID Act first were introduced in H.R. 418, which was passed by the House, but was not taken up in the Senate. By House Resolution, the provisions were appended to the text of the H.R. 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005. This emergency spending bill passed both houses and was signed into law by President Bush on May 11, 2005.

³ See Sec. 202(a)(1) of the REAL ID Act, the full text of which is set out in Appendix A.

⁴ Sec. 201(3) defines “official purpose” as including “accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.” The

Under the Act, before issuing a REAL ID compliant credential, States must verify the identity and residence address of each applicant, ensure that the applicant is lawfully present in the United States, and confirm his or her social security number (SSN) or ineligibility for an SSN. In addition, States must issue temporary credentials that are valid only for the period of authorized stay (or for one year where the period of stay is indefinite) to persons whose authorized presence in the United States is temporary or conditional. Furthermore, States must maintain a database with all driver's license and identification card information that can be accessed by all the other States. Under the Act, drivers are prohibited from holding a license in more than one State at a time.

On September 19, 2005, by Executive Directive 9, then Governor Warner established the Governor's Task Force on the REAL ID Act,⁵ which was to:

- Review the REAL ID Act and raise public awareness about its potential impact on Virginia, including but not limited to the potential increased cost of licensure, administrative burdens on the public and businesses, and the potential benefits of the Act;
- Explore options for compliance with the Act while protecting the security and integrity of Virginians' personal information;
- Recommend action steps to be taken at the Federal and State levels to minimize the impacts of any unfunded federal mandates, remove impediments to compliance, and to ease the cost and administrative burden of the Act;
- Identify a timeline for implementation;
- Recommend strategies for Virginia to take to address the Act; and
- Examine other issues as appropriate.

The Report of the Governor's Task Force on the Real ID Act, issued December 29, 2005, identified as key issues the short timeframe within which implementation was required, the lack of infrastructure and technology necessary for implementation, the costs associated with implementation of the Act and lack of funding, and the impact on individuals, service, security, and privacy. The Report included thirteen recommendations, many of which focused on the need for regulatory guidance and the actions and position Virginia should take in seeking regulations that would facilitate feasible, efficient, and economical implementation of the Act.

As was noted throughout the Task Force Report, the precise meaning of many provisions of the REAL ID Act and the manner in which those provisions are to be carried out are unclear in the absence of the regulations that are to be promulgated by the Department of Homeland Security (DHS). For the purposes of this report, the same uncertainties remain, as DHS has not published

complete list of activities that will be considered official purposes under the Act will not be known until the DHS regulations are published.

⁵ A list of the members appointed to the Governor's Task Force is provided in Appendix B.

the first draft of the regulations for public comment. Estimates as to when the draft regulations will be issued range from the end of 2006 to sometime in January or February of 2007.⁶

While Virginia DMV has taken a number of steps to prepare for the known and the likely requirements of the REAL ID Act, the majority of what actually will have to be done will not be known until the regulations are finalized. Thus, for the most part, it is not possible at this time to proffer specific proposals for legislative and executive action needed to execute the REAL ID Act effectively. The following proposals seek to address those general areas and issues that can be anticipated prior to the publication of the DHS regulations.

IMPLEMENTATION OF TASK FORCE RECOMMENDATIONS

Task Force Recommendation regarding Advocacy Strategy: The Task Force recommends that Virginia's elected officials work with the National Governor's Association (NGA), the National Conference of State Legislatures (NCSL), and the National Association of Attorneys General to amend the REAL ID Act and in the promulgation of regulations to ensure that requirements are feasible, economical, practicable to implement and not unduly burdensome to Virginia residents. The Task Force also recommends that regulations address waiver or accommodation of the Real ID Act requirements during times of national emergencies.

Since the publication of the Task Force Report, DMV has worked closely with the American Association of Motor Vehicle Administrators (AAMVA), participating in three of the four task groups established by the AAMVA REAL ID Steering Group to address the components of the Act. The Governor's office has worked with NGA on key issues.

Going forward, DMV recommends the following:

- The issues facing Virginia (funding, compliance deadline, lack of regulations, verification, effect on customer service, etc.) should be included in the presentation made by the Virginia Legislative Office when it meets with the Virginia Congressional Delegation for its annual Congressional briefing.
- Virginia should be prepared to respond to the DHS draft regulations once they are published, if the content of the regulations presents serious obstacles to implementation or to the protection of the rights and privacy of the residents of Virginia. Comment also will be needed if the regulations appear to be deficient in terms of the issues raised and recommendations made by the Governor's Task Force.

