

**THE IMPACT OF IMPLEMENTATION: A REVIEW
OF THE REAL ID ACT AND THE WESTERN
HEMISPHERE TRAVEL INITIATIVE**

HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE
DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

APRIL 29, 2008

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Printed for the use of the Committee on Homeland Security
and Governmental Affairs



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TUESDAY, APRIL 29, 2008

U.S. SENATE,
SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL WORKFORCE,
AND THE DISTRICT OF COLUMBIA,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:36 a.m., in Room SD-342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka, Pryor, Tester, Voinovich, Collins, and Coleman.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. I call the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia to order.

I want to first thank our witnesses for being here today to testify as we review how the Department of Homeland Security and the Department of State are implementing the REAL ID Act and the Western Hemisphere Travel Initiative (WHTI).

I also want to thank Senator Voinovich, my partner on so many issues on this Subcommittee, and welcome him here, too. Last year, following our hearing on REAL ID, he expressed his interest in holding another hearing to examine whether Federal agencies are prepared to implement both REAL ID and WHTI. I share this concern and I am happy that we can work on this issue together.

Both REAL ID and WHTI stem from the 9/11 Commission's recommendations on how to improve our efforts to prevent and deter another terrorist attack in the United States. REAL ID was designed to enhance the security of drivers' licenses, as most of the September 11, 2001 hijackers acquired some form of U.S. identification document, some by fraud, which assisted them in boarding commercial flights and renting cars. WHTI is based on the Commission's recommendation that Americans have their identities securely verified when entering the United States.

I support the 9/11 Commission's recommendations concerning identification security. However, as the saying goes, the devil is in the details. Unfortunately, both REAL ID and WHTI are controver-

sial because of those very details. Both REAL ID and WHTI pose significant threats to Americans' privacy and civil liberties.

REAL ID calls for all States to capture digital images of an individual's documents proving identity, such as birth certificate or passport, and provide electronic access to their databases to all other States. The massive amounts of personal information that would be stored in State databases that are to be shared electronically with all other States, as well as the unencrypted data on the REAL ID card itself, could provide one-stop shopping for identity thieves.

We have been told repeatedly that the model for this network of networks is the Commercial Drivers' License Information System (CDLIS), which allows States to exchange information about commercial drivers. CDLIS currently stores the name, date of birth, Social Security number, and State driver's license, and number of 13.5 million commercial drivers. Although proponents of REAL ID are quick to point out that CDLIS has never been breached, the attractiveness of such a network for computer hacking by identity thieves would increase exponentially as the number of individuals in the system increases to 245 million.

In addition, it is unclear what privacy and data security laws would apply to this network of networks and what redress mechanisms are in place for individuals whose data is lost or stolen in another State.

Because of the lack of privacy details in REAL ID, this expansive effort may create a false sense of security while actually making Americans more vulnerable to identity theft.

Adding to my concern is the fact that some States are implementing enhanced drivers' licenses (EDLs) to comply with WHTI. EDLs are basically REAL IDs with a vicinity-read radio frequency identification chip. I am afraid this poses serious privacy and security risks, as anyone with a RFID reader will be able to monitor the activities of EDL holders.

Both REAL ID and WHTI pose significant challenges to the economy and the travel industry. For example, last year, the State Department was not prepared for the overwhelming demand for passports caused by the implementation of WHTI for individuals traveling to Canada and Mexico. Due to the lack of staff and planning, the passport processing time went from several weeks to several months, causing many Americans to cancel their travel plans. I feel that DHS will be in the same boat in 2009 when the current extensions for REAL ID compliance expire.

Several States have passed laws rejecting REAL ID and the list is growing. DHS must be prepared for how it will deal with partial compliance if the problems with REAL ID are not resolved. The American public will need to know what to expect in secondary screening. The Transportation Security Administration will need enough staff on hand to quickly screen passengers and avoid travel disruptions if States continue to reject REAL ID. Federal agencies will need guidance on how they can serve the public and provide benefits to those who visit them and do not have the REAL ID-compliant cards.

Today, I hope to hear from both DHS and State as to how they are preparing for these implementation deadlines and what has

been the impact of the current WHTI rules on the traveling public so far.

Moreover, States are struggling to figure out how they are to pay for what is essentially an unfunded mandate. The matter is even more important given the current economic climate. States are trying to figure out how to pay for schools, roads, health care, and other essential services in a tight budget. Now they have to figure out how to pay for secure ID cards.

Initially, DHS estimated the cost of implementing REAL ID to be \$23 billion, of which \$14 billion would be borne by the States. In the final regulations, the overall cost decreased to \$10 billion, leaving the estimated cost to the States at \$4 billion.

The Federal Government should pay for this unfunded mandate, but it is critical that we fix the problems with REAL ID first. We cannot spend billions of taxpayer dollars to erode Americans' privacy protections.

That is why I introduced the Identity Security Enhancement Act, S. 717, with Senators Sununu, Leahy, Tester, Baucus, and Alexander, to repeal REAL ID and replace it with a negotiated rule-making process and the more reasonable guidelines established in the Intelligence Reform and Terrorism Prevention Act of 2004. As you know, that Act brought together representatives from the Federal Government, State, and local governments, privacy groups, and other stakeholders to develop standards for drivers' licenses while ensuring privacy protections. By bringing everyone together, I believe that we can address the problems with REAL ID and have secure drivers' licenses faster than the time frame proposed through DHS's final rules.

I am pleased that our bill now has the support of the National Conference of State Legislatures, the U.S. Conference of Mayors, the Association of Corporate Travel Executives, the American Civil Liberties Union, and the Center for Democracy and Technology.

We all support improvements in our driver's license and identification cards, but Congress has the responsibility to ensure that the changes being implemented by the Administration really are improvements and are affordable, practical, and increase security against would-be terrorists and identity thieves.

Now I turn to my good friend, Senator Voinovich, for any opening statement that he would like to make. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman, and I really appreciate you holding this hearing today about two subjects that you and I have been concerned about for quite some time. I think it is apropos that we do because the folks that are going to be testifying here today are going to carry out these programs for the rest of the year and we want to make sure that the baton is handed off to the next Administration so that we don't have some of the screw-ups that we have had in the past implementing some of these programs.

I think we all know that since the 9/11 Commission issued its findings and recommendations, we have passed several pieces of legislation to improve our Nation's security by implementing those recommendations. This has included legislation to implement the

Commission's recommendation that everyone, including U.S. citizens, should carry a document enabling their identity to be verified when they enter the United States as well as the Commission's recommendation that the Federal Government should set standards for the issuance of sources of identification, like drivers' licenses. Easier said than done.

Congress's legislative efforts in these regards have resulted in plans known as the Western Hemisphere Travel Initiative, and I think, Senator Akaka, you referred to it as WHTI. So if we keep using the word WHTI, everybody will know it is the Western Hemisphere Travel Initiative, and REAL ID, and that refers to the licenses that we are asking States to produce.

There have been significant challenges in implementing each of these programs. First, the implementation of WHTI at our airports last year was, at best, chaotic. Through no fault of their own, numerous American travelers missed their departure dates to travel overseas when the amount of time it took to get a passport increased from 4 to 6 weeks to several months. These problems were due to an absolute failure to anticipate demand by the State Department. This was outrageous, and quite frankly, I believe it contributed to the defeat of the President's immigration legislation initiative because people believed that if the Federal Government could not do something simple like issue passports, how in the world could it ever implement the changes that were contained in the proposed immigration laws.

There are times when I have asked myself, Mr. Chairman, whether we did good when we created the Department of Homeland Security, when we merged 22 agencies, over 200,000 people, with several of those departments in trouble already, and with different cultures. I have seen what has resulted of that. As we look back on it, I really wish that the Administration had been a little bit more aggressive in saying that maybe we were biting off too much.

That is probably the biggest management change in the world. No corporation would ever have undertaken it. Compared to what we did with the Defense Department, at least there were some strings that went through the various Defense agencies. Here, we were trying to put together lots of departments, and so I think that there may be a day when we are going to have to look back and say whether we did this right and maybe look at maybe breaking some of that consolidation up.

While I am told passport issuance problems have been resolved, I am interested in learning what steps the Departments of Homeland Security and State are taking to ensure that travelers don't face similar or worse problems with WHTI when we implement it at land and seaports next year. Are we going to have another fiasco?

I am also interested in discussing how these policy changes could impact cross-border tourism and trade. I visited the Windsor port last summer when I was there with the U.S.-Canadian Interparliamentary Group and heard about slow processing in Canada because of staffing shortages. Imagine my shock last week when I met with members of the Canadian Parliament Group, who I am going to be meeting with in the next several weeks and who told

me about the lines and the waiting times because of U.S. staffing shortages. I question how we can successfully implement policies that could further slow cross-border travel if we are doing such a poor job now to secure our borders in a way that facilitates the free flow of legitimate trade and travel.

Now, I want you to know this is important to States like my State of Ohio, where in 2006 there was a \$2.7 billion trade surplus with Canada—and there are over 500,000 Canadian visits to my State. We cannot have more embarrassments and problems like those that occurred last summer as the Departments of State and Homeland Security worked to implement WHTI at land and sea-ports.

I also have real concerns about the REAL ID program, and Senator Akaka, I think, did a pretty good job in his opening statement to lay it out. I am troubled by the significant cost REAL ID compliance imposes on the States. I don't know why we never raised the issue that this was an unfunded mandate under the legislation that Congress passed several years ago. According to DHS regulations, REAL ID compliance is expected to cost States almost \$4 billion, yet only \$90 million has been appropriated for REAL ID grants to States to date. This is a small sum when you consider that Ohio estimates that its initial cost of compliance will be \$15 million.

I am also concerned about the fact that the Department of Homeland Security's regulations indicates States should utilize databases like the Electronic Verification of Vital Events System, to verify REAL ID applicants' information, even though DHS acknowledges that this and other systems are not ready for full implementation. What I am saying is there are six databases that are important to issue these REAL ID cards and those databases aren't even all up. When are they going to be up? I question how we can go forward with a proposal that asks a State to utilize systems that are not there.

As we implement the 9/11 Commission recommendations, we must do so in a way that is intelligent, thoughtful, and involves good management practices. We cannot proffer artificial measures that will do more harm than good. Further, we must allocate the resources necessary to implement the 9/11 Commission recommendations. In other words, are we giving you the resources that you need to do the job that we are asking you to do?

I look forward to hearing from you today and I thank you for being here. I don't want you to interpret anything I have said to say that I don't think both of you gentlemen are doing the best that you can, but we have some real problems and I want you to know, as a former mayor and as a governor of Ohio, I was interested in good management and making sure that programs that I was involved with worked smoothly.

You have a big burden on your shoulders and the real challenge is this stuff is not going to hit the fan soon—you will be gone. We want to make sure that next year, when a new Administration takes over, that it doesn't hit the fan, that we are all set. It needs to be smooth, and they will look back and say that the Bush Administration did everything that they could to make sure they

eliminated the glitches so that the baton would be passed off smoothly. Thank you.

Senator AKAKA. Thank you very much, Senator Voinovich. Senator Tester.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Chairman Akaka, and I want to thank both you and Senator Voinovich for allowing me to be at the Subcommittee hearing today. I also want to thank both our panelists here for being here, Mr. Baker, especially. You have got a tough task ahead to defend REAL ID, but I really do appreciate you being here.

I want to echo Senator Voinovich's thoughts. My frustration is with the policy. It is not with the people. And whatever we say here today is directed at that and not at anybody personally, because quite honestly, I have got some pretty strong emotions about REAL ID. It is, as I see it, the worst kind of Washington, DC boondoggle.

I think we have folks who really have lost sight of the forest for the trees and we are implementing a law, and lost track of attaining a goal that we all share, and that is making this country more secure. The fact is that we are spending so much time on REAL ID that I think it has become a distraction from the very serious security challenges that do face this country.

I live in Montana, right next to the Canadian border. We still are some 1,500 agents short on the Canadian border, on the Northern border. The technology that DHS planned to gain control of the Southern border has been shelved because it doesn't work and there are still significant other gaps on the Northern border, for sure, other than the 1,500 agents that we need to be addressing, sooner rather than later.

Mr. Baker, I have read your testimony and I do think that we are looking for the same outcome. You are right that no State wants to see its identity documents used in the commission of a terrorist act and we need to do what we can to prevent such an attack. But the question is really whether this is the right way to go about it.

REAL ID was enacted with no debate or chance to amend it. In the 3 years since the law was enacted, it has had all kinds of unintended consequences and no benefit whatsoever when it comes to making America more secure at this point. It is incredibly expensive and complicated. It is burdensome to States and individuals alike. And it is being implemented in a style that makes ordinary folks cringe.

It was not possible for any State to comply with REAL ID by the statutory deadline, so DHS created a game where they waited until more than 2 years after it was enacted before issuing rules that said if the States said they were going to comply, you would treat them as if they were in compliance. However, a number of States sent letters to DHS that specifically said they could not or would not comply with REAL ID.

Montana's Attorney General, for example, wrote, "Since the Montana legislature will not convene again until January 2009, I cannot authorize implementation of the REAL ID Act." Your response

to Montana was, "I can only provide the relief you are seeking by treating your letter as a request for an extension, and gave my State and others an extension that they never requested.

I might add that the bill that the Attorney General referred to that was passed in 2007, I believe was passed unanimously to not implement REAL ID, and the legislature is a pretty diverse group. To get an unanimous vote is nothing short of amazing.

I am pleased that Montanans were not arbitrarily penalized under the law because I think that would have been a big mistake, but I really fail to see what this exercise actually accomplished other than to leave the details of implementing REAL ID to the next Administration.

In short, the entire process of implementing REAL ID has become meaningless. Extensions were granted without cause and without any demonstrated security enhancements. Extensions were almost denied to certain States despite the fact that many of these States had actually done something productive in this area. This legal bobbing and weaving has done nothing to improve our homeland security.

But the consequences for States and for individuals are very meaningful. They have no idea whether to go forward with the database construction, to redesign the drivers' licenses and the training of new DMV workers that REAL ID requires. If States do, in fact, undertake these costly efforts, they do so with no guarantee that the Federal Government will compensate their efforts, as has been mentioned earlier here today.

And for individuals, the price may even be higher. More expensive drivers' licenses with more waiting time at the DMV may be the least of the individual worries. Above all, creating a national ID card—and make no mistake about it, that is precisely what this is—will open up countless opportunities for an individual's personal information to be stolen or used in a way that he or she has not agreed to.

So as you can probably tell, I am not impressed with the REAL ID Act and I am not impressed with how it has been handled and I don't have the confidence that things are getting better. The Congress really needs to address this issue in a way that makes sense for this country and not continue to keep limping along from deadline to deadline.

Chairman Akaka, as he talked about in his opening remarks, and others have introduced legislation that would take a new approach, giving States a seat at the table, which I think is critically important, and capitalizing on the improvements in drivers' license security that already have been happening in States. I am pleased to support him in that effort as a cosponsor of that bill.

Like I said in my opening remarks, Mr. Baker, we have got to play the hands we have been dealt. You have been dealt a pretty terrible hand and I don't envy you having to go through this. But I look forward to your testimony and I look forward to explanation of some of the points that have been brought out today by the opening statements and I look forward to the questions. Thank you.

Senator AKAKA. Thank you, Senator Tester. Senator Coleman.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Mr. Chairman, I am going to yield to my colleague from Maine and submit my statement for the record. I would just briefly say that as a Northern border State, I have been focusing on the Western Hemisphere Travel Initiative, and actually, I will associate myself with the comments from my colleague, Senator Voinovich. I have a lot of concerns—I have traveled to Northern Minnesota—with some of the new rules regarding passports and drivers' licenses, and hopefully there is better communication now, but we have got to do it right. I look forward to the testimony.

With that, I yield to my colleague from Maine.

[The prepared statement of Senator Coleman follows:]

PREPARED OPENING STATEMENT OF SENATOR COLEMAN

I want to begin by thanking the Chairman and Ranking Member for holding this important hearing today on the Western Hemisphere Travel Initiative and REAL ID. WHTI is an issue I have been closely working on for many years now as a member of this Committee and as the previous Chairman of the Foreign Relations Western Hemisphere Subcommittee.

Despite some frustrations and bumps along the way, I believe there has been some encouraging progress in recent months with the extension of the final deadline and the new passport card option for land and sea travel. I was also thrilled the State Department announced the addition of a walk-in, same day service passport office opening in the Twin Cities at the end of this year or early next year. I am hopeful the State Department will issue passport cards at this facility as well.

The WHTI Final Rule will go into effect in a little more than a year and I want to be sure DHS and the State Department are doing what is necessary to continue to ease the burden on our constituents, especially those who live on the border. To that end, I have signed on as an original cosponsor to legislation that will be introduced by Senator Collins that would require DHS to establish temporary mobile enrollment teams in communities along the border for the purpose of assisting U.S. citizens in applying for passports and passport cards. This is an issue we developed together last year and would be another great step to help our border communities.

I've worked hard to raise awareness on the issues I've heard from folks and businesses along the border with respect to WHTI. I am looking forward to hearing from our witnesses what is being done to effectively communicate what documents will be needed to cross the border in June 2009 and how they can obtain them. One of the biggest concerns I've heard throughout the entire WHTI process has been the lack of communication that has accompanied the many changes. I am also interested to hear how the new birth certificate requirement is impacting border crossings and what is being learned from the changes.

Earlier this year, I visited the International Falls border to do a crossing for myself to observe the process firsthand and was pleased with what I experienced. That being said, we are on the doorstep of some of our busiest border crossing months and DHS and the State Department have a great opportunity to reassure folks through their conduct that the June 1st implementation date can go smoothly. We must not waste this opportunity. I look forward to hearing the testimony of our witnesses and thank them for participating in this hearing.

Senator AKAKA. Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman, and thank you for holding this important hearing.

The attacks on our country on September 11, 2001, focused our attention on the security of our borders and the security of our identification documents. Recommendations for stronger border security and authentic drivers' licenses were proposed by the bipartisan 9/11 Commission. Both the Western Hemisphere Travel Ini-

tiative and REAL ID have been flawed programs, however, despite their worthy goals.

In the case of the WHTI, the Department of Homeland Security has not been sufficiently attuned to how important cross-border travel is to the everyday lives of those who live in border communities. In the case of REAL ID, the Department has not yet resolved longstanding privacy and funding concerns.

Meeting the challenge of securing the homeland requires that our borders be closed to our enemies but open to our friends. Along the Northern border, and in Maine in particular, that principle has special meaning. Our Nation's border with Canada has long been criss-crossed with the strands of kinship, friendship, commerce, health care, and other shared activities. Border crossings are a routine part of daily life in the cities and towns along our borders and they are vital to the economies of communities on both sides of the border.

The Aroostook Valley Country Club in Northern Maine is a perfect example of just how integrated border communities are, so I want to describe it to my colleagues. This golf course literally straddles the border of Maine and New Brunswick. The pro shop and the parking lot are on the American side of the border, while the golf course and the clubhouse are on the Canadian side of the border. Members and guests from both countries come and go and have done so for more than 80 years. Recently, however, the Border Patrol blocked the road leading from Canada to the golf course. This inconvenienced local residents, and once the golf course opens for the year, there is a great deal of concern that it could actually endanger the very existence of the course.

The challenges associated with the Aroostook Valley Country Club are similar to those at numerous other border communities. I have urged Customs and Border Protection to devise common-sense solutions to border security issues, accommodating legitimate travel and trade while preventing entry by those who would do us harm.

The Western Hemisphere Travel Initiative similarly poses burdens beyond mere inconvenience. While DHS has taken some important steps to accommodate legitimate concerns, such as adopting the long-held view of Senator Coleman and myself that it should not require children traveling with their parents to carry passports, more needs to be done to relieve the financial and commercial burden that the Initiative will place on our Nation's border residents.

A positive step was the recent development of a passport card for land border crossings at half the cost of a passport. Its \$45 cost is certainly an improvement. However, for a large low-income family, it still poses a significant burden. Reducing the cost of this document, having adequate port of entry staffing and infrastructure, and ensuring that the public is fully aware of the Initiative's document requirements are necessary steps that must be taken before WHTI goes into effect.

That last point about communication is particularly important. I have heard time and again from people in the hospitality industry in Maine and throughout the United States that there is a lot of

confusion about WHTI and that confusion is discouraging some Canadians from visiting Maine and other States.

Turning from border security to the issue of REAL ID, I would note that the effective date for REAL ID has effectively been moved to the beginning of 2010, as all 50 States have now received extensions of the compliance deadline. These extensions headed off what might have been a disastrous day on May 11, when citizens of several States might have arrived at local airports only to find that their drivers' licenses would no longer be an acceptable ID for airport security.

While these extensions have averted a near-term crisis, they do not resolve other problems with REAL ID. For example, I remain very concerned about the implementation cost to States from what is effectively an unfunded Federal mandate. I also continue to be troubled by the potential privacy threats associated with the program's information retention and verification policies. Many of the problems that States are encountering with REAL ID today would have been avoided if the original provisions of the Intelligence Reform Act of 2004 that Senator Lieberman and I authored had not been repealed.

The Congress, the Administration, and States now have a year and a half to come together to resolve these remaining issues. If we fail, December 31, 2009, may see a group of States exercising their right to say no to the Federal Government. That does not advance the cause of homeland security and it does not advance the debate.

We need to come together to solve the remaining problems, and they are real problems. So once again today, I encourage the Department to reach out and truly work with State officials, technology experts, privacy advocates, and other stakeholders, including the Members of this Subcommittee, to minimize and address the very real cost and privacy concerns that continue regarding REAL ID.

Again, I want to commend the Subcommittee Chairman and the Ranking Member for convening this important hearing. Thank you. [The prepared statement of Senator Collins follows:]

PREPARED STATEMENT OF SENATOR COLLINS

The attacks on our country on September 11, 2001, focused our attention on the security of our borders and the security of identification documents. Recommendations for stronger border security and authentic drivers' licenses were proposed by the bipartisan 9/11 Commission.

Both the Western Hemisphere Travel Initiative and REAL ID have been flawed programs, however, despite their worthwhile goals. In the case of WHTI, the Department of Homeland Security has not been sufficiently attuned to how important cross-border travel is to everyday life for those who live in border communities. In the case of REAL ID, the Department has not resolved long-standing privacy and funding concerns.

Meeting the challenge of securing the homeland requires that our borders be closed to our enemies, but open to our friends. Along the northern border and in Maine, in particular, that principle has a special meaning. Our Nation's border with Canada has long been criss-crossed with the strands of kinship, friendship, commerce, health care, and other shared activities. Border crossings are a routine part of daily life in the cities and towns along our borders and vital to the economies of communities on both sides of the border.

The Aroostook Valley Country Club is a perfect example of how integrated border communities are. Its golf course literally straddles the Maine-New Brunswick border. The pro shop and parking lot are in the United States, while the course and

clubhouse are in Canada. Members and guests come from both countries and have done so for more than 80 years.

Recently, however, the Border Patrol blocked a road leading from Canada to the golf course. This inconvenienced local residents and, if continued, could endanger the existence of the golf course.

In responding to the challenges associated with the Aroostook Valley Country Club or those at numerous other border communities, I have urged Customs and Border Protection to devise common-sense solutions to border-security issues, accommodating legitimate travel while preventing entry by those who would do us harm.

The Western Hemisphere Travel Initiative similarly poses burdens beyond inconvenience. While DHS has taken some important steps to accommodate legitimate concerns—such as adopting my long-held view that it should not require children traveling with their parents to have passports—more must be done to relieve the financial and commercial burden that WHTI will place on our Nation's border residents.

A positive step was the recent development of a passport card for land-border crossing at half the cost of a passport. Its \$45 cost, however, is still a burden for low-income families. Reducing the cost of this document, having adequate port of entry staffing and infrastructure, and ensuring the public is fully aware of the initiative's document requirements are necessary steps before WHTI goes into effect. That last point is an important one: People in the hospitality business in Maine have expressed concern that confusion over the WHTI requirement is discouraging some Canadians from visiting Maine and other States.

Turning from border security to securing identification documents, I note that the effective date for REAL ID has been effectively moved to the beginning of 2010 as all 50 States have now received extensions of the compliance deadline.

These extensions headed off what might have been a disastrous day on May 11, when citizens of several States might have arrived at local airports to find that their drivers' licenses would no longer be an acceptable ID for airport security.

While these extensions have averted a near-term crisis, they do not resolve other problems with REAL ID. For example, I remain very concerned about the implementation costs to States from what is an unfunded Federal mandate. I also continue to be troubled by potential privacy threats associated with the program's information-retention and verification policies. Many of the problems that States are encountering with REAL ID today would have been avoided if the original provisions of the Intelligence Reform Act of 2004 that Senator Lieberman and I authored had not been repealed by REAL ID.

The Congress, the Administration, and the States have a year and a half to come together to resolve these issues. If we fail, December 31, 2009, may see a group of States exercising their right to say "No" to the Federal Government.

I encourage the Department to work with State officials, technology experts, privacy advocates, and other stakeholders to minimize the costs and privacy concerns that continue regarding REAL ID.

I commend the Subcommittee Chairman and Ranking Member for convening this important hearing.

Senator AKAKA. Thank you, Senator Collins, for your statement.

I want to welcome our witnesses and thank you for being here today. Testifying on our first panel is Stewart Baker, the Assistant Secretary for Policy at the Department of Homeland Security, and Derwood Staeben, the Senior Advisor on the Western Hemisphere Travel Initiative for the Office of Passport Services in the Bureau of Consular Affairs at the Department of State.

It is the custom of this Subcommittee to swear in all witnesses so I ask you to please stand and raise your right hand.

Do you swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BAKER. I do.

Mr. STAEBEN. I do.

Senator AKAKA. Thank you very much. Let the record note that our witnesses answered in the affirmative.

I would like our witnesses to know that although statements are limited to 5 minutes, their entire statements will be included in the record. Mr. Baker.

**TESTIMONY OF STEWART A. BAKER,¹ ASSISTANT SECRETARY
FOR POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. BAKER. Thank you, Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee. I am pleased to appear before you today and talk about the implementation by the Department of Homeland Security of the REAL ID Act and the Western Hemisphere Travel Initiative, two initiatives, as the Chairman said, that resulted from recommendations of the 9/11 Commission that are designed to secure identification and protect our citizens.

At DHS, a big part of our job is making it harder for terrorists to travel to the United States and we need to do that at the same time that we allow innocent travelers to move quickly and smoothly to their destinations. Doing those two things requires two things in turn: Good information about our adversaries, so that we actually know who we should be looking for, who should get special scrutiny, and then a good way to make sure that they don't change their identities when they realize that we are onto them.

We talk a lot about screening and getting good information about who our adversaries are. We have testified about that often. We are less often asked about how we can make sure that terrorists cannot easily change their identities to avoid the scrutiny that we have brought upon them, and so I am very pleased to be able to talk today about that aspect of our initiatives.

False identification has long been a threat to the Nation's security. For years, loopholes in our identification document system have been exploited for purposes of breaking the law. Many of us have been victims of identity theft, which is often made possible by forged identity documents, and the same criminal networks that helped illegal workers obtain fraudulent identity cards so that they could use them to obtain jobs, that same network also aided the terrorists who attacked us on September 11, 2001. Eighteen of the 19 hijackers carried government-issued IDs. Many of them were obtained fraudulently. This led the 9/11 Commission to conclude that for terrorists, travel documents are like weapons, and the Commission made two important recommendations, that the Federal Government should set standards for the issuance of sources of identification, such as drivers' licenses, and that it should ensure that people crossing the border are not exempt from carrying secure identification.

To carry out these recommendations, Congress has enacted and DHS is implementing two legal requirements. The REAL ID sets the standards for security of documents that most people use to identify themselves in the United States. Its purpose is to make identity theft and fraud by terrorists and others much more difficult.

And the Western Hemisphere Travel Initiative requires that everyone entering the United States have a passport or acceptable

¹The prepared statement of Mr. Baker appears in the Appendix on page 61.

identity and citizenship document. WHTI, as we are going to call it, is designed to ensure that when we encounter travelers at the border, they have a document that confirms their identity and their citizenship, something that is not true today.

I am going to stop reading the prepared statement here and turn briefly to something that Senator Tester said in his generous remarks, that perhaps this wouldn't be the easiest job and perhaps we have been dealt a difficult hand to play. I would be lying if I said I thought I was going to have a great time for the next hour, but I will say that I am sustained because every once in a while, I get a letter like the letter I got from Maureen Mitchell from Madison, Ohio, just the other day.

It begins, "Dear Mr. Baker, as a repeat victim of the crime of identity theft, I am writing to offer my support for enhancing the security measures for issuing drivers' licenses and State ID cards. The State-issued drivers' licenses and photo ID cards fraudulently obtained by the identity theft criminals in our cases"—she is talking about herself and her husband—"were the weapons used to successfully assume our identities, wreak havoc on our lives, and fraudulent obtain \$184,000 worth of goods and merchandise."

She goes on to describe the first theft in 1999, when criminal impostors were able to fraudulently obtain Illinois State ID cards that displayed the criminal's picture and my husband's name and data. They obtained \$150,000 worth of goods with that fraud. She took special measures after that to make sure that her bank account was protected and only upon presentation of a photo ID was the account to be accessed, and yet 2 years later, the bank called her to say, we have some unusual activity, and it turned out that there had been four fraudulent withdrawals totaling \$34,000 from her bank account by a woman named Tina Payne, who had an Ohio photo ID card, driver's license equivalent, that had Tina Payne's picture and Maureen Mitchell's address and date of birth on it.

She goes on to explain the difficulty that she had clearing her name and says in closing, "Mere words fail to convey the life-altering consequences my family and I have endured as victims of identity theft. Our good names and personal finances are one of the most private and sacrosanct areas of our adult lives and they will never be truly restored. REAL ID security protocol measures that stop terrorists, ID theft criminals, and illegal immigrants from fraudulently obtaining DMV-issued drivers' licenses and ID cards are of vital importance to our national security, our national economy, and our citizens.

"As an ID theft victim and consumer, I will be happy to spend a few extra dollars and wait a little longer in the line at the DMV to ensure the safety and well-being of my identity and our national security. The minor inconvenience is a small price to pay for our own sake and the sake of our Nation. Thank you for your efforts."

So every once in a while, someone sees what we are doing and agrees with us and we are delighted to help people like Maureen Mitchell by improving the security of the drivers' licenses that currently are used by so many identity thieves. Thank you.

Senator AKAKA. Thank you. And now we will hear from Mr. Staeben.

**TESTIMONY OF DERWOOD K. STAEBEN,¹ SENIOR ADVISOR,
WESTERN HEMISPHERE TRAVEL INITIATIVE, BUREAU OF
CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE**

Mr. STAEBEN. Chairman Akaka, Ranking Member Voinovich, and distinguished Members of the Subcommittee, thank you for this opportunity to discuss the role of the Department of State in implementing the Western Hemisphere Travel Initiative to enhance the security of our borders and facilitate legitimate trade, travel, and tourism.

Our primary role is to provide American citizens with passports and soon passport cards so they can comply with the new travel document requirements that take effect on June 1, 2009.

Our increased workload indicates that Americans are already well aware of the new requirements. In fiscal year 2007, we issued 18.4 million passports, a 50 percent increase over fiscal year 2006 and an 80 percent increase over fiscal year 2005. Currently, more than 89 million Americans have passports, roughly 28 percent of our population. Thus far in fiscal year 2008, we are seeing a 7 percent increase in receipts over the same time period last year and our processing time is well within the standard 4 weeks for routine service and 2 weeks for expedited service.

Our initial workload projections indicated demand for U.S. passports could reach as high as 26 to 29 million this fiscal year, 30 million in fiscal year 2009, and 36 million in fiscal year 2010. Although we continue to prepare for a possible 26 to 29 million this year, our current workload indicates that it may be more in the range of 20 to 21 million. Although this lower demand may be due to recent legislation extending the implementation date, we fully expect to see an increase in demand in the months leading up to June 1, 2009.

To meet the passport demand generated by WHTI, we are building the necessary staffing levels and infrastructure. To that end, we have hired hundreds of new passport adjudicators and support staff since spring of 2007 and are continuing our recruiting efforts into 2008 and 2009.

We opened the mega-passport center in Hot Springs, Arkansas, 1 year ago to process 10 million passport documents per year and we are opening a second printing and shipping facility in Tucson, Arizona, this month with the same capacity, for 10 million documents. We are also opening three new passport agencies in Detroit, Dallas, and Minneapolis to better serve our border communities. We are expanding our agencies in Seattle, Miami, and Chicago, and we are doubling the size and adjudicative capacity of the National Passport Center in Portsmouth, New Hampshire. We have also established a reserve corps of passport adjudicators to supplement our full-time passport services staff during demand surges.

One of the key objectives of the Department is to ensure that the passport application is as convenient as possible. The most convenient way to apply for a passport is at a Passport Acceptance Facility. Currently, there are more than 9,400 sites at post offices, clerks of court, and other government offices nationwide where citi-

¹The prepared statement of Mr. Staeben with an attachment appears in the Appendix on page 68.

zens can apply for a passport. Since April 2005, when WHTI was announced, the Department has added more than 2,400 facilities, many of which are located along the Northern and Southern borders. In fact, there are currently 301 acceptance facilities located within 25 miles of the U.S.-Canada border and 128 acceptance facilities located within 25 miles of the U.S.-Mexico border.

In response to the needs of the border resident communities for a more portable and lower-cost alternative to the traditional passport book, the Department will begin issuing passport cards this June. To meet the operational needs of Customs and Border Protection, the passport card will contain vicinity-read RFID technology to facilitate entry and expedite document processing at U.S. land and sea ports of entry. This card is the result of an interagency effort to produce the most durable, secure, and tamper-resistant card possible to the American public using state-of-the-art laser engraving and security features.

The Department has benefited from the collaborative efforts, among others, of the National Institute of Standards and Technology, Sandia National Labs, DHS's Forensics Document Lab, and, of course, our colleagues at Customs and Border Protection Agency. In consultation with DHS's Forensics Document Lab, the card is designed with multiple layers of overt, covert, and forensics security features to guard against tampering and counterfeiting and to provide easy visual and tactile verification to Customs and Border Protection officers. It is important to note that there is no personal identity information on the RFID chip, only a unique number that points to the bearer's file in a secure government database. To mitigate the risk of tracking, the card will be issued with a protective sleeve to prevent unauthorized reading of the chip.

To encourage Americans to apply for passports and cards and to level demand during our traditional peak season, we began accepting applications for the passport card on February 1, 2008. As of yesterday morning, we have received 192,000 passport applications.

Public outreach, of course, is a key to successful implementation of WHTI. The Department awarded a contract to a marketing firm on March 3, 2008 to help inform Americans about WHTI requirements, the new passport card, and the differences between the card and a traditional book, and to encourage Americans to apply early for their documents.

As we move toward full implementation of WHTI, we and our colleagues at DHS will continue our public outreach efforts, particularly in border resident communities, and will continue our outreach to business associations and stakeholder organizations. We, like our colleagues at DHS, are committed to implementing WHTI in a rational, intelligent manner, one that facilitates trade, travel, and tourism while enhancing our national security.

I thank you again and I look forward to your questions.

Senator AKAKA. Thank you very much, Mr. Staeben.

Mr. Baker, as you know, the REAL ID Act states that individuals who do not possess a REAL ID-compliant driver's license or identification card cannot use it to fly or enter Federal buildings. Therefore, Americans without REAL ID cards could be subject to secondary screening at airports. Given the number of States that have

passed laws against REAL ID compliance, this could lead to major disruptions for the airline industry. Can you tell us what steps you are taking to ensure that TSA is prepared to handle the possible increase in secondary screening after December 31, 2009?

Mr. BAKER. As you know, we faced the prospect as early as May of this year that we would be doing that, and at the time, there were a number of States who had expressed opposition to REAL ID, several who said that they would not implement it, and we were in the process of preparing to handle the additional screening requirements on May 11 of this year.