⁶ An article published in *Federal Computer Week* on October 20, 2006 reported that Jonathan Frenkel, director of law enforcement policy at DHS, indicated that DHS was reviewing the draft regulations, after which they would be sent to the Office of Management and Budget and other agencies for their input.

- If the DHS regulations do not provide for a delay in the effective date of the REAL ID Act, and the Act is not amended to change the implementation date, Virginia should be prepared to request an extension of time to meet the requirements of the Act. The length of the extension requested will depend upon the publication date of the regulations and the complexity of implementation pursuant to the regulations.
- The Virginia General Assembly may want to consider a joint resolution or other means of calling Congress' attention to the difficulty and financial burden created by this federal legislation.
- Virginia's elected officials should continue to work closely with the NGA and NCSL to address with regulators key policy issues and implementation recommendations cited in the Task Force report and, if necessary, to seek amendment of the Act itself.

Task Force Recommendation regarding Change Management Strategy: Virginia must put into place mechanisms for managing the changes and issues that will arise and the preparations that will be necessary for implementing the REAL ID Act.

DMV has initiated two major projects, Central Issuance of Driver's Licenses and Identification Cards and Systems Redesign (redesign of DMV's computer operating systems), both of which will enhance the agency's ability to implement the REAL ID Act. While these projects are necessary to the agency independent of the REAL ID Act, DMV has endeavored to build into both of these projects elements that will facilitate the implementation and administration of the REAL ID Act.

The REAL ID Act will require all current Virginia driver's license and identification card holders to come into the Customer Service Centers for renewal of their credentials. Renewal by alternative services will not be an option for renewing current credentials, at least for the first renewal after the Act takes effect.

In fiscal year 2006, almost 28% of the 872,805 persons renewing their regular driver's licenses did so via use of an alternative service.⁷ Under REAL ID, those 244,301 customers would have to come to a Customer Service Center to process their renewals.

In addition, the processing of each application for a REAL ID compliant driver's license or identification card will take much longer than processing such applications under current Virginia standards. DMV issues approximately 1.9 million driver's licenses and identification cards per year. DMV has estimated that, without any changes to its current procedures, implementation of REAL ID will increase wait times at Customer Service Centers by at least 258%.

⁷ Renewal by alternate services is not an option for commercial driver's license holders.

As a result, it is of critical importance to develop a strategy to counteract the negative impact that compliance with REAL ID will have on the quality of service provided to DMV customers, because of the increased number and complexity of the transactions to be performed pursuant to the requirements of the Act. This strategy should focus on actions designed to move resources and shift the workload between Customer Service Centers and alternative services and may include:

- Evaluating the fiscal and workload implications of a possible extension of the current five year validity period of driver's licenses and identification cards;⁸
- Increasing the number of DMV Select agents and the compensation paid to them, to increase the availability of alternative sites for processing vehicle transactions so that those customers will not have to visit the Customer Service Centers which will, in turn, reduce the volume of traffic in the Customer Service Centers;
- Requiring the use of alternative services (i.e., internet, telephone, DMV Select Agents) for certain motor vehicle transactions (e.g., registration renewals) and dealer transactions to eliminate the demand on DMV Customer Service Center personnel to process those transactions, which will reduce the volume of traffic in the Customer Service Centers; and
- Creating a central verification unit, to be located in an area of Virginia where the addition of jobs would be beneficial to the Commonwealth, to eliminate the need for customers to wait at the Customer Service Centers while their documents are being verified and to relieve Customer Service staff of the responsibility to perform the verification so that they are able to process a greater number of applications.

In addition, DMV recommends that the following actions be commenced:

- Dedicate a position at DMV for an individual who will oversee and manage the agency's implementation and administration of the REAL ID Act. The agency's activities in connection with implementation and administration of the REAL ID Act will include:
 - Receipt and dissemination of "official" information and correspondence concerning the REAL ID Act and the regulations promulgated thereunder;
 - Overseeing dissemination of information to the public before, during, and after implementation of the Act;
 - Working with the Administration to provide advice for and coordinate all legislative and regulatory efforts associated with the REAL ID Act;
 - Serving as the liaison between federal regulators, legislators and other governmental and private entities associated with implementation of REAL ID, to ensure that implementation is timely, cost effective and in accord with regulations and the law; and
 - Identifying and seeking amendment to the Code of Virginia necessary for implementation.

⁸ REAL ID compliant credentials may be issued with a validity period of up to 8 years. See Sec. 202(d)(10).

- Design and plan an extensive public relations campaign to notify, inform, and educate the citizens of the Commonwealth about the importance of the REAL ID Act, what it will mean to them, and how it will affect the process of obtaining original and renewal driver's licenses and identification cards. This campaign should include:
 - Development of message;
 - Town Hall meetings;
 - News media tours;
 - News releases;
 - Participation in radio and television talk shows;
 - Editorial board tours;
 - Paid advertising;
 - Outreach to citizens, advocacy groups, private sector organizations, and employers
 - Targeted mailings and correspondence; and
 - Use of DMV website and signage in the Customer Service Centers.

Task Force Recommendation regarding Compliance: Virginia should comply with the REAL ID Act and implement a program under which compliant credentials are issued, but should, at a minimum, also offer residents a non-compliant driver's license.

Although the REAL ID Act does not mandate State compliance, Virginia is preparing to implement and administer the Act to best serve its citizens. If Virginia does not issue REAL ID compliant drivers licenses and/or and identification cards, its residents will not be able to use their State-issued credentials with federal agencies for any of the official purposes referred to in the Act or the DHS regulations.

However, it is anticipated that not all Virginia residents will be able to satisfy the application requirements to obtain a REAL ID compliant credential. The recommendation that Virginia provide the option of a non-compliant driver's license addresses the important role of the ability to drive in most persons' everyday life.

Sec. 202(d)(11) of the Act provides that States may issue driver's licenses or identification cards that do not satisfy the requirements of the Act if any such credential "(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and (B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose."

At present, DMV is studying the pros and cons of various approaches to this recommendation. Factors being examined include the costs, impact on the Customer Service Centers, and ease of implementation.

The options for issuing both compliant and non-compliant credentials include, but are not limited to:

- Issue REAL ID compliant driver's licenses and identification cards, and continue to offer non-compliant driver's licenses and identification cards issued under current Virginia standards;
- Issue REAL ID compliant driver's licenses and identification cards, and continue to offer non-compliant driver's licenses under current Virginia standards;
- Issue REAL ID compliant identification cards and non-compliant driver's licenses issued under current Virginia standards (residents would be permitted to apply for and obtain both credentials); and
- Issue REAL ID compliant driver's licenses and identification cards, and issue non-compliant driver's licenses that solely evidence the ability to drive.

The Task Force recommendation made the assumption that non-compliant driver's licenses will not meet all requirements of REAL ID, but will continue to be issued under the standards currently used in Virginia. The first three of the above listed options incorporate that assumption. The fourth option presents an alternative approach, which is to offer non-compliant driver's licenses to residents who are qualified to drive but are unable to establish legal presence.⁹

Once DMV is able to complete its study and compile the results, the decision regarding what approach to implement will be a policy determination to be made by Virginia's elected officials.

Task Force Recommendation regarding Grandfathering: Virginia should advocate for an interpretation of the Act and promulgation of regulations that would allow for permanent grandfathering, whereby existing credential holders could obtain compliant credentials without having to satisfy the requirements of the REAL ID Act.

The REAL ID Act provides that, beginning May 11, 2008, federal agencies may not accept a driver's license or identification card issued by a State that is not in compliance with the Act for any official purpose. It is not clear from this language whether this means that the States must commence issuing compliant credentials by May 11, 2008 or whether each and every person who requires access to a federal agency on May 11, 2008 must possess a compliant credential. The DHS interpretation of this issue will not be known until the regulations are published.

As the Task Force recognized, based upon the purpose and language of the Act, it is unlikely that the recommended permanent grandfathering will be adopted. However, an interpretation of the Act and promulgation of regulations that allow for temporary grandfathering is critical to the

⁹ The rationale being that this would reduce the number of residents who presently drive without licenses and without insurance because they cannot obtain a license under the Virginia legal presence statute. Also, the option of obtaining a non-compliant license would encourage better skills, as these residents would have to learn to drive in order to take the driving tests that would still be required.

feasibility of Virginia's implementation of the act. Temporary grandfathering should allow current credential holders to use their existing credentials for federal purposes until they expire, at which time they will have to fulfill the prerequisites of the Act in order to obtain a REAL ID compliant credential.

Virginia simply does not have the resources that would be needed if it were required to reenroll all existing credential holders by May 11, 2008. As of July 1, 2006, there were 5,538,280 persons in Virginia with active driver's licenses, commercial driver's licenses, and identification cards. Temporary grandfathering would permit Virginia to reenroll almost all of its current credential holders during the normal course of the Commonwealth's current five-year credential renewal cycle.

Virginia should continue to advocate for the inclusion of temporary grandfathering in the DHS regulations or by amendment of the REAL ID Act by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Task Force Recommendation regarding Minimum Document Requirements: Virginia should seek an amendment of the Act that permits the display of a non-residential address on a compliant credential in certain cases.