As it happens, and I think for very good reason, all of those States found a way to comply with the security requirements or to assure us that they are moving toward compliance with those security requirements, notwithstanding their statements and their legislation saying that they would not implement REAL ID.

We expect that was a very practical solution. It has improved the security and put a number of drivers' licenses and put a number of States on a path to substantially increase the security of their licenses by the end of 2009. We expect that the same thing will happen in the run-up to December 31, 2009. States faced with the question, do I want to improve the security of my drivers' licenses or do I prefer less-secure licenses that people can't use to get on planes without going through secondary screening, have chosen to improve the security of their licenses? We fully expect them to do the same at the end of next year, which is what they did this year.

Senator AKAKA. So did you have a backup plan for TSA?

Mr. BAKER. I am glad to respond in a little more detail. Obviously, we left ourselves some months between the deadline for submitting a request for extension and the actual date on which we had to begin implementing REAL ID in the airports of the Nation, so we had some months of additional planning that we could do and so the planning was at an initial stage.

But I can say that the plan was to focus first on the airports that were in the State that failed to meet the standards because we expected to see the largest number of licenses there. That is the largest amount of and most difficult planning. And we were considering a number of possible measures to separate the people who had good drivers' licenses or good ID from people who were unable to produce licenses or ID that met the standards of REAL ID.

Senator AKAKA. As I mentioned in my statement, I am concerned about the network of networks that will emerge connecting State motor vehicles offices with each other. In its final regulations, DHS mentions the Commercial Drivers License Information System run by the American Association of Motor Vehicle Administrators as a model for this network of networks. AAMVA claims that all of the information in CDLIS is owned by the States. Assuming that the laws governing CDLIS will also apply to the REAL ID State network, can you tell me what privacy laws govern the information in CDLIS, and if CDLIS is breached, what rules apply to protect drivers whose personal information is compromised?

Mr. BAKER. There are Federal privacy laws that actually apply directly to State DMVs, including the information that would be stored and handled through the systems. In addition, I would expect that any other State laws that provide for privacy of that data

would provide for, say, notification of breach. I think that 40 or more States now have laws requiring notifications of breaches of personal data. I believe that the great majority of them apply to government agencies as well as the private sector so that you would expect notification of those breaches in accordance with State law.

Senator AKAKA. Mr. Baker, cost is a major issue for States in determining whether to comply with REAL ID. Allowing States to use up to 20 percent of their Homeland Security grants to pay for REAL ID is, in a way, a hollow solution. It is essentially robbing Peter to pay Paul. Of the approximate \$80 million in REAL ID grants available today, how much does DHS plan to give to States for development of the State motor vehicle hub and how much will be set aside for the other elements of REAL ID, such as improving card security and operational or maintenance costs at State DMVs?

Mr. BAKER. I think that is an opportunity to talk a little bit about the funding that we have made available. Hundreds of millions of dollars has been made available through the 20 percent rule, and while States may say, well, we would prefer to spend that money on something else, it is nonetheless available to offset the costs of REAL ID.

In addition, we have received \$90 million in appropriations for grants. We have asked for, I believe, \$110 million in fiscal year 2009 as well as an additional \$50 million to pay for IT costs that will benefit the States overall.

We currently have, as you said, about \$80 million that is available in a grant program that we will be making available to States. We are still examining the question of how much we believe a hub would cost. We continue to be attracted to the idea of putting grant funds into the hub because, as I believe others have said, one of the concerns is that we need connectivity to several databases. The databases need to be available to all States so that the States can get access to that information to verify the particular documents they see. Therefore, we know all States will benefit from the construction of a mechanism for them to talk to all of these databases and no one today has that connectivity. So it is valuable and supplemental to existing expenditures.

So we expect to fund the construction of that connectivity as part of the grant program. Some of that connectivity will likely be, in effect, paying the cost of individual States to hook up to the database, to the hub. That money could be spent centrally or it could be provided to the States so that they can make the hook-up on their own. We are still looking at that possibility.

Senator AKAKA. Thank you. Senator Voinovich.

Senator VOINOVICH. Thank you, Mr. Chairman.

Mr. Baker and Mr. Staeben, as you know, I am unhappy with the passport issuance problems that resulted from the implementation of WHTI at airports and I am extremely concerned that we will have similar problems with the implementation of WHTI at land and seaports. I am equally concerned with Homeland Security's plans to implement the REAL ID Act. Will you or representatives of your Departments commit to briefing me and perhaps other Members of this Subcommittee on the strategic written plans for implementing WHTI and REAL ID, including how the programs

will be transitioned to a new Administration and who will manage the program throughout the transition? I am really concerned who is going to carry it on. You are going to be gone, and who is going to take care of moving that program forward?

And also, on the issue of costs, how are they being estimated and how are they being funded? I am extremely concerned about the amount of money that is in the 2009 budget and whether or not it is adequate for you to get the job done. Senator Akaka and I are very concerned about the handing off of the baton to the next Administration so it is not dropped.

Mr. STAEBEN. Thank you very much for that question, sir. Yes, on behalf of the Bureau of Consular Affairs and the State Department, I would commit to briefing you and any other members on your staff on our long-term strategy, our plans in order to meet the passport demand that will be generated by WHTI, as well as to discuss our transition plans for the next Administration.

I would also like to say that after we returned to our normal processing levels last fall, we took a very intensive review of all aspects of passport operations, from infrastructure, staffing levels, lockbox operations, call center operations, IT connectivity, printer capacity, as well as the number of acceptance facilities around the United States in order to take the necessary steps to see that what happened last year does not happen again. We are currently building our infrastructure and our staffing, as I mentioned in my testimony, in order to meet an anticipated 26 to 29 million by next year and 36 million by 2010.

As far as you asked about funding, in 2008, we submitted Congressional notification for additional funding to meet—when we learned that initially we could be facing 26 to 29 million, we asked for additional funding. We currently have authority to hire upwards of 700 additional passport adjudicators this fiscal year. And the other point is in terms of long-term funding, with Congress' assistance and the Passport Services Enhancement Act of 2006, we obtained a funding stream to help us to fund the additional passport requirements that would be generated by WHTI.

Mr. BAKER. Senator, of course, I would be glad to commit to brief you on our transition plans for both of those programs. As you know, we have taken the transition, which will be DHS's first transition, very seriously. We have done a lot of planning. I have personally designated career officials who can carry over in the transition period because, of course, we know that in the past, terrorists have exploited power transitions and we don't want to see that happen again.

Senator VOINOVICH. Have you personally visited various places on the Canadian border to see what is going on? I have to tell you that the Canadian Parliamentarians that we have met with have voiced some great concern about the lines and it seems the mismanagement. There is supposed to be a line apparently for commercial vehicles that is faster than the other and it stacks up. They just are very critical of the operation. Have you actually been up there to spend some time, to see it and—

Mr. BAKER. I have, and it is true that we have special lanes with readers, in fact, using RFID in order to move people faster. If the lane for the folks with the registered traveler cards is blocked by

traffic, then it is—until you get to that lane, you don't get the benefits of being a registered traveler. However, I have to point out that the lanes leading up to the United States are in Canada and at the end of the day, the Canadians will have to make the decision to build infrastructure that allows those lanes to extend far enough for travelers to get the benefit.

Senator VOINOVICH. I would like, because we are going to be getting together in the next couple of weeks with the Canadians, I would love to have your appraisal of where we are and also what you believe to be their responsibilities on how they could help us facilitate—

Mr. BAKER. Absolutely.

Senator VOINOVICH [continuing]. This effort. And you understand that Canada is the No. 1 trading partner for 36 of our States. It is our biggest trading partner. We have this unbelievable surplus with Canada. Our economies are intertwined. We have a place called Cedar Point that gets an enormous number of folks coming down from Canada and they are concerned about their business. This is a big deal and we certainly want to make sure we secure the borders. But we have got to make sure that in the process of doing that, we do not stymie this economic vitality that is going on between our respective countries and also just the travel and tourism aspect of this, which is very important to both of our countries.

It is my understanding that these databases for REAL ID aren't up and it would seem to me that before you would ask States to implement the REAL ID program, that you would wait until those databases are up and then say, now they are up, they are available, and give States a reasonable time to comply now that they have all of the information they need to really do the kind of job that they should be doing. Why we aren't doing that is one question.

And the other question is, don't you think that if we are asking the States to do this that the Federal Government ought to pay for a good part of the infrastructure that they are going to have to put in initially to make this happen? I mean, that is a major part of the push-back. You are asking States to come in with an enormous investment on something and saying it is your responsibility when this is more than just the States' responsibility. It is the Federal Government's responsibility. We have mandated this in this legislation.

Mr. BAKER. Two thoughts. On the databases, we have indeed given States extra time, recognizing that the databases are not up. Nothing that is required right through the end of 2009 requires them to utilize databases that are still under construction. During the next year or two, we expect, with the funding that we are going to be releasing, that many of these databases will be available. Already, the Electronic Verification for Vital Events has probably doubled or tripled the—

Senator VOINOVICH. But what I am saying is you are going to ask—you are saying to me, go ahead and do it now with the databases that are in existence. Aren't you going to come back, or we are going to come back and say, now they are all up. Now do it over again.

Mr. BAKER. No. None of the things that we are asking States to do now are redundant of the things that they will be asked to do once the databases are available.

And if I could just briefly, I will address the funding question. Yes, we do believe that the Federal Government should provide assistance to the States and we have provided, as I said, made available hundreds of millions of dollars, some of it directly focused on REAL ID to the tune of close to \$200 million, if our fiscal year 2009 request is granted. So we are bearing a substantial part of the financial burden.

How much more this will cost is actually still to be determined. We all are using very speculative data that was originally provided to us by the States when they were asked, how much do you think this is going to cost you. They told us, and all of us have been using that data since. So until we can get some good data about the actual expenditures, we think we have provided a very substantial part of the cost already.

Senator VOINOVICH. My time is up. Are we going to have another round?

Senator AKAKA. I will have another round, yes. Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman.

I kind of want to follow up on Senator Voinovich's questions here, and then we will go a different route later. Mr. Baker, you talked about hundreds of millions of dollars for REAL ID have been requested and in some cases appropriated, and \$200 million is a lot of money. But we are talking about a \$10 billion program. If my math is right, if you had a program that cost \$1,000, we are talking about \$20 to \$30, to put it more in layman's terms.

So you are right on one hand that there have been hundreds of millions of dollars requested or that has actually come to fruition, but on the other hand, you are talking about a \$10 billion program, and \$100 million here and \$100 million there isn't going to get it done. Could you respond to that?

Mr. BAKER. Yes, I will be glad to. Many of the costs that we saw in this program have to do with how rapidly people are processed, how soon you require people to come in and renew their licenses, and we have substantially reduced that cost by providing the States with a longer period to bring people in and by allowing them to extend for people over 50 for a very substantial period of time so that they can get a lot of the under-50s through their system in a reasonable time. That is going to greatly reduce the cost. In addition, of course, we have provided additional funds.

We will be asking the States, I think, to give us better estimates of the costs, but I think we heard an estimate of \$15 million from, I think, the State of Ohio as a cost. We have heard numbers on the order of two to five from other States. That doesn't add up to \$10 billion.

Senator TESTER. OK. So how much less would you anticipate it being for overall implementation of the program?

Mr. BAKER. It is hard to know. If you took a \$10 million cost from one State and you multiplied that by 50, you would be looking at \$500 million.

Senator TESTER. OK. It is interesting. I just want to talk about the 20 percent rule just for a second. The President requested cuts

in Homeland Security funding for the States from \$550 million to \$200 million. Twenty percent of that can be used for REAL ID to set up databases, background checks, DMV employee checks, countless other mandates. For Montana, that would amount to about \$160,000, because we get about \$800,000 total. Twenty percent of that is \$160,000. I have got to tell you, by Montana terms, where a dollar does go quite a ways, that is a mere pittance. Any thoughts about how that can be rectified?

Mr. BAKER. Well, I understand you are using the figures that the Administration proposed for substantially reducing that particular program—

Senator TESTER. That is right.

Mr. BAKER [continuing]. At the same time that the Administration proposed \$160 million worth of funding directly for REAL ID. A \$110 million of it would go straight to the States and presumably Montana's share of that would be substantially more than \$160,000.

Senator TESTER. OK. Well, you get to my concern. My concern is the same concern probably—well, I shouldn't say exclusively, but the funding part of this is a big issue for States.

I want to talk about encrypting data on the card. There is nothing put in the final regulations about it. Do you see it that the information has to be encrypted, or should it not be encrypted, or should it be encrypted, or what is going on there?

Mr. BAKER. We did not approach this with a priori sense of what the right answer was, but when we talked to law enforcement, they raised real questions about the value of the machine readable zone for them if it was encrypted. You can imagine, if you are a Montana State Trooper and you stop someone in the middle of a long empty highway drive, you need to be able to read that information quite quickly, and if you have to try to find an encryption key, it is not going to be easy.

Senator TESTER. I get that, but when you talk about the Maureen Mitchells of the world, if it is not encrypted, that means that bar owners—I am not saying they are bad folks—clubs, people on the Internet that want to get one of these machines, and I think from my perspective that opens up identity threat to a much greater risk.

Mr. BAKER. Well, the information that is on the machine readable zone is the same information that is on the face of your driver's license. It doesn't include your Social Security number. It includes your name, address, date of birth. That is information that is very hard to hide in an Internet age, and the notion that somehow because it is on a machine readable zone it will become more available to identity thieves is, I think, pretty speculative.

Senator TESTER. Well, as long as you want to bring that up, you have 17 requirements. One of those requirements is, in fact, a Social Security number on the card, No. 4. Required documentation, date of birth, Social Security number, address of principal residence, and habitancy of lawful status.

Mr. BAKER. That is the information that must be provided to the Department of Motor Vehicles. It does not—

Senator TESTER. But it doesn't need to be on the card. OK.

Mr. BAKER [continuing]. Need to be on the card.

Senator TESTER. Let me ask you about folks in Montana, a couple issues. We get our drivers' licenses mainly by mail, is there any difficulty there?

Mr. BAKER. Certainly not mailing it out—

Senator TESTER. As far as security, as far as that kind of stuff?

Mr. BAKER. We have not tried to restrict central issuance of drivers' licenses because central issuance saves States a great deal of money and can provide more security.

Senator TESTER. OK. In Montana we have centralized Department of Motor Vehicles, places where you go to get your drivers' licenses. We also have a lot of places that may be an afternoon once or twice a month where DMV employees go out to a public building usually and take the tests and that material is gathered up in a room very similar to this one. Is there a problem with that?

Mr. BAKER. I think not, from what I understand of the process as you have described it. That is to say, people will be collecting the information and then mailing out the licenses. That should be something that can be accommodated under REAL ID.

Senator TESTER. OK. Does it concern you at all that after all is said and done, we are really not going to have anything until 2017 for sure everywhere, and that means if there are gaps—that is 16 years after the terrorist attack on September 11, 2001. Does it concern you at all that we are extending out that far for this particular item?

Mr. BAKER. Obviously, we would love to be able to wave a magic wand and have everybody have good ID today, but we know that the biggest expense the States have was the process of bringing people in. So if we are going to reduce the cost, we have to extend that period. What we did is we said that 2017 is when the last person over 50 is going to get a REAL ID. Everyone under 50 will have it in 2014. We will be issuing the first of those completely compliant in 2011. That means that we will be able to check the IDs with confidence by 2014 of everyone under 50, and if you have to make a priority, I think that is an appropriate—

Senator TESTER. So the extensions are done to save money?

Mr. BAKER. If we could get this faster without breaking the bank for the States, we would be delighted to do it faster.

Senator TESTER. OK. Well, even 2014 is a ways out there. I mean, I will be pushing 60 by 2014. That is how far it is out there. [Laughter.]

Thank you, Mr. Chairman.

Mr. BAKER. It is not that bad, Senator. [Laughter.]

Senator AKAKA. Thank you very much, Senator Tester.

I will call now on Senator Collins, followed by Senator Coleman. We will have a second round of questions. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

I want to pick up, Mr. Baker, on the cost issue because this is of tremendous concern to our States and the Department's suggestion that States use a portion of an already inadequately funded State Homeland Security grant program just is not a sufficient answer. The cost to States of implementing REAL ID by the Administration's own estimate is expected to be approximately \$4 billion over 10 years. Both the National Governors Association and the National Conference of State Legislatures have recommended that

\$1 billion be appropriated this year to assist States in improving the security of their drivers' licenses, a key part of REAL ID.

So first, let me ask you, does the Department support such an appropriation, a targeted, earmarked—at the risk of using a word that is in disfavor in Washington, but a targeted \$1 billion appropriation for compliance with REAL ID?

Mr. BAKER. The Administration has supported targeted funding for REAL ID. The Administration budget put forward, as I said, \$110 million in grants and another \$50 million in in-kind contribution from the Federal Government. It did not include the numbers that you are talking about, and obviously at this point the determination of the size of the grant is going to be determined by the Congress and not necessarily by our recommendation. But at this stage, our recommendation is that there be a targeted program, but the number that we would use is \$110 million plus the \$50 million.

Senator COLLINS. See, that number puzzles me because the Department's own analysis suggests that far more is required to help States, especially since there are a lot of expensive start-up costs, particularly for States like Maine, like Montana, that have had to make sweeping changes in their approaches. This is not something that is easily affordable to any of our States. So I hope you will work with us to be more realistic on those up-front costs because the amount that the Administration is proposing does not begin to cover the costs that our States are having to incur at a time when the economy is poor and State revenues have declined sharply, leaving shortfalls in many States.

Mr. BAKER. We will be glad to work with you on this. We recognize that the cost estimates have been difficult to arrive at with any precision and we will be doing everything we can to produce better numbers that are more accurate for you.

Senator COLLINS. Well, what would be most helpful is to have the Administration actually support our efforts to increase the funding for a targeted program, but I am going to move on to another issue.

Your written statement notes that DHS plans to expand its mobile enrollment centers for the NEXUS Trusted Traveler Program in some of the Northern border States, and Senator Coleman and I, in particular, have been pushing for DHS to use these mobile centers in our States. If CBP is already deploying these teams to the field, why doesn't DHS also instruct these teams on how to accept passport card applications? After all, these officers are very skilled at reviewing identity documents. They could easily pass on to the State Department the verified applications for further processing.

That would allow us to either greatly reduce or eliminate the \$25 execution fee that first-time applicants have to pay, which is more than half the cost of the \$45 for the passport card. If you could get the passport card's cost down to \$25, it would be so much more acceptable to our constituents. And it seems to me it doesn't make sense to send out these teams—you also have TWIC teams that are going out. Why not use these mobile enrollment centers as a more full-service approach so that we don't have to pay \$25 to the Postal Service each time one of these applications is handled?

Mr. BAKER. We certainly would support anything that would bring down the cost of the card, bearing in mind Senator Voinovich's stress that the State Department have the funds to handle the load. But I think on the question of the exact procedures for gathering the information that is necessary for a card, I should defer to Mr. Staeben.

Senator COLLINS. Let me broaden the question to you because last year's Homeland Security law instructed the State Department to develop proposals for reducing that execution fee, including the use of mobile application teams, before the final rule on WHTI is issued. And the rule has been issued, but the State Department has yet to come up with a plan to use the mobile enrollment teams. Why isn't there more cooperation between DHS and the State Department on this?

Mr. STAEBEN. Well, thank you for the question, Senator Collins. There are a couple of questions in there. One, on February 1 of this year, we did lower the cost of the execution fee from its previous \$30 to \$25. This was after extensive discussions with our primary acceptance facility agent, which is the U.S. Postal Service, and after these discussions, we all agreed to lower it from \$30 to \$25. The execution fee, of course, is the fee that these entities, such as the U.S. Postal Service, county clerks of court, charge on our behalf in order to cover their costs for processing the acceptance of these applications.

I think from the State Department's perspective, we are looking for a more permanent solution in terms of increasing our acceptance facilities along the Northern and Southern border, which will be more permanent. We already have 301 on the Northern border. In fact, there are 17 Passport Acceptance Facilities within 25 miles of the Maine and Canada border already. We have been working with the Postal Service both to increase the number of acceptance facilities along the borders as well as to encourage them to conduct more "Passport Fairs," which they have been doing very aggressively. I noted in discussions with your staff several months ago that they had already conducted at least two, I believe, in the State of Maine.

So this is how we are approaching this. That, of course, does not preclude discussions with the Department of Homeland Security on other possible activities, but I will defer to Mr. Baker since that falls under his purview.

Senator COLLINS. Mr. Chairman, I know my time has expired and I hope my colleague is going to follow up on this, but this just does not make sense. If DHS is sending enrollment centers out, mobile enrollment centers, which I applaud the Department for doing, for both the NEXUS program and the TWIC program, surely these individuals who are skilled in reviewing identity documents can also handle applications for the passport card and thus pool resources here and allow for a significant reduction in the fee. This is an example of the left hand not knowing what the right is doing, or perhaps knowing but not working together.

Senator AKAKA. Senator Coleman.

Senator COLEMAN. Let me follow up. First, do you have a map showing the Northern border where these various acceptance agents are located? I have seen some old maps, at least in Min-

nesota, and the Northern border was pretty empty in those areas right by it. Do you have anything that you have available—

Mr. BAKER. I did not bring a map of that.

Mr. STAEBEN. No, I am sorry. I do not have one with me. I can provide that information to you.¹

Senator COLEMAN. Mr. Chairman, I would like to actually take a look at that.

Second, just following up, and this is Minnesota-specific, there is a new passport agency that we are opening up in the Minneapolis area. If \$25 of the \$45 cost is an execution fee, if folks then apply in a passport agency, does that mean that the cost for getting the passport card would be less if they are not working with the Post Office?

Mr. STAEBEN. The \$20 cost of the card is based on cost of service study, a requirement to recover the cost of producing the card. So the execution fee is just an incentive. Basically, it encourages the acceptance facilities to accept these passport applications on behalf of the Secretary of State.

Senator COLEMAN. What Senator Collins and I are pushing here is that if you have ways in which folks get these cards without dealing with the Post Office or these acceptance facilities—in other words, if you get it directly, if you are not dealing with a third party, can we lower the cost? The message here is it sure would make a lot of sense, at least in my State where we have integrated communities. We have hockey teams that go back and forth between Fort Francis and International Falls.

And by the way, the exception for kids is still in place, right? Minors will not have to be getting these cards?

Mr. BAKER. That is true.

Senator COLEMAN. But then going to the adults, if, in fact, you have—as I understand this fee, there are two pieces of it. There is the execution fee, it is the administrative cost, and then there is the incentive to some of these acceptance facilities, Post Offices, for instance. But if folks can get it directly, are there ways to get the cost of this card down to the \$20 or \$25, either through the mobile teams that Senator Collins has talked about that I support or working directly with other facilities where you are not paying the Post Office the \$25 to \$30?

Mr. STAEBEN. I would have to discuss this further with the Department of Homeland Security—

Senator COLEMAN. I would appreciate that discussion, and—

Mr. BAKER. And I think you do deserve a more detailed answer and we will get it for you. I just want to point out that the reason the States are complaining about the cost of REAL ID is that it costs money every time somebody shows up at the counter and hands you papers and says, “This proves that I am entitled to an identity document.” Handing that burden to the mobile teams doesn’t mean that there isn’t a cost to doing it. There is a cost when the Postal Service deals with it. So it won’t be free to do something like that. We will examine the question of whether it is nonetheless something that can be done and what the implications would be.

¹The information provided by Mr. Staeben appears in the Appendix on page 74.

Mr. STAEBEN. Yes. Also, I believe there may be a legal requirement to collect the execution fee as part of the application process. If it doesn't go to the passport acceptance facility, such as the USPS, or to county clerks of court, it goes to the U.S. Treasury. So we would have to investigate that, as well.

Senator COLEMAN. There is no question, there is a cost of processing a document, but at least as I understood the breakdown, you have the administrative cost and then there is this incentive for others who have their own costs. But if we can short-circuit that or change that, then perhaps we can reach the point where, again, we are paying the administrative fee. There is no question about that.

Let me kind of step back a little bit. When we came to January of this year, or last year, the system collapsed. Folks didn't really understand that they didn't need the passports at that time. We had all this pressure on passports. I dealt with thousands of cases in Minnesota, thousands of folks who simply—they paid the expedited fee and literally it was months before they got a passport. The staff was listening to people on Sunday nights before they were leaving on a honeymoon, long-planned trip, etc., on Monday. I appreciate the fact the Department then put in some additional facilities, has increased the production capability.

As we fast-forward now to June 1, 2009, another deadline is going to be approaching. How confident are you that we are not going to have the disaster that we had at the beginning of last year?

Mr. STAEBEN. Well, thank you for that question. As I mentioned, or alluded to earlier, the plan here is to make sure that we have the infrastructure in place as well as the adjudicative capacity to meet whatever comes our way, whether it be 32 million or 36 million. We also have built in trip wires for surge capacity.

For instance, if we hit the first trip wire, we will draw on our reserve corps of passport specialists that we have trained. They have other jobs, but we can draw on them, if necessary. The second trip wire is remote adjudication, where we will draw on the expertise of our consular officers at missions abroad to adjudicate renewal cases.

So everything that we have done and all the steps that we have taken are to make sure that, first, we can meet an anticipated capacity of 36 million by 2010, and then to build in surge capacity so that if it does happen, we can respond very quickly and do not have a repeat of last year.

In terms of informing the American people, particularly the border resident communities, we have contracted with this company which will begin its bulk outreach campaign probably in September, with a follow-up in December. The reason we are doing it then is because we are accepting the passport applications now for the cards, but we will not begin producing those until June. Then it will take a short time in order to issue all those cards that have been in the system, so we want to wait until September when we will have returned to our normal 4-week turnaround time for passport card applications to begin informing the border resident communities that the card is now out there. You can get it within a

short time frame. Please apply now. And that still gives us 9 months before June 1, 2009.

Senator COLEMAN. I would hope there would be a very robust public communication effort to avoid the kind of confusion, or massive confusion that we had last year.

I see my time is up, Mr. Chairman. There are other questions. I know there are other panels and I don't want to keep this panel here forever, so I anticipate submitting some questions for the record.

Senator AKAKA. Thank you, Senator Coleman.

Mr. Baker, States are concerned that strings will be attached to the REAL ID grant funds. All States could use funding to improve the security of their drivers' licenses and identification cards, whether they comply with REAL ID or not. I would like to know, if a State receives funding under the REAL ID grant program, are they required to comply with REAL ID? If a State chooses not to comply with REAL ID, will it have to repay the grant funds?

Mr. BAKER. We are clearly not going to give REAL ID money to States who say that they are going to spend it on a yacht for the governor, so we do expect to get the security benefits that REAL ID requires from States that take these funds. And some States, New Hampshire among them, said—they actually received a grant and they returned it because they said, we aren't going to comply with REAL ID.

Since then, I think the States that are looking at this question have discovered that they can refuse to comply with REAL ID and at the same time implemented all the security features that REAL ID calls for. That has allowed a number of States, including Maine and Montana, to say while we are not implementing REAL ID, we are implementing the security features of REAL ID because we believe in security.

DHS has been flexible and accepted the substance of security without insisting on some kind of pledge of allegiance to REAL ID and we continue to expect to do that. So I hope that we can find a way to improve the security of State licenses, to help underwrite the cost of that without having an argument about what bumper sticker goes on the car.

Senator AKAKA. Mr. Staeben, in determining its cost estimate for REAL ID, DHS estimated that 75 percent of current driver's license holders would actually get a REAL ID card. Do you believe that those individuals who do not get a REAL ID card will instead apply for a passport? If so, what steps are you taking to prepare for the increase in passport applications from individuals who do not want to or cannot receive a REAL ID card?

Mr. STAEBEN. Thank you for that question, Mr. Chairman. Actually, that was one of the variables in last year's experience. We believe that there is a growing demand for the U.S. passport for purposes other than international travel, as a premiere document for identity and citizenship, and we asked the contractor that conducted the survey last summer that led to the projections that we were using until the recent legislation indicated that we would be at 26 to 29 million and there was an attempt, although not particularly successful, to get a handle on that number. We are still trying to refine that number as to how many are out there applying for

a passport book or a card for purposes of obtaining Medicaid benefits, for purposes of voter registration, or for purposes of compliance with the REAL ID.

But in general, we think that the 36 million is a little on the high side, and yet we continue to prepare for that and we are—our strategy is to remain flexible so that we can increase very quickly if we need to, or we can scale back a little bit on our recruiting efforts, if necessary, if in fact the numbers aren't coming in as we anticipate.

As I said, we are also working with the contractor in order to conduct yet another survey to follow up on that in order to further refine those numbers and get a better understanding of how many people will be applying for passport cards, presumably since they are less expensive, for purposes other than international travel.

Senator AKAKA. Mr. Baker, in light of all of the recent stories about personal data privacy breaches, it is particularly important that REAL ID be implemented with strong protections for the privacy of personal data. This is especially true because REAL ID essentially requires the creation of a national database of driver information to be shared between States. Yet the final DHS regulations contain no plan to secure the shared driver information. Can you explain why the REAL ID final rules did not lay out a plan for protecting the personal data that will be accessible in the planned databases?

Mr. BAKER. First, we do require States to have security plans for the data, and that is an important protection. We want to leave room for States to make choices that make sense to them on exactly how to implement that to accommodate their individual circumstances and how they actually process data.

In terms of ways to approach this problem for the future with respect to the hub, we expect to be addressing that in the course of actually deciding how the hub will function and what security measures will be in place, but that is a question for the actual implementation of the grant and the contracts that will produce the hub, and so we certainly do not expect it to be without security features.

Senator AKAKA. Mr. Baker, I want to commend your Department, acting through Customs, for taking action to enforce the Passenger Vessel Services Act on Hawaii's coast-wide cruises. Maintaining a U.S.-flag cruise industry is important to both Hawaii and the Nation as a whole. Not only is this important to the State of Hawaii and to the U.S. economic and national security, but this issue is important to me personally. I hope that Customs will adopt the rule that adequately protects markets where U.S.-flag passenger ships operate, and that does not have unintended effects elsewhere in the United States.

Has the Department considered implementing a more limited rule that specifically addresses the competitive harm to large U.S.-flag passenger ships by foreign-flag ships evading the coastwise laws in those markets?

Mr. BAKER. Well, Senator, as you know, we have looked hard at the possibility of addressing the question of what truly is an international cruise and what is not. There have been strong objections to the practice of having very brief stops after midnight in a single

port outside the United States as a way of demonstrating that the international component has been met.

Our proposed solution which we have published attracted quite a bit of controversy and we are looking very hard at the comments, both favorable and unfavorable, to see how we can best come to a final resolution. We are working at that very hard and I hope that we will be able to announce something, certainly in the next few months.

Senator AKAKA. Thank you, Mr. Baker. I will submit my other questions for the record. Senator Voinovich.

Senator VOINOVICH. Thank you, Mr. Chairman.

I would like to know what plans you both have to explain to the public the requirements and procedures and documents WHTI is going to be requiring and the differences between the documents. In other words, I think you need to clarify what is going to be required. For example, the passcard cannot be used as a substitute for a passport for air travel, and it is important people understand that.

Now, you made some reference before about the passcard. For example, I understand that TSA is going to require some day a REAL ID as you go through airport security. Would the passcard substitute for that REAL ID? If the States aren't going to go forward with REAL ID, what is going to happen in terms of when people go through and they are asked for their ID and it is not a REAL ID, it is my old driver's license from Ohio? Is that going to be adequate? There is a lot of questions that are out there and it seems to me that you ought to do a lot of work in working with travel and tourism, AAA and a lot of other organizations to have a plan in place to make sure that the information getting out is as clear as possible.

For example, I understand now that if you are coming from Canada to the United States, in the old days, it was an oral declaration. Now, I think they are requiring a passcard or a driver's license or a birth certificate. Come June of next year, it is my understanding that you are going to have to have a passcard to come back into the United States or a passport. These are things that really need to be clarified so that folks understand just what they are going to use these documents for.

Mr. STAEBEN. Thank you very much, Senator Voinovich, for that question. The passport card was designed specifically to meet the needs of the border resident communities. In fact, it was as a result of the Advanced Notice of Proposed Rulemaking that we issued in 2005. We received over 2,000 comments to that. Many of these comments specifically addressed a need for a document that was more portable and less expensive than a traditional passport book. That is really the genesis of the passport card that the Department of State is developing. It is not a globally interoperable document and therefore it is not under ICAO standards acceptable for the air environment. So we designed it specifically to meet the needs of the border communities.

Senator VOINOVICH. Could it be used as a substitute for a driver's license?

Mr. BAKER. Yes, it could. If you are using it to go through TSA's checkpoints, we would, of course, accept it.

Mr. STAEBEN. The passport card is, by definition, a U.S. passport and carries all of the rights and privileges of a U.S. passport book. So wherever a passport book would be accepted—

Senator VOINOVICH. But for air travel, you need to have a regular passport?

Mr. STAEBEN. That is correct, sir. In terms of public outreach, the public relations firm that we have contracted that will begin its outreach this September with a follow-up in December going to focus specifically on the differences between the book and the card so that people understand the differences. If all they do is they live in a border community, they cross the border, whether it is from Texas into Mexico or Maine into Canada, this is their life, then the card would probably be the correct document for them.

Senator VOINOVICH. For example, I will just interrupt you, but we have a lot of folks in Cleveland who tell me that they go up to Windsor to gamble. I suspect that the gambling houses will tell them they need to get—by June of next year, they are going to have to have a passcard if they expect to get back into the United States, is that right?

Mr. STAEBEN. That would be correct, sir. A passport card would probably be the document of choice in that situation if all they are doing is driving to Windsor for those purposes. If, on the other hand, you live in a border community and yet you have occasion to fly, then probably you would want to order both a passport book and a card, in which case the card is only \$20 because it is treated as a renewal. So it is \$20 in addition to the cost of the passport book.

The public outreach campaign that we have is going to focus on the border resident communities. We look to DHS for the broader national campaign. However, we are coordinating very closely. In fact, their public relations firm is meeting with our public relations firm this week to begin coordinating our outreach activities. As I said, we will be focusing more on the border resident communities in order to inform them about the passport card.

Senator VOINOVICH. How about the Canadians? We have Cedar Point that just gets a tremendous number of people coming in from Canada to take advantage of it. What are those Canadian people going to need to get into the United States come June of next year?

Mr. BAKER. The Canadian Government has not issued a passport card, but Canadian provinces have indicated strong interest in following up on the lead of the States in the United States who have begun issuing enhanced drivers' licenses that have the features of a passport card and can be obtained—

Senator VOINOVICH. But we are the ones that are going to require it. I mean, for people coming in from Canada.

Mr. BAKER. Yes.

Senator VOINOVICH. We are going to tell them, you can't come into the United States unless you have what?

Mr. BAKER. And we have—well, certainly a Canadian passport, also an enhanced driver's license from any of the participating provinces. British Columbia is already issuing them. Ontario, Manitoba, and others are launched on the planning for issuing theirs so that there should be an inexpensive alternative to a passport available to Canadians. The Canadians by and large have

passports at a much higher percentage than the United States does, probably double U.S. penetration in terms of having passports, so that it may not be as necessary for them to have special cards to cross the border. They may already have what they need.

Senator VOINOVICH. Well, one thing I would just leave with you is that we need to do as much as we possibly can to work with our Canadian brothers and sisters and try to get the best information that we possibly have to each other and make sure that things are as clear between us as possible, because I am, as I say, very active in the U.S.-Canadian Parliamentary Group. I have to tell you that our colleagues in the Canadian Parliament are very critical of what we are doing. Now, I suspect maybe some of them may be exaggerating it, but if that is the kind of feeling that they have, I just wonder whether or not you are spending as much time as you should with their ambassador here, Mr. Wilson, to make sure that all of the details are worked out and clarified so that there isn't a bunch of finger pointing next year about not cooperating.