The REAL ID Act requires that each driver's license and identification card must include "the person's address of principal residence." Section 202(b)(6) of the Act.

Virginia law provides licensees with the option of having an alternate address displayed on their driver's licenses.¹⁰ The primary residence addresses are maintained in the DMV database. The purpose of this law is to protect individuals for whom display of their principal residence address would create a risk to their personal safety or security.

If the regulations interpret the above language of the Act to mean that the principal residence address must be shown on the face of the credential, this will conflict with Virginia law and necessitate amendment thereto. If, however, the regulations allow an alternate address to be shown on the face of the document as long as the principal residence address is included in the

¹⁰ § 46.2-342(A1): "At the option of the licensee, the address shown on the license may be either the post office box, business, or residence address of the licensee, provided such address is located in Virginia. However, regardless of which address is shown on the license, the licensee shall supply the Department with his residence address, which shall be an address in Virginia. This residence address shall be maintained in the Department's records. Whenever the licensee's address shown either on his license or in the Department's records changes, he shall notify the Department of such change as required by § 46.2-324."

common, machine-readable technology that is required to be included on each compliant credential, then there will be no conflict.

Virginia should continue to advocate for regulations that allow for the continued utilization of Virginia law, which was designed to address the safety and security concerns of its citizens, by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Task Force Recommendation regarding “Temporary” Indicator on Credentials:

Regulations should authorize a discreet method for indicating the temporary nature of a credential when the expiration date must be tied to an applicant’s authorized stay in the U.S taking into account the utility of such an indicator and the potential for profiling or discrimination.

Section 202(c)(2)(C)(iii) of the REAL ID Act requires that “[a] temporary driver’s license or temporary identification card ... shall clearly indicate that it is temporary and shall state the date on which it expires.”

The Task Force recommendation does not conflict with this provision in the Act. However, whether the DHS regulations will interpret the language in Act so as to create a conflict is unknown.

The temporary driver’s licenses and identification cards currently issued by Virginia DMV clearly note on the front of the credential that there is a restriction, and the restriction is explained clearly on the reverse side of the credential.¹¹ Virginia’s current process demonstrates that the indicator on a credential showing it is temporary can be both clear and discrete.

Virginia should continue to advocate for an interpretation of the Act acknowledging that the temporary nature of a REAL ID compliant credential may be indicated in a discreet method, similar to that currently in use on Virginia driver’s licenses and identification cards. Virginia’s continued advocacy should be undertaken by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, and continuing to be involved with the efforts of NGA, NCSL and AAMVA, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

¹¹ See sample limited duration driver’s license shown in Appendix C. The existence of a restriction is clearly shown on the front of the credential and the explanation that the credential is of limited duration is clearly stated on the reverse.

Task Force Recommendation regarding Verification of Source or Proof Documents:

Implementation of any provision of the REAL ID Act for which infrastructure and/or electronic solutions do not currently exist must be delayed until necessary infrastructure and systems are developed and in place. Further, Virginia should advocate for modification to the Act and for regulations that authorize use of alternative approaches to verification if systems for verification with the issuing entity are not currently in place.

The REAL ID Act requires each State to “verify, with the issuing agency, the issuance, validity, and completeness of each document” presented by an applicant for a compliant credential. Such documents will include proof of identity, date of birth, legal presence, social security number or ineligibility, and residence address.

Other than the systems available for verifying social security numbers (Social Security On-Line Verification, “SSOLV”) and the legal presence status of non-U.S. citizens (Systematic Alien Verification for Entitlements, “SAVE”) there are no electronic systems available to verify other requisite documentation. While systems are in development for certain documentation (e.g., nationwide access to driver’s license and identification card information, Department of State passport and birth records, States’ birth records), none of these systems will be available by May 11, 2008. Furthermore, there are no electronic systems or mechanisms for verification of documents typically used to establish principal residence, such as utility bills, leases, bank account records, etc.

Implementation of the REAL ID Act will be virtually impossible unless the Act is amended and regulations are issued modifying the verification requirements for any source documents for which electronic verification is not possible and delaying the implementation date of the verification requirements until the necessary electronic systems are available and accessible.

Virginia should continue to advocate for amendment of the Act and for regulations that delay the implementation date of the Act until the infrastructure and systems essential to compliance with the Act are developed and in place. Virginia also should continue to advocate for amendment of the Act and for regulations that authorize the use of alternative approaches to verification if systems for verification with the issuing entity are not currently in place. Advocacy of these proposals can be accomplished by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

In addition, Virginia should begin formulating a plan for the creation a central verification unit, which would administer and process the verification of all documentation submitted by applicants for REAL ID compliant driver’s licenses and identification cards. It is recommended that this facility be located in a part of Virginia where labor market conditions would be

favorable to staffing the unit and where the location of the unit would be favorable to the locality.