Mr. BAKER. I think we have spent quite a good bit of time with Ambassador Wilson and with our Canadian partners, working very hard to make sure that information gets out. And in fact, it is worth remembering that what happens in June 2009 is the third and last stage in the process of imposing more effective documents at the border. We imposed a requirement in January 2007 for everyone who flies to the United States and compliance is at 99.8 percent today, and was.

When people realize you are going to enforce that deadline, the word gets out. Every Canadian media outlet was focused on that requirement and got the word out. When we imposed the requirement—when we got rid of the requirement that you could smile your way across the border without any documents, that new requirement was imposed in January of this year and while there was a lot of, again, what was called earned media, mostly consisting of people on both sides of the border predicting a disaster, everyone understood that they needed to have a birth certificate as well as a driver's license or a passport, and again, our compliance with that is above 95 percent today. People do come into compliance if they know you are going to enforce the deadline.

And now, I think, we have one last step to take, which is to move from the idea that a driver's license and a birth certificate is as sufficient as an actual passport. That will take some doing. There will be a number of people who need to get those documents. We are getting the word out. We are going to spend \$10 to \$15 million over a period of years to make sure that word gets out. But our biggest allies in this are the people who will be covering it for the media, and we have had very good cooperation, if you can call it that, from people in the past saying this could be a disaster, watch out, and that alerts everyone. They all go out and get their documents and we have averted the disaster twice.

Senator VOINOVICH. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Voinovich. Senator Tester.

Senator TESTER. Yes, thank you, Mr. Chairman.

I just want to echo the remarks of Senator Voinovich because I have heard some of the same, and I hope the meetings that you

are having with the Canadian officials, are to a discussion, because quite honestly, the points that they have brought up to me, I hope to bring them up to you and I hope that they are not just pushed away. I hope they are addressed. I just implore you to do that.

I want to go back to the Department of Motor Vehicles centralized. I asked you a question earlier on the first round about if, in fact, there were people that go out to public buildings and give the tests. I just want to make sure that what I heard was correct, and you said you did not think that would be a problem, that they could still go out to remote locations, give the test, and send the driver's license through the mail back to the applicant. Is that correct?

Mr. BAKER. Yes. I would have to get into the details, but if what they are doing is collecting the information so that they have the information that would otherwise be collected at the DMV—

Senator TESTER. Right.

Mr. BAKER [continuing]. Which I assume they have to do.

Senator TESTER. Right.

Mr. BAKER. Actually, central issuance, in our view, tends to be more secure than having multiple places that just print the license out on the premises.

Senator TESTER. OK. So what you are saying is they couldn't print them out on the premises?

Mr. BAKER. You mean like in the back of the mobile—

Senator TESTER. I mean, if they had—yes, in the back of a mobile.

Mr. BAKER. It is not that that is impossible, but it would require particular care to make sure that the materials are not subject to being diverted, etc.

Senator TESTER. OK. What I need from you, if you could, in your free time, if you could just send me a verification that this is possible, and if there are any caveats, include—

Mr. BAKER. We will be glad to look at that closely.

Senator TESTER. I would appreciate it because in a State as big as Montana, myself, for example, I live 80 miles from the nearest one, 50 miles from the one that meets three times a week, 35 miles from the one that is open once every month for half a day, so it is a big issue.

Just a quick question and it deals with the September 11, 2001 terrorists. They were here long after their visas expired. Why aren't we putting resources into a system to track and find visa overstays?

Mr. BAKER. We are. We have identified and deported more people in the last year than I think ever before in the history of the United States. And obviously, you have to prioritize them because there are a large number of overstays. We have just published a rule that will require everyone who comes to the United States by air to check out biometrically upon departure so that we can compare arrival and departures with biometric identification of the identities, which will give us a much better picture of who is arriving and who is leaving and who is overstaying.

Senator TESTER. That database is already constructed for the biometrics?

Mr. BAKER. No. We have proposed the rule. We are hoping to get the rule into final form by the end of the year.

Senator TESTER. OK, and so it will be operational when?

Mr. BAKER. The data would begin arriving sometime in 2009. It is not that we don't have some idea of who has overstayed. We often have some idea of—

Senator TESTER. I understand that, but—

Mr. BAKER. This will improve it, yes.

Senator TESTER [continuing]. To fill all the cracks in, that would be done by—

Mr. BAKER. I expect in 2009.

Senator TESTER. OK, 2 years after—2009, that is next year. You would have the database done by 2009?

Mr. BAKER. Yes, the plan is to have the data come in—

Senator TESTER. Good for you.

Mr. BAKER [continuing]. And that would allow us to do the matching.

Senator TESTER. I think that is great. My last point, and it is not a question, it is just a comment. The economic impacts, the potential economic impacts of people being able to flow across the border, Senator Voinovich talked about a little bit, are incredible. From a farming perspective, being able to go up into Canada and get repairs where they are not available, sometimes down in the States, is huge.

And the other issue, if there is one good thing about the dollar being down, it is the Canadians come across and they like to spend money in the United States and they do it. And if they can't get across the border or if there is a minimal amount of hassle about getting across the border, they won't do it, and so we need to minimize the hassle. Thank you very much.

Senator AKAKA. Thank you very much, Senator Tester.

I want to thank our first panel very much for your comments and your statements, as well, and your responses. That will be helpful to the Subcommittee.

Mr. BAKER. Thank you, Senator.

Mr. STAEBEN. Thank you.

Senator AKAKA. Thank you very much.

And now I would like to call our second panel. We have six members of this panel. Testifying on our second panel are the Hon. Donna Stone, a Representative from the 32rd District in the Delaware General Assembly and President of the National Conference of State Legislatures; David Quam, Director of Federal Relations for the National Governors Association; Caroline Fredrickson, Director of the Washington Legislative Office of the American Civil Liberties Union; Roger Dow, President and CEO of the Travel Industry Association; Angelo Amador, Director of Immigration Policy at the U.S. Chamber of Commerce; and Sophia Cope, Staff Attorney at the Center for Democracy and Technology.

As you know, it is the custom of the Subcommittee to swear in all witnesses and I would ask all of you to stand and raise your right hand.

Do you swear that the testimony you are about to give this Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. STONE. I do.

Mr. QUAM. I do.

Ms. FREDRICKSON. I do.

Mr. DOW. I do.

Mr. AMADOR. I do.

Ms. COPE. I do.

Senator AKAKA. Thank you very much.

Senator TESTER. Mr. Chairman.

Senator AKAKA. Senator Tester.

Senator TESTER. I just want to express my regrets to the second panel. I have got to go preside on the floor. I will be checking out your testimony. I have already read a fair amount of it and appreciate your presence here today, and I really mean that. I am sorry I have to leave, because I would really love to follow up these questions with you guys, too.

Senator AKAKA. Thank you very much.

Again, I want to thank all of you for being here today. As you know, your full statements will be placed in the record.

Representative Stone, please proceed with your statement.

TESTIMONY OF HON. DONNA STONE,¹ PRESIDENT, NATIONAL CONFERENCE OF STATE LEGISLATURES

Ms. STONE. Good morning, Chairman Akaka, Ranking Member Voinovich, and distinguished Members of the Subcommittee. I appear before you today as President of the National Conference of State Legislatures. Mr. Chairman, thank you for the opportunity to testify today on the State impact of implementing the REAL ID and the Western Hemisphere Travel Initiative.

State legislators across the country share the goal of ensuring the integrity and security of State-issued identification and recognizing the need to provide adequate border protection. We hope to continue the dialogue with you and this Subcommittee on these programs.

While NCSL had numerous concerns with the draft REAL ID regulations issued in March 2007, we commend DHS's efforts to provide States much-needed flexibility and to reduce State costs, per DHS, in the final regulations. However, the road to successful implementation is long, uphill, and in some places has rocky terrain due to a number of ongoing uncertainties, which include most importantly the Federal Government's commitment to fund the REAL ID; the connectivity to and governance of the databases that States will need to access in order to verify the validity of identity documents; the true cost of the REAL ID, including the user fees States will have to pay when accessing these databases; and the Department's recognition of State legislatures' critical role in the implementation of the REAL ID.

I have provided more details on each of these items in my written testimony and ask that it be submitted for the record. I would welcome the opportunity to discuss them in detail during the question and answer period.

Senator AKAKA. It will be included.

Ms. STONE. In order to address some of these implementation challenges, NCSL calls on Congress to repeal the REAL ID Act and

¹The prepared statement of Ms. Stone with attachments appears in the Appendix on page 75.

reinstitute the negotiated rulemaking process created under the Intelligence Reform and Terrorism Prevention Act of 2004 and to fully fund the requirements. Again, while NCSL recognizes that the final regulations provide States additional time and flexibility to implement the REAL ID, the negotiated rulemaking could address several remaining issues, including waiving the verification requirements for applicants who already have a federally-issued identity credential; prohibiting Federal agencies from charging States transaction fees for accessing the required electronic verification systems; and instituting a legislative trigger that would automatically release States from complying with REAL ID provisions in any fiscal year in which the Congress fails to appropriate funds for these purposes.

Regarding WHTI, I again want to thank DHS and the State Department for recognizing the importance of cross-border movement of people to the families, communities, and businesses throughout the Nation, but particularly along the borders. I also commend the Department's efforts to work with States to create WHTI-compliant enhanced drivers' licenses and other border crossing documents.

However, the experience of many of my colleagues in developing EDLs does not encourage me. Washington State is the first to conclude an EDL agreement with DHS, but I have heard that it is now harder and more time consuming to obtain an EDL than to get a passport. Other colleagues have expressed concern about the use of RFID. We also believe that DHS should conduct separate negotiations with each State and not use an EDL agreement with one State as a cookie cutter for all.

Many State legislators who are wrestling with REAL ID and WHTI EDLs have noted that the U.S. passport achieves the same goals of both programs and that the process for obtaining the passport is much less onerous than what is required for either REAL ID or an EDL. The problem is the cost of a passport. At NCSL's spring forum just last week, we considered resolutions calling on Congress to reduce the cost of a passport.

Mr. Chairman, I would like to reiterate that State legislators are committed to working with Federal policy makers to ensure the security and integrity of identity documents. However, we see the road to REAL ID as being closed for construction, and S. 717 is the best route to finalizing Federal standards for State-issued drivers' licenses and identification cards as long as it is accompanied by full funding.

For WHTI, the road is bumpy at present, but if the Federal Government chooses the proper route, a smoother ride is still possible.

I thank you for this opportunity to testify and look forward to questions from Members of the Subcommittee.

Senator AKAKA. Thank you very much, Representative Stone, for your statement. Mr. Quam.

**TESTIMONY OF DAVID QUAM,¹ DIRECTOR OF FEDERAL
RELATIONS, NATIONAL GOVERNORS ASSOCIATION**

Mr. QUAM. Thank you, Chairman Akaka and Senator Voinovich, it is a pleasure to be back before you to talk about an issue that is of very large interest to governors.

The position of the governors remains as it was the last time I was before this Subcommittee. Our governors' policy is that of fix and fund: REAL ID has to be fixed, it has to be workable, it has to be cost-effective, and actually has to increase the security of driver's license systems. And it must be funded. When the Federal Government decides to come in and regulate a traditionally State-based activity, the Federal Government should pick up the tab.

Before I get into my testimony, I did want to mention something that Assistant Secretary Baker said. He said that governors were recently faced with a choice, do I want to improve the security of my licenses or do I want less-secure licenses, and that was the choice they were facing as they came up on this deadline for asking for an extension. That was not the choice the governors faced. All governors are committed to having secure drivers' licenses. They are also committed to combatting identity theft. There is not a single governor who would say that they are not pro-security.

The choice that they were given, however, was whether or not to inconvenience their citizens because their citizens and their legislatures and themselves had questions about whether REAL ID would work. Faced with that, ultimately, all States did receive an extension, but for several States, it was a Hobson's choice. It was a take-it-or-leave it and if you leave it, citizens will be the ones who are punished. It wasn't much of a choice, but all States did ultimately comply. I think we have to have a more cooperative system in the future if REAL ID is ultimately going to survive.

Three main points that I want to make. First, what does it mean to be fixed, to fix REAL ID? All the focus must be on the electronic databases and this is really the cornerstone of REAL ID. It is also the source of all the uncertainty. When governors ask me to brief them about the databases, they ask the following questions: How will it work? Who will own it? How is it governed? How does it protect my citizens' individual data? What does it cost? We today cannot answer any of those questions, and so when you talked about fixing REAL ID, I think it is getting a handle on those systems and knowing what it is before States can commit.

With regard to funding, again, governors believe that if the Federal Government steps in to dictate how States should do their business, then the Federal Government should pay for it. DHS has made a big deal of the cost estimate, the fact that it has gone down to about \$4 billion. I think Assistant Secretary Baker was questioning whether maybe that was high. States, on the other hand, are questioning whether it is low.

That \$40 billion estimate misses several key points. First, we don't have cost estimates, nor are they included, on the security of the manufacturing centers. What will the buildings be required to have as far as making them secure? If all States need to build Fort Knox, that estimate is going to be low.

¹The prepared statement of Mr. Quam appears in the Appendix on page 94.

Second, the transaction cost. This is the cost of actually asking each database a question about the applicant before you. DHS recently raised the rates for the SAVE database to 50 cents. Well, 50 cents—and that is the minimum—per transaction when you have 242 million people is a large number that is not counted in this original estimate.

And then third, in the spirit of Washington, DC accounting, the assumption was made that only three out of every four people would actually get a REAL ID. Well, it is easy to cut your costs when 25 percent of the population is taken out of who may have to be serviced. I think accurate numbers have to be found so that we know what is being asked of States.

Finally, with regard to the grant process, governors were very concerned about the fact that there is only \$90 million out there. States other than the State of Kentucky, which received some initial grants with regard to vital statistics, have not received one dollar. No money has come out under the grant programs. The existing grant programs favor the creation of the hub, a DHS priority, not a State priority. The governors' position is that governors and States should be deciding how those funds should be used. The appropriations were for States, not for DHS, to determine how best to move forward with REAL ID.

Finally, with regard to WHTI, governors are taking a very close look at some of the pilot projects with regard to enhanced drivers' licenses, including the Washington project. I think some are encouraged by what they see as a more collaborative effort than REAL ID has been to date. Governors firmly believe that security and commerce can coexist, but it must be a collaborative process. I think there is a long way to go with regard to WHTI, but hopefully the cooperation that was shown there can help yield results on REAL ID.

I would be happy to take questions. Thank you.

Senator AKAKA. Thank you very much, Mr. Quam. Ms. Fredrickson.

TESTIMONY OF CAROLINE FREDRICKSON,¹ DIRECTOR, WASHINGTON LEGISLATIVE OFFICE, AMERICAN CIVIL LIBERTIES UNION

Ms. FREDRICKSON. Chairman Akaka, Congress stands at a crossroads regarding our national policy for identification cards. Following one path, Congress can choose to do nothing and the REAL ID Act will gradually force the creation of a national ID card system. Disregarding the growing national consensus against this system, Congress could allow the REAL ID system to limp forward over the next decade or more, wasting billions in tax dollars and weakening, not enhancing, ID security in the process.

Or Congress can follow another, better path, heeding the clear call of constituents and the States that want ID security but believe it can only come with protection of individual privacy. This more prudent path requires Congress to replace REAL ID with a plan that allows and encourages States to innovate, to improve ID

¹The prepared statement of Ms. Fredrickson appears in the Appendix on page 102.

security, but avoids the privacy and security risks of a national ID card system.

On behalf of the American Civil Liberties Union (ACLU), our 53 affiliates, and more than half-a-million members, we urge Congress to choose the second path. Stop building a national ID system that vastly increases the risk of identity theft and instead move towards a system that recognizes that security can be enhanced only by protecting privacy.

Specifically, Mr. Chairman, we recommend that this Subcommittee work to enact your bill, S. 717, the Identification Security Enhancement Act of 2007, to replace Title 2 of the unworkable REAL ID Act of 2005.

REAL ID will almost certainly generate ubiquitous demands for presentation of compliant cards. The REAL ID could soon serve as an internal passport. Card readers will proliferate in daily life, and going to the grocery store or the gym or the day care center will require passing through a series of internal domestic check points. Soon, no American will be able to operate without a REAL ID card, and every check point will degrade the privacy of our lives just a little more.

The ACLU does not oppose identity security, but if REAL ID survives, its database would create one-stop shopping for identity thieves with the largest repository of private information on all Americans—our birth information, Social Security numbers, and biometric information. We don't want DHS to impose a system that makes our private information an easy target for identity theft.

If Congress fails to change course, then REAL ID will continue to force wasteful expenditures of State and Federal funds during precarious economic times. If REAL ID made us safe, perhaps it would be worth the high price, but it won't. When criminals and terrorists obtain REAL ID licenses by using the stolen identities of law-abiding Americans, they will be able to walk through our society without scrutiny.

As you can see from this map, the one with 2008 here,¹ State opposition has led to the passage of numerous State laws prohibiting implementation of the REAL ID Act. Governor Butch Otter recently signed an act prohibiting Idaho from implementing REAL ID. Idaho became the eighth State to enact such a law, joining the seven States in red—Georgia, Maine, Montana, New Hampshire, Oklahoma, South Carolina, and Washington. Legislation is awaiting Governor Palin's signature in Alaska to prohibit funding of REAL ID.

Ten additional States have unequivocally stated their opposition through passage of memorials and resolutions, with many calling on Congress to repeal REAL ID entirely. These States are Arkansas, Colorado, Hawaii, Illinois, Missouri, Nebraska, Nevada, North Dakota, South Dakota, and Tennessee. They appear in yellow on the map. Legislation opposing REAL ID has passed at least one chamber of a State legislature in an additional 11 States. And Missouri, confusingly, is green on this map, not yellow, because in addition to passing a resolution against REAL ID in 2007, the State legislature moved binding legislation through one house in 2008.

¹The map referred to appears in the Appendix on page 111.

Some States have asked for extensions of compliance deadlines, not to signal compliance but simply to run out the clock on the Bush Administration. Republican Governor Mark Sanford of South Carolina sent a letter to Congress this month calling REAL ID “the worst piece of legislation I have seen during the 15 years I have been engaged in the political process” and urged its repeal. When asked whether Montana would participate in REAL ID, Democratic Governor Brian Schweitzer explained, “No, nope, no way, hell no.”

Despite DHS’s rhetoric to the contrary, States’ opposition to REAL ID is accelerating, not slowing. So Congress should not sit idly by while the REAL ID Act creates a national ID card system at the cost of Americans’ privacy and in the face of widespread opposition. Congress must choose the better path and pursue S. 717 and repeal REAL ID. Thank you very much.

Senator AKAKA. Thank you. Thank you very much. Mr. Dow.

TESTIMONY OF ROGER J. DOW,² PRESIDENT AND CHIEF EXECUTIVE OFFICER, TRAVEL INDUSTRY ASSOCIATION

Mr. Dow. Thank you, Chairman Akaka. I am pleased to appear before you on behalf of the Travel Industry Association and our strategic partner, the Travel Business Roundtable, to discuss the impact of the Western Hemisphere Travel Initiative (WHTI) on travel to the United States. We represent 1,700 public and private entities that make up the \$740 billion travel community that employs over seven million Americans, generates \$99 billion in taxes, and produces a trade surplus. Travel and tourism is the front door of economic development and really is a critical element in public diplomacy.

First, I would like to thank you for your leadership in assuring that our homeland security efforts are properly implemented in an efficient and effective manner. We commend Congress for prudently extending the WHTI deadline and defining reasonable benchmarks to ensure its successful implementation.

The travel community is keenly aware and supportive of the need to protect our borders and to prevent admission of those who wish us harm. On the horrific day of September 11, 2001, it took hours to bring the travel industry to its knees and our economy followed weeks later, as did the world economy. We must protect both the physical security and the economic security of our country.

Unfortunately, we have instituted increased travel and security measures while neglecting to properly communicate these new and cumulative security requirements to international visitors, and this has hampered travel facilitation and resulted in a significant decline and impact on overseas travel to the United States. We must not cause similar harm by not properly implementing and communicating WHTI to Canada, our closest neighbor.

I would like to discuss four points covered in my written testimony. First, the travel community strongly supports a properly implemented WHTI. It is good policy, as long as we can enhance border security and as long as we have realistic deadlines, robust advanced communications, and the necessary infrastructure and staffing. TIA’s support of WHTI is longstanding and consistent,

²The prepared statement of Mr. Dow appears in the Appendix on page 116.

whether it be through testimonies, starting a “get a passport now” website, and mobilizing more than 30 members of the travel trade community in support of the Administration’s efforts on WHTI. We participate in the CBP Travel Advisory Group, lending our expertise on communications.

As early as October 2005, we submitted comments on four separate occasions to DHS and to States on the need to develop a robust communications plan for WHTI. That did not happen, resulting in last summer’s passport debacle. Senators Voinovich and Coleman talked about the left hand not talking to the right hand. We just heard two entities say that they have hired two separate public relations firms to accomplish the same job and communicate WHTI clearly to our friends across the border and to U.S. citizens.

There is so much at stake if we don’t implement WHTI correctly and properly. The negative receptions of poorly-communicated air security rules over the last 7 years have caused us to lose millions of overseas visitors. Since 2000, the number of global long-haul travelers around the world to locations other than the United States has increased by 30 percent, or 35 million visitors. During the same time period, travelers visiting the United States has dropped by two million, or 8 percent, and that is at a time when the U.S. dollar is at an all-time low. We should be booming and we are not.

Successful implementation of WHTI is extremely important. It is a major priority because Canada is our closest travel partner, as has been said many times today. In 2006, 40 million Canadians and Americans crossed the border, Canadians bringing \$13.5 billion to the United States. Just a 5 percent decrease in those Canadian travelers would cost us \$700 million. We can’t afford economically and diplomatically to mess this up.

Communications is a critical key to making WHTI successful. We must have a preemptive, sophisticated, well-funded, and sustained public outreach campaign. DHS and States should have prepared this campaign years ago and used all communication channels—television, radio, print, Internet—outdoors. WHTI is very important. This is a sea change in culture and law, culture and practice and tradition from what has gone on in traveling to the United States. This communications campaign should have already begun and would better serve the needs of our country in the future.

In S. 1661, the Travel Promotion Act, all of these factors are included. It is supported by you, Chairman Akaka, by the majority of this Subcommittee, and 40 additional U.S. Senators. The Act creates a public-private partnership to explain U.S. policies. It combines private execution with public sector oversight and does not require any funding from U.S. taxpayers.

Last, the Subcommittee should be concerned about whether DHS has the staffing and the technology in place for WHTI. We all know that there are not enough CBP officers at all of our ports of entry. This is troubling in context with WHTI being implemented in 2009 during the busiest summer travel period, when millions of Canadians will be traveling. We recommend that you immediately lift the overtime cap for CBP officers and fund adequate new hires in the future.

Our message is simple and clear. DHS and States must successfully and effectively implement WHTI and all other travel security programs. We live in a new era. Changing security is not a one-time occurrence, but will continue in the future. We must preserve our physical and our economic security. Let us work together to protect America and project America and welcome international visitors to the United States. Thank you.

Senator AKAKA. Thank you very much, Mr. Dow.

I have to step away for a few minutes, and I will call a short recess until Senator Voinovich can return. He has questions, and I will have questions for you, as well.

So at this time, the Subcommittee will stand in a short recess.
[Recess.]

Senator VOINOVICH [presiding]. The hearing is reconvened, and I apologize that I wasn't here for the testimony that has gone before. One of the things about being in the Senate is that you need to be at three places at the same time and justify all of them, and I really appreciate the fact that several of you have come a distance to testify today and we are greatly appreciative of your being here. We are very concerned about this and look forward to the rest of the testimony.

Ms. Fredrickson, you have testified. Mr. Amador, you are up.

TESTIMONY OF ANGELO I. AMADOR,¹ DIRECTOR OF IMMIGRATION POLICY, U.S. CHAMBER OF COMMERCE; AND EXECUTIVE DIRECTOR, AMERICANS FOR BETTER BORDERS COALITION

Mr. AMADOR. Thank you, Senator Voinovich, for the opportunity to present today on the impact of implementation of the Western Hemisphere Travel Initiative. I usually refer to it as WHTI, but since Senator Collins is not here, I will call it "witty."

Before I begin, I would like to ask that the three studies I sent earlier to the Subcommittee with in-depth analysis of border issues and recommendations on how to fix them be made part of the record, together with my written testimony.

Senator VOINOVICH. Without objection.

Mr. AMADOR. Thank you. My name is Angelo Amador and I am Director of Immigration Policy for the U.S. Chamber of Commerce and I am also the Executive Director of the Americans for Better Borders Coalition.

The Chamber is committed to continue working with Congress and the Department of Homeland Security and States to successfully and efficiently implement WHTI. It is important to keep in mind that the efficient movement of people, goods, and services, and a secure border are not mutually exclusive or competing objectives.

Furthermore, it is important to note that WHTI is not being implemented in a vacuum. A number of inefficiencies at the borders are threatening our competitiveness and WHTI places further pressures on our eroding infrastructure.

¹The prepared statement of Mr. Amador with attachments appears in the Appendix on page 121.

The Chamber is concerned that the U.S.-Mexico and U.S.-Canada border crossings are increasingly becoming a competitive disadvantage. The North American supply chain for many companies is tightly integrated. For these companies, the impact of border delays, fees, and strengthened security procedures are magnified because their products are required to clear Customs multiple times in the manufacturing process.

The reports I submitted for the record contain many excellent recommendations to improve border security. I will mention only three of them.

First, we need proper measurement of border wait times. This needs to be addressed so the severity of delays and their costs can properly be dealt with.

Second, there is extreme anxiety in the business community due to the level of uncertainty created by border policies announced and implemented before the infrastructure is in place. The private sector needs to know what to expect in order to properly adjust. Mr. Dow mentioned the Travel Promotion Act earlier, so I am not going to go into details on that other than to say that we also support it.

Third, inadequate staffing, reduced or changing hours of service, mandates for secondary inspection of some products, new fees, and outdated infrastructure are leading to long delays with a significant economic impact on businesses without apparently increasing security. We should increase funding for CBP to guarantee the adequate staffing and extended hours of service and upgrade our technology and infrastructure. In the House of Representatives, the Putting Our Resources Toward Security Act addresses some of these issues and we hope it can also be introduced in the Senate.

As to WHTI, implementing it without addressing the existing border delays and the additional pressures that WHTI imposes may generate a new security problem with long lines of trucks idling like sitting ducks at the busiest ports of entry. In the final rule published this month, DHS stated that it intends to fully implement WHTI on June 1, 2009, the earliest possible date. The Chamber believes that more emphasis needs to be placed on doing it right versus doing it fast. Before pushing for full implementation, pilot programs need to be performed to assess the potential impact of WHTI on cross-border commerce. We must avoid the chaos, long lines, and 12-week paperwork backlogs that were created in 2006 with the hurried implementation of the WHTI air rules. The government was not prepared for the changes it made in policy.

As to passport alternatives, the two most promising at this time are passport cards and enhanced drivers' licenses. However, for either document to be a true substitute to a U.S. passport under WHTI, they should be accepted at airports of entry as well as the proposed land and sea ports of entry.

Also, although the passport card application fee at first blush seems reasonable—\$20 for adults, \$10 for minors—there are a number of additional fees in addition to the execution fee. You have picture fees and others. The approach explained earlier by Senator Collins is one that we support of deploying CBP staff to high-demand areas.

As to enhanced drivers' licenses (EDLs), the Chamber has always called for the acceptance of a document that is as close to being non-discretionary as possible. EDLs have significant promise. However, the Chamber is concerned that there will not be a critical mass of WHTI-compliant EDLs in circulation before June 2009, the target for full implementation.

As to REAL ID, the Chamber has never taken a position on this issue, but as long as Congress believes it should be enforced or remain law, Congress should also consider statutory changes to make REAL ID-compliant documents accepted as WHTI compliant.

In conclusion, if we want to grow and remain competitive in the global market, we need to address the deteriorating problems at our borders and make sure that programs like WHTI do not exacerbate the problems we are trying to fix.

Thank you for the opportunity to testify and I look forward to your questions.

Senator VOINOVICH. Thank you very much. Ms. Cope.

TESTIMONY OF SOPHIA COPE,¹ STAFF ATTORNEY AND RON PLESSER FELLOW, CENTER FOR DEMOCRACY AND TECHNOLOGY

Ms. COPE. Thank you, Ranking Member Voinovich. The Center for Democracy and Technology has significant concerns with both REAL ID and WHTI. In the few minutes I have here today, I will focus on WHTI. However, both initiatives pose serious risks to the rights of American citizens and Congressional action is needed now.

CDT takes no position on the requirement that American citizens must now present a passport or equivalent document when seeking to reenter the United States at the land borders, nor do we find unreasonable Congress's desire to minimize congestion at the border due to this new requirement. However, the problem is that DHS and the State Department both have chosen an insecure technology, vicinity RFID, for the passport card and the enhanced drivers' licenses.

Also, the Departments have not given any serious consideration to the risks to personal privacy and security posed by the use of this technology, despite concerns raised in thousands of public comments, two pieces of Federal legislation, and DHS's own Inspector General.

Additionally, it is not clear why the Departments chose vicinity RFID. It does not provide unique operational benefits in the border crossing context and there is already a secure infrastructure in place for the electronic passport, which makes sense to use here.

I would like to make two main points and then offer some recommendations for this Subcommittee. First, vicinity RFID technology is insecure and inappropriate for human identification. This technology was not created to identify people. Rather, it was intended to track things, like televisions, toilet paper, and toothpaste. It was designed to be quickly and easily scanned by standardized readers, unencumbered by security features, as products move through the supply chain.

¹The prepared statement of Ms. Cope appears in the Appendix on page 220.

Sensitive information on the RFID chip can be picked up by unauthorized people because the information is stored and transmitted unencrypted and in the clear. The information can be read by any reader compatible with the common standard. And finally, these readers can secretly read the vicinity RFID chip remotely, from distances of 30 feet, and potentially many times more than that.

Second, the risks to privacy here are very real. For example, the unique ID number on the RFID chip will, over time, become yet another identifier that can be used to track and profile the movements and activities of innocent Americans. Many citizens will likely not use a protective sleeve, and even those who do will likely take their cards out of the sleeve and use the cards for transactions that have nothing to do with crossing the border. The unique ID number on the RFID chip can be easily collected, along with other personal information from a transaction, such as name and address from a driver's license or even a credit card number.

Therefore, the unique ID number will cease to be an anonymous, meaningless identifier as both DHS and States have asserted. Once a person's identity is associated with the RFID chip, he or she can be unknowingly identified or tracked by a network of compatible readers.

Also, because the RFID chip includes information about the issuing entity, Americans traveling abroad could be identified as such and be vulnerable to security risks. Last, because the unique ID number on the RFID chip is transmitted in the clear, unscrupulous individuals might be able to use the number to access personal information held in government databases. Recent privacy breaches at the State Department support this concern.

Finally, I would like to offer some recommendations for this Subcommittee. This Subcommittee should press DHS and the State Department to abandon vicinity RFID technology in favor of a machine-readable technology that requires the card to make contact with the reader. This is consistent with the Departments goal of prepositioning traveler information before the travelers reach the CBP inspection booth.

In addition, this Subcommittee should insist that the citizen's unique ID number be encrypted or otherwise protected from unauthorized readers. This is how the new electronic passport works now. This Subcommittee should also strongly consider supporting legislation or regulations that prohibit the unauthorized skimming of the RFID chip by businesses and other third parties. And finally, this Subcommittee should consider supporting legislation or regulations that prohibit the use of the passport card and the enhanced driver's license by government agencies that have nothing to do with border security.

Thank you, and I welcome any questions.

Senator VOINOVICH. Thank you very much.

Were all of you here for the testimony of our two first witnesses, Secretary Baker and Mr. Staeben?

[Chorus of yesses.]

Senator VOINOVICH. I have been in your chairs before, as President of the National League of Cities and Chairman of the National Governors Association, and I have always thought to myself,

if I get a chance to be where I am right now that I would give people an opportunity to comment upon the testimony of the people that were here before, because I am sure when they were giving their testimony, there were some red flags that went up with all of you. I would like you to share with me your observations or your perspective on what they had to say in terms of its accuracy. Ms. Stone.

Ms. STONE. Thank you very much.

Senator VOINOVICH. And by the way, Ms. Stone, one of my big complaints, we used to have something called the Big Seven.

Ms. STONE. Yes.

Senator VOINOVICH. Yes. And I was kind of fortunate, because I am a former county commissioner, a former State legislator, and a former mayor and governor, and when I was Chairman of the National Governors Association, we did unfunded mandates relief legislation and welfare reform and I want to say that, and you are a leader in your organization, it would be very smart, I think, for those groups to get together to develop some priorities about what they would like to get done down here, because if you get all the local government, State Government organizations testifying before the Congress on a bipartisan basis on something and you are really committed to it, you can move mountains. There is no question about it.

And my observation in the last number of years is that it hasn't happened. And so Mr. Quam, I am going to share that same thing with you. I have talked to Ray Sheppach about it and so forth, but you guys could be doing a better job of getting your act together and coming down here to testify, and I can tell you, if you have problems with this legislation and all of you get together, we are going to respond to your concerns. So I want to start with that.

Ms. Stone.

Ms. STONE. Well, thank you very much for those comments. NCSL's position on REAL ID has been very consistent from the beginning and our message has been as follows. Fix and fund the REAL ID or we call for its repeal. And our message is still consistent on that. We have asked the Administration to provide \$1 billion in start-up costs for REAL ID. We have been very proactive since the bill was passed. Unfortunately, we were never invited to the table before the bill was crafted. And as very big stakeholders in what will happen as a result of REAL ID in the States, we should have been at the table. We should have been part of the entire process. After REAL ID—

Senator VOINOVICH. Actually, it violates UMRA. I have asked the question why it wasn't raised, but the way it came in, it was a supplemental and I think it was one of the House members that stuck it in at the end and there was very little discussion about it and it just got zipped through here. I am going to do some research on it. Indeed, it is an unfunded Federal mandate.

Ms. STONE. It definitely is, and I thank you so much for concurring with that because that is our position. And as you know, sir, the States are required, at least 49 of them, to have balanced budgets and that is—we do not have the luxury of operating at a deficit. And every time an unfunded Federal mandate is put down onto the States, it makes our fiscal lives that much more challenging.

Senator VOINOVICH. Listen, I understand that. I was at the White House when the President signed that legislation, represented all the local government and State groups, so I understand that.

Ms. STONE. I know you do. That was quite a victory for NCSL, too. We played a huge role in UMRA and our President then, who happened to be a Senator from Delaware, was actually present at the signing of that agreement and that was one of his proudest moments, I think, as President of NCSL.

We have appreciated being part of the conversation during the rulemaking process and many of the concerns that were raised by NCSL were listened to and have been addressed. But we believe that there is much more room for conversation. We believe that a return to a negotiated rulemaking process can be very valuable. We believe it can move from a top-down coercive process to more of a collaborative process, which has always been what we are asking for, that brings all interested stakeholders to the table.

We think it could produce more and even better buy-in from the States. I don't remember if you were in the room when the large displays were up here that Ms. Fredrickson brought, but I probably don't have to bring to your attention the number of States that have literally passed legislation that says we are not going to comply. All the States—

Senator VOINOVICH. It is just a set up for a gigantic crash—

Ms. STONE. Absolutely.

Senator VOINOVICH [continuing]. And you have to regroup the troops, and because we didn't touch the bases before this thing was passed, we are now running into that problem—

Ms. STONE. Absolutely.

Senator VOINOVICH [continuing]. In which you are basically saying, now is the time to pull back on it, reevaluate it, get into some of the issues that you have raised, Ms. Fredrickson and Ms. Cope, about how we are going about doing it, and maybe just reevaluate where we are at right now and see if we can't remedy some of these things and understand that it is going to take resources, but more important than that, cooperation.

And I want to say one other thing to all of you, we are really in bad shape in terms of the Federal Government. One of the things that I am looking at right now is all the money that we are spending in Homeland Security and where is the money going. A 374- or 375-mile wall down on the Mexican border, I mean, you are looking at some things that make me ask—are we allocating resources as wisely as we should be?

I don't need to tell you that our national debt today is going to be over \$10 trillion around the corner. We are the biggest violator of the credit card in the world today. And we have got some very serious problems facing our country, and the truth of the matter is the resources that we need to deal with our problems across the board are not available to us. No one wants to talk about it, but it is a fact of life and everyone should get it.

I wish that we had to balance our budgets, like I did when I was mayor and governor.

Ms. STONE. Yes.

Senator VOINOVICH. But we have become—they talk about one group being “tax and spend.” We have become the group of “tax and borrow,” and I think tax and spend is better than tax and borrow because at least you have some tension there that is going on.

Ms. STONE. Right.

Senator VOINOVICH. Other comments about the witnesses? Yes, Mr. Quam?

Mr. QUAM. Thank you, Senator. My biggest concern would be that of tone, and something I mentioned to Chairman Akaka, Assistant Secretary Baker had said that the choice governors were faced with was one of do I want to improve the security of my license or do I want a less-secure license. That is ridiculous. There is no governor who faced that choice with regard to these extensions.

Every governor wants a secure license. Every governor works towards a secure license. Every governor wants to fight identity theft. The choice was, we don't know what REAL ID is, we don't know what we are being asked to sign up for, we have some serious questions, and yet we are asked to sign on the dotted line that we want an extension and possibly imply that we are going to meet you at the end of the day when we don't know what the house is going to look like that supposedly you are building.

And the retaliation was against our citizens, governors' own citizens who might have to go to the airport and not be able to use their ID to get to Walt Disney, take the family out, and that, at the end of the day, was no choice at all. And so the governors came in, some with great reluctance, and eventually an extension was given, and you heard some of the dance that both DHS and States went through to get to that point.

The other part would be funding.

Senator VOINOVICH. By the way, I will never forget on Christmas Day getting a call, and the reason they were able to call me was that my telephone number is published in the church bulletin. [Laughter.]

The caller said “I am at the airport with my family.” I am not sure where they were going to, but it was for mom and dad's fiftieth anniversary and they couldn't get the baby to go because they didn't have a birth certificate for her and the office were closed. And I had to spend probably an hour on the phone back and forth and finally got TSA to get involved and they let the baby go and then they had to fax the birth certificate down to wherever they went to so the baby could get back in the country. But that is the kind of stuff that goes on.

Mr. QUAM. Senator, REAL ID is one of those few laws that actually comes out of Washington where at the end of the day every citizen is actually going to know the term REAL ID. As this thing moves forward, this is going to be one of those that everybody will have REAL ID on the mind as they go through their DMVs or they go through the airport, depending on how this plays out. If they do it right, we will be OK. If we don't, then there is going to be some serious concerns.

With regard to the funding, States do not appreciate, and I think the Subcommittee echoed it, this whole idea that through SHSGP funds, hundreds of millions of dollars have been made available.

Nobody really believes it. What you really have is \$90 million that has been appropriated, \$6 million that has gone to one State to start a pilot project. I think the Department of Homeland Security has actually used \$1.3 million to start its own program office and not one other dollar has actually gone to States to help implement REAL ID, what States are seeing out there is an unbuilt house, being asked to pick up a tab and sign on the dotted line, not a dollar in the coffers yet and wondering what is going ahead, and then asking Congress if this is your priority, then shouldn't there be money behind it to help States fund it?

And so it is one of tone. Collaboration and cooperation, as you know, governors can work with an adversary type of situation, which sometimes we face in REAL ID, isn't actually going to get this done. So my biggest question would be that of tone and whether or not we can change it to something more cooperative.

Senator VOINOVICH. Ms. Fredrickson.

Ms. FREDRICKSON. Thank you, Senator, for letting us have this opportunity. I wanted to talk more about the privacy issues and the concerns we have with REAL ID, and I think Mr. Baker spent quite a bit of his testimony telling a story about a woman who had been the victim of identity theft.

Senator VOINOVICH. From Madison, Ohio.

Ms. FREDRICKSON. From Ohio, exactly. It was Maureen something.

I think Senator Tester asked the right question, which wasn't really answered by Mr. Baker, which is about the fact that the information that is on the machine-readable part of that REAL ID is not encrypted. There is no requirement by the DHS in the regulations that those kinds of requirements are built into the REAL ID. And so Senator Tester asked Mr. Baker, doesn't that mean that the woman from Ohio is actually going to be much more subject to identity theft than she is under the current system, and I think that is a real danger that we run into.

DHS really kicked that to the States, I think, to develop something called State security plans. Each State can develop a different plan. And how does that protect the woman in Ohio if another State has a plan that is not as secure as Ohio's and her information is being accessed through this nationwide database by that other State?

So there are some very serious questions that I think certainly lead us at the ACLU and several of the other panelists to implore you to go back to the negotiated rulemaking process, have the different parties at the table, the States, the governors, the privacy experts, the technology experts, to really hash this out to make sure that the system that is put in place actually protects our security because it is our very strong belief that if privacy is compromised, security is compromised. Thank you.

Senator VOINOVICH. I think that, first of all, from a practical point of view, if what you say is true, and I have no reason to doubt it—I am not that familiar with all of these various systems that they are putting in place. I think States are going to be reluctant to go forward with it if they feel that you have got a real privacy issue, and I think individuals will be very reluctant to participate because of their concerns.

Ms. FREDRICKSON. I think Senator Tester also asked about the fact that this is unencrypted information and that when somebody goes into a bar, for example, and they have to give their ID, that bar can swipe the card and take the information off and store it in a database, and we all know—we have seen what happens with DoubleClick and all of these other companies. Where we go, what we buy, how we spend our free time is very valuable commercial information and the incentive to create databases and track people and their habits through the REAL ID card, I think is an inevitable fact of life if this issue is not addressed.

Senator VOINOVICH. Thank you. Mr. Dow.

Mr. DOW. Yes, sir. I would like to shift gears to WHTI. One of the things that is so critical is that we have botched communications of WHTI implementation.

And the challenge we have got, we have to have some really robust and coordinated communications, and my two colleagues at DHS and the State Department earlier talked about each hiring a unique and different PR firm to start sometime in a few months to get the word out. Well, this takes more than PR. With WHTI, we are changing a lifestyle, a culture, a tradition of how people come to Ohio.

Maybe it was glossed over, but when you asked about Cedar Point, you have 500,000 Canadians that come to Ohio. Sixty percent do not have a Canadian passport. My math says that is 300,000 people that may not come to Ohio and Cedar Point and no communication is out there.

So we are pushing very importantly, that is before the Senate right now, S. 1661—the Travel Promotion Act. New security is not a one-time occurrence. We have got an ongoing change of life here that we have to communicate. This is public diplomacy. This is how America is seen, and we are going to be seen as the hard-handed folks that don't want Canadians, as we are being seen around the world as the hard-handed folks that don't want anyone else from around the world. That is a problem.

Senator VOINOVICH. I understand that fully. I was the main sponsor of the visa waiver legislation, and we didn't get really what we wanted on that, but it is a step forward. But you are right. From a public diplomacy point of view, things are very bad. From that point of view, public relations, public diplomacy, it is bad, but it is also, as you point out, very bad for our economy.

I mean, one of my goals as Governor of Ohio was to increase travel and tourism. It is a big industry. And to not take that into consideration and to not get the information out there and just to leave it to public relations, there should be a joint effort by your organization and the government to figure out how we are going to get that information out to the best of our ability, using your resources and the government's.

Mr. DOW. And that is the opportunity we will have with the Travel Promotion Act because we use the best of private with public oversight, and that is important.

Senator VOINOVICH. You heard my remarks about the whole Department of Homeland Security, and that is our fault. It is very interesting that when we were going through that, I said, you ought to ask the people who are going to do the job how they think they

best should be organized, and we said, no, we are smarter than they are. And I said that when the screw-ups happen, we will blame them instead of taking the responsibility ourselves, and we are starting to see part of that, and of course, it is always their fault. But we haven't got clean hands in this, either, in terms of the way this organization came together, and we don't have clean hands in terms of allocating resources to the various agencies.

I am just doing a survey right now of all the places, all the Departments in the Federal Government where we have asked people to do jobs and we have not given them the resources to get the job done. And any of you that have been in business or government, if you ask somebody to do a job and you don't give them the resources to get the job done, then basically what you tell them is you don't think very much of what you are asking them to do.

So this is not only the administrative side, but also the legislative. We have a big responsibility here and that is why I am interested in your suggestions that we had better pull this thing down, look at it, start all over again, touch the bases so we will be far better off than just to continue meandering down this stream. You think if we do, this thing is going to continue to explode here, there, and everywhere.

Mr. DOW. When you talked about resources, my wife and I returned from Mexico 2 weeks ago into Houston and there are 40 booths to process people and 22 of the 40 had "closed" signs up. Just multiply this by 40 million Canadian travelers, by the billion dollars coming across the border every day, and it dwarfs anything we have seen coming across the air borders where we are understaffed right now.

Senator VOINOVICH. That is why we are going to get them in. Mr. Amador.

Mr. AMADOR. Yes, thank you. I would just follow with some of the things that were said earlier. One of the issues we have is transparency, obviously, and communication. The tone that they take translates into the actions that they are taking, as well. When they use hyperbole and they talk about, well, it was time to stop letting people come in with a smile, that was never what we were asking for. That is not what many Senators who wrote to Chertoff were calling for. We had some very good solutions to the issue that we presented. The same thing with other issues with homeland security, whether it is a fence on the Southern border or other issues.

And to rely as a PR campaign on negative publicity from the media as the way of getting the word out, we don't think that is the way to go because it does damage not only our tourism and our view abroad, but businesses of people that might be thinking of investing in the United States versus someplace else. So those are the kind of things that need to improve communication and transparency and it doesn't seem that it is taking place right now.

Senator VOINOVICH. Well, the Chamber, I think, could do a better job of capturing the total amount of exchange between the United States and Canada, the number of trips. As I mentioned, I think back when I was Chairman of the National Governors Association, we set up a new thing with Canada, because for 36 of us, they were our No. 1 trading partner, and so we tried to find ways that we could enhance the relationship between Canada and the United

States. I think we need to capture the amount of money that it is costing our respective economies because of this lack of movement back and forth and how it can even become worse with some of the things that we are talking about doing.

Mr. AMADOR. And one of the reports is a joint report with the Canadian Chamber of Commerce, and another one, so we are trying to capture that data. GAO is working on a report and we have asked DHS to wait until all these economic data start coming out because even when they did their airfare analysis, they only really looked at tourism and we said, what is the cost to the economy from the commerce being delayed and from all these things?

And again, with the changes and reasonable talk going back, it seems that all of the changes, and Mr. Dow knows from all the battles that we have fought, have to come from Congress. It seems that we tell them, you are not ready, you should do it later, maybe in June 2009, and they wait for Congress to mandate it before moving the deadline. And it seems that is happening with everything else, as well.

Senator VOINOVICH. Ms. Cope, you are clean-up.

Ms. COPE. Thank you, Senator. Well, first off, I think the first panel completely glossed over the privacy concerns related to the enhanced drivers' licenses and the passport card. But with that being said, they also completely glossed over the cost issue. This hearing has focused a lot on the costs of both programs and one thing they didn't address is that the passport card and enhanced driver's license programs, are going to mandate a third reader system.

So at this point, if these programs move forward, we are going to have three different infra reader structures at our land borders and that just seems inefficient and probably a waste of money, as well. The Trusted Traveler programs require one type of infrastructure. The electronic passport requires a second type of reader and technical infrastructure. And then now the passport card and the enhanced driver's license will require yet a third reader infrastructure.

Senator VOINOVICH. So it is not only the manpower, but it is the technology and the quality of the technology and then how are we kind of making it seamless so that we don't have three different systems that we are going to have to put up and train people to operate.

Does anyone else want to make another comment? I only can hear from the witnesses, sir. Yes, Ms. Fredrickson?

Ms. FREDRICKSON. I just wanted to point out, there was a really terrific op-ed by Governor Sanford of South Carolina that was in the Greenville paper just a couple of days ago, and I think one of the reasons that several of us up here have urged you to go back to the negotiated rulemaking process that Congress actually passed and then repealed shortly after REAL ID is because, as Governor Sanford points out, steroid use in baseball has now received more Congressional attention than REAL ID.

We think Congress needs to go back, allow a negotiated rule-making process to go forward to allow some real thinking to go into how to solve what are some very significant problems in setting up a system like this. We think that having all the stakeholders at the

table can actually result in a much shorter implementation time and a much better outcome than what REAL ID envisions, where potentially, at DHS's best estimate, it will reach the public by 2017 and cover the full population. That is a really long window if this is really a security imperative.

Senator VOINOVICH. Well, thank you all for coming, and the gentleman that wanted to say something, I will be glad to talk to you after this meeting.

Folks, I don't know what your schedule is, but Senator Akaka said he is on his way back. I thought he wasn't coming back. So why don't you stay, please. I would appreciate it.

We will stand in recess until Senator Akaka gets back.

[Recess.]

Senator AKAKA [presiding]. This Subcommittee hearing will be in order. Thank you all for waiting.

Representative Stone, I am pleased to see that NCSL supports my bill, S. 717, to repeal the REAL ID Act and reinstate the negotiated rulemaking process for the Intelligence Reform Act. Since some of NCSL's recommendations were incorporated into the REAL ID regulations, I would like to hear what you believe to be the benefits of repealing REAL ID and reinstating the negotiated rulemaking process. Would it ensure secure drivers' licenses faster than REAL ID?

Ms. STONE. Thank you for the question, and thank you for the opportunity to be with you here today and for having this hearing.

NCSL does see benefits to returning to the negotiated rulemaking process. We believe that it would move from a top-down, what we perceive as a coercive process, to a more collaborative process that would bring all interested stakeholders to the table. We believe that it would produce more and better buy-in from State policy makers, and we think that is key because it is the State policy makers who will deal with all of the implications and all of the results when it is finally implemented.

It provides an opportunity to address needed fixes that have not been addressed so far in the final rule, such as exempting populations as I discussed in my remarks, folks who already hold passports, folks who hold military IDs, folks who actually have Federal IDs.

It also provides an opportunity for the stakeholders to negotiate the cost implications, and NCSL's message on REAL ID has been very consistent. Fix and fund, and certainly the cost is every bit as important to us as fixing the actual rules. It also allows the process to accommodate State experiences, best practices, and existing business practices and systems.

So even though we have had an opportunity during the rulemaking process to be heard, we wish we had had that opportunity prior. We have appreciated that, but we do not think that the process is complete by any means and we would like to be able to participate as it moves forward.

Senator AKAKA. Thank you very much for your response.

Mr. Amador, if States reject REAL ID, its citizens cannot enter Federal buildings because they do not have a REAL ID card. This will affect their access to private entities in addition to Federal agencies. For example, the DC Chamber of Commerce Visitor Infor-

mation Center is located in the Ronald Reagan Building, which houses Federal agencies. What will the DC Chamber of Commerce and other businesses across the Nation do if they are located in Federal buildings and individuals do not have REAL ID cards?

Mr. AMADOR. Well, it is really a question for—and it was asked during the previous panel. What are you going to do for those individuals that do not have a REAL ID? And we are still waiting for that answer. It is the same idea—they have so many requirements and it is not clear how they interact with each other. They used to call it a passcard. They themselves chose to call it a passport card and they said it is like a passport card unless you want to use it to get on a plane. Well, then it is not a passport, it is a different card. It is something else. They were asked whether the passport card would be able to be used as a REAL ID to get into buildings and they were like they never thought about it.

So what other IDs are they going to accept to be able to go into a Federal building and how secure are these IDs going to be if it is not a REAL ID? We need to see what answers they come up with. I think they are complicating themselves by continuing to create more and more programs that don't necessarily interact with each other. But again, we are just trying to give them recommendations. We are not telling them how to do their job. But it is confusing, the more IDs and the more programs that they create instead of working together to make these things easier for everyone.

Senator AKAKA. Thank you. Mr. Quam, as you know, the final regulations for REAL ID reduced the cost to States from \$14 billion to \$4 billion. While the delayed implementation time line helped reduce the cost, the Department made several assumptions that lowered the cost estimate, including that not everyone will want a REAL ID card.

You mentioned in your testimony some skepticism about the cost estimate for the States to implement REAL ID. What do you think the real costs to the States will be?

Mr. QUAM. I think the likelihood is that it is actually higher than \$4 billion. The Office of Management and Budget used some of the information that was developed by States early on when States had to try to establish a baseline for what this could cost. Certainly a lot of it is bringing people through the actual physical plant. The faster you have to bring 245 million people in, the more draw-down there is going to be on your resources, on overtime, on your physical buildings. And so the 10-year time line that has been given was a recommendation of both NGA and NCSL and AAMVA as a way to help monitor and manage the line. And so there is some savings there. There is also savings in the flexibility to choose the type of security for your card.

What is missing, again, is the fact that they have a new assumption that one out of every four drivers will choose not to get a REAL ID. The problem with that assumption is if REAL ID comes online and now you need it for a Federal building and you need it for an airport and you need it to get benefits and you need it maybe to get across the border and it fits all these different definitions, this is a card now that you can't do without. And so rather than one in four people not having it, I think everybody will actu-

ally want it, and so just reducing your price by 25 percent, I think we would all love to be able to do that. I don't think it actually comes to fruition.

The other one, however, and a real troubling one for a lot of governors, is with all of these databases, there is an assumption that a lot of them will be paid for by fees, that with every query, ask if they are to check with DHS, there is going to be some price tag attached to it. We do not know what those price tags are. I talked about the SAVE system, and this is through DHS. The minimum amount is 50 cents per query. You have 245 million drivers' licenses. Take half of that and all of a sudden, there is \$100 million just for that one database. We have five that have to be queried for every single license.

Having those costs not part of those cost estimates, I think raises suspicion for governors. I think it should raise suspicion for the Department of Homeland Security and Congress. We need some hard numbers so that we know what the tab is that States are being asked to pick up. Governors, just like NCSL, are on a fix and fund policy. Those cannot be separated. A workable regulation with no funding does not work. Total funding with unworkable regulations doesn't work. They have to go together. Only if they go together do I think REAL ID can get done.

Senator AKAKA. Thank you so much for your response.

Mr. Dow and Mr. Amador, most land border crossings were built at a time when there was a lower volume of travel and less recognition of the need for security. According to GAO, CBP estimates that \$4 billion in infrastructure improvements at ports of entry are needed. In addition to increasing CBP staffing, do you believe that investments in infrastructure at ports of entry could help with the problems you highlighted? Mr. Dow.

Mr. DOW. Chairman Akaka, I do believe that we have a crisis on staffing and on the pinch point of going through these physical areas. If you look at the land crossings or even if you look at something as simple as Dulles Airport, that it is so antiquated for the volume we are trying to pull through, just think of all the Chinese that will be traveling here.

And also, the other thing is the confusion factor that we have had among very educated, knowledgeable people in this room about what is going to happen with WHTI. Think of the poor Canadian or the poor U.S. citizen who has no idea about WHTI. That is why we need a comprehensive communications plan, and I want to just thank you as I close for your support of the Travel Promotion Act. You realize how important it is to our country, and to your State. Your colleague and friend, Mayor Hannemann, has been a good friend also on this with all the mayors and I appreciate that.

Senator AKAKA. Mr. Amador.

Mr. AMADOR. Yes. As I said, it is in the written testimony and also in the oral testimony, we are supporting a bill in the House of Representatives called Putting Our Resources Towards Security Act, and that bill authorizes \$5 billion over 5 years for the General Service Administration to address infrastructure deficiencies at land ports of entry. I think that will be a good start, together with increasing the staffing so the booths will be open and the hours will be extended. So we think that will be a good beginning. We

would encourage the introduction in the Senate and we will be happy to talk to you and your staff about doing that.

Senator AKAKA. Thank you. Mr. Quam and Ms. Stone, while both of your organizations have similar concerns with the REAL ID Act, I am interested in your views with regard to WHTI, specifically enhanced drivers' licenses. Do States have similar concerns with EDLs as with REAL ID?

Mr. QUAM. Let me start. With regard to WHTI, the governors' position with regard to WHTI and any cross-border security measures is that security and commerce can coexist and must coexist, and that as DHS moves forward with any of these plans, the biggest mistake that it could make is not to work with the States who are on those borders to find a program that works for its citizens, because it knows—I think Senator Collins did an excellent job of talking about the golf course. That is a local issue. Only local officials are going to know that issue and find a way to solve it. And so you have really got to work with local officials, State, and local officials, when devising those programs.

With regard to the enhanced driver's license, I know the Washington State project has had some success in working with DHS to get that off the ground. They have a great interest in having that program in place because of all the activity that happens on their border and with regards to the upcoming Olympics. Several other States are looking at that issue and seeing, does an enhanced driver's license make sense for their States?

The important thing is that becomes a State decision. I think as Ms. Stone said, there cannot be a cookie cutter approach, that each State is a bit different. And so I think States are going to want to take the best practices from some of the others. They will have concerns on privacy that they will want to address. They will have concerns on cost and implementation. But if it is done at the State level, then it is much more possible to get that balance between security and commerce across the border.

Senator AKAKA. Representative Stone.

Ms. STONE. Yes. Thank you very much. Very good question. It is our belief that DHS is actually using the economic impact of WHTI on border communities especially to pressure the border States into acting on EDLs. As we all know, the State of Washington has recently concluded a Memorandum of Agreement with DHS and they have launched the first EDL program. They cannot take a cookie cutter approach because it will not work. Every State's needs are different and we really are hopeful and insist upon a collaborative process.

Probably the biggest problem for us with DHS on these issues has been that they seem to bypass the legislature and legislators when it comes to these issues and we are truly stakeholders in these processes. We are the ones who ultimately will fund anything. We are the ones that have to deal with the privacy concerns. We are the ones who make the policies.

DHS has recently formed a working group with members from the Governors Association, and we are delighted to see that they are including them in a collaborative process. When we approached DHS to participate in that same working group, we heard a resounding no, and although we are delighted that they are including

the governors, we believe that as legislatures and legislators, we are every bit as important to this process as the governors are.

And so once again, our philosophy always has been, include us as stakeholders. Give us a seat at the table and allow us to participate in the process. It will ultimately result in better buy-in and it will ultimately result in a partnership, which it must be if we are going to be successful with providing the kind of security that we believe we need to have.

Senator AKAKA. Thank you for your response.

Ms. STONE. Thank you.

Senator AKAKA. Ms. Cope, you have written in great detail about the problems with vicinity-read RFID chips. If DHS and States could not use vicinity RFID, how else could travel information be prepositioned?

Ms. COPE. Thank you, Chairman Akaka. As I touched upon earlier, both Departments could use a machine-readable technology that requires the card to actually make physical contact with the reader, and those readers could be placed 20 or 30 or however many feet away from the CBP inspection booth such that individuals either walking across the border or in a car would have to have their cards scanned well in advance of them actually being interviewed by the CBP officer. That would allow the information to be pulled up on the CBP computers, and be checked against various law enforcement and other terrorist watch lists. And so the goal of prepositioning can still easily be achieved with different technology that is more secure than vicinity RFID.

Senator AKAKA. Ms. Fredrickson, the ACLU has developed a REAL ID scorecard, a list of potential problems that have been identified with the REAL ID law by a variety of parties, including privacy advocates and survivors of domestic violence. I understand that many of these problems were identified prior to or soon after the enactment of the REAL ID Act of 2005. Others were raised in numerous meetings between interested parties and DHS since that time.

According to your scorecard, DHS has failed to fix most of the problems you identified. Did DHS respond to any of these unaddressed problems in the regulations, and if so, what was the response?

Ms. FREDRICKSON. Well, I think if you look at our scorecard, it is very lengthy. It identifies a very long list of concerns. There were certainly areas where DHS took some actions that made the regulations somewhat less problematic. But I think I would actually tell you to look at the rest of the list that is on the scorecard because there, the biggest concerns that we had were left unaddressed, and in those areas, DHS clearly failed to respond.

And I think I would go back to the discussion that we had earlier about the privacy concerns, because for us as the ACLU, that is obviously first and foremost and that is something that DHS completely threw up its hands about, kicked it to the States and said, develop your security plans. We are not going to have any standards. And that will somehow protect Americans' private information.

I think, again, I would go back to Mr. Baker's testimony where he talked about the dangers of identity theft and having insecure

identification cards. Well, I would put to you that the system that would come about through the REAL ID would be much more prone to identity theft and to those dangers, to have a vast nationwide database with very little thought put into some kind of standards that would protect privacy.

And that is why we are very strong advocates for your bill, S. 717, because we think we need to go back to the drawing board. We need to get the partners back at the table. We need to go through those kinds of concerns, because really, if you don't protect privacy, you can't protect security.

Senator AKAKA. Thank you. I want to thank all of you again for being here today. Thank you for your statements and your responses. As you know, the purpose of today's hearing was to review the impact of the implementation of the REAL ID Act as well as the Western Hemisphere Travel Initiative. You have certainly responded. Your participation has helped us understand whether or not the Federal Government is prepared to implement REAL ID and WHTI.

Unfortunately, the concerns I had coming into this hearing have not been addressed. Privacy, funding, and overall planning remain critical issues that need to be addressed for us to have successful implementation of secure identification cards.

I look forward to working with my colleagues to make this a reality and look forward to your participating in this, also.

The hearing record will be open for 2 weeks for additional statements or questions from our Members.

Again, I want to thank you very much for your patience. This hearing is adjourned.

[Whereupon, at 1:09 p.m., the Subcommittee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF SENATOR STEVENS

I would like to thank the witnesses for coming here today to provide us with an update on the status of the Western Hemisphere Travel Initiative and the REAL ID.

Implementation of both the Western Hemisphere Travel Initiative and the REAL ID has caused serious concern to many Members of the Congress and their constituents.

When the REAL ID Act of 2005 passed the Senate, I voted in favor of it. A driver's license has long been used for much more than just proving that a person can legally drive a vehicle. A state driver's license is the principal form of identification American's use to enter federal buildings, fly on airplanes, and for any number of places proof of identification is required.

When a document is this integral to our everyday lives, we need to work together to make sure it is as secure as possible. As a matter of fact, many of the 911 terrorists had driver's licenses they acquired fraudulently. This allowed them to rent vehicles, open bank accounts, and ultimately to fly on that fateful day.

I understand there are valid concerns surrounding the REAL ID, and I hope we can work together to address those concerns. I believe the Department of Homeland Security has been quite flexible in allowing states an extension for implementation, and I commend the Department for this.

I have two main concerns about implementation of REAL ID. The first is the cost to states. I hope we in Congress can work on all possible ways to aid states in the drastic costs associated with meeting the REAL ID requirements.

I am also concerned that DHS has not executed sufficient public outreach on the REAL ID. Many citizens have serious privacy concerns about this, and although I believe the privacy of every American will continue to be protected, I do not feel as though DHS has been able to sufficiently get that point across. It is an important concern of the American people, and I hope DHS will work hard to ensure they understand that this is in no way intended as a national identification card.

As many of you know, I have had serious concerns about the implementation of the Western Hemisphere Travel Initiative, W.H.T.I.

Although I understand the importance of these new regulations, I continue to be concerned about the effect they will have on travel and trade with Canada.

Alaska is the only state in which residents must drive through another country in order to reach another state. Many border communities in Alaska rely heavily on travel to and from Canada on a daily basis. As a matter of fact, if a resident of Haines, Alaska wanted to drive to Anchorage, another city in their own state, they would have to drive through Canada and re-enter Alaska.

I was pleased that Secretary Chertoff sent DHS staff to Alaska last month to visit with some of our border communities about the new and upcoming border document requirements.

It was very helpful to have DHS personnel there to answer questions these communities had, and to listen to the unique aspects of these communities that must be kept in mind when implementing new requirements.

Many in Alaska do not have the correct information when it comes to what is currently required at the border, and what will be required once WHTI is fully implemented. Again, as with REAL ID, I am concerned that DHS is not doing enough public outreach to these communities to ensure they, and all Americans, understand exactly what is needed now and what will be needed in the future.

I hope DHS will move forward with aggressive public outreach campaigns so that we can avoid any delays or problems at our borders.

I am also concerned about another backlog for passports as the land and sea implementation date nears.

As you know, the State Department suffered a severe backlog of passport requests as the air implementation deadline neared. Some waited 12 to 13 weeks for their passports, and travel, in some cases, was impeded. So much so in fact, that passport requirements had to be changed during the backlog to accommodate those who had applied for, but had not yet received their passports.

Before air implementation, I was assured by the State Department that they were well prepared for the increase in passport requests they would receive. This was not the case. I hope the State Department is better prepared this time to accommodate those requesting passports and passcards.

Thanks you, and I look forward to your testimony today.

Statement for the Record

**Stewart Baker
Assistant Secretary for Policy
Department of Homeland Security**

Before the

**Subcommittee on Oversight of Government Management, the Federal Workforce,
and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate**

April 29, 2008

Chairman Akaka, Ranking Member Voinovich, and distinguished members of this Subcommittee, I am pleased to appear before you today to discuss how the Department of Homeland Security (DHS) plans to implement the REAL ID Act and the Western Hemisphere Travel Initiative (WHTI), two initiatives resulting from 9/11 Commission recommendations designed to secure identification and protect the citizens of our country.

Background

At DHS, part of our job is to make it difficult for terrorists to travel into the United States. We need to do that while at the same time allowing innocent travelers to move quickly and smoothly to their destinations.

Restricting terrorist travel requires two things: 1) good information about our adversaries, so we know who should get special scrutiny; and 2) a good way to confirm the identity of travelers, so that our adversaries cannot avoid scrutiny by shedding one identity and assuming another. The Department has been asked to testify often about the first requirement, but there has been less focus in public on the vital role that secure identification plays in fighting terrorism. So I appreciate the opportunity to talk about

this issue, and the central role that REAL ID and WHTI play in our counterterrorism mission.

First, false identification has long been a threat to our security. For years, loopholes in our identification documents systems have been exploited for purposes of breaking the law. Many of us have been the victims of identity theft, which is often made possible by forged identity documents. The same criminal networks that helped illegal immigrants obtain fraudulent identity documents were put to use by the terrorists who attacked us on 9/11. Eighteen of the nineteen hijackers carried government-issued IDs, many obtained fraudulently. This led the 9/11 Commission to conclude, “for terrorists, travel documents are like weapons.”¹ The Commission made two important recommendations to address this problem: 1) the federal government should set standards for the issuance of sources of identification, such as driver’s licenses; and, 2) it should ensure that people crossing the border are not exempt from carrying secure identification.

To carry out these recommendations, Congress has enacted and DHS is implementing two legal requirements. The REAL ID Act sets standards for the security of the documents most people use to identify themselves inside the United States; its purpose is to make identity theft and fraud – by terrorists and others – much more difficult. The Western Hemisphere Travel Initiative requires that everyone entering the United States have a passport or acceptable identity and citizenship documentation. WHTI is designed to ensure that when we encounter travelers at the border, they have a document that confirms their identity and citizenship.

REAL ID

In this country the document that most people use to identify themselves is not issued by the federal government and was not originally intended as an identity document. State driver’s licenses were originally designed to verify that the holder had passed a driving test and was allowed to drive. But over the years they have become the primary identification document for almost everyone over the age of 16. They are used

¹ The 9/11 Commission Report, p. 384

to buy liquor and cigarettes, to enter federal buildings, to board airplanes, and to cash checks.

Our reliance on licenses issued by fifty-six jurisdictions to prove identity can create special problems. More important, there can be fifty-six different standards and fifty-six different notions of how much security should be built into the document and the issuance process, based on fifty-six different state and territory budgets and policies. Given the ease with which people travel interstate, it is all too easy for criminals and terrorists to exploit security holes in the weakest state license procedures. This seems to be what Timothy McVeigh did. In 1995, he was able to create a fake South Dakota license with ease; all it took was a manual typewriter and a kitchen iron. He used the license to rent a Ryder truck in Oklahoma and destroy the Murrah Federal Building.

After Oklahoma City and 9/11, the lesson was clear. As the 9/11 Commission report said, “(f)raud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.”² The 9/11 Commission’s recommendation was equally direct: “The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses.”³ That is what REAL ID does.

REAL ID does not create a national identification card. It does not establish a national database. REAL ID simply sets minimum standards for the identity documents that federal officers must rely upon every day to make security decisions about who gets on planes or enters federal facilities.

Implementation of REAL ID has been steady, and it continues today. The Act was enacted on May 11, 2005. A proposed rule generated over 21,000 public comments, and we worked with the states to address concerns about the costs of implementation. The states responsible for adopting security measures asked for more time and flexibility in the regulation, and we granted both, reducing the costs to states by 73 percent. We

² The 9/11 Commission Report, p. 390.

³ Id.

accomplished all of this without sacrificing security. The final rule was published January 29, 2008, and the minimum standards for the issuance of driver's licenses are now set.

The regulation requires states to meet some of those standards by January 1, 2010. All 50 states, the District of Columbia, and five territories have been granted extensions for the purpose of complying with the regulation. Many states are well on their way to meeting these standards, demonstrating their commitment to security.

A good example is Maine. The decision to seek an extension of the deadline provoked a healthy debate about license security in that state. The governor decided that the additional security measures set by REAL ID made sense for Maine. He proposed legislation to implement them, and it is now law. We were pleased to work constructively with Governor Baldacci on this issue, and we commend him and the state legislature for their work.

In some ways, this is typical of our experience. While views about REAL ID may differ, no state wants their documents exploited by terrorists or identity thieves. Once the debate gets beyond bumper stickers and focuses on specific security measures, agreement can come quickly. We look forward to continuing this focus on practical security improvements in all states as we move forward with REAL ID implementation.

Western Hemisphere Travel Initiative

It's remarkable that, in an age of terrorism, it was possible to travel to the United States without a passport or other secure document providing strong proof of identity and citizenship. And plenty of travelers tried to exploit this loophole. In fiscal year 2007, more than 30,000 individuals were apprehended at ports of entry trying to cross the border with false documents.

With Congress's help, we have been steadily plugging this security hole. WHTI designates specific identity and citizenship documents that can be used to gain entry at our land, sea, and air ports of entry. Relying on this Congressional guidance, we have ended the practice of flying into the United States without a passport or similar document, and more recently ended the policy that allows travelers to cross our land

border without identification. On January 23, 2007, the WHTI Air Rule required all arriving air travelers, regardless of age, to present a passport or other acceptable secure document for entry into the United States. Compliance is over 99 percent for citizens of the United States, Canada, and Bermuda, showing that Americans and foreign nationals alike are willing to obtain the necessary documents to enter or re-enter the U.S. once the requirements are known and enforced.

The next step was to improve security at our land border. Until January 31 of this year, the United States permitted entry by oral declaration alone. This was a serious security risk that we are pleased to have eliminated – and without the traffic jams and delays that many predicted. Compliance with the new policy has been good, again demonstrating that a firm deadline, widely advertised, is the best way to avoid confusion and secure cooperation when we raise security standards at the border.