Task Force Recommendation regarding Effective Procedure to Verify/Confirm Credential Holders' Information Upon Renewal: Virginia should advocate regulations that authorize use of currently available procedures for verifying information of existing credential holders at the time of renewal and to not require these credential holders to complete the full requirements of the Act.

Under presently available procedures only SSNs and legal presence status of non-U.S. citizens could be verified. However, since DMV does not capture the specific information needed to verify legal presence status, the only information of current credential holders that DMV could verify is their SSNs. Based upon the purpose and language of the Act, it is unlikely that DHS would endorse such a limited review process for current credential holders.

Virginia might want to study the feasibility of using this approach in the future, for renewal by REAL ID compliant credential holders. Sec. 202(d)(4) of the Act requires each State to “[e]stablish an effective procedure to confirm or verify a renewing applicant’s information.” However, consideration of this or alternate approaches will have to wait until the DHS regulations are published, in order to know what restrictions and requirements will be applied to the procedures for processing renewals of REAL ID compliant credentials.

Task Force Recommendation regarding Confirmation Out-of-State License Has Been or is Being Terminated: Implementation of any provision of the REAL ID Act for which infrastructure and/or electronic solutions do not currently exist must be delayed until necessary infrastructure and systems are developed and in place. Further, Virginia should advocate for amendment to the Act or regulations that allow the current notification process utilized by Virginia to satisfy the requirement that when issuing a driver’s license there be confirmation that an out-of-state license held by the applicant has been or will be terminated.

Under the REAL ID Act a State may not issue a compliant credential “to a person holding a driver’s license issued by another State without confirmation that the person is terminating or has terminated the driver’s license.” Sec. 202(d)(5) of the Act.

At present, there is no electronic system or infrastructure through which any one State can ascertain whether an applicant holds a driver’s license that was issued by any other State. Although AAMVA is coordinating an effort to design such a system, it is unknown when this system might be up and running. Until such a system is available, Virginia will not be able to comply fully with section 202(d)(5) of the Act.

Currently, if an applicant for a Virginia driver's license reports that he or she has a driver's license issued by another State, Virginia DMV asks the applicant to surrender the license. Virginia DMV then notifies the other State that the license was surrendered and that the individual has been issued a Virginia driver's license. Prior to issuance of an original driver's license, Virginia DMV checks the applicant's information against both the National Driver Register ("NDR") and the Commercial Driver License Information System ("CDLIS"). The NDR includes all individuals whose driver's licenses have been suspended or revoked, or who have been convicted of serious driving offenses. CDLIS includes only individuals to whom a commercial driver's license has been issued. However, neither of these systems contains information concerning all licenses nationwide.¹²

Virginia should continue to advocate for amendment of the REAL ID Act or regulations that delay the implementation date of section 202(d)(5) of the Act until such time as the electronic systems or infrastructure needed to comply with that section are available. In addition, Virginia should continue to advocate for amendment of the Act or regulations pursuant to which Virginia's current notification process for out-of-state surrendered licenses would be deemed to satisfy the requirements of section 202(d)(5) until such time as an electronic system or infrastructure is available to facilitate compliance with that section.

Virginia's advocacy of these proposals should be accomplished by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Task Force Recommendation regarding Providing Other States With Access to Driver's License and ID Card Records: Implementation of any provision of the REAL ID Act for which infrastructure and/or electronic solutions do not currently exist must be delayed until necessary infrastructure and systems are developed and in place. Further Virginia should advocate for regulations that mandate that the Federal Driver's Privacy Protection Act (DPPA) and the privacy laws of the source State remain applicable when information contained in driving records is accessed by other States.

As discussed above, the REAL ID Act includes a number of provisions that Virginia cannot implement without the needed infrastructure and/or electronic systems. Virginia should continue to advocate for amendment of the Act and for regulations that delay the implementation date of the Act until the infrastructure and systems essential to compliance with the Act are developed and in place. Such advocacy can be accomplished by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when

¹² DMV can only confirm whether an applicant has a driver's license in another state if the applicant presents an out-of-state driver's license, has convictions in NDR, or has been issued a CDL.

published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Until the DHS regulations are published, Virginia will not know whether the protections afforded by DPPA or those included in Virginia's privacy laws will be at risk. Virginia should be ready to examine and evaluate this issue when the draft regulations are published and provide such comments to the draft regulations as are warranted.

Task Force Recommendation regarding SSN Discrepancies and Letters of SSN

Ineligibility: Regulations pertaining to the SSN-related requirements of the Act should require the applicant to resolve the discrepancies except in cases of DMV error, and should forestall requiring letters of ineligibility until the SSA has a reliable issuance system in place.

Under the REAL ID Act, one of the prerequisites to issuance of a compliant credential is the presentation and verification of proof of the applicant's SSN or verification that the applicant is not eligible for an SSN. Sec. 202(c)(1)(C).

According to the Social Security Administration (SSA)¹³, it cannot provide verification that an applicant is not eligible for an SSN. All SSA can verify is why it could not process an individual's application for an SSN on the particular day that it issued its notice of Refusal to Process SSN Application. However, the data provided by SAVE can be used both to verify lawful immigration status and to determine ineligibility for an SSN. Therefore, SSA suggests that each State can verify that an applicant is not eligible for an SSN when it is accessing SAVE to verify the applicant's legal presence status.

DMV recommends that this additional use of SAVE be incorporated into the procedures it develops for verification of SSN related prerequisites to issuance of a REAL ID compliant credential.

Of greater concern is the requirement in Sec. 202(d)(5) that: "In the event that a social security number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action."

This provision places a blanket obligation on each State to resolve all SSN discrepancies, regardless of the underlying cause. When a discrepancy is the result of DMV error, the State should be responsible for resolving the problem. However, if the source of the discrepancy is SSA, then the individual applicant should be required to pursue the matter directly with SSA.

¹³ As reported in March 17, 2006 AAMVA/SSA/DHS Meeting Notes.

Virginia should continue to advocate for amendment of the Act and for regulations that identify and distinguish those circumstances under which the State must resolve SSN discrepancies and those circumstances under which it is the applicant's responsibility to resolve the discrepancy. Advocacy of this proposal can be accomplished by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Task Force Recommendation regarding Acceptable Proof or Source Documents: Do not place in regulations a list of acceptable source documents, but implement a system similar to that implemented in Virginia in which lists are established by policy based on criteria established in the law.

The Act specifies each element for which an applicant must provide documentary evidence (e.g., legal name, date of birth, SSN, principal residence address, lawful status in the United States, etc.), but does not describe, limit, or restrict the types of documents that States may accept as valid documentary evidence of the prescribed elements.

It is likely that the DHS regulations will provide further guidance regarding this issue in order to ensure that each State applies a consistent standard. Based on its own experience in determining what source documents should be acceptable to establish its legal presence requirements, Virginia DMV proposes that the most efficient and effective way to do this would be to establish criteria that the States would use to determine what documentary evidence would be acceptable. The alternative, a specific list of acceptable documents, would hinder implementation and administration of the Act, as the removal of documents proven to be unreliable and the addition of new or previously omitted documents could only be accomplished through the lengthy regulatory process.

Virginia should continue to advocate for the DHS regulations to set forth the criteria pursuant to which each State may determine what source documents will constitute acceptable documentary evidence rather than merely provide a list of acceptable source documents. Advocacy of this proposal can be accomplished by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, and continuing to be involved with the efforts of NGA, NCSL and AAMVA, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

Task Force Recommendation regarding Costs of and Funding for Implementation:

Virginia should aggressively seek federal funding for implementation of the REAL ID Act. In addition, the Commonwealth should consider the potential sources of State funds that may be

available to address the costs of implementing the Act, and whether the fees for DL/IDs will need to be increased.

Implementation of the REAL ID Act will require significant investments in public awareness, information technology, increased personnel, and central issuance of credentials. DMV is seeking to improve service delivery and to reduce operational costs to mitigate the negative impact of REAL ID on the Commonwealth and its citizens. Pending the publication of the DHS regulations, DMV recommends that all options be explored for implementation of REAL ID and for stable and sufficient revenue to support that implementation.

DMV estimates that the total annual cost for currently anticipated expenditures will be \$14.2 million per year. This estimate includes:

111 personnel to staff the central verification unit:	\$4,644,884
Lease and operation costs of central verification unit facility:	110,000
55 additional Customer Service Center personnel:	2,561,406
Compensation for DMV Select agents:	1,000,000
Driver's license and identification card central issuance:	3,900,000
Related IT costs:	805,272
Public relations campaign:	1,150,000
Supplies/Materials:	58,598

Virginia should pursue federal funding for the implementation and administration of this federal legislation by pursuing the involvement and assistance of its Congressional Delegation, providing responsive comments to the draft regulations when published, passing a joint resolution in the Virginia Legislature, continuing to be involved with the efforts of NGA, NCSL and AAMVA, and seeking an extension of the time within which Virginia must implement the Act, as described in greater detail under the Task Forces advocacy strategy recommendation (see above at pages 5-6).