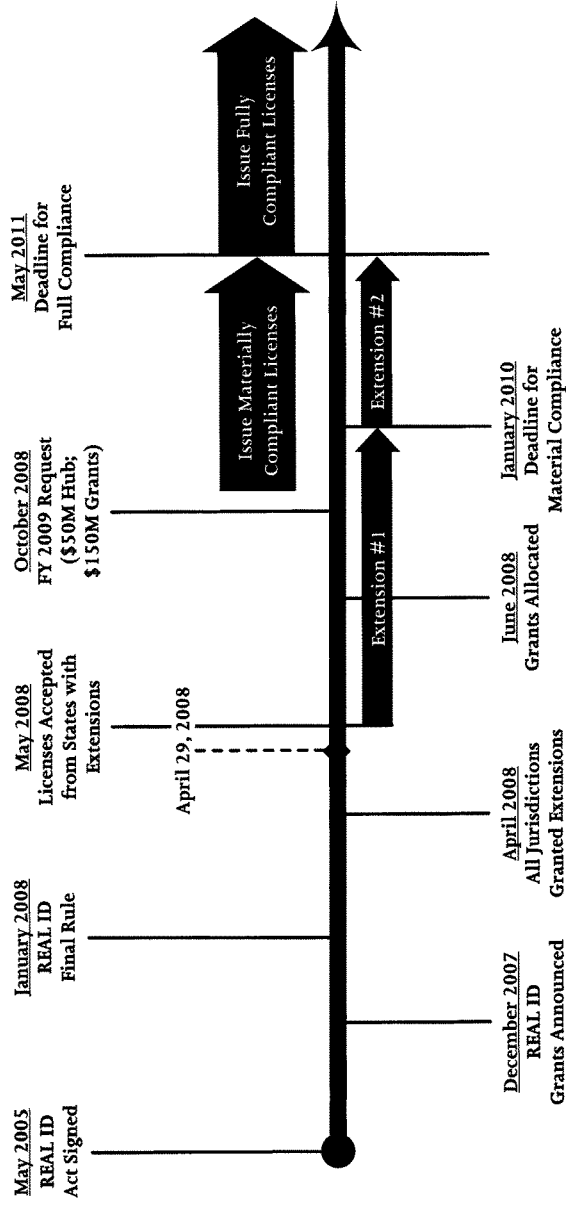
The next step is to implement the passport or similar document requirement that Congress enacted. We recognize that, for border communities, this is a big step, and we have a responsibility to make this transition as easy as possible. We are working with the Department of State, which will produce passport cards that will reduce the cost of passports for people who live along the border. We also are continuing to work with state DMVs and Canadian provinces to develop enhanced drivers licenses acceptable for border crossing purposes (and compatible with REAL ID standards).

We will be prepared to implement this requirement as soon as Congress allows us to do so. By law, we may not implement this important security reform before June 1, 2009. Over the next 13 months, we will complete the infrastructure at our ports of entry and work to ensure that travelers have access to WHTI-compliant documents.

Conclusion

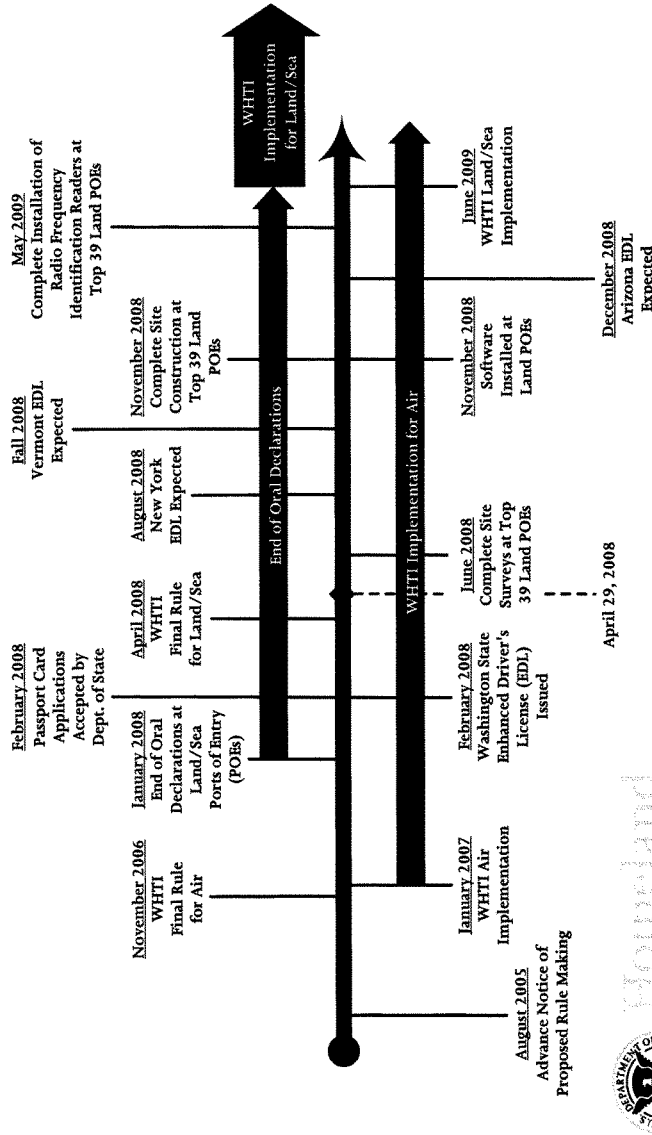
We continue to engage stakeholders as we institute nationwide secure identification. We regularly communicate with state DMVs and Canadian provinces in an effort to develop appropriate requirements, guidance, and milestones that ensure timely implementation. The development, production, and distribution of quality, physically secure documents, is an expensive process, as it requires replacing old document production systems and infrastructure; however, the investment will pay healthy dividends towards the security of this country.

REAL ID Timeline



Homeland Security

Western Hemisphere Travel Initiative (WHTI) Timeline



NOTE: DHS continually refines this schedule



Homeland Security

**TESTIMONY OF
DERWOOD K. STAEBEN, SENIOR ADVISOR,
WESTERN HEMISPHERE TRAVEL INITIATIVE
BUREAU OF CONSULAR AFFAIRS
U.S. DEPARTMENT OF STATE**

**SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON OVERSIGHT OF
GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND
THE DISTRICT OF COLUMBIA**

**“THE IMPACT OF IMPLEMENTATION: A REVIEW OF THE REAL ID
ACT AND THE WESTERN HEMISPHERE TRAVEL INITIATIVE”**

**TUESDAY, APRIL 29, 2008
9:30 A.M.
DIRKSEN SENATE OFFICE BUILDING
ROOM 342**

Chairman Akaka, Ranking Member Voinovich, Distinguished Members,

Thank you for this opportunity to discuss the Western Hemisphere Travel Initiative (WHTI) and the role of the State Department in providing American citizens with reliable, secure passports and soon passport cards so that American citizens can comply with the new travel document requirements under WHTI.

In passing the Intelligence Reform and Terrorism Prevention Act of 2004, Congress required the Departments of Homeland Security and State to develop and implement a plan to require **all** travelers, U.S. citizens and foreign nationals alike, to present a passport or other secure document to denote identity and citizenship when entering the United States. The goal of the program is to strengthen border security and facilitate entry into the United States for U.S. citizens and legitimate foreign travelers.

To meet this mandate, the State Department is adjudicating and issuing passports to eligible U.S. citizens in record numbers; we have also begun to accept passport card applications and will begin issuing the cards in June. Our workload indicates that Americans are aware of the new document

requirements under WHTI and are coming into compliance with them. In FY 2007, the Department issued 18.4 million passports — a 50 percent increase over FY 2006 and an 80 percent increase over FY 2005. Thus far in FY 2008, there is a seven percent increase in passport demand over the same time period in FY 2007. We are meeting this demand processing routine passport applications well within our four week service standards for routine applications and two weeks for expedited applications.

Increasing Passport Production Capacity

Today's record-breaking demand is not an anomaly. Implementation of WHTI has created a permanent increase in passport demand, and we believe it will continue to grow. More than 88 million Americans currently have passports — about 28 percent of all citizens. Our initial workload projections for FY 2008 indicated demand for U.S. passports could reach as high as 26-29 million in 2008, 30 million in FY 2009, 36 million in FY 2010. Although we continue to prepare for that possibility, our current workload indicates that FY 2008 demand may be more in the range of 20 - 21 million passports. We attribute this decline to the recent congressional action mandating implementation of the final phase of the land and sea rule of WHTI to no earlier than June 1, 2009. This legislation passed subsequent to our demand study, and we fully expect demand to increase as we approach the June 1, 2009 implementation date.

The Department is implementing a long-term strategy to provide the staffing levels and infrastructure necessary to meet the increased passport demand generated by WHTI. To that end, the Department has hired hundreds of additional passport adjudicators and support staff and continues to recruit aggressively. The Department has also established a reserve corps of passport adjudicators to supplement our full-time Passport Services staff, providing the ability to react quickly to demand surges.

To increase production capacity, we opened a mega-processing center in March 2007 in Hot Springs, Arkansas. The Arkansas Processing Center (APC) differs from our other passport centers in that it focuses solely on printing and mailing passports. It will have the capacity to produce 10 million travel documents per year. The centralization of passport printing and mailing frees up space and personnel at our existing passport agencies to focus on the critical areas of customer service and adjudication, and to process more passport applications. Using APC as a model, we expect to open a second printing and mailing facility in Tucson in

May. This facility, like the one in Arkansas, will have the capacity to produce over 10 million travel documents per year.

Expanding Passport Acceptance Facilities

One of the key objectives of the Department is to ensure that passport services are provided in a secure, efficient and courteous manner. At the same time, we need to make our application process as convenient as possible for citizens. The most convenient and least expensive way to apply for a passport is at a passport acceptance facility or by mail for adult renewals. A full 90 percent of our passport applications are submitted via an acceptance agency or mailed directly to us. We have significantly expanded our network of passport acceptance agents in the last several years. Currently, there are more than 9,400 sites at post offices, clerks of court and other government offices nationwide where citizens can apply for a passport.

We have heard the concern of border residents, and are aggressively recruiting acceptance facilities along the northern and southern border regions. Since the Administration announced WHTI to the public in April 2005, the Department has increased its network of acceptance facilities by more than 2,400 facilities, many of which are located along the borders.

There are currently 301 acceptance facilities located within 25 miles of the U.S.-Canada border and 128 acceptance facilities located within 25 miles of the U.S. Mexico border. In fact, since the end of calendar year 2006, we increased the total number of facilities within 25 miles of the Northern border by 5 percent and the total number of facilities within 25 miles of the Southern border by 15 percent.

Our largest acceptance partner, the United States Postal Service (USPS) has held successful passport acceptance events in several border regions around the country. These "Passport Fairs" help meet high customer demand for passports in underserved areas. The USPS plans more of these passport acceptance events in the future, leading up to the June 1, 2009 implementation date.

We are continuing our recruitment efforts in the southern and northern border regions and continue to work with our acceptance agent partners to make the passport application process easily accessible to all Americans.

Passport Agencies

In addition to our 18 passport facilities, the Department is also opening three new Passport Agencies in Detroit, Dallas and Minneapolis to serve border communities readying themselves for WHTI land and sea rule requirements. These agencies will provide personal, direct passport services to customers. Unlike our regional passport agencies and centers, these new agencies are primarily counter agencies designed to meet the urgent travel needs of citizens. These agencies will have the capability of serving 650 customers per day, issuing passport books and cards on-site to qualifying applicants.

The Department looked at several criteria to determine the location of these new passport agencies, including location, distance from an existing passport agency/center, volume of current passport applicants, service and volume of international and domestic departures, and an upward trend in population growth.

Along the northern border, we are expanding our agencies in Seattle and Chicago, and are doubling the size and adjudicative capacity of the National Passport Center in Portsmouth, New Hampshire. Along the southern border, we are expanding our facilities in Houston, Miami, and New Orleans.

Passport Card

In response to the expressed concerns of American citizens who live in border communities for a more portable and less expensive document than the traditional passport book, we will begin issuing a wallet-sized passport card in June with full production beginning in July. The passport card will facilitate entry and expedite document processing at U.S. land and sea ports-of-entry when arriving from Canada, Mexico, the Caribbean region and Bermuda. The card may not be used to travel by air. It will otherwise carry the rights and privileges of the U.S. passport book and will be adjudicated to the exact same standards. The passport card is designed for the specific needs of border resident communities and is not a globally interoperable travel document as is the traditional passport book.

The card will have the same validity period as a passport book: 10 years for an adult, five years for children 15 and younger. For adults who already have a

passport book, they may apply for the card as a passport renewal and pay only \$20. First-time applicants pay \$45 for adult cards and \$35 for children.

To meet the operational needs of Customs and Border Protection (CBP) and to facilitate document processing at U.S. ports-of-entry, the Department of Homeland Security selected vicinity-read radio frequency identification technology (RFID) for use in the passport card as well as their Trusted Traveler Card program and for use in the Enhanced Driver's License (EDL). The passport card will therefore contain a vicinity-read (RFID) chip which will link the card to a stored record in a secure DHS database. There will be no identifying information on the RFID chip, only a number will be read at a distance by an authorized CBP reader mounted alongside the traffic lane at ports of entry. The reader will automatically retrieve the personal data from the secure database and populate the officers' screens as the vehicle approaches.

This card is the result of an inter-agency effort to produce for the American public the most durable, secure and tamper-resistant card possible, using state of the art laser engraving and security features. To ensure the durability for the ten-year validity period, we have chosen to make the card of a polycarbonate composite material rather than plastic as are most ID and credit cards currently in circulation. The Department has benefited from the collaborative efforts of the National Institute of Standards and Technology (NIST), Sandia National Labs, the DHS Forensics Document Lab (FDL), and, of course, colleagues at CBP. To ensure the durability and integrity of the card, the Department subjected the test cards to a full battery of durability and chemical testing at Sandia National labs in accordance with guidance from NIST. In consultation with the DHS/FDL, the card is designed with multiple layers of overt, covert and forensic security features to guard against tampering and counterfeiting and to provide easy visual verification to CBP officers.

To encourage Americans to apply for passports and cards and to level demand during our traditional peak season, we began accepting applications for the passport card on February 1, 2008. Given the volume of applications to date, particularly from the southern Border States, there is clearly a demand for the card. As of April 9, the Department has received more than 143,000 applications for the card. These applications have been adjudicated and will be produced in the order in which they were received. The Department expects to begin issuing these cards in June and to be in full production by July.

Public Outreach

Public outreach is the key to successful implementation of WHTI. The Department awarded a contract to a marketing firm on March 3 to help inform Americans about WHTI requirements, the new passport card, the differences between the card and the traditional book, and to encourage them to apply for their documents early — well in advance of their planned trips and certainly well in advance of June 1, 2009.

As we move toward full WHTI implementation, the Department of State, working with our colleagues at DHS, will continue public education efforts which will include greater advertising with local media in areas that specifically target those persons who use the land borders. We will also continue sponsoring informative sessions with business associations and civil organizations.

The frontline of our outreach efforts will be the more than 10,000 passport acceptance agents in every corner of the United States, especially along our border, who will continue to reach out to their customers and neighbors with passport fairs, press releases as well as during visits to their post offices, town halls and libraries.

Conclusion

We understand that our national security is dependent on our economic well being and that of our neighbors to the north and south. We also understand that the economic well being of the border communities depends on the free flow of people and goods.

As we have stated since we announced WHTI three years ago this month, we are committed to implementing the WHTI in a rational and intelligent manner, one that facilitates trade, travel and tourism while enhancing our national security.

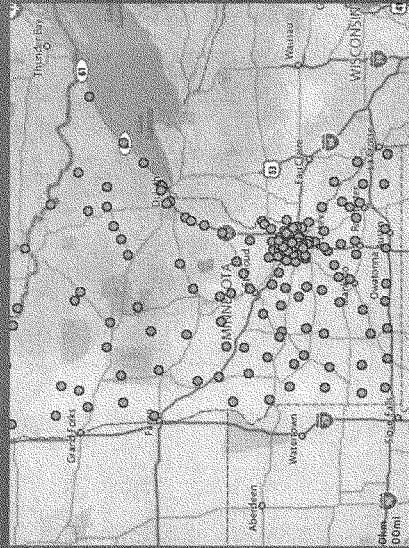
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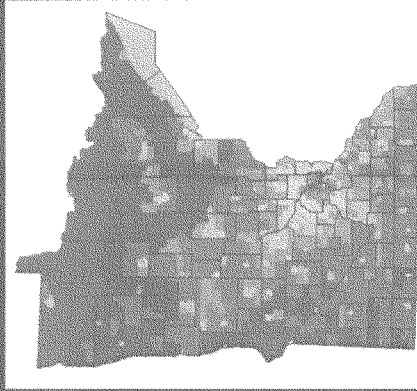
MINNESOTA



Passport Acceptance Facilities



Population Density





NATIONAL CONFERENCE
of STATE LEGISLATURES
The Forum for America's Ideas

TESTIMONY OF
REPRESENTATIVE DONNA STONE
DELAWARE GENERAL ASSEMBLY

ON BEHALF OF THE
NATIONAL CONFERENCE OF STATE LEGISLATURES
REGARDING

**THE IMPACT OF IMPLEMENTATION: A REVIEW OF THE REAL ID
ACT AND THE WESTERN HEMISPHERE TRAVEL INITIATIVE**

BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT
MANAGEMENT, THE FEDERAL
WORKFORCE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS,
UNITED STATES SENATE

APRIL 29, 2008



Good morning Chairman Akaka, Ranking Member Voinovich and distinguished members of the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. I am Representative Donna Stone, President of the National Conference of State Legislatures (NCSL) and a member of the Delaware House of Representatives. I appear before you today on behalf of NCSL, a bi-partisan organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories, and the District of Columbia.

Mr. Chairman, I would like to thank you for the opportunity to testify today on the state impact of implementing the REAL ID and the Western Hemisphere Travel Initiative (WHTI). Legislators across the country share the goal of improving the integrity and security of state-issued identification, but they do have some concerns with the implementation of both of these programs. We hope to continue the dialogue with you and this committee as you and the implementing departments consider the path forward for both efforts.

REAL ID

As you know, the REAL ID Act of 2005 requires states to adopt federal standards for state-issued driver's licenses and identification cards by May 11, 2008. If they do not, the federal government will not accept the driver's licenses or identification cards for federal purposes—boarding commercial aircraft, entering a federal building or nuclear power plant, or other purposes as determined by the secretary of the Department of Homeland Security (DHS).

While NCSL had numerous concerns with the draft regulation to implement the Act, we commend the Department of Homeland Security (DHS) for its efforts in the final regulations to provide states much needed flexibility and to reduce, per DHS estimates, state 10-year costs from over \$14 billion down to \$4 billion.

In particular, the final regulations reduce the implementation burden on states in the following ways:

- Provide states additional time to reenroll existing driver's license and identification card holders;
- Allow for an age-based progressive enrollment;
- Provide flexibility on security features of driver's licenses and identification cards;



- Allow states to determine which employees will be subject to background checks; and
- Establish a flexible waiver and exceptions process.

However, the road to successful implementation is long, up hill and in some places has rocky terrain due to a number of uncertainties that still exist, which include:

- the federal government's commitment to fund the REAL ID;
- the connectivity to and governance of the databases, including privacy protections, that states will need to access in order to electronically verify the validity of identity documents;
- the true cost of the REAL ID, including the user fees states will have to pay when accessing these databases;
- privacy protections; and
- the department's recognition of state legislatures' critical role in implementation of the REAL ID.

Commitment to Fund the REAL ID

To date, Congress has appropriated only \$90 million to assist states with implementation of the REAL ID, and a portion of these funds are now targeted to fund what many state legislators considered a federal responsibility, the hub—how states will connect to the necessary databases.

It is critical to successful implementation that states see a commitment on the part of the federal government to pay for the state portion of this unfunded mandate. NCSL has requested that the Administration and Congress provide at least \$1 billion in fiscal year 2008 to states for start-up cost. To date, these requests have gone unanswered.

In fact, the President's budget proposal for FY 2009 zeroes out the grant program for states that Congress created for FY 2008 and instead makes REAL ID one of the eligible programs for a new \$110 million National Security and Terrorism Prevention Grant program, while at the same time slashing the SHSGP program by 78% (FY 2008 appropriations were \$890 million and the President requested \$200 million for FY 2009). REAL ID represents federal standards, and they deserve federal dollars.



Furthermore, the cost of unfunded federal mandates, like REAL ID, is now conservatively estimated to be \$31.9 billion for FY 2008—the highest level since the passage of the Unfunded Mandate Reform Act. The time is long past to cease cost-shifts to states and fund mandated standards like REAL ID.

Connectivity to and Governance of Electronic Databases

The REAL ID requires states to electronically verify the validity of identification documents presented by every individual applying for a REAL ID-compliant credential. This process will require states to have access to at least five national databases. While we recognize that some, but not all, of these databases do exist, their availability and reliability on a national level have yet to be tested. In addition for several of these systems, the method by which states will connect to these systems and the governance structure for information sharing has yet to be resolved, causing much consternation.

In order to effectively implement the REAL ID, we needed these systems available and tested not yesterday, not last week, but last year. But in order to do that a governance structure which all 56 U.S. licensing jurisdictions can agree to has to be established. The lack of a governance structure makes it difficult for me as a state legislator to respond to questions I am receiving from my constituents such as: Who will have access to my information? How will it be protected? Is this a national database?

While we appreciate the department's recognition that states will have to establish most of these policies, again, these decisions cannot be made overnight and as a result will be a challenge to implementation.

The True Cost of the REAL ID

DHS estimated in the final regulations that it will cost states \$3.9 billion to implement the REAL ID; however, NCSL fears those costs could well be higher. The \$3.9 billion estimate assumes that only 75 percent of individuals currently holding a driver's license or identification card will apply for a REAL ID; this excludes the majority of individuals with a U.S. Passport or those who do not fly



commercially. For Passport holders to have this option, their state of residence must operate a two-tiered system, offering both a REAL ID-compliant and a non-compliant card. Does the \$3.9 billion take into account the cost states face if they chose to operate a two-tiered system? Further, does the \$3.9 billion take into account the fees states may face in order to access the five electronic databases for verifying applicant information or the FBI databases required for employee background checks? This concern with the fees will become an even bigger issue in October of this year when the transaction fee on one of the existing systems—the Systematic Alien Verification Entitlement (SAVE) system—will increase from \$.05 to \$.50 for an initial query.

Because of all of these unknown costs, it is difficult for states to project the true fiscal impact of implementing the REAL ID. State legislators are required to balance their budgets and must pay for a host of high priorities that compete for state attention and funds such as other homeland security priorities, critical infrastructure, transportation, education and health care/Medicaid. It is critical that we have the answers to these questions.

State Legislatures' Role in Implementing the REAL ID

State legislatures' traditional roles—lawmaking, oversight, the appropriation of funds, and information gathering—are critical in the implementation of the REAL ID. The state legislature:

- Exercises constitutional and statutory oversight to review and evaluate state programs in order to coordinate the state's activities.
- Appropriates state funds and ensures that all federal funds are appropriated according to state law. This becomes extremely critical to ensure the long term viability of new programs as future federal funding cannot be predicted and federal funds may require a maintenance-of-effort contribution from the state.
- Conducts hearings or other public information-gathering activities to determine what actions the state will take on a given issue.

I feel that the lack of understanding by DHS of the role of the state legislature in the REAL ID will continue to be a barrier to implementation unless something changes. For example, Secretary Chertoff recently established a task force to address concerns raised by governors relating to implementation of the REAL ID and in particular how the state grant funds were to be distributed.



Because state legislators play a key role in the future of the REAL ID, NCSL's leadership asked staff to contact the department's Office of Intergovernmental Programs to request that legislators be included in those discussions or that a similar activity be established for state legislators. Our request was denied even though it is state legislators, in their capacity as appropriators, who will have to find a way to pay for this mandate in the midst of competing state priorities; even though it is state legislators who will debate and make any necessary changes to state laws; and even though it is state legislators who will hold oversight hearings on the implementation of the program.

State legislatures are essential partners in the successful implementation of the REAL ID Act. While I commend the department for recognizing the need for improved and continued dialogue with state policymakers, there needs to be an equal exchange between the secretary and both the executive and legislative branches of state government in order to ensure successful implementation of the Act.

State Legislative Activity on the REAL ID

In their capacity as policymakers, legislators in 48 states and the District of Columbia have proposed approximately 207 pieces of legislation related to REAL ID and, of those, 42 states have considered legislation that either asserted the state's opposition to REAL ID or urged Congress to amend or repeal the Act.

As of April 17, 2008, anti-REAL ID measures had passed in twenty-one states. Seven of those states—Idaho, Maine, Montana, New Hampshire, Oklahoma, South Carolina and Washington—passed bills that forbid state agencies from complying with REAL ID. Legislators in several states are currently considering similar proposals.

However, not all responses to the REAL ID Act have been negative. Since 2005, legislators in 19 states have proposed measures that would bring their states closer to compliance with REAL ID. Lawmakers in five states—Indiana, Michigan, Nevada, Ohio and Wisconsin—have passed REAL ID compliance related laws.

NCSL's Policy on the REAL ID



Given the amount of state legislative activity, it should not come as a surprise that the REAL ID has been the issue of many hours of discussion and debate at NCSL meetings over the past several years, which has resulted in the following policy position:

NCSL calls on Congress to repeal the REAL ID Act and reinstitute the negotiated rulemaking process created under the Intelligence Reform and Terrorism Prevention Act [IRTPA] of 2004 (P.L. 108-458) and fully fund the requirements of the final rule promulgated under the negotiated rulemaking process;

NCSL's policy statements on REAL ID and a letter dated April 4th in support of S.717 are appended.

While NCSL recognizes the final regulations provide states additional time and flexibility to implement the REAL ID, the negotiated rulemaking could address the issues I have raised today and others, which NCSL raised last year before this committee, such as:

- Waiving the verification requirements for applicants who already have been through an identity verification process conducted by the federal government, such as individuals with military credentials, U.S. Passports, Transportation Worker Identification Credentials, or other federal identification cards.
- Prohibit federal agencies from charging states transaction fees for accessing the required electronic verification systems.
- Institute a legislative trigger that would automatically release states from complying with any REAL ID provision in any fiscal year in which the Congress fails to appropriate funds for these purposes.

In addition, a negotiated rulemaking process could result in an acceptable funding mechanism because the outcome would be the product of a true partnership. Further, it is possible that the negotiated rulemaking could result in new standards implemented more quickly than the current timetable set forth in the REAL ID final rules. In fact, we started with all the promises of a collaborative, negotiated rulemaking process following enactment of IRTPA of 2004; unfortunately, REAL ID substituted coercive federalism for collaborative federalism.



WESTERN HEMISPHERE TRAVEL INITIATIVE

State legislators have expressed concern about WHTI for several years. As with REAL ID, state legislators support the border security goals of WHTI but are concerned that some policy and implementation choices may unnecessarily and adversely affect travel, trade, and tourism, all of which are critical economic drivers for state economies throughout the nation. We are also concerned that WHTI and REAL ID are being conflated and confused as initiatives and identity credential programs.

The Departments of Homeland Security and State recently issued final regulations regarding the documents necessary for entering the United States at land and sea ports-of-entry. Since Congress legislatively stipulated that WHTI cannot be implemented at land and sea ports until June 1, 2009, having final regulations at this time seems to allow ample time for public education efforts and a smooth implementation; we hope that proves the case.

Nonetheless, many state legislators have expressed concerns about some implementation issues, particularly as they relate to technology; Passports, Passcards, and costs; and the state Enhanced Driver's License (EDL) option that the Department of Homeland Security is making available through Memoranda of Agreement with various states.

Last week, at NCSL's Spring Forum in Washington, NCSL considered two new policy statements on WHTI implementation. The first policy was adopted and, in general, opposes federal mandates to use RFID in WHTI-compliant state-issued documents and the prospect of RFID use in the REAL ID program. The second related to the cost of Passport alternative documents. It was discussed and tabled for further action at NCSL's Annual Meeting this July. NCSL's policy statements on WHTI are appended for your reference.

In particular, NCSL is now on record expressing concern about plans to use different kinds of RFID in Passcards or EDLs than are used in Passports. While measures to make Passports affordable is perhaps a congressional policy decision, use of RFID is an implementation choice being made by the Departments. The RFID found in traditional State Department-issued Passports is a short-range version that uses basic access control; however, the technology that DHS is



requiring states to use in EDLs is a stronger RFID and DHS is denying state consideration of encryption.

The second, tabled policy asserts that the new Passcard—which is intended to provide a lower cost, \$45 alternative to traditional Passports—is of limited and misleading use since it will only be valid for land and sea border crossing but not for air travel in the Western Hemisphere. The resolution suggests that Congress instead take action to cut the cost of traditional passports in lieu of the entirely new Passcard program and supports congressional establishment of a federal income tax credit to halve the cost of a Passport. At NCSL's Annual Meeting this summer, state legislators will examine other means of reducing costs of Passports as this policy is revisited.

DHS is using the economic impact of WHTI on border communities to pressure border states into acting on EDLs. DHS is not truly negotiating with states on EDLs and continues to ignore the importance and role of legislatures in setting credentialing and privacy policy, frameworks for state programs, and funding agency operations. Instead, it has been reported to NCSL that DHS is presenting states with a cookie cutter plan for EDLs, getting state administrator agreement, and then pushing “must pass” legislation through the legislature.

Don't mistake me, NCSL appreciates and supports the notion of working with states to create EDLs so that this state ID credential can continue to be used to cross borders as they have been for years. The State of Washington has recently concluded a Memorandum of Agreement with DHS and launched the first EDL program. However, the beauty of this EDL approach to WHTI is the opportunity it provides to adapt to a particular state's needs, licensing systems, and border-crossing patterns. Simply taking the Washington model and imposing it upon another state, which is the approach we understand DHS is now taking, is not acceptable and completely wastes this excellent opportunity to build a state-federal partnership to meet the goals of WHTI.

Finally, many state legislators have expressed concern about the way in which DHS seems to conflate REAL ID and WHTI, blurring lines between the two programs, and encouraging states who have legislatively opposed REAL ID to implement REAL ID by way of WHTI-compliant IDs.



This seems disingenuous, perhaps duplicitous, and certainly disrespects decisions taken by state legislatures.

Mr. Chairman, in closing I would like to reiterate that state legislatures are committed to working with federal policymakers to ensure the security and integrity of identity documents. However, we see the road to REAL ID as being closed for construction and S. 717 as the solution and the new direction for finalizing federal standards for state issued driver's licenses and identification cards. For WHTI, the road is bumpy at present, but if the federal government chooses the proper route, a smoother ride is still possible.

I thank you for this opportunity to testify and look forward to questions from members of the subcommittee.

Appendices

NCSL Policy on Policy on Implementation of the REAL ID

NCSL Urges Congress to Fix and Fund the REAL ID Action Calendar Resolution

NCSL Policy on the Western Hemisphere Travel Initiative

NCSL Opposes Federal Mandates to use RFID in State Documents Action Calendar Resolution

NCSL Letter of Support for S. 717 dated April 4, 2008



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Standing Committee on Transportation

Policy on Implementation of the REAL ID

On May 11, 2005, the REAL ID Act was enacted as part of supplemental spending bill (P.L. 109-13). Under the REAL ID Act, a state must implement new federal standards for the issuance of drivers licenses (DL) and identification cards (ID) by May 11, 2008 or the federal government will not recognize the state's DL/ID for federal purposes. The United States Department of Homeland Security is currently developing regulations to implement the Act. Congress is failing to provide adequate funds to implement the Act.

NCSL urges the federal government to:

- Maintain a definition of official purpose consistent with the underlying legislative intent. Establish an official process, which includes state legislatures, to consider future application.
- Provide states sufficient time for conversion of DLs/IDs issued after the underlying federal infrastructure is in place.
- Allow for states to self-certify as to their compliance with the requirements of the Act. DHS should involve states in the development of this process.
- Establish standards and do not set specific substrates for card security features.
- Allow for the display of an alternative address on the face of the license.
- Exempt documents related to verification of proof of principal residence from electronic verification, scanning and retention requirements.
- Make necessary improvements to the Systematic Alien Verification for Entitlements (SAVE) program and other federal systems necessary for the Act's implementation. These changes should be federally funded.
- Establish a state working group to ensure the appropriate functionality of the SAVE system for the purposes of the Act and to ensure that SAVE is to be used by any jurisdiction only for the purpose for which it is intended.
- Recognize that states issue other temporary licenses. Continue to allow states to use the same method of identifying those drivers.
- Require states to electronically verify identity documents only if the systems for verification are operational, reliable and federally funded.
- Provide states sufficient time to change record retention laws.
- Allow states to convert to front-end image capture as system contracts come up for renewal or upgrade.
- Allow for REAL-ID compliant DLs/IDs to be renewed through the mail or Internet, or other methods that states currently have available.
- Allow states to identify those staff that require security clearances as part of the self certification process, to include disqualifying factors. Allow new hires to be granted a provisional status.
- Access to state information, as it relates to an all-driver's system should be as a query and response and not wholesale penetration. Access must adhere to the Driver Privacy Protection Act (DPPA) as well as additional state requirements which may exist, and be limited to state issuance and law enforcement management.
- Provide federal funds for implementation and recognize the need for an annual appropriation to maintain the system. Federal appropriations must recognize and cover the costs of new requirements on states in support of federal security initiatives required by the Act.



- Repeal the REAL ID Act if Congress does not provide for full funding or the federal government does not provide for the points listed in this policy on or before December 31, 2007.

This policy replaces and supersedes the NCSL standing committee policy "Identity Security, Driver's Licenses and State Identification Cards."

July 2009



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

STANDING COMMITTEE ON
 TRANSPORTATION

Action Calendar Resolution
NCSL URGES CONGRESS TO FIX AND FUND THE REAL ID

WHEREAS, many states have been taking the necessary steps to modernize and improve the security of state-issued driver's licenses (DLs) and identification cards (IDs) since before September 11, 2001; and

WHEREAS, the 9/11 Commission recognized the importance of state issued driver's license and identification card security; and

WHEREAS, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) authorized the U.S. Secretary of Transportation to convene a group of elected state, local and federal officials, driver's license experts, and other interested parties to negotiate minimum standards for driver's licenses and identification cards;

WHEREAS, the negotiated rulemaking process established under the Intelligence Reform and Terrorism Prevention Act of 2004 provided states with the flexibility to provide safety and security to our citizens in an efficient and cost effective manner; and

WHEREAS, on May 11, 2005, the REAL ID Act (act) was enacted as part of a supplemental spending bill (P.L. 109-13); and

WHEREAS, the act repealed the negotiated rulemaking process established under the Intelligence Reform and Terrorism Prevention Act of 2004; and

WHEREAS, under the act, a state must implement new federal standards for the issuance of drivers licenses and identification cards by May 11, 2008 or the federal government will not recognize the state's DL/ID for federal purposes; and

WHEREAS, under the act, states must have access to five national identity document verification systems, of which only one is operational; and

WHEREAS, a comprehensive analysis of the act conducted by the National Conference of State Legislatures (NCSL), National Governors Association and the American Association of Motor Vehicle Administrators determined the act would cost states more than \$11 billion over its first five years of implementation, which includes a one-time, up front cost of \$1 billion; and

WHEREAS, the U.S. Department of Homeland Security (DHS) issued a Notice of Proposed Rulemaking (NPRM) to implement the Real ID (6 CFR Part 37) on March 9, 2007; and



WHEREAS, the NPRM does not adopt the necessary changes to the Real ID as outlined in the September 2006 report—The Real ID Act: National Impact Analysis—issued by NCSL, the National Governors Association and the American Association of Motor Vehicle Administrators; and

WHEREAS, DHS estimated in the NPRM the cost of implementation of the Real ID at \$23.1 billion over 10 years, of which \$10 billion to \$14 billion are costs to states; and

WHEREAS, DHS was expected to publish final regulations to implement the Real ID in August or September of 2007; and

WHEREAS, the May 11, 2008 deadline for the implementation of the act is rapidly approaching; and

WHEREAS, Congress and the Administration have failed to address the fatal shortcomings of the Real ID, including in the area of securing personal identification and biological data; and

WHEREAS, Congress and the Administration have failed to provide adequate funds to implement the act; and

WHEREAS, several members of Congress want to expand the use of the Real ID;

THEREFORE, BE IT RESOLVED, NCSL urges Congress to adopt the necessary changes to the Real ID as outlined in the September 2006 report—The Real ID Act: National Impact Analysis—issued by NCSL, the National Governors Association and the American Association of Motor Vehicle Administrators;

BE IT FURTHER RESOLVED, that NCSL urges the President and Congress to fully fund the federal government's obligations under the act to develop various document verifications systems for states;

BE IT FURTHER RESOLVED, that NCSL urges the President and Congress to provide at least \$1 billion in federal FY 2008 for up front costs to states to implement the Real ID;

BE IT FURTHER RESOLVED, that NCSL urges the President and Congress to fully fund state implementation of the Real ID through a grant program, which provides each state with a minimum grant award;

BE IT FURTHER RESOLVED, that if, by December 31, 2007, Congress does not provide at least \$1 billion in federal FY 2008 for up front costs to states to implement the Real ID, including in the area of securing personal identification and biological data, and adopt the necessary changes to the Real ID as outlined in the September 2006 report—The Real ID Act: National Impact Analysis— then NCSL calls on Congress to repeal the Real ID Act and reinstitute the negotiated rulemaking process created under the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and fully fund the requirements of the final rule promulgated under the negotiated rulemaking process; and

BE IT FURTHER RESOLVED, that NCSL urges Congress and the Administration to affirm their commitment of working with state legislatures to improve driver's license security standards; and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the President of the United States and to all the members of Congress.