In addition, Virginia may want to consider any or all of the following possible sources of funding within the Commonwealth:

- Allocation of the \$2.00 information fee charged pursuant to § 46.2-214.1 of the *Code of Virginia* to the DMV special fund would provide almost \$10.2 million per year to help fund REAL ID costs.
- Increasing the cost of the identification cards issued by Virginia to equal the amount charged for driver's licenses would produce approximately \$2.2 million per year in additional revenue.
- Increasing the cost of driver's licenses and identification cards by 10% would generate over \$3 million in additional revenue.

CONCLUSION

A definitive plan for the implementation and administration of the REAL ID Act in Virginia can not be made until the DHS regulations are promulgated. Some questions should be answered when the first draft of the regulations is published for public comment.

Despite these uncertainties, Virginia DMV has taken a number of steps designed to prepare it for the demands and requirements of the Act. These include:

- DMV currently is in the process of procuring a vendor to administer centralized issuance of driver's licenses and identification cards. DMV anticipates that all REAL ID Act requirements regarding the composition and design of compliant credentials will be met by the driver's licenses and identification cards produced once centralized issuance is implemented.
- In preparation for implementation of Central Issuance, DMV is in the process of replacing the dumb terminals used by Customer Service Center staff with personal computers and installing scanners. This will allow Customer Service Center personnel to scan applicants' documentation into DMV's computer system and return the documents to the applicants before they leave the Customer Service Center. This equipment will be in place when needed for implementation of procedures required by the REAL ID Act.
- DMV has commenced the redesign of its operating systems. This will facilitate DMV's ability to comply with the requirements of REAL ID as, for example, through the added capacity to capture all information required by the Act and a more efficient capability for connecting to systems that are being developed for verification of source documents and of driver's licenses issued in other states.
- DMV has entered into a Memorandum of Understanding with DHS regarding use of the SAVE system, as required by Sec. 202(c)(3)(C) of the Act.
- DMV has already implemented fraudulent documentation recognition training. If the AAMVA training program being used is acceptable under the DHS regulations, DMV will be in full compliance with this requirement of the REAL ID Act prior to May of 2008.

Until the DHS regulations are finalized, Virginia should continue its advocacy for the regulatory and statutory provisions that are essential to a feasible, efficient, and economical implementation of the Act.

APPENDIX A
TEXT OF THE REAL ID ACT

Public Law 109–13
109th Congress
May 11, 2005

An Act
Making Emergency Supplemental Appropriations for Defense, the Global War on
Terror, and Tsunami Relief, for the fiscal year ending September 30, 2005, and
for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

**An Act Making Emergency Supplemental Appropriations for Defense, the Global War on Terror, and
Tsunami Relief, for the fiscal year ending September 30, 2005, and for other purposes.**

**DIVISION A—EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR DEFENSE,
THE GLOBAL WAR ON TERROR, AND TSUNAMI RELIEF, 2005**

[Omitted]

DIVISION B – REAL ID ACT OF 2005

**TITLE I—AMENDMENTS TO FEDERAL LAWS TO PROTECT AGAINST
TERRORIST ENTRY**

[Omitted]

**TITLE II—IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL
IDENTIFICATION CARDS**

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) Driver's license.--The term "driver's license" means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) Identification card.--The term "identification card" means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) Official purpose.--The term "official purpose" includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.

(4) Secretary.--The term "Secretary" means the Secretary of Homeland Security.

(5) State.--The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) Minimum Standards for Federal Use.--

(1) In general.--Beginning 3 years after the date of the enactment of this division, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) State certifications.--The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) Minimum Document Requirements.--To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

- (1) The person's full legal name.
- (2) The person's date of birth.
- (3) The person's gender.
- (4) The person's driver's license or identification card number.
- (5) A digital photograph of the person.
- (6) The person's address of principal residence.
- (7) The person's signature.
- (8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
- (9) A common machine-readable technology, with defined minimum data elements.

(c) Minimum Issuance Standards.--

(1) In general.--To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non- photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) Special requirements.--

(A) In general.--To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) Evidence of lawful status.--A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person--

- (i) is a citizen or national of the United States;

- (ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
- (iii) has conditional permanent resident status in the United States;
- (iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;
- (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
- (vi) has a pending application for asylum in the United States;
- (vii) has a pending or approved application for temporary protected status in the United States;
- (viii) has approved deferred action status; or
- (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) Temporary drivers' licenses and identification cards.--

(i) In general.--If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) Expiration date.--A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) Display of expiration date.--A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) Renewal.--A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) Verification of documents.--To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) Other Requirements.--To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

(10) Limit the period of validity of all driver's licenses and identification cards that are not temporary to a period that does not exceed 8 years.