Expires in August 2008



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

STANDING COMMITTEE ON
LABOR & ECONOMIC DEVELOPMENT

THE WESTERN HEMISPHERE TRAVEL INITIATIVE

The Western Hemisphere Travel Initiative (WHTI)

On April 5, 2005, the Departments of Homeland Security and State announced the Western Hemisphere Travel Initiative (WHTI) which would require all travelers to and from the United States to have a passport or other accepted document to enter or re-enter the United States. The federal government asserts that this initiative will increase the safety measures at the borders.

On September 1, 2005, the U.S. government published in the Federal Register an Advanced Notice of Proposed Rulemaking (ANPR) on the plan to implement the WHTI and opened a period of public comment on the plan.

The ANPR confirmed the U.S. Departments of Homeland Security and State have delayed and simplified the implementation of WHTI and now says that the rules will apply to all individuals traveling to the United States by air and by sea beginning December 31, 2006, and will apply to all individuals entering or re-entering the U.S. via its land border crossings as of December 31, 2007.

Impacts on Trade and Tourism

The WHTI as currently outlined will be a deterrent to travel and negatively impact the total number of border crossings, having significant implications for the economies of both Canada and the United States. The Canada–United States border relationship is a special one with more than 300,000 business people, tourists, and regular commuters traveling between Canada and the United States every day. On average \$1.1-billion in goods crosses the Canada–United States Border every day. It is estimated that fifty-six percent (56%) of same-day travelers from the United States, forty percent (40%) of same-day travelers from Canada, fifty percent (50%) of overnight travelers from the United States, and thirty percent (30%) of overnight travelers from Canada do not possess a passport.

A recent report prepared by Conference Board of Canada for the Canadian Tourism Commission estimates that this passport requirement would result in 3.5 million fewer trips into the United States from Canada by 2008 with a related



loss of \$785 million in potential tourism revenue. Likewise, the report estimates 7.7 million fewer trips by U.S. citizens into Canada and \$1.7 billion in lost revenues.

NCSL on Trade and Tourism

The National Conference of State Legislatures (NCSL) recognizes that tourism is a vital element of state economic development, diversification, and rural development programs as well as a leading services sector employer. As evidence of its importance to the U.S. economy, travel and tourism is the nation's largest export industry, ranks as the nation's third largest employer, and is the third largest retail sales industry. NCSL also acknowledges that free and open trade can bolster economies and increase standards of living and that measures that restrict the free flow of individuals and goods between the United States and Canada could negatively impact both economies.

Alternative Measures to the WHTI

NCSL applauds efforts by the U.S. Departments of Homeland Security and State to further secure America's borders and protect the well-being of U.S. residents and their property. However, NCSL strongly encourages the federal government to seek the least onerous measures possible where the U.S. Canada border is concerned in full recognition of the trade and tourism traffic that benefits the people and nations on both sides of that line. To this end, NCSL encourages the federal government to fully explore frequent border-crossing programs – such as NEXUS, FAST, and CANPASS – and the range of identity documentation or passport substitutes that could be employed. At the same time, NCSL implores the federal government – the U.S. Congress, the White House, and the U.S. Departments of Homeland Security and State – to fully and effectively consult with NCSL and state legislatures to ensure that state interests and concerns are factored into these border security plans. Further, NCSL supports a delay, if necessary, in the implementation of WHTI to ensure that federal action along America's northern border has a minimal effect on tourism, trade, citizens' way-of-life, and states' economies while achieving the goal of homeland security.

Effect on Southern Border Between United States and Mexico

NCSL acknowledges the importance of the cultural, economic and trade issues unique to the border between the United States and Mexico, and hereby expresses concern about the potential economic impact of the WHTI policy on the states which border Mexico. We urge that alternative measures to the WHTI be explored for the U.S.-Mexico border.

NCSL looks forward to working with the appropriate federal officials as they work to guarantee American security while sustaining American quality of life and commerce. To wit, NCSL's position shall be communicated, *inter alia*, to the Chairmen and Ranking members of the Senate Foreign Relations Committee, the Senate Homeland Security and Governmental Affairs Committee, the House Homeland Security Committee and the House International Relations Committee, as well as the President of the United States, the U.S. Secretary of State, and the U.S. Secretary of Homeland Security. NCSL also looks forward to working with the Prime Minister of Canada, the Deputy Prime Minister/Minister of Public Safety and Emergency Preparedness and the Minister of Foreign Affairs in Canada, as well as to the Governors, Premiers and legislative leaders of the states and provinces that share these common borders.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas
NCSL Opposes Federal Mandates to use RFID in State Documents
Communications, Financial Services & Interstate Commerce

Whereas, the federal government is taking a more active role in determining or influencing the technological standards for state issued identification documents. The federal government is attempting to mandate or influence the technological standards of sovereign state issued identification documents through the acts of Congress, the rule-making processes of the Departments of State and Homeland Security, or through both official or informal agreements with international organizations or initiatives such as the American Association of Motor Vehicle Administrators (AAMVA), the Security and Prosperity Partnership (SPP), or the United Nation's agency known as the International Civil Aviation Organization (ICAO).

Whereas, the initial version of the REAL ID Act, as introduced, would have required the states to enter into the AAMVA compact known as the Driver's License Agreement (DLA). This compact as drafted would put the international 501c3 AAMVA in charge of making technology decisions for state's sovereign driver's licenses. Such decisions would allow for AAMVA to determine such choices as to whether data could be encrypted, and whether Radio Frequency Identification Technology (RFID), or similar remote technology, would be required.

Whereas, in 2008, the final rules were published for both the Western Hemisphere Travel Initiative (WHTI) and REAL ID, which imposed technological standards onto states' driver's licenses for them to be acceptable for certain uses. While not specifically called for in the IRTP of 2004, the Department of Homeland Security is requiring states to embed RFID into a state's sovereign documents in order for them to be acceptable at ground border crossings under the WHTI. This places specific technological choices as having equal importance over the roles of identification and proof of citizenship, while leaving states with no flexibility or options in this area.

Whereas, the final rules for REAL ID, for now, both do not require encryption and do require the use of 2D bar code technology. The final rules for REAL ID, page 86, make clear however that "Moreover, in the future, DHS, in consultation with the States and DOT, and may consider technology alternatives to the PDF417 2D bar code that provide greater privacy protections after providing for public comment". REAL ID requiring the use of RFID in state documents in the future therefore remains an open possibility, and would require only non-binding consultation with States.

Whereas, the use of unencrypted, long range vicinity read RFID technology, in federal documents such as new "passport cards", NEXUS, and others, has been controversial for reasons of both security and privacy. The RFID chips in passports are also being assembled overseas in foreign countries such as Thailand, and have been found to be susceptible to a variety of technological security problems including hacking, cloning, and remote data interception. Whereas the use of RFID in federal passports has much to do with agreements between the United States and the ICAO, the States have entered into no such



Testimony of **Representative Donna Stone**
April 29, 2008

agreements. Despite this fact, current federal policy is being crafted in a manner that penalizes the States if they do not adopt this or similar technology.

Therefore, let it be resolved, that the National Conference of State Legislatures will urge the President, Congress, and the Departments of State, Transportation, and Homeland Security to not pass law, allow for federal policy, to use international organizations, or to enter into international agreements that mandate or attempt to influence the use of RFID, the specific kinds of RFID, or similar remote technology, into state or local identity documents.

Unanimously adopted by NCSL Standing Committee on Communications, Financial Services and Interstate Commerce on April 25, 2008.

Unanimously adopted at Spring Forum Business Meeting on April 26, 2008.



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

April 4, 2008

The Honorable Daniel K. Akaka
 United States Senate
 141 Hart Senate Office Building
 Washington, D.C. 20510

The Honorable John E. Sununu
 United States Senate
 111 Russell Senate Office Building
 Washington, D.C. 20510

Donna D. Stone
State Representative
Delaware
President, NCSL

Sharon A. Crouch Steidel
Director, Information Systems
Virginia House of Delegates
Staff Chair, NCSL

William T. Pound
Executive Director

Dear Senators Akaka and Sununu:

The National Conference of State Legislatures (NCSL) expresses its support for your legislation – S. 717, the Identification Security Enhancement Act of 2007 – that would repeal the REAL ID Act and reinstitute the negotiated rulemaking process that preceded it.

State legislators are extremely concerned about homeland security and place security and emergency preparedness as a very high policy and budgetary priority. State legislators share the goals of REAL ID and are committed to making sure that state-issued identity credentials are tamper-resistant, free from fraud and abuse, and reliable documents. Many state legislatures initiated efforts to improve state-issued driver's licenses even before the tragedy of September 11, 2001.

However, lacking the full policy and financial commitment of the federal government to ensure the success of the state-federal partnership needed to make REAL ID possible, NCSL now calls upon Congress to repeal REAL ID and reinstate the negotiated rule-making process. This approach will achieve our shared goals for security in a manner that respects states' rights, privacy protections, and fiscal responsibility.

Please have your staff contact Jeremy Meadows (202-624-8664; jeremy.meadows@ncsl.org) or Molly Ramsdell (202-624-3584; molly.ramsdell@ncsl.org) in NCSL's Washington office with any questions or concerns. Thank you for your courage to seek this reasoned approach to security measures. We look forward to working with you.

Sincerely,

Representative Donna D. Stone
 Delaware House of Representatives
 President

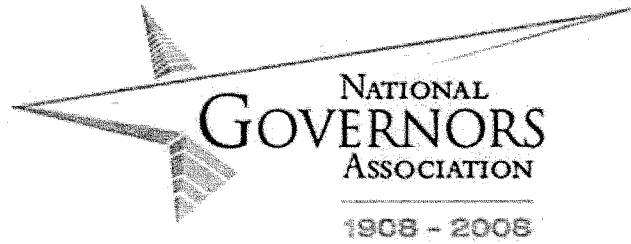
Speaker Joe Hackney
 North Carolina House of Representatives
 President-Elect

CC: Members, U.S. Senate Committee on the Judiciary
 Members, U.S. Senate Committee on Homeland Security & Governmental Affairs

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Statement of David Quam
Director, Federal Relations, National Governors Association

Before the Subcommittee on Oversight of Government Management, the Federal
Workforce and the District of Columbia, Committee on Homeland Security and
Governmental Affairs

United States Senate

The Impact of Implementation: A Review of the REAL ID Act and the Western
Hemisphere Travel Initiative

April 29, 2008

Chairman Akaka, Ranking Member Voinovich and distinguished members of the subcommittee, my name is David Quam and I am the director of federal relations for the National Governors Association (NGA). I appreciate the opportunity to appear before you today on behalf of NGA to discuss the issues surrounding state implementation of REAL ID and the Western Hemisphere Travel Initiative. While both issues are critical for states, most of my testimony will focus on REAL ID.

OVERVIEW:

The position of the National Governors Association regarding REAL ID remains “fix and fund.” REAL ID should be fixed through regulatory and, if necessary, congressional action to ensure it is workable, cost-effective and actually enhances the security and integrity of state driver’s licenses and identification cards. Final regulations for REAL ID were released on January 11 of this year, a mere four months before the statutory compliance deadline of May 11, 2008. The regulations include significant changes to the initial notice of proposed rulemaking to address state concerns and recommendations. These changes have moved REAL ID from the realm of the improbable to the possible, but significant questions remain before REAL ID is fully fixed.

REAL ID also must be funded. For the first time in our nation’s history the federal government is setting national standards for state driver’s licenses. If the federal government is going to regulate state practices over traditional state functions such as driver’s licenses and identification cards, then the federal government should pay the states’ cost of compliance. Governors have called on the Administration and Congress to demonstrate the priority they place on REAL ID by fully funding the program. Specifically, Congress should provide \$1 billion to cover the up-front cost of REAL ID this year and commit to providing additional funds to offset the ongoing costs of meeting this federal mandate.

BACKGROUND:

Congress passed the REAL ID Act (REAL ID) as part of the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act (P.L. 109-13). The law replaced section 7212 of the Intelligence Reform Act (P.L. 108-458), which established a negotiated rule making to determine national standards for state driver’s license and identification cards (DL/IDs). NGA supported the compromise contained in section 7212 because it allowed stakeholders, including governors, to participate in the process of reforming what traditionally has been a state function.

Although the negotiated rulemaking already had begun, REAL ID repealed the provision and replaced it with statutory standards, procedures and requirements that must be met if state-issued DL/IDs are to be accepted as valid identification by the federal government. REAL ID’s mandates will alter long-standing state laws, regulations and practices governing the qualifications for and the production and issuance of DL/IDs in every state. Complying with these new standards will require significant investments by states and the federal government and test the resolve of citizens who will be directly affected by changes to state systems.

To ensure states, Congress and the federal government understand the fiscal and operational impact of altering these complex and vital state systems, the American Association of Motor Vehicle Administrators (AAMVA), in conjunction with NGA and the National Conference of

State Legislatures (NCSL) conducted a nationwide survey of state motor vehicle agencies. Based on the survey results NGA, NCSL and AAMVA issued a report in September 2006 concluding that REAL ID will cost states more than \$11 billion over five years, negatively affect services to the public and impose unrealistic burdens on states to comply with the act by the statute's May 2008 deadline. The report also identified key components of REAL ID that will have the greatest impact on states and citizens and made specific recommendations for Congress and the Department of Homeland Security (DHS) to follow if REAL ID is to succeed. [A copy of the report can be found on the NGA Web site at www.nga.org/Files/pdf/0609REALID.PDF.]

Regulations:

DHS formally published its notice of proposed rulemaking (NPRM) on REAL ID on March 9, 2007. While the NPRM incorporated several of the recommendations made by states, four major requirements continued to present critical challenges for states: 1) the need to re-enroll all 245 million DL/ID holders over five years; 2) increased verification requirements for identification documents; 3) new document design mandates; and 4) changes to business and support practices that reduce efficiencies and customer service.

In response to the NPRM, NGA reiterated the following major recommendations:

- Extend the compliance deadline;
- Provide funds necessary for states to comply with REAL ID;
- Grant the Secretary of Homeland Security the flexibility to recognize innovation at the state level;
- Implement a 10-year, progressive re-enrollment schedule;
- Allow reciprocity for persons already vetted by the federal government;
- Provide the federal electronic verification systems necessary to comply with the law;
- Require states to employ electronic verification systems only as they become available;
- Adopt uniform naming conventions to facilitate electronic verification between files; and
- Establish card security criteria based on performance—not technology.

On Friday, January 11, 2008, DHS released its final rule for meeting the requirements of REAL ID. The final rule incorporates many of the recommendations made by states, including the adoption of a 10-year compliance timeline that establishes milestones for states and provides some flexibility to manage the driver's license applicant pool.

Specifically, the rule requires all states to be in compliance with REAL ID on May 11, 2008, unless they obtain an extension from DHS. States were given until March 31, 2008, to request an extension. To reinforce the deadline, DHS made it clear that if a state failed to negotiate an extension, that state's DL/ID cards could not be used for identification purposes to board commercial aircraft. Although all states were eventually granted an extension, several governors, especially those from states with laws or resolutions opposing REAL ID, did not appreciate this Hobson's choice.

If states demonstrate they have achieved certain milestones towards compliance (18 milestones are identified in the rule), but have not reached full compliance by December 31, 2009, states may request a second extension from DHS until May 11, 2011. After May 11, 2011, states are

expected to issue fully compliant REAL ID cards. In other words, the regulations anticipate all electronic systems will be operational by May 2011. Thereafter states will have until December 1, 2014, to issue REAL ID compliant drivers' licenses and ID cards to individuals born after December 1, 1964, and until December 1, 2017, for those born on or before December 1, 1964.

Cost Estimates:

The Office of Management and Budget (OMB) estimates that the new rule will cost states more than \$3.9 billion over 11 years. This estimate is far less than OMB's \$14.6 billion estimate associated with the NPRM. The dramatic reduction in costs comes primarily from the adoption of the 10-year window for re-enrollment and performance-based rather than mandated security requirements. By allowing states more time to process applicants, states can better manage resources and reduce costs. Likewise, flexibility in choosing security options for their cards allows states to maximize security and cost effectiveness by choosing technologies that work best for them.

OMB's estimate also benefits from its new assumption that only 75 percent of all drivers will actually receive a REAL ID. While not all drivers may elect to get a REAL ID, OMB's assumption that one in four drivers will opt for another form of identification is questionable. Under REAL ID, states may provide alternative non-REAL ID compliant cards, but states may also seek savings by only offering REAL ID compliant DL/IDs. If more than 75 percent of drivers and identification card holders elect to get REAL IDs, states' actual cost could easily exceed OMB's estimates.

Appropriations:

To date, Congress has appropriated only \$90 million for REAL ID: It appropriated \$40 million in 2005 when the act was passed and added another \$50 million in REAL ID grants to states as part of the Fiscal Year (FY) 2008 Omnibus Appropriations Bill.

To supplement these amounts, DHS Secretary Chertoff has authorized states to use up to 20 percent of their State Homeland Security Grant Program (SHSGP) funds for REAL ID. This authority, however, does little to offset the cost of the program because states must distribute 80 percent of all SHSGP funds to local governments. A state's use of 20 percent of state SHSGP funds for REAL ID would therefore limit available resources for other state homeland security priorities.

Also undermining the usefulness of SHSGP to help pay for REAL ID is the fact that funding for SHSGP has fallen from its original level of \$1.1 billion in FY 2005 to \$550 million in FY 2006 and \$525 million in FY 2007. The President asked for only \$200 million for the program in FY 2008 before Congress increased funding to \$950 million. The Administration's FY 2009 budget again calls for a mere \$200 million for SHSGP.

Finally, as part of its FY 2009 budget, the Administration proposed a \$110 million competitive grant program for states in part to assist with REAL ID, and \$50 million for DHS to develop verification capabilities. While appreciated, these amounts constitute a fraction of the projected cost of REAL ID.

Grants:

Of the \$90 million appropriated, DHS has awarded \$7 million in grants to Kentucky as part of two pilot projects to check birth certificates via the Electronic Verification of Vital Events database. All remaining funds (\$79.9 million) are to be distributed using the FY 2008 REAL ID Demonstration Grant Program guidelines, which were published on December 18, 2007. The guidelines outline a competitive grant process favoring proposals to work with AAMVA in the building of a "hub" system to facilitate electronic verification.

Applications for REAL ID grants were originally due March 7, 2008. Following the NGA Winter Meeting in February 2008, governors expressed concern that the few funds appropriated to help states implement REAL ID were instead being used to fund a competitive grant program aimed at achieving a DHS priority of building a hub. NGA joined with NCSL and AAMVA to request that the grant application deadline be extended by at least 30 days to provide time for governors and DHS to discuss the goals and implementation of the grant program. The application deadline was extended to April 4, 2008. During the extension governors stressed the need for the federal government to fully fund the cost of REAL ID and allocate existing grant funds among all states to assist in implementation. DHS is expected to announce its REAL ID grant awards over the next several weeks.

CONCERNS AND RECOMMENDATIONS:

Governors are committed to providing their citizens with secure driver's licenses and identification cards. To that end governors have consistently offered constructive recommendations for implementing REAL ID. DHS is to be commended for listening to governors' concerns and incorporating several of the recommendations into the final regulations. That being said, governors continue to have serious questions about how proposed electronic verification systems will operate, how individual information will be protected and secured, what the actual costs of REAL ID will be for states and how those costs will be funded.

Electronic verification:

The ability to electronically verify identifying information is the cornerstone of REAL ID and the most uncertain element of the act. The final regulations identify five systems that will be required to make REAL ID work: Social Security On-Line Verification (SSOLV), Electronic Verification of Vital Events Records (EVVER), Systematic Alien Verification for Entitlements (SAVE), an all-drivers system run by the states to ensure an applicant is not licensed in another state and a system run by the U.S. State Department to verify foreign passport information. DHS envisions these systems being linked by a hub system that will bridge federal and state systems; allow for timely, dependable and accurate transmission of information; secure personal data; and protect against unauthorized use and identity theft. Creation of the hub is a top priority for DHS because it is critical for making electronic verification feasible.

The uncertainty surrounding electronic verification stems from the fact that states do not know precisely how the systems will work, how they will integrate together or what protections will apply for the security of data. In particular, the hub will require extensive development of governance systems and security protocols to ensure the transfer of timely, accurate and secure information. Back up systems and practices also must be developed for those instances in which

the hub or one of the corresponding databases is not functioning. In addition, all systems must comply with federal and state privacy laws.

These uncertainties have led several states to oppose REAL ID and others to question whether all systems can be ready by 2011 as contemplated by the regulations. They also raise concerns with regard to cost since system development, testing and deployment must all be completed before the first fully compliant REAL ID is ever produced. Development of comprehensive governance and business plans that detail the operations, cost and security features of the electronic verification systems must be completed before states can fully evaluate the benefits and risks of complying with REAL ID.

Recommendations:

- **DHS must prioritize the development of comprehensive business plans, governance systems, security protocols and initial and ongoing cost estimates for all electronic verification systems.**
- **Federal priority projects should be paid for with dedicated federal funds. For example, the hub serves a primarily federal purpose and should be funded with the \$50 million requested by the President in his FY 2009 budget for “verification capabilities” rather than state grant funds or user fees.**

Privacy:

The privacy and security of individual records remains a critical concern for governors and citizens. Although DHS took strides to reduce threats to privacy by limiting the amount of information available on driver’s licenses and identification cards, privacy concerns will remain an issue until detailed business plans and security systems are developed to assure states that data from state and federal systems is secure.

Recommendation:

- **Congress should closely monitor the development of comprehensive governance and security plans to ensure the protection of individuals’ personal information and compliance with state and federal privacy laws.**

Cost:

States are concerned that OMB’s cost estimates do not take into account several elements. For example, the estimates do not include the need for new manufacturing and distribution centers or the retrofitting of existing distribution centers, to meet security protocols. OMB’s projected costs also fail to account for transaction costs of soliciting responses from the five verification systems. In fact, DHS just recently increased the per-query transaction cost for SAVE transactions, potentially doubling the cost of each query to the system.

With most of the data systems still in the development stage, it is impossible to estimate the total transactional cost of verification, let alone the ongoing cost of operating such systems. With more than 245 million drivers and identification card holders in the United States, these unknowns are cause of significant concern as states plan their budgets and determine whether to proceed with REAL ID.

Recommendation:

- **Congress should call for updated cost projections that include all costs associated with REAL ID, including transaction costs for electronic verification and increased security at driver's license distribution and manufacturing centers.**

State Grants:

Governors' primary objection to the REAL ID Demonstration Grant Program was that it took funds appropriated to assist states with the implementation of REAL ID and channeled them toward a DHS priority. Each state that chooses to implement REAL ID will have different needs. Determining how to allocate resources to meet the requirements of REAL ID should be left to the states.

Additionally, grant awards should not be predicated on a commitment to fully comply with REAL ID. By creating a 10-year window for implementation, DHS recognized that many of the systems required to make REAL ID work do not yet exist. The uncertainty surrounding the development of these systems with regards to security, privacy, operations and cost make it unreasonable to tie funding awards to promises of full implementation.

Recommendations:

- **Funds to assist states with compliance should be provided to states on a flexible, formula basis to allow states to determine which investments best meet the requirements of the act.**
- **Grant awards should not be conditioned on a promise to fully comply with REAL ID until DHS determines what full compliance entails.**

Funding:

Governors call on the federal government to "fund" REAL ID by providing federal dollars to offset state expenditures for meeting new federal standards. The funds appropriated for REAL ID to date and those called for in the President's budget are insufficient to meet the needs of states. REAL ID is a mandate on states that should be paid for by the federal government.

Recommendation:

- **Congress and the Administration must work together to provide \$1 billion for states this year to cover states' upfront costs of compliance and commit to covering the ongoing costs of REAL ID.**

WESTERN HEMISPHERE TRAVEL INITIATIVE:

The Intelligence Reform and Terrorism Prevention Act of 2005 (P.L. 108-458) required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop a plan to require U.S. citizens and foreign nationals entering (or re-entering) the United States from the Western Hemisphere to carry a passport or other document "sufficient to denote identity and

citizenship.” To meet this statutory requirement, the DHS and the Department of State developed the Western Hemisphere Travel Initiative (WHTI).

Governors recognize that promoting homeland security and international economic activity are compatible goals and that homeland security needs should be addressed in a way that facilitates international trade, tourism and travel. Governors, particularly those in border states, are essential partners in facilitating cross-border commerce and implementing security measures such as the WHTI that are intended to increase safety and security at the border. As such, it is critical that the federal government consult with states whenever security-oriented legislation or agency actions impact the flow of commerce and traffic across United States borders to ensure that such initiatives both protect the public and minimize unnecessary burdens on international travel, tourism, and trade.

An example of the type of cooperation that can yield meaningful results is the enhanced driver’s license pilot project in the state of Washington. Washington developed this project, in conjunction with the U.S. Departments of State and Homeland Security, to facilitate the entry (or re-entry) of its residents to the United States from Canada. Washington residents interested in participating in this voluntary program are able to use their Washington State Enhanced Driver’s License (EDL) in lieu of a passport for crossing the U.S.-Canadian border.

The Washington Department of Licensing began issuing EDLs earlier this year. Washington authenticates these documents by requiring proof of residence, identity and citizenship acceptable to DHS. Residents pay a fee to cover the cost of inclusion of a radio frequency identification chip in the EDL to facilitate rapid identification checks at border crossings.

Governors are encouraged by the progress of the Washington project and will continue to examine it for possible use in their own states. Governors encourage the federal government to continue to explore opportunities and technologies to facilitate border crossings by developing frequent-border-crossing programs as well as acceptable passport substitutes to establish travelers’ identities and nationalities.

CONCLUSION:

Since its passage, governors have offered several constructive recommendations for implementing REAL ID. Governors have encouraged DHS and Congress to “fix” the act by implementing statutory or regulatory changes to make REAL ID feasible and cost-effective. They also have called on the federal government to “fund” REAL ID by providing federal dollars to offset state expenditures for meeting new federal standards.

Governors’ “fix and fund” policy is not separable. Workable regulations without full federal funding are no more palatable or useful than unworkable regulations with full federal funding. As WHTI has shown, states are willing to work with the federal government to find solutions that are practical, cost-effective and enhance the security of the nation. If REAL ID is to be fully implemented, Congress and the Administration must work collaboratively with states to develop workable systems and fund states’ costs of complying with REAL ID.

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**Towards a Better Vision of Identity Documents – A Call for Congressional
Action to Prevent the Implementation of a National ID System**

**U.S. Senate Committee on Homeland Security and Government Affairs
Subcommittee on Oversight of Government Management, the Federal
Workforce, and the District of Columbia**

**Hearing Regarding the Impact of Implementation: A Review of the REAL ID
Act and the Western Hemisphere Travel Initiative**

**April 29, 2007
342 Dirksen Senate Office Building**

I. Introduction and Call for Congressional Action to Repeal Real ID and Institute Privacy and Constitutional Protections for WHTI and EDLs

Subcommittee Chairman Akaka, Ranking Member Voinovich, and Subcommittee Members, Congress stands at a crossroads with respect to our national policy for identification systems. Along one path Congress can choose to do nothing and the Real ID Act will limp along for the next decade gradually creating the backbone for a National ID card system. The first path requires Congress to continuously prop up the failed Real ID program for the next decade – DHS’s final implementation date is not until December 2017 – with funding and DHS cajoling. The first path necessitates the building – byte-by-byte, ID check by ID check – a de facto national ID system including the Western Hemisphere Travel Initiative (“WHTI”) and Enhanced Driver’s License (“EDL”) systems. This choice costs billions in wasted tax dollars and threatens Americans’ privacy. Or will Congress take a better path heeding the advice of states and the clear call of constituents who want ID security but not at the cost of their privacy and constitutional rights? The second path requires Congress to intervene to repeal Title II of the Real ID Act and replace it with a plan that frees states to innovate and improve ID security. It remains only for Congress to choose the correct path.

Given the tangled web of ID proposals – Real ID, Western Hemisphere Travel Initiative, Enhanced Driver’s Licenses – and the unprecedented opposition to these programs, the latter choice is the only one that will advance identity security in this country. This testimony briefly discusses the two potential paths and recommends congressional intervention to avert the imposition of a de facto National ID system that offers only the fiction of security, while in fact threatening our security, vastly increasing the incidence and severity of identity theft, and that changes our culture irrevocably without any significant, measurable benefits to the American people.

On behalf of the American Civil Liberties Union (“ACLU”), America’s oldest and largest civil liberties organization, its 53 affiliates and its more than half a million members, we recommend that this Subcommittee act decisively and help enact legislation, such as S. 717, the Identification Security Enhancement Act of 2007, to replace Title II of the unworkable Real ID Act of 2005, Pub. L. 109-13 (hereinafter “Real ID Act”). Additionally, we call on Congress to require that the Department of Homeland Security (“DHS”) and states institute meaningful privacy and constitutional protections for the WHTI and EDL programs, or block implementation of the programs altogether.

II. Congress Must Choose Between Two Paths and Reject a National ID Card System

This is truly a moment of decision. Due to the states' unprecedented rejection of Real ID and similar systems, Congress must choose between two paths. The current path, rejected by states, would lead to the building of a National ID card system over the next decade or more. This path would bring enormous costs in the form of higher taxes, diminished constitutional rights, restrictions on individual privacy, and fundamental changes to American principles, even while providing little or no security – and even that little security coming no earlier than a decade or more into the future. The second path, represented by S. 717, requires Congress to defund and repeal Real ID. This second path is a return to the statutory language enacted by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458. It also requires Congress to institute privacy and constitutional protections for WHTI and EDLs. This second path would prevent the creation of a National ID card system by limiting unnecessary sharing of drivers' information and safeguarding that data by maintaining state license diversity. It would free states to be innovative and dynamic in order to quickly thwart new types of identity theft and document fraud. It would lead to the enactment of cooperatively negotiated licensing standards, but with protections for privacy and constitutional rights. It is certainly cheaper and more achievable because it relies on asking the states cooperatively "what can you do?" instead of imposing upon them standards for what they must do, even where such standards are illogical or duplicative of other efforts already taken by a state to modernize its licensing system. It would also be achieved years before Real ID will ever be implemented.

The current license path leads to the eventual creation of a backbone system for a National ID card. First, all Real ID licenses would contain a standardized machine readable zone ("MRZ"), making card readers for these systems cheap and easy to deploy. Second, as will be discussed in greater detail below, the data contained in the MRZ is unencrypted, rendering it easy to capture and store. Third, the standardized formatting of data will make it profitable for third parties to capture that data with a swipe of a card both because the information is digitized and because it is presented in the same format. We can, therefore, expect Real ID readers to be present at every store and retailer in our society and at the entrance to apartment buildings and housing communities, parking garages and gyms. We should also expect that readers will eventually be placed at the entrances to many government buildings and locations. Fourth, future Congresses and state governments will find it all too convenient to require the presentation of a Real ID-compliant license to obtain any number of government services, or to exercise rights or privileges. The last two summers, Congress has already debated requiring Real IDs for obtaining federal housing assistance or federal loans, and for prescreening for employment. Finally, the interlinked

network of databases of personal information – built upon interoperable software systems – and the data verification systems – controlled by the federal government and also standardized to capture and store data – will create the data backbone for this National ID system.

Current Path:

- *De facto National ID system*
- *Enormous ongoing and upfront costs*
- *Battles over costs, privacy drag out for years*
- *Citizen nightmares at DMVs*
- *Very little visible or actual benefits to Americans.*

Akaka-Sununu S.717 Path:

- *No creation of a de facto National ID system*
- *Lower costs Actual results in shorter time frame*
- *Cooperatively negotiated licensing standards*
- *Protections for privacy and constitutional rights*
- *Less political controversy*
- *Frees states to innovate quickly to stop identity theft.*

In short, if Real ID is allowed to limp forward, we will almost certainly see a ubiquitous demand for everyone to carry and present a Real ID card. It will soon serve as a de facto internal passport. Readers will proliferate and become a set of ubiquitous internal checkpoints. No one will be able to operate in modern American life without a Real ID card. Assistant Secretary Stewart Baker himself has proposed expanding the use of Real ID to require it every time an American wants to purchase cold medicine. And, the database backbone will facilitate ever increasing requests for data about every member of the public and provide a system of efficient transmission and storage of that data.

Continuation of Real ID will only ensure the extension of programs that should be terminated. If Congress does not act, Real ID will continue to force expenditures at the state level that could be used for better state-specific license or identification systems or for other needed services.

Technology vendors eager for government contracts may help propel the program forward for all the wrong reasons – leading future Congresses and/or state legislatures to expend funds merely in the name of self-perpetuation rather than due to any real and demonstrable benefit to society.

This current path would be a costly one. First, any security benefit that Real ID might provide – and security experts who have analyzed Real ID think its benefit is negligible at best¹ – will not possibly be achieved until December 2017 at the earliest – the date DHS set for states to issue compliant licenses to the whole public. It is reasonable to believe that the date of implementation may slip well past this decade-long time frame due to the technological problems inherent in establishing such an enormous, interlinked government database system, and in building the data verification systems that are required by the act.

Second, states will be forced to spend billions, and eventually the federal government will too. During the intervening decade leading up to DHS's target implementation date, software and hardware would certainly become outdated and require replacement several times over, further clouding the future of the program. States will dramatically raise taxes and licensing fees to cover the costs imposed by the Real ID Act.²

Third, once Real ID systems start to come on line in some states, they will become magnets for identity thieves and the best source for insiders to commit document fraud. The Real ID database will be one of the country's largest repositories of personal information on Americans, containing everything from copies of birth certificates to social security numbers. This privacy burden will be felt acutely by those drivers whose information is compromised or stolen. Meanwhile, third party retailers will be skimming information off the card and reselling purchase data to commercial data brokers who will in turn resell it to the government. This enhanced assault on our personal privacy will be shared by all of us.

¹ "As currently proposed, Real ID will fail for several reasons. From a technical and implementation perspective, there are serious questions about its operational abilities both to protect citizen information and resist attempts at circumvention by adversaries. Financially, the initial unfunded \$11 billion cost, forced onto the states by the federal government, is excessive. And from a sociological perspective, Real ID will increase the potential for expanded personal surveillance and lay the foundation for a new form of class segregation in the name of protecting the homeland." -- Richard Forno and Bruce Schneier, "National ID Card a Disaster in the Making," *C-NET News.com*, May 3, 2007.

² "I think the concept, though, was that this -- like all driver's licenses -- is largely a fee-based system, and that, ultimately, the cost of building Real ID should be amortized over the driver's license fee." -- Sec. Michael Chertoff, speaking before Senate Homeland Security Committee Hearing, February 13, 2007.