(11) In any case in which the State issues a driver's license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card--

(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and

(B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.

(12) Provide electronic access to all other States to information contained in the motor vehicle database of the State.

(13) Maintain a State motor vehicle database that contains, at a minimum--

(A) all data fields printed on drivers' licenses and identification cards issued by the State; and

(B) motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 203. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

(a) Criminal Penalty.--Section 1028(a)(8) of title 18, United States Code, is amended by striking ``false authentication features" and inserting ``false or actual authentication features".

(b) Use of False Driver's License at Airports.--

(1) In general.--The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) False defined.--In this subsection, the term ``false" has the same meaning such term has under section 1028(d) of title 18, United States Code.

SEC. 204. GRANTS TO STATES.

(a) In General.--The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) Authorization of Appropriations.--There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 205. AUTHORITY.

(a) Participation of Secretary of Transportation and States.--All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) Extensions of Deadlines.--The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for non-compliance.

SEC. 206. REPEAL.

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is repealed.

SEC. 207. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

APPENDIX B
MEMBERS OF THE GOVERNOR'S TASK FORCE ON THE REAL ID ACT

Mr. D. B. Smit, Chairman
Department of Motor Vehicles

Mr. Robert M. Blue
Dominion Resources, Inc.

Mr. Richard Barton Campbell
Office of the Attorney General

Ms. Eileen Filler-Corn
Governor's Liaison Office

Colonel W. Stephen Flaherty
Virginia State Police

Mr. George Foresman
Office of Commonwealth Preparedness

Ms. Tanya M. Gonzalez
City of Richmond

Mr. John W. Knapp, Jr.
Verizon Virginia

Mr. Dean A. Lynch
Office of the Secretary of Health and Human Resources

Mr. Steven L. Myers
Virginia Poverty Law Center

Ms. Betty L. Serian
Pennsylvania Department of Transportation

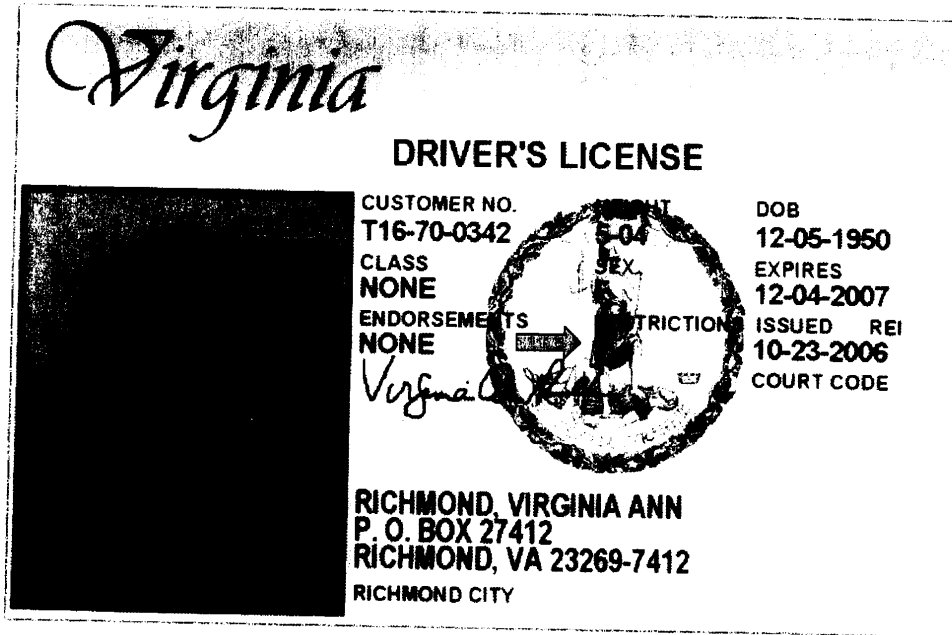
Mr. Roger L. St. John
Philadelphia Region of the Social Security Administration

The Honorable Walter Tejada
Arlington County Board of Supervisors

Mr. Kent Willis
American Civil Liberties Union of Virginia (ACLU)

APPENDIX C
SAMPLE LIMITED DURATION DRIVER'S LICENSE

FRONT



BACK



RESTRICTIONS	DEFINITIONS
9: Limited Duration (SEE EXPIRATION DATE ON FRONT) ←	NOTICE Descriptions for restriction, class, and endorsement codes contained on the back of this document are Virginia specific.