Fourth, the very creation of a “real” ID will entice criminals and terrorists to acquire them so as to freely move throughout our society likely obviating any of the alleged security benefit from the Act. Experts agree that identity theft is easy to achieve. Although DHS’s ID proposals appeared at first glance to provide some element of security benefit, under further scrutiny they appear to create glaring security vulnerabilities. When criminals and terrorists obtain Real ID licenses under assumed names they will walk through our society without scrutiny – just as the 9/11 hijackers boarded airplanes using lawfully obtained driver’s licenses.³

Perhaps most importantly, our constitutional traditions of living in a free society will be diminished and our culture will change in unpleasant ways if Congress does not act. The ability to live and move throughout society freely will largely evaporate. That is the chief cost of a National ID card system. Those whose religious beliefs prevent their being photographed or require head coverings will be compelled to choose between their beliefs and participating in modern society. Essentially, we will be asking people to declare who they are at a myriad of internal checkpoints – all in the faint hope of possibly obtaining some *de minimis* security benefit. Worse still, that minimal benefit may be undercut by the ease with which criminals and terrorists can obtain forged or actual Real ID licenses using the real information of a law-abiding American.

Real ID may turn out like US-VISIT, a similarly failed program that tracks immigrant visitor entries, but still fails to track their departures, and hence provides maximum privacy invasion with minimum security. Sadly despite US-VISIT’s failure, Congress has yet to end this tortured program, leaving the public to bear the burden of it. If Real ID implementation is allowed to continue, the American public could be faced with a similar yet even larger boondoggle.

The second and better path, in contrast, saves us from the imposition of a National ID card system and averts many of these costs while promising increased security of identity documents. Passage of S.717, or a similar piece of legislation, puts the nation on the second and wiser path; one that restores federal policy establishing a negotiated rulemaking procedure under the Administrative Procedures Act to cooperatively devise plans for ID security enhancements. This is the policy that Congress wisely enacted in the Intelligence Reform and Terrorism Prevention Act of 2004.

³ It is the ACLU’s opinion that no matter what your opinion about the security benefit of ID documents, Real ID and its progeny are now the greatest impediment to increased state ID security. Real ID’s implementation is years away and yet states are holding off implementation of commonsense, achievable security measures as they await Real ID’s fate.

First, S. 717 would create greater ID security than Real ID because it allows innovation in protecting state DMV databases. It also would likely avert a uniform ID card and uniform computer system. The bill would certainly lead to the erection of rigid data security to control access to data collected by DMVs. While the bill would set minimum standards for state licensing, it would allow states to innovate and add features on top of those standards. Thus, if a state were seeing a particular type of document fraud, it could add a physical or digital security feature to licenses. Because Real ID relies on a set of uniform national mandates, such innovation is prevented absent passage of a new act of Congress or regulatory modifications.

Second, passage of S. 717 would reduce costs substantially for states and taxpayers by incorporating some of the security advancements already achieved by states. Contrary to DHS's assertions, states have continuously updated their licensing systems to improve data privacy and ID security. Many of these updates would surely become the base line for a set of cooperatively agreed upon standards. Therefore, should Congress choose the second path, it will dramatically reduce costs for many states. The savings will encourage state participation and reduce the need for new tax hikes or license fees.

Third, the second path would protect drivers' privacy, and therefore makes DMV databases a less attractive target for identity thieves, criminals and terrorists. Because each state would be freed to establish its own computer security and data storage protocols, hacking into one state would not provide ease of access into other states' data. While this will not prevent malicious hacking attacks, it will limit the impact of such attacks. Similarly, states would likely choose to encrypt data on the cards and as it is transmitted between states and the federal government. This would be a substantial privacy protection that DHS has declined to endorse despite its obvious security advantages. The encryption of such information, coupled with reduced standardization would make it less likely that retailers will utilize readers when purchases are made by drivers because it will be less efficient to sort, store and resell the data of consumers. Most importantly, states will surely erect barriers to access that will make it less enticing for insider fraudsters to sell real IDs with law-abiding individuals' information to identity thieves, criminals and terrorists. And, when such fraud occurs – as it surely will – the fake IDs that were sold will not necessarily be treated as above reproach by neighboring states.

Finally, the second path would preserve the tradition of free, unfettered movement throughout society and the right for law-abiding citizens to remain anonymous. That tradition was enshrined in the Constitution, which replaced the Articles of Confederation and the series of internal ID checkpoints they permitted. That tradition has endured despite

numerous external and internal threats that have arisen since 1789 and should not be cast aside now.

III. Widespread State Opposition Requires Congressional Intervention to Prevent the Creation of a National ID System

The ACLU believes that Congress must act decisively and choose the second path because, despite DHS's recent rhetoric to the contrary notwithstanding:

- The entire Real ID Act scheme is collapsing as states recognize the unprecedented burdens on taxpayers' privacy and civil liberties imposed by this unfunded mandate, and as states enact legislation prohibiting participation.
- Rather than resolving privacy problems posed by the Real ID Act, DHS's inaction makes it likely that third-party privacy invasions will become commonplace if Real ID is ever implemented. Similarly, Congress must block the introduction of EDLs enabled with Radio Frequency Identification Devices ("RFIDs").
- DHS has largely thrown up its hands and abdicated its implementation responsibilities by not requiring states to fully implement Real ID until nearly a decade from now, at the earliest. This action belies statements that DHS believes that Real ID, WHTI and EDLs are critically important security tools.

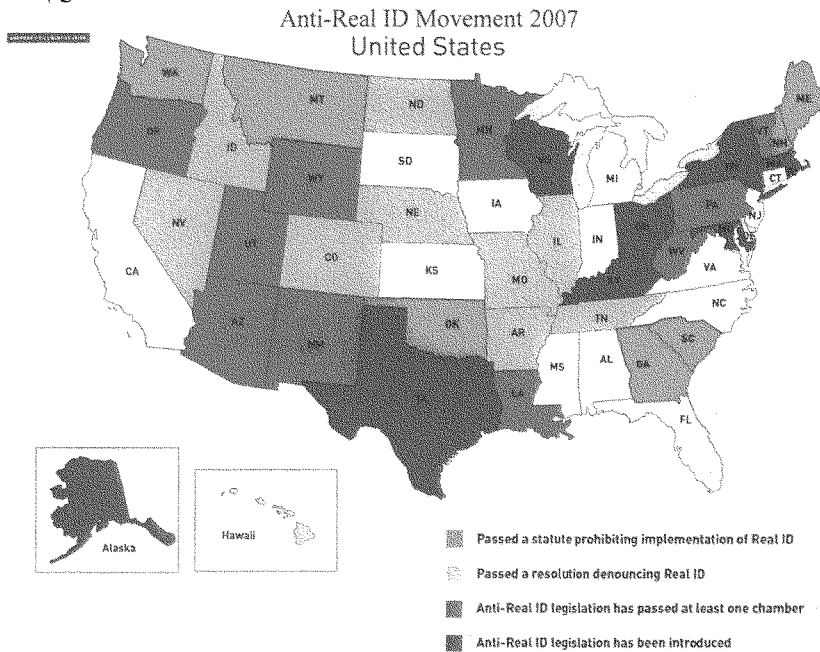
A. States Rejection of Real ID is Accelerating

Reiterating our testimony before this Subcommittee 13 months ago, one thing has become clear – states and the public are moving en masse to reject the Real ID Act and calling for Congress to repeal it in toto. That process is accelerating, not diminishing. Rather than mollifying state government officials' concerns, DHS's January publication of a fatally flawed Final Rule that largely disregarded the more than 21,000 comments opposing Real ID has set off a new round of state opposition. In response, state governments are rapidly moving to opt out of this unfunded mandate altogether.

States are also refusing to comply with Real ID. States took extensions on the statutory deadline not to signal compliance but to simply run out the clock on the Bush Administration. Governor Mark Sanford (R-SC), sent a letter to every Member of Congress this month calling Real ID "the worst piece of legislation I have seen during the 15 years I have been

engaged in the political process,”⁴ and urging its repeal. When asked whether Montana would participate in Real ID, Governor Brian Schweitzer (D-MT) exclaimed “No. Nope. No Way. Hell No.”⁵

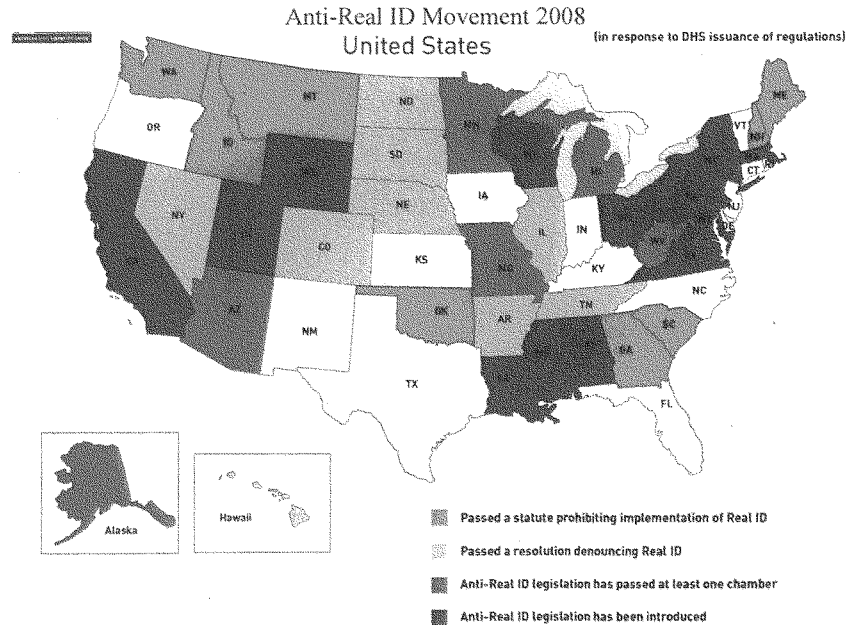
State opposition has led to the unprecedented passage of state laws prohibiting compliance or implementation of the Real ID Act. Governor Butch Otter (R-ID) recently signed into law an act prohibiting Idaho from implementing Real ID, HB 606. Idaho thus became the eighth state to enact such a law, joining Georgia, Maine, Montana, New Hampshire, Oklahoma, South Carolina, and Washington. Legislation is pending Governor Palin’s (R-AK) signature in Alaska to prohibit funding of Real ID. Similar legislation awaits Gov. Tim Pawlenty’s signature in Minnesota. Ten additional states have unequivocally stated their formal opposition, with many calling on Congress to repeal Real ID entirely. These states are: Arkansas, Colorado, Hawaii, Idaho, Illinois, Missouri, Nebraska, Nevada, North Dakota, and Tennessee. South Dakota passed a similar resolution in direct response to the release of DHS’s final rule. Legislation opposing Real ID has passed at least one chamber of a state legislature in an additional 11 states.⁶ In all, only eight states have not seen the introduction of anti-Real ID legislation.



⁴ Gov. Mark Sanford to Members of Congress, April 3, 2008.

⁵ Associated Press, “Gov. signs law rejecting Real ID act,” *Billings Gazette*, April 17, 2007.

⁶ Those states are: Arizona, Oregon, Louisiana, Michigan, Missouri, New Mexico, Pennsylvania, Utah, Vermont, West Virginia, and Wyoming.



States also defied DHS's demands that states seek an extension of time to become Real ID-compliant. In fact, many explicitly refused to commit to implementation of Real ID in the future. Four states, Maine, Montana, South Carolina and New Hampshire refused to request such an "extension." DHS contradicted the plain language of its own Final Rule, which allowed states to take an extension waiver as of right and without indicating an intent to commit to Real ID implementation. Yet, despite this regulatory language, DHS engaged in brinksmanship with these states and then stated that any state that received a waiver intended to implement Real ID. In a naked attempt to save face and avoid a confrontation that would surely show that DHS was unable to cajole states into compliance, DHS chose to misconstrue these states' opposition letters as requests for extensions. In response to a letter from Montana Attorney General Mike McGrath asking DHS not to enforce the statutory deadline on Montana residents, DHS Assistant Secretary Stewart Baker wrote, "I can only provide the relief you are seeking by treating your letter as a request for an extension,"⁷ and then proceeded to grant Montana an extension it never requested. The California Department of Motor Vehicles felt compelled to send DHS a letter two months after the state had received an extension to clarify that it was not committing to Real ID, stating unequivocally, "California's request for an extension is not a commitment to implement

⁷ Stewart Baker to Mike McGrath, March 21, 2008.

REAL ID, rather it will allow us to fully evaluate the impact of the final regulations and precede with necessary policy deliberations prior to a final decision on compliance.”⁸ An additional dozen states wrote or stated similar disclaimers.⁹

B. DHS’s Final Real ID Rule Failed to Resolve Privacy Problems

DHS has failed to resolve the privacy-invasive potential of the Real ID Act. As we stated last year, the Final Rule undercuts Congress’ earlier effort to protect drivers’ information, which is considered by many to be of higher quality than commercial data amassed from warranty cards and the like. Responding to the murder of actress Amy Boyer by a man who obtained her address from the New Hampshire DMV, in 1994 Congress passed the Drivers’ Personal Privacy Act (“DPPA”), Pub. L. 103-322, 18 U.S.C. § 2721, *et seq.*, which requires such data to be kept confidentially. Every state has passed legislation to implement the DPPA. Many of these state statutes, like California’s, go beyond the original act. This is in sharp contrast to the Real ID Final Rule, which provides states with no guidance on how a nationwide database should be created and how the information in it should be protected.

Despite widely acknowledged security and privacy benefits, DHS refused to encrypt the MRZ, which will lead to a thriving third-party market in data collected from swiping the card itself when packaged with detailed sales and tracking data. The standardization of the MRZ and its data elements facilitates the capture of the data on the card. Standardization makes card readers efficient. Digitization of the information in an unencrypted form invites third-parties to demand presentation of the cards. DHS’s failure to prohibit third-party collection and resale encourages retailers, security companies and property managers to gather card data at a myriad of places. Already, private sector third parties have a ready market for such information through resale along with detailed sales information to data broker companies. These companies, in turn, repackage and resell the information to other companies and to federal, state and local agencies. Thus, DHS’s regulatory failure to protect privacy supercharges the market for sale of private data about consumers that is tied directly to each consumer’s driver’s license.

⁸ George Valverde to Michael Chertoff, March 18, 2008.

⁹ See, e.g., statement on Pennsylvania Department of Transportation website (at <http://www.dmv.state.pa.us/idSecurityCenter/realID.shtml>): “This extension does not commit the commonwealth to implement REAL ID. The extension allows for more time to complete a comprehensive analysis of the REAL ID regulations to determine potential options, the costs involved and the affect on Pennsylvania’s citizens.” For additional statements, see Broach, Anne and McCullagh, Declan, “Real ID Could Mean Real Travel Headaches,” *C-Net News.com*, February 4, 2008.

The DPPA would be completely undercut if Congress allows for the easy harvesting of data from both the printed information and the MRZ on the license. In fact California would need to amend state laws to reduce privacy protections as California law would be in conflict with the Final Rule. If Real ID were ever to be implemented in accordance with the Final Rule, it would be a major step backward from a good policy that protects Americans like Amy Boyer every day.

C. DHS's Actions Speak Louder than Words; DHS Is Kicking the Can Down the Road

Despite its recent act of brinkmanship with Maine, Montana, New Hampshire and South Carolina, the current DHS management's timetable for Real ID's implementation is at least a decade long, undercutting Secretary Chertoff's claims that Real ID is a security imperative. The Final Rule does not require states to issue the first Real ID-compliant licenses until December 1, 2013, and then only for drivers 50 years of age and younger. It is not until December 1, 2017, nearly a full decade from now and more than 16 years after 9/11 that states would need to issue Real ID-compliant licenses to the remainder of drivers.

For the second year in a row, the President's budget did not request funding to reimburse states for their expenses in implementing this unfunded mandate. This illustrates that Real ID funding is not a priority for DHS. Congress should see DHS's actions for what they are – an attempt to make Real ID the next President's problem rather than work through the myriad hassles bedeviling implementation. This timeline is in sharp contrast to S. 717 which would have a workable identity framework in place in two years. For this reason alone Congress should repeal the Act and start over with a cooperatively agreed upon licensing system.

IV. Limping Towards Creation of Additional Card Systems that Invade Privacy

Just as bureaucratic inertia, absent congressional intervention, will lead inexorably towards the building of a Real ID system that is the backbone of a National ID card system, sporadic movement towards implementation of WHTI-compliant licenses and EDLs will build card systems that invade Americans' privacy in new ways without adding security benefits. Through fits and starts, these programs – despite their overlapping missions and lack of clear security benefit – may be initiated and slowly propelled forward. These programs will gather detailed information that tracks the cross border movement of U.S. persons. How soon before the readers are placed at the borders between the states or at major city boundaries or near national monuments and government buildings, not just at the U.S.-Canada and U.S.-Mexico borders?

Just as we all use separate keys to secure separate locks rather than one universal skeleton key, it is good ID security to require separate IDs for separate purposes. Nevertheless, the security and privacy advantages of separate IDs are undercut when the licenses – in the name of efficiency – become linked as these three systems may soon be. Congress should resist convergence of these licenses and their computer network systems. The ACLU opposes such proposals because they will hasten the imposition of a National ID system by marrying detailed driver information with a movement tracking capability. We believe that WHTI compliance licenses work best as separate identity systems – avoiding the rigidity and security flaws inherent in a National ID system.

The Enhanced Driver's License program presents additional privacy problems. DHS requirements for EDL include the use of Radio Frequency Identification (RFID) technology, which has proved highly insecure and has even been abandoned by DHS in other contexts. RFID chips emit a radio signal that transmits data a substantial distance away. As such, they allow remote tracking of the license holder, by government officials or anyone else who buys an RFID reader over the internet. The data transmitted by RFID is also highly vulnerable to hacking and cloning. Shortly after the U.K. introduced RFID chips into their passport, a hacker cloned the chip, encoding an innocent person's data into a fraudulent passport.

The measures DHS is proposing to secure the RFID chip in the EDL would be laughable if they were not so alarming: a tin foil envelope to hold your license and an "awareness" campaign. DHS claims additional protections are not needed since all the EDL will broadcast only a unique identifying number. But that is exactly what a Social Security Number is – a unique identifying number that does not in itself contain private information about you, but can be used to access your most sensitive data. Further, the unique identifying number does nothing to prevent tracking: once someone's unique ID is learned, that number can be used to track his or her movements by anyone with a cheap RFID reader.

DHS cannot claim to be unaware of the problems inherent in RFID technology – since DHS itself abandoned use of RFIDs in the US-VISIT program because of insurmountable technological hurdles. The Department's own Data Privacy and Integrity Committee warned against using RFID for tracking and monitoring people, because of security risks of "skimming" and intercepting the signal, and the potential for broader tracking of individuals' movements and activities. EDL will do exactly what DHS's own privacy committee warned against.

The security rationale for both programs is lacking. DHS justifies these programs as promoting efficient border crossing because the cards

would permit remote clearance of border crossings. Yet, unless an agent physically compares the picture produced by a transmitting RFID with the actual occupants of a vehicle crossing the border, all the government learns is that the ID issued to a certain person crossed the border. Absent such a secondary stop and review, the government cannot know that the person who owns the license crossed with the card. Thus, the system is easy to game. If such physical stops are introduced, the speed and efficiency gains promised by using RFID-enabled licenses virtually disappear.

Furthermore, the security benefits for these programs is lacking given that undocumented immigrants, smugglers, criminals and terrorists will likely cross our borders freely at the miles of unguarded borders rather than obtain such licenses. In short, Congress must guard against allowing DHS to implement programs that produce a negligible security benefit at best and whose threat to personal privacy is substantial. If Congress does permit these programs to proceed, it should mandate substantial privacy protections to limit the negative consequences inherent in these concepts.

V. Conclusion – Congress Must Choose a Path that Prevents the Slow Creation of a Fatally Flawed National ID Card System.

Congress cannot sit idly by while the Real ID Act threatens Americans' privacy and hampers improvements to identification security. Rather, Congress must repeal the Real ID Act and, if need be, replace it with a workable, achievable statute to improve licensing security devoid of the privacy and civil liberties infirmities that hamstring the Real ID Act, and which is agreed upon by all interested stakeholders. Further, Congress should enshrine privacy and constitutional protections into WHTI-compliant Licenses and EDLs.



TESTIMONY OF

ROGER J. DOW
PRESIDENT AND CEO
TRAVEL INDUSTRY ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA OF
THE SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

HEARING ON

THE IMPACT OF IMPLEMENTATION: A REVIEW OF THE REAL ID
ACT AND THE WESTERN HEMISPHERE TRAVEL INITIATIVE

APRIL 29, 2008

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Chairman Akaka, Ranking Member Voinovich, and other distinguished Members of the Committee: It is a privilege and honor to appear before you today on behalf of the Travel Industry Association (TIA) and our strategic partner the Travel Business Roundtable (TBR) to discuss the impact of the Western Hemisphere Travel Initiative or WHTI on travel to the U.S. Let me first thank you for your continued leadership in ensuring that our homeland security efforts are implemented in an efficient and effective manner. We believe that the actions taken by Congress to extend the WHTI deadline to ensure successful implementation should also be commended. The U.S. travel community is a willing partner with Congress, the Department of Homeland Security (DHS) and the Department of State (State) in promoting travel security measures such as, WHTI that enhance U.S. border security and maintain an efficient flow of visitors and goods through our ports-of-entry.

TIA is a national organization representing 1,700 travel public and private entities across the country. Our members encompass every sector of the diverse, \$700 billion travel community and its more than 7 million direct employees. Our industry creates jobs and careers; we fulfill important social policy goals, such as moving people from welfare to work; we contribute more than \$99 billion in tax revenue for local, state and federal governments to drive our economy; we create a travel trade surplus to offset the nation's worsening balance of payments deficit; and we promote America's public diplomacy efforts. We are keenly aware of the need to ensure that our borders are protected from those intent on doing our country harm. As we saw on 9/11, one terrorist attack can and will cripple our entire industry.

However, as we have instituted increased security in our travel systems, we have neglected to ensure that travel facilitation is not hampered and that new security requirements are properly communicated to international visitors. As a result, overseas travelers are avoiding the U.S. due to concerns over the visa and entry experience and a global perception that visitors are not as welcome as they were prior to 9/11. Overseas travel to the U.S. in 2007 remains down 8 percent compared to 2000 (Dept. of Commerce) at a time when the global overseas travel market grew nearly 30 percent, amounting to 35 million new travelers.

In contrast, the U.S. has experienced an upswing in international visitation from Canada over the last four years in large part due to a dramatically stronger Canadian dollar, its proximity to the U.S., and continued ease of travel across land borders for Canadians. Canada is America's largest source of international visitation, with 40 million Canadian visitors spending \$13.5 billion here in 2006. At a time when the U.S. is attracting two million fewer "overseas" travelers today from other key markets in Europe, Latin America and Asia versus 2000, it is especially critical that the U.S. sustain this growth in Canadian travel and take action to promote this success. Even a five percent decline in Canadian travel to the U.S. would result in the loss of \$700 million to the U.S. economy.

With so much at stake, we believe that DHS and State should have begun to plan and implement a well-funded, well-executed public outreach campaign several years ago in order to preempt the confusion and anxiety of the traveling public about WHTI requirements. As we approach the final compliance deadlines next year, an effective communications plan is more necessary than ever. In May 2006, the GAO wrote to the House Homeland Security Committee warning that one of the main challenges to WHTI program implementation was the development of an awareness program for the public. Additionally, DHS received hundreds of comments during the rule making process about the confusion that continues to exist among travelers. Until this year however, DHS did not request or receive funding to move forward with a communications campaign.

Full implementation of WHTI at our land borders and sea ports is not simply a change in law, but a dramatic change in culture, practice and tradition with impacts on both sides of the border, especially in bi-national communities. In order to minimize the impact of these changes on millions of travelers moving in each direction to conduct business, vacation, shop and engage in sporting and cultural events, or for education and exchange purposes, a vigorous public awareness campaign must be executed both within and outside the United States.

Such a sustained communications campaign should explain not only what these changes are and how travelers must comply, but it should also explain why these changes are necessary from the standpoint of safety and security. Building “awareness” amongst cross-border travelers requires repeatedly telling visitors how the new requirements will work and what actions they need to take in advance of their trip. Gaining acceptance of these changes requires explaining to travelers why it is necessary to change decades of custom and practice. And by conducting a broad, sustained public outreach campaign that utilizes all available communications channels (print media, TV, radio, internet, direct mail, etc.), we can help spur travelers to take action and obtain the type of travel document that best suits their travel needs and complies with WHTI.

Is it too late to successfully communicate WHTI requirements? We hope not and we are prepared to work in partnership with DHS and the State Department to ensure that the public relations efforts they are planning succeed. In fact, DHS has invited TIA provide advice and consultation for the communications plan they recently began planning and hope to execute this summer. The DHS and State Department communications campaigns should assure our largest trading partners and neighbors to the north and south that we still welcome them across our border and that our special relationship will only improve as we *partner* to secure both our lands.

We urge you to view the public outreach effort for WHTI as a lesson learned and to look at alternative approaches for the future. For instance S. 1661, the “Travel Promotion Act of 2007”, supported by Chairman Akaka, the majority of this subcommittee and forty other Members of the U.S. Senate would establish a public-private partnership between the federal government and the U.S. travel community to create a sustained communications effort that would explain U.S. travel rules to prospective international travelers and also issue an explicit invitation for them to travel to the United States. While all the changes in law post-9/11 that are designed to enhance U.S. border security make sense individually and have served to create a layered approach to homeland security, those “layers” can become suffocating to some international travelers and send an unintended signal that the U.S. welcome mat has been pulled.

The Travel Promotion Act joins together the power and authority of the federal government with world-class promotion and communications expertise from the travel community. This dynamic partnership will enable us to better explain all of the U.S new and changing travel requirements while at the same time allow the U.S. to compete with other nations that invest upwards of \$100 million annually to attract international visitors. In fact, we are the only industrialized nation without a national promotion campaign, while Americans traveling to other countries help fund their promotion efforts; in effect, our own citizens are funding the competition while America remains silent.

This effort would aide our ability to successfully implement WHTI over the next several years, and in a sustained manner meet future challenges related to international travel facilitation. And importantly, these efforts would not be subject to the vagaries of the congressional appropriations process or rely in any other way on U.S. taxpayer dollars since the Travel

Promotion Act envisions a partnership funded by a nominal fee on Visa Waiver Program travelers that is matched by contributions from the private sector travel community. Finally, this approach would ensure a coordinated message among various Federal Departments. In contrast, DHS and State have each issued separate contracts to communicate WHTI entry rules and it is unclear how those messages will be coordinated.

The challenge for this nation, this Congress and this and future Administrations is that there are, and will continue to be, a need to inform travelers of new and changing travel requirements like WHTI, the Electronic System for Travel Authorization; Global Entry™; US-VISIT Entry and Exit; and Visa Waiver Program requirements. The Travel Promotion Act provides a concrete and long-term solution for communicating these changes to travelers.

In addition to the need for a robust and sustained strategic communications campaign for the successful implementation of WHTI, the travel community has also emphasized the need to: (1) set realistic deadlines for implementation; 2) ensure the infrastructure, staffing, and technology is in place at ports of entry; 3) provide low-cost options for secure travel documents; and 4) expand cooperation and communication efforts with neighboring countries.

We thank Congress for exercising vigorous oversight authority and taking action at appropriate times to extend deadlines for WHTI implementation. Extending the deadline for WHTI to June 2009, was not delay for the sake of delay, but a common sense extension necessary for DHS and State to properly prepare for the execution of WHTI requirements. Now that the deadline for implementation has been extended, we urge Congress and all its relevant committees of jurisdiction to provide DHS and State with the resources necessary to secure the appropriate technology, build the necessary infrastructure, and hire sufficient personnel to implement WHTI correctly. We hope that the RFID infrastructure being built for WHTI will make border crossings faster and more secure. Congress needs to be assured that the technology is working, not just in a lab, but in real-world conditions. CBP must be required to demonstrate progress towards deployment of RFID infrastructure and confirmation that the system is able to quickly review travelers without privacy concerns.

Sufficient staffing at all air, land and sea ports of entry is also critical to WHTI success. Your Committee is keenly aware of the significant shortages that exist in staffing levels at CBP. We are concerned that as this summer's travel season approaches that increased enforcement of the end of oral declarations at land borders will result in long delays for travelers. We urge the Committee to direct DHS to consider a two pronged approach to the staffing problems at our ports of entry. First, we urge Congress to lift the overtime cap for CBP officers beginning this summer through the beginning of Fiscal Year 2009 to ensure that staffing levels will accommodate a busy travel season as DHS ramps up the enforcement of the end of oral declarations and WHTI implementation. Secondly, we urge Congress to appropriate significant new funding to hire CBP officers for land, air and sea ports of entry so that new CBP officers can be hired and trained before the June 2009 WHTI implementation date. Continued oversight in all these areas will be necessary to determine if DHS and State are fully prepared by June 2009 to begin to implement WHTI.

We are greatly encouraged at the higher rates of passport ownership on both sides of the border, and we look forward to witnessing the distribution of the passport card by the Department of State this summer to help facilitate the transition to WHTI rules. We support efforts by various Northern Border Senators including Senator Collins and Senator Levin of the full Committee to ensure that the cost of the passport card is set low enough to promote its use by cross-border

residents. We are also pleased by the leadership of Senator Collins, Levin, and Coleman to promote mobile enrollment sites for the passport card that will facilitate the ease of access for this new document. The continued growth in development of Enhanced Driver's Licenses by states is also a welcome development, and we hope to see an acceleration of similar efforts in Canada in order to provide Canadian travelers a similar, low-cost WHTI compliant document.

Expanded cooperative efforts with our North American neighbors, Canada and Mexico, is critical in the larger context of border security and travel/trade facilitation, but is also crucial to the successful implementation of WHTI. And since this change in law, custom and practice falls most heavily on returning U.S. travelers and Canadian visitors (again, with little practical impact on Mexican visitors), U.S.-Canadian joint efforts are essential in order to ensure that "security" and "prosperity" continue to move forward in practice and not just in name.

Our message today is simple – the travel community wants DHS and State to successfully implement WHTI and other programs that protect U.S. citizens and visitors from those who would seek do us harm. Let us work to protect America even as we project America abroad and welcome the world to visit here in the coming years.

Thank you, again, Chairman Akaka, Ranking Member Voinovich and other Members of the subcommittee for holding this important hearing and for remaining engaged on the critical issue of whether or not government and travelers are prepared for implementation of the Western Hemisphere Travel Initiative.

Testimony before
Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the
District of Columbia
U.S. Senate Committee on Homeland Security and Governmental Affairs

Hearing on
The Impact of Implementation:
A Review of the REAL ID Act and Western Hemisphere Travel Initiative

Tuesday, April 29, 2008

Statement of
Angelo I. Amador
Director of Immigration Policy for the U.S. Chamber of Commerce
Executive Director of the Americans for Better Borders Coalition

Introduction

Thank you Mr. Chairman, and members of the Committee, for the opportunity to present today on the impact of implementation of the Western Hemisphere Travel Initiative ("WHTI"). In addition, I would also like to thank all of you who voted in favor of key amendments in 2006 and 2007 to help guarantee that WHTI is implemented properly and efficiently. The Chamber urges you to continue your excellent oversight and support of this important program.

I am here today in two capacities, as Director of Immigration Policy for the United States Chamber of Commerce ("Chamber"), and as Executive Director of the Americans for Better Borders Coalition ("ABB"). The Chamber is the world's largest business federation, representing more than three million businesses and organizations from every size, sector, and region. ABB is a coalition that unites regional business organizations and a wide array of companies and national trade associations working to ensure the efficient flow of tourism and goods across our borders while addressing national security concerns.

Also, the Chamber serves jointly with the Council of the Americas as the Secretariat of the U.S. Section of the North American Competitiveness Council ("NACC"), a trilateral advisory group of business leaders from Canada, Mexico, and the United States. The NACC was formed in 2006 to provide a voice for the private sector and engage them as partners in enhancing North America's competitive position in global markets, promoting increased employment, and fostering a higher standard of living.¹ In addition, the Chamber's President and CEO, Tom Donohue was appointed to the Secure Borders Open Doors Advisory Committee

¹ The NACC has offered recommendations to the three governments, both within and building upon the Security and Prosperity Partnership of North America ("SPP"), to enhance the secure flow of people, goods and services in North America, please see "Meeting the Global Challenge: 2008 Report to Leaders from the North American Competitiveness Council" http://www.uschamber.com/publications/reports/0804_global_challenge.htm.

to the Departments of State and Homeland Security, which was created as part of the Rice-Chertoff Initiative.

These comments reflect the information and concerns expressed to date by our members on the implementation of WHTI. To be clear, the Chamber is committed to continue working with Congress and the Departments of Homeland Security and State to successfully and efficiently implement WHTI. The efficient movement of people, goods and services and a secure border are not mutually exclusive or competing objectives. In fact, “the primary mission” of the Department of Homeland Security (“DHS”) includes “ensur[ing] that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.”

It is important to note that WHTI is not being implemented in a vacuum. A number of inefficiencies at the borders are threatening our competitiveness and WHTI places further pressure on our eroding infrastructure, which could harm legitimate commerce, trade and tourism.² Increased delays at the border due to poor WHTI implementation would not only affect border communities and last minute travelers, but would also impact the entire North American economy by slowing down commerce. In U.S.-Canada traffic alone, there are about \$1.5 billion in goods and services crossing the land borders every day.

Congress and the Administration deserve credit for many positive changes to WHTI, since it was first announced, and I will discuss those in my statement together with the Chamber’s recommendations for improvement in the context of the final rule published on April 3, 2008. Also, the Chamber has never taken a position on the REAL ID Act and I will refrain from discussing it here, other than to point out how REAL ID compliant documents could statutorily be made to be WHTI compliant. However, before discussing WHTI, I would like to take this opportunity to address certain border issues and make several recommendations to facilitate trade and travel across our land borders. Focusing solely on implementing WHTI efficiently without a holistic approach to other border issues would not lead to an efficient and secure border.

Existing Delays at the Borders

The Chamber is concerned that the U.S.-Mexico and the U.S.-Canada border crossings are increasingly becoming a competitive disadvantage when compared to the rest of the world. The Chamber is troubled that security concerns are not being balanced with economic interests in the border management decision making process. Thanks to both the North American Free Trade Agreement (“NAFTA”) and the closely connected economies of the U.S., Canada, and Mexico, the North American supply chains for many companies is tightly integrated.³ For companies with an integrated supply chain, the impact of border delays, fees, and stringent

² For a detailed discussion of other border issues, please see “Finding the Balance: Reducing Border Costs While Strengthening Security.” U.S. Chamber of Commerce and Canadian Chamber of Commerce, February 2008, http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

³ For a full discussion of the substantial economic gains to the three countries from NAFTA, please see “The Economic Benefits of NAFTA” from the Canadian-American Business Council, April 2008.

security procedures are magnified because their products are required to clear customs multiple times in the manufacturing process—creating a competitive disadvantage.

In the automotive industry, parts cross from Canada and Mexico heading to plants throughout the United States, whether it is to a long-existing assembly plant in Detroit, or a newer one in San Antonio. In the food industry, a vegetable grown in the United States may find its way into a product that is processed just across the border in Canada or Mexico and then shipped back to the United States. Thus, delays at U.S. ports of entry not only harm Canadian and Mexican processors—it backs up the entire supply chain, affecting our own farmers. In addition, delays at U.S. ports have also resulted in trucking companies significantly raising prices to ship products and/or companies in the U.S. opening storage facilities to keep inventory. The increased costs are many times passed down to the American consumer in higher prices for goods crossing our land borders.

a. Measuring Border Wait Times

Even before WHTI has been fully implemented, wait times at the border seem to be increasing. To address this issue, DHS should start by dealing with their counterparts in Canada and Mexico, as well as industry representatives, to reach agreement on proper measurements for border wait times. Data from the private sector on border wait time varies widely when compared to the data kept by U.S. Customs and Border Protection (“CBP”). The private sector data shows much longer wait times than CBP data—particularly for the most extensive delays. The difference is associated with the fact that CBP calculations customarily only includes time spent in the primary inspection lane, while ignoring time spent on backed-up roads approaching the primary inspection lane or time spent on secondary inspections. These measuring discrepancies need to be addressed, so the severity of delays and their causes can properly be addressed.⁴

b. Transparency

There is a great deal of anxiety in the business community due to the level of uncertainty created by border policies announced and implemented before the infrastructure is in place. The private sector needs to know what to expect in order to properly adjust. This is difficult to do when there is a lack of transparency concerning implementation plans and almost no concerted outreach to the traveling public regarding upcoming changes in requirements for border crossings. The “Travel Promotion Act” (S.1661 / H.R. 3232), would address several of these issues by establishing a well-funded public-private outreach campaign to improve the efficient dissemination of new U.S. entry and exit policies. The Chamber asks that you consider cosponsoring this legislation.

⁴ The Secure Borders Open Doors Advisory Committee (“SBODAC”) to the Departments of Homeland Security and State issued a report which recommended that metrics should take a more prominent role in both departments’ operations. “Report of the Secure Borders Open Doors Advisory Committee,” January 2008 (Pages 35, 38-42) http://www.dhs.gov/xlibrary/assets/hsac_SBODACreport508-compliant_version2.pdf. Perhaps this Committee will consider proposing the creation of a private sector advisory board to oversee the implementation of the recommendations made in the SBODAC report and new recommendations as we move forward.

c. Fully Staffing CBP and Upgrading the Infrastructure

Currently, inadequate staffing, reduced or changing hours of service, mandates for secondary inspection of some products, new fees, and outdated infrastructure at our land ports of entry are leading to long delays with a significant economic impact on businesses, without apparently increasing security. We should reconsider some of the new fees and inspections that have been imposed, increase funding for CBP to guarantee adequate staffing and extended hours of service, and upgrade our technology and infrastructure, so CBP officers can more efficiently monitor the flow of people and commerce. In the House of Representatives, the “Putting Our Resources Towards Security” Act (“PORTS Act” H.R. 5662) was introduced by Representative Silvestre Reyes, and is a step in the right direction. The Chamber encourages members of this Subcommittee to consider introducing it in the Senate.

The PORTS Act would:

- provide for 5,000 additional CBP officers, allowing for an increase in total officers by approximately 30 percent over five years;
- provide for 350 additional support personnel and 1,200 agriculture specialists at CBP, which will help ensure officers will not be pulled away from inspection duties to perform specialized or administrative work;
- authorize \$5 billion over five years for the General Services Administration (GSA) to address infrastructure deficiencies at our land ports of entry. GSA and CBP will be required to work together to prioritize repair work.

Western Hemisphere Travel Initiative

Implementing WHTI without addressing the existing border delays and the additional pressures that WHTI imposes may generate a new security problem with long lines of trucks idling at the busiest ports of entry. If improperly implemented, WHTI could make a bad situation even worse. Many improvements have already been accomplished, but more needs to be done.

a. Implementation Timeline

The Chamber continues to reiterate the need for rational and measured implementation of new border crossing requirements. The President and Congress agreed that securing our nation’s borders is something that needs to be done correctly—rather than expeditiously—to avoid unnecessarily harming our economy. On January 4, 2008, President George W. Bush signed the Consolidated Appropriations Act of 2008 (H.R. 2764) into law, which provided the Administration at least until June 1, 2009, to develop alternatives to a passport for use in land and sea ports of entry.

Great progress has already been made in developing enhanced driver’s licenses (EDLs) to be acceptable at land and sea ports of entry. Furthermore, this spring, DHS and the Department of State (“DOS”) plan to unveil a federally issued, wallet-sized, lower-cost alternative to a U.S. passport, the U.S. passport card. Congress and the Administration acknowledged when granting

the eighteen-month extension that for WHTI to be successful, with minimum economic disruption, it required an aggressive campaign to educate the general public.

The Chamber objects to the creation of interim standards, as was done in January of this year, that would change in 18 months and only serve to further confuse the traveling public and complicate implementation of the final proof of citizenship standards.

b. Cost Analysis

The analysis done by DHS concentrates on travel and tourism and does not address the larger concerns of the business community, which include the impact on commerce in general. DHS has said that it will not conduct a more robust economic analysis. However, there is a study underway at the Government Accountability Office (“GAO”).

Given that the primary mission of DHS includes ensuring that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland, we recommend for DHS to wait for the GAO report, or conduct a new more comprehensive economic impact analysis of its own, before moving ahead with full implementation.

c. Pilot Programs

Before pushing for full implementation, pilot programs need to be performed to assess the potential impact of WHTI on cross-border commerce, thus, making sure final implementation of WHTI does not negatively affect our economy and security. A minor pilot test of WHTI at a 65% review rate in the port of entry of El Paso caused major delays.

We must avoid the chaos, long lines, and 12-week paperwork backlogs that were created in 2006 with the hurried implementation of the WHTI air rules. Again, the problem then was exacerbated by an infrastructure that was not in place and by the lack of an efficient public-awareness campaign. Despite the business community’s warnings, the government was not prepared for the changes it made in policy. Pilot programs help identify concerns before the damage is done. Specifically, for land ports of entry, the pilot programs need to address infrastructure and staffing requirements with an emphasis on future plans for full implementation and technological requirements. The test results must be transparent and consistent with recommendations to ensure operational success in the future.

d. U.S. Citizen Cruise Ship Passengers

The Chamber is pleased that DHS and DOS in the final rule took notice of the difference in demographics between the international airline traveler and those traveling in an uninterrupted-loop cruise originating in the U.S. While international airline travelers generally have a high level of passport ownership, the ratio of passport ownership for sea cruise travelers is closer to the U.S. population at large, which is significantly lower, especially for those travelers taking short (two to five days) Caribbean cruises. This industry would have suffered economic harm—without any apparent improvement in security—had the change not been made between

the proposed rule and the final rule. The Chamber supports the alternative document requirements in the final rule for U.S. citizens departing and reentering U.S. territory on board the same cruise ship.

e. Travel by Children Under Age 16

Since 2005, when WHTI was first announced, the Chamber has been calling for flexibility in the document requirements for children. Children in both the United States and Canada have the lowest passport ownership rate of any demographic group. The implications of improper implementation in this area are broad, covering, for example, legitimate travel by families with children, children on school day trips, and children participating in cross-border sport activities. The Chamber strongly supports the alternative document requirements created for U.S. and Canadian citizen children under the age of 16. **However, the Chamber continues to recommend that the alternative be applied to children “Age 16 and Under,” and not as currently stated in the final rule as children “Under Age 16.”**

As DHS and DOS recognize, “it is difficult for the majority of children under 16 to obtain a form of government-issued photo identification” and also “age 16 is the age that DOS begins to issue adult passports, valid for 10 years, instead of 5 years for children.” However, given that neither government-issued photo identifications nor adult passports arrive automatically in the mail on a child’s 16th birthday, allowing children age 16 to travel under the alternative procedure would give them the time needed to apply for the appropriate documentation.

f. Travel by Groups of Children Under Age 19

The Chamber successfully called for language now found in Section 546 of the Department of Homeland Security Appropriations Act of 2007, requiring the certification by DHS and DOS that an alternative procedure for groups of children be created. The Chamber supports the alternative procedure found in the final rule for “Children Under Age 19” traveling as part of school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations. **However, this alternative procedure should be applicable to groups traveling by air, not just those arriving at U.S. sea or land ports of entry.**

The language found in Section 546 clearly calls for an alternative procedure to be developed for groups of children traveling across “an international border.” Section 546 makes clear distinctions when the requirements are to apply only to land and sea ports of entry. While the statute clearly calls for availability of the passport card only for use at land and sea ports of entry before final WHTI implementation, it also clearly calls for an alternative procedure “for groups of children traveling across an international border” with no restriction based on the ports of entry type.

g. Outer Continental Shelf Employees

Chamber member companies received differing and conflicting information with regard to document requirements for workers aboard Mobile Offshore Drilling Units (“MODUs”)

attached to the United States Outer Continental Shelf (“OCS”) traveling from the U.S. to and from MODUs. The Chamber sought the clarification and standardization of the procedures that now appear in the final rule. Thus, the Chamber supports the more official clarification contained in the final rule, which plainly states that the WHTI requirements do not apply when traveling from the U.S. to and from MODUs in the OCS. Once again, had WHTI been applied to these group of workers, it would have impacted this industry without any security benefit.

h. Individual Cases of Passport Waivers

The Chamber has been calling for passport waivers to be provided in cases of emergencies, such as “volunteers responding to fires and emergencies across the border (an everyday occurrence).” The Chamber strongly supports the description in the final rule of the possible waivers to be granted in a case-by-case basis. Also, the explicit acknowledgement that Customs and Border Protection (“CBP”) has the authority to temporarily admit non-immigrant aliens into the United States on a temporary basis in case of a medical or other emergency is welcomed. The Chamber believes that CBP should proactively confer with local emergency responders in border areas to help facilitate entry procedures into the United States when emergencies occur. Of particular importance would be groups such as fire fighters that respond to cross-border calls, emergency workers that would respond in a natural disaster, Medivac personnel, and others that deal with emergencies where even a few minutes could make the difference between life and death.

i. Passport Cards

The new passport cards, also known as the PASS card, will be a wallet-sized alternative to a U.S. passport designed to facilitate efficient and secure cross-border travel at land and sea ports of entry under WHTI. The Chamber has long advocated for the development of this alternative prior to full implementation of WHTI and continues to urge the U.S. government to make it truly economical to obtain and acceptable at all ports of entry, including air. For it to be a true substitute to a U.S. passport under WHTI, **the passport card should be accepted at air ports of entry as well as the proposed land and sea ports of entry.**

Also, although the application fee at first blush seems reasonable, \$20 for adults and \$10 for minors (under age 16), applicants applying in person will have to pay an additional “execution fee” of \$25. Many applicants will be required to apply in person and will, therefore, be subject to this fee. For example, first time adult passport applicants, all minors, adults holding expired passports issued more than 15 years previously or when the bearer was a minor, and those applying for replacement passports that have been lost, stolen, or mutilated will have to pay the additional execution fee. In addition, there is currently about a \$15 fee for pictures taken at the government application center. Thus, what starts as a \$20 alternative to the \$115 passport (\$75 application fee, \$25 execution fee, and \$15 picture fee) becomes a \$60 alternative (\$20 application fee, \$25 USD-execution fee, and \$15 picture fee). These costs do not take into consideration possible expediting fees, given there is no indication the time frame for production of a passport card will be any shorter than for a passport.⁵

⁵ Also see “Finding the Balance: Reducing Border Costs While Strengthening Security,” February 2008 (page 18), http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

The cost of the passport card should be \$20 for adults and \$10 for minors, regardless of whether it is a renewal or original application, if it is truly to be an economical substitute to a passport. It should also not be burdened with the same additional “fees” and “charges” already imposed on passport applications, e.g., there should be no execution or picture fee. Furthermore, special discounts should be made available to families applying for several cards at a time. The Chamber understands that the \$25 execution fee is paid to the Post Office or county clerk who acts as the acceptance agent for the U.S. passport or passport card paperwork. One approach to avoid the execution fee would be to have CBP deploy staff to high demand areas to accept and verify identity documents in passport card applications. This would be particularly helpful in border communities. CBP occasionally deploys officers to businesses to accept and process applications for trusted traveler cards, such as NEXUS, via what they call mobile enrollment teams, and this proposal could expand upon those efforts. Finally, the time frame for production of a passport card should be significantly shorter than for a passport, increasing its appeal and eliminating the need to increase its cost even further with expediting fees.

j. Enhanced Drivers’ Licenses

The Chamber supports the decision by DHS and DOS to announce officially that documentation such as the Border Crossing Card (“BCC”), the Secure Electronic Network for Travelers Rapid Inspection (“SENTRI”) card, NEXUS card, and the Free and Secure Trade (“FAST”) card will become acceptable substitutes for a passport. However, as the Chamber has stated since 2005, these documents still require a special discretionary form of identification solely for border crossing purposes and, in the case of NEXUS, SENTRI and FAST, are significantly more difficult to obtain than a passport. **Thus, the Chamber continues to call for the acceptance of a “document that is as close to being non-discretionary as possible,” in particular, enhanced driver licenses.** EDLs denote identity and citizenship, while containing vicinity radio frequency identification (RFID) technology and other security features. They hold significant potential to serve as a less expensive and more practical form of documentation than a passport.

The Chamber applauds the departments’ continued commitment “to considering travel documents developed by the various U.S. States and the Governments of Canada and Mexico,” particularly since they can be issued by a “State, tribe, band, province, territory, or foreign government if developed in accordance with pilot program agreements.” The Chamber looks forward to states, provinces, and territories joining in. Following in the footsteps of the state of Washington, the states of Vermont and New York signed such an agreement with DHS to create enhanced drivers’ licenses (EDLs) that will be WHTI compliant. Arizona has also expressed its intention to do the same. DHS and DOS should continue to work on expanding these WHTI compliant driver licenses and state identifications for land and sea border crossings before moving into full implementation. The Chamber is concerned that there will not be a critical mass of WHTI-compliant EDLs in circulation before its target June 2009 implementation.

Without this critical mass, WHTI implementation will lead to further congestion at the border with travelers arriving without proper documentation. The resulting lengthy wait times will have many tourists and business people avoiding cross-border travel, worsening an already

critical situation. EDLs are vital to ensuring WHTI is smoothly implemented and the security needs of North America are met without impeding the movement of people, goods, and services across the border. However, as with the passport card one of the limitations of the EDLs is its acceptance only for land and sea border crossings and not air crossings. Hence, an EDL would be useless for a person who might, cross the border by automobile, but needs to return by air. **A broader, more universal acceptance of the EDLs is needed to facilitate travel in all modes of transportation within the WHTI area.**⁶

k. REAL ID

There is a real disconnect between the REAL ID Act and WHTI. To the extent that states will be mandated to become REAL ID compliant for their residents to be able to board a plane using their drivers' license, there should be some consideration given to amending the underlying WHTI law to make REAL ID compliant licenses also WHTI compliant. The underlying WHTI law could be amended to allow identifications that prove legal residency in the United States, which REAL ID compliant documents do, acceptable under WHTI.

Conclusion

In the final rule published this month, DHS stated that it intends to fully implement WHTI on June 1, 2009, the earliest possible date, which DHS believes is in the best interest of national security—with no mention of economic security. **The Chamber believes that more emphasis needs to be placed on doing it right versus doing it fast.** In addition, economic security and national security are interlinked. We should remember that the twin towers in New York were attacked because they were the symbol of U.S. economic power. The Chamber continues to ask DHS to recognize the need to advance the dual objectives of enhancing security and improving economic prosperity, which are mutually reinforcing.

Border management policy has a tremendous economic impact not just on border communities or the travel and tourism sector, but on our economy at large. North America has the largest trading relationship in the world and it all relies on the efficient movement of goods, services and people across our borders.⁷ If we want to grow and remain competitive in the global market, we need to address the deteriorating problems at our borders and make sure that programs like WHTI do not exacerbate the problems we are trying to fix.

The Chamber greatly appreciates the excellent relationship we have developed with this Committee and hopes to continue and expand that relationship in the future. I wish to thank you for this opportunity to share the views of the U.S. Chamber of Commerce and our broad membership concerned with WHTI and efficient border management. I look forward to your questions.

⁶ The U.S. Chamber of Commerce with the Canadian Chamber of Commerce released a report which emphasized the importance of EDLs and recommended that there is a need for rapid deployment, a broad communications plan, as well as that EDLs should be accessible for air travel. "Finding the Balance: Reducing Border Costs While Strengthening Security," February 2008 (page 17), http://www.uschamber.com/publications/reports/0802_finding_balance.htm.

⁷ Canadian-American Business Council, "The Economic Benefits of NAFTA," April 2008.

Canadian-American Business Council

The economic benefits of NAFTA

April 2008

The U.S. presidential election has prompted a debate on renegotiating the 1994 North American Free Trade Agreement.

The agreement came into force January 1, 1994, and as of January 1, 2008, it has been fully implemented. Virtually trade in all products manufactured in Canada, Mexico and the U.S. cross the borders tariff-free.

Presidential candidates on the Democratic side and the presumed Republican nominee have said they plan to push for changes in the 14-year-old agreement.

Both Senators Hillary Clinton and Barack Obama have said they want to “fix” NAFTA by including tougher labor and environmental standards, mirroring those found in other bilateral trade agreements the U.S. has signed with other countries subsequently.

Republican Senator John McCain has indicated that he wants to strengthen U.S. Trade Adjustment Assistance, which was designed to assist trade-affected U.S. workers who have lost jobs as a result of increased imports from Canada or Mexico or shifts in production out of the U.S.

Calls by the presidential candidates to renegotiate parts of NAFTA have sparked responses from Canadian and Mexican politicians. In Canada's case, the government of Prime Minister Stephen Harper has suggested it would make changes to the guarantees Canada has given on exports of oil, natural gas and electricity to the U.S. Canada is the largest exporter of energy to the U.S. Mexico is threatening to end the special treatment to U.S. agricultural products in the Mexican market.

There is little argument that NAFTA has generated substantial economic gains for all three countries. Gary Clyde Hufbauer and Jeffrey J. Schott, trade experts at the Peterson Institute for International Economics in Washington and authors of NAFTA Revisited: Achievements and Challenges, say that on a basic level NAFTA's impact on North American companies is clear.

"NAFTA was designed to promote economic growth by spurring competition in domestic markets and promoting investment from both domestic and foreign sources. It has worked. North American firms are now more efficient and productive," the authors conclude. "They have restructured to take advantage of economies of scale in production and intra-industry specialization."

Statistics are telling as well.

Between 1993 and 2007, trade among the NAFTA partners has more than tripled, to US\$930 billion a year from US\$297 billion a year. When NAFTA came into force in 1994, the combined gross domestic product or economic output for the three countries was US\$6 trillion among a total population of 360 million. A decade later, the NAFTA continental

economy had grown to a US\$12.5 trillion with a population of 430 million. Last year, the three countries' total GDP was US\$15.8 trillion with a population of 445 million. It is the largest trading relationship in the world.

While the phenomenal economic growth cannot be solely attributed to NAFTA, the pact among Canada, Mexico and the U.S. has made a significant difference in trade patterns among the three countries since 1994.

Today, trade with NAFTA partners now accounts for more than 80% of Canada and Mexican trade and about a third of U.S. trade, according to the U.S. Trade Representative's Office.

The pact has also had an impact on individual sectors such as the automobile industry, the U.S. Department of Commerce says.

"NAFTA provisions in the auto sector allow U.S. automotive producers to treat the three countries as a single market, maximize efficiencies, and become internationally competitive."

Hufbauer notes, however, that it can be difficult to pinpoint which industrial sectors have stayed put because of NAFTA rather than migrate to lower wage countries because public announcements by companies are focused largely on moving to a new location.

"However, I believe that the yarn-forward rules of origin in textiles, coupled with NAFTA, have strengthened the textile complex," he says. "Certainly electronics and autos benefit from slicing up the value added chain and performing each part in the cheapest NAFTA location. Also, we do a lot more food processing within NAFTA than 15 years ago."

With NAFTA fully implemented -- with tariffs on virtually all products, except dairy, poultry and sugar, crossing the borders eliminated -- there is an expectation trade could grow even more, especially among agricultural products. "In 1994, our combined agricultural exports to Canada and Mexico totaled US\$10.1 billion," said acting US Agriculture Secretary Chuck Conner in a statement in January. "They are expected to reach US\$28 billion in 2008."

The Canadian perspective:

Between 1994 and 2003, Canada's economy had average annual growth rates of 3.6%, compared with 3.3% in the U. S. and 2.7% in Mexico. The Canadian government notes that employment since NAFTA has shown steady gains, with overall employment rising from 14.9 million to 15.7 million in the early 2000s. Last year, employment stood at 18.1 million.

Since the implementation of the original Canada-U.S. Free Trade Agreement in 1989, two-way trade has tripled. Under NAFTA, growth in bilateral trade between Canada and the U.S. has averaged 6% annually over the past decade. In 2007, the federal government said bilateral trade in goods and services was C\$597 billion, with more than C\$1.7 billion worth of goods and services crossing the border every day.

In a recent speech in Boston, Canada's Ambassador to the U.S., Michael Wilson, outlined the significant impact NAFTA and the earlier Canada-U.S. Free Trade Agreement have had on the Canadian economy.

“Since the Canada–U.S. Free Trade Agreement was signed in 1988, there’s no doubt that our bilateral trade has been the key to growth,” he said. “During those 20 years, Canada–U.S. trade has more than tripled, from C\$225 billion to C\$720 billion. Investment flows have also increased substantially.”

Not only, he said, is Canada the biggest export market for U.S. products — more than China, Japan, the U.K. and Germany combined —Canada ranked No. 1 in 36 states.

Canada’s trade with the U.S. is equivalent to 53% of Canadian GDP. The U.S. receives about 80% of Canadian exports while the U.S. ships about 20% of its exports to Canada.

As Ambassador Wilson pointed out, Canada and the U.S. have also one of the world’s largest investment relationships. The U.S. is the largest foreign investor in Canada and the most popular destination for Canadian investment. In 2006, U.S. direct investment in Canada was worth more than US\$241 billion while Canadian direct investment in the U.S. was close to C\$224 billion and C\$4.4 billion in Mexico. In 2006, the U.S. and Mexico direct investment in Canada reached 61% of the total C\$449 billion invested in Canada from foreign investors.

The Canadian government notes that most cross-border shipments move without problems. There are notable exceptions such as softwood, but Canada insists both the World Trade Organization and NAFTA dispute settlement processes can handle most issues.

Canada remains the U.S.’s largest trading partner, at least for the moment. The U.S. Census said that in January this year that Canada-U.S. trade for the month was US\$46.7 billion, followed by China with \$32 billion and Mexico with US\$28.9 billion.

The U.S. perspective:

From the current U.S. government's perspective, the U.S. economy has been a big winner under NAFTA. U.S. Trade Representative Susan Schwab says U.S. merchandise exports to Canadian and Mexico grew more rapidly – 157% – than U.S. exports to the rest of the world, which was 108%.

About US\$2.4 billion worth of goods crosses the northern and southern borders each day. As a result, Canada and Mexico are the U.S.'s first and second largest export markets, although China is soon expected to be the U.S.'s largest trading partner. Initial worries about NAFTA, from the U.S. perspective, had little to do with trade with Canada. Instead, former presidential candidate Ross Perot, characterized then widespread concerns about America job losses to Mexico as “that giant sucking sound.

That does not appear to have happened.

Instead, Schwab says that U.S. economic growth during the past 14 years of NAFTA has been strong: U.S. employment rose 22% to 137.2 million in December 2006 from 112.2 million in December 1993. The average unemployment rate was 5.1% between 1994 and 2006, compared with 7.1% between 1981 and 1993.

U.S. manufacturing output rose by 63% between 1993 and 2006, nearly double the 37% seen between 1980 and 1993. Wages in the same sector increased 1.6% between 1993 and 2006 compared with 0.9% between 1980 and 1993.

Excluding housing, U.S. business investment has risen by 107% since 1993, compared with 45% between 1980 and 1993

The U.S. Trade Representative also insists that NAFTA's investment provisions such as Chapter 11 do not prevent the U.S. – or any NAFTA country – from adopting or maintaining non-discriminatory laws or regulations that protect the environment, worker rights, health and safety or other public interest.

Schwab notes that to date the U.S. has not lost a challenge in cases decided under NAFTA, nor has it paid a penny in damages to resolve any investment dispute. Even if the U.S. were to lose a case, it could be directed to pay compensation but it could not be required to change the laws or regulations at issue.

The Mexican perspective:

In its latest analysis, the Mexican government says NAFTA has increased both imports and exports between Mexico and the U.S. Its most recent data indicates that between 1994 and 2003, 48 out of 50 U.S. states and the District of Columbia have seen a growth in exports to Mexico. Among these, 31 states have at least doubled their sales to Mexico.

On the export side, Mexico is among the top 10 exporters to 46 states with the biggest increases being to Maryland, Wyoming, Virginia, South Carolina, West Virginia, Colorado, Massachusetts and New York.

Not surprisingly, the southern border states of California and Texas have seen a huge boost in exports to Mexico. California's sales to Mexico have more than doubled to US\$14.8 billion in 2003, from US\$ 6.5 billion in 1993, ahead of California exports to Canada

and Japan. Texas exports to Mexico have doubled to US\$41.5 billion in 2003 from US\$ 20.3 billion in 1993.

In 2006, trade with Mexico's two northern partners accounted for almost 90% of its exports and 55% of its imports.

However, translating that growth in trade to economic growth in Mexico remains more difficult. The Council on Foreign Relations, in its March 2008 review of NAFTA benefits (http://www.cfr.org/publication/15790/naftas_economic_impact.html), reports that economists suggest growth in the country has been less than expected under NAFTA.

Since 1994, Mexico's GDP has increased at an average annual rate of 2.7%, lagging the average growth rates of 3.3% in the U.S. and 3.6% in Canada. That is despite the fact that Mexican exports to the U.S. have quadrupled since NAFTA, to US\$280 billion a year from US\$60 billion, the Washington-based council found.

However, Schott and Hufbauer of the Peterson Institute say while Mexican growth economic rates have been "a disappointment," the lackluster growth may be more linked to what the economists see as a slow opening up to foreign investment of sectors such as energy not covered by NAFTA.

"Sectors that were shielded from NAFTA—particularly energy in Mexico—have also been shielded from its positive effects."

The road ahead:

In an election climate, it is always difficult to judge how serious a winning presidential candidate would ultimately go in attempting to renegotiate international trade agreements.

Both Senators Clinton and Obama have made it clear they want to amend NAFTA to include what they describe as core labor and environmental standard. Clinton also wants to create a trade prosecutor, eliminate the rights of foreign companies to sue to overturn U.S. laws that protect the environment as well as health and safety of workers.

Senator McCain, who supports NAFTA, has limited his criticism of the pact to the U.S. Trade Adjustment Assistance program, which he wants to strengthen and which was designed to help U.S. workers affected by U.S. industries moving to other NAFTA countries or by competition from imports.

Largely in response, Canadian politicians have made it clear they may use the opportunity to change the energy provisions of NAFTA, which assures that Canada will continue to ship oil, natural gas and electricity to U.S. markets. Canada is the largest exporter of energy to the U.S. Said Prime Minister Stephen Harper: "Of course, if any American government ever chose to make the mistake of opening (NAFTA), we would have some things we would want to talk about as well." Mexico, a major importer of U.S. agricultural products, has raised similar concerns.

Paul Moen, former senior policy advisor to Canada's Minister of International Trade, points out that both Republican and Democratic presidents have been under pressure to be more protectionist in tough economic times.

But as he pointed out in a recent letter to the Financial Times: "When all is said and done, Americans have always carried the torch of free trade in the world since 1945, and without their leadership the evolution of a rules-based system would be in serious jeopardy.

Trade experts and governments are concerned that an attempt by a new Democratic president – should one be elected this November -- to re-open an existing international trade agreement will be a tricky road to go down. Much like pulling at a loose yarn on a sweater, there is a very real risk NAFTA could completely unravel.

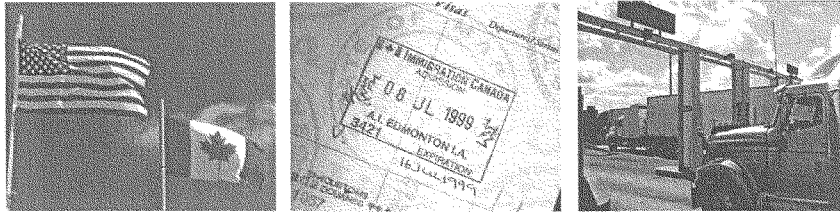
And that would have even broader foreign relation ramifications for the next U.S. president, notes Derek Burney, former Canadian Ambassador to the U.S. who was intimately involved in NAFTA negotiations.

"A decision to torpedo a highly successful international agreement would certainly backfire on a new Democratic President's intentions to refurbish U.S. standing in the world," says Burney, a CABC advisory member.



THE CANADIAN CHAMBER OF COMMERCE
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Finding the Balance:

Reducing Border Costs While Strengthening Security



February 2008

Partnering Organizations

Co-Chairs: Canadian Chamber of Commerce
U.S. Chamber of Commerce

Air Transport Association of Canada
 American Trucking Associations (ATA)
 Association of International Automobile Manufacturers of Canada
 Binational Tourism Alliance
 Border Trade Alliance
 Buffalo Niagara Partnership
 Business for Economic Security, Tourism and Trade (BESTT)
 Canadian Airports Council
 Canadian American Business Council
 Canadian Chemical Producers' Association
 Canadian Council of Chief Executives
 Canadian Courier and Logistics Association
 Canadian Die Casters Association
 Canadian Federation of Independent Business
 Canadian Industrial Transportation Association
 Canadian International Freight Forwarders Association
 Canadian Manufacturers and Exporters
 Canadian Plastics Industry Association
 Canadian Society of Customs Brokers
 Canadian Trucking Alliance
 Canadian Vehicle Manufacturers' Association
 Canadian Vintners Association
 Canadian/American Border Trade Alliance
 Chamber of Marine Commerce
 Council of the Americas
 Food Processors of Canada
 Grocery Manufacturers Association (GMA)
 Hotel Association of Canada
 I.E. Canada, Canadian Association of Importers and Exporters
 International Association of Exhibitions and Events (IAEE)
 Motor & Equipment Manufacturers Association
 National Business Travel Association (NBTA)
 National Business Travel Association Canada
 National Foreign Trade Council
 Public Border Operators Association
 Québec-New York Corridor Coalition
 Railway Association of Canada
 Retail Council of Canada
 Retail Industry Leaders Association
 Shipping Federation of Canada
 Supply Chain and Logistics Association Canada
 The Capital Corridor
 Tourism Industry Association of Canada

Executive Summary



Canada and the United States enjoy a special relationship that has been built on shared values developed through the long history of family, friends, and visitors who live on both sides of the border. It facilitates the largest bilateral trading relationship in the world, with approximately \$1.5 billion USD¹ in two-way trade crossing the border on a daily basis. The benefits flowing from this relationship are significant, including approximately 7.1 million jobs in the United States² and 3 million jobs in Canada³.

Unfortunately, both Canadian and U.S. business communities are expressing a serious and growing concern with the increasing costs and delays associated with crossing the border. While we strongly support the efforts of our governments to protect our two nations against those who threaten our freedoms, we also believe that we can keep our borders closed to terrorism yet open to trade. Ensuring the safety and prosperity of our citizens requires us to work together so that decisions about security and economic policy are mutually reinforcing and balanced and do not serve to unnecessarily disrupt legitimate travel and trade. A 'thick' border, one associated with increasing border-crossing fees, inspections, and wait times, is an expensive border. A sense of frustration exists within the Canadian and U.S. business communities that many practical measures that could reduce border-related costs have yet to be taken.

To address some of these concerns, the Canadian Chamber of Commerce and the U.S. Chamber of Commerce co-chaired a coalition, in close collaboration with members and partnering associations, to collect specific, near-term and practical recommendations on how to reduce Canada-U.S. border-related costs.

This report recognizes and fully embraces post 9/11 security realities. Many of the recommendations seek to increase the participa-

tion in programs that identify known low-risk goods/travelers, allowing border officials to expend their limited resources where they are most needed – on unknown shippers and travelers.

We call on both our governments to implement the recommendations which will increase Canadian and U.S. competitiveness and reduce the unpredictability related to the border. Our current economic climate only amplifies the urgent need for action; action that will deliver a big win for Canadian and U.S. jobs, companies, and a more secure North America.

The active participation by our leaders in the Security and Prosperity Partnership of North America (SPP) initiative clearly demonstrates that both prosperity and security are important to our governments. The SPP workplan set a framework for further trilateral action on border measures and direct business input was provided by the North American Competitiveness Council (NACC). The North American Leaders' Summit in Montebello, Quebec in August 2007 called for "further cooperation in law enforcement, screening, and facilitation of legitimate trade and travelers across our borders."

This report responds to this call for action with specific and practical solutions for the Canada-U.S. border. We have collected industry's top recommendations for cost reductions, many of which have been expressed in other documents.

Many of the recommendations will strengthen participation in trusted shipper and traveler programs that have been designed by our governments to enhance their ability to take a risk-based approach to securing our borders. The more participants in these programs, the more border officials can focus on identifying illegitimate cargo and travelers – the aim of all the security measures. We support these programs. Businesses and travelers,



from both sides of the border, are willing to undertake the often costly investments needed to participate in these voluntary, certified low-risk programs if they benefit from more predictable and expedited border crossings. Businesses have identified a number of needed changes that will enhance the participation in these programs including: establishing goals, with shared metrics, for measuring the success factors that will increase participation; ensuring all government departments and agencies with border requirements are fully implementing the Single Window Initiative or International Trade Data System requirements; mutual recognition between U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) and Canada's Partners in Protection (PIP) trusted shipper programs; elimination of duplicative fees and requirements; establishing a pilot program for expediting shipments from low-risk food producers; and extensive marketing, expansion and wide implementation of the secure NEXUS and People Access Security Service (PASS) programs.

Other measures that will reduce the costs and risks associated with the border are also needed. These include providing 24/7 border access, including all secondary inspections, by fully trained officers at major crossings; further progress on the development of a border contingency plan; rapid implementation of enhanced drivers' licenses; waiving of APHIS fees; establishing a pilot preclearance program for low-risk food importers; rescinding the requirement for individual food health stickers; a Secure Flight Program exemption for Canadian overflights; a harmonized electronic in-transit process; establishment of a Short Sea Shipping pilot project; full rollout of Radio Frequency Identification (RFID) technology at all major crossings; and a work around ensuring minimal disruptions during the Peace Arch border upgrade.

It is important to state that we recognize that a significant contributor to the level of unacceptable burden that has been placed on the movement of legitimate goods, services, and travelers, has been insufficient funding for the border agencies. We clearly state our support for the needed funding for the agencies and departments that must implement the recommended measures.

The focus of this paper is reducing border-related costs in the short term. While not addressed in this report, we do recognize that there is also a pressing need for governments and industry to come together to rethink how we achieve our joint needs for a secure and trade efficient border in the mid to long-term. There are also important issues that fall outside of the mandate of this paper that must be addressed including the urgent need to fund and put in place upgraded border infrastructure, expanding preclearance, and implementing a coordinated clearance and point of departure determination program. While not short term deliverables, it is important that efforts begin in the near term.

The growing global competition and current financial downturn make the adoption of these recommendations essential to ensuring the competitiveness of Canada and the United States. We call on the governments of Canada and the United States to commit to fully deliver on these recommendations within the next 18 months.

The full list of recommendations can be found in 3 List of Recommendations.

¹U.S. Department of State. 2008. "Background Note: Canada".

²Canadian Embassy to the United States. 2006. "State Trade Fact Sheets 2006".

³David L. Emerson, Minister of International Trade Canada. October 5, 2007. "Free Trade Works." The Chronicle Herald.

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1 The Current Situation



Impact of Border Delays

Feedback from Canadian and U.S. business shows an increase in border costs and a 'thickening' of the border because of increased wait times; direct fees for crossing the border; additional and duplicative border programs; additional costs for participating in trusted shipper and traveler programs; and increased inspection times. The extensive layering of these costs has resulted in a border that is becoming increasingly more expensive to cross for both cargo and travelers.

Increased Border Wait Times

The summer of 2007 saw the longest delays since 2001 for U.S.-bound traffic at many land-border crossings. Delays of up to three hours were not uncommon even at some border crossings not known for extensive wait times. Yet during 2007, at Ontario–U.S. land crossings, the volume of commercial and passenger vehicles was down almost 4 percent. For example, in August 2007⁴, the Peace Bridge crossing experienced an increase in average inspection time per vehicle from 56 seconds to 74 seconds, a 32 percent increase from the same period in the previous year. With an average of 14,500 vehicle crossings per day, 18 short seconds per vehicle easily turns into hours of delay at each crossing. Average wait times at the Detroit-Windsor Tunnel increased from 13.4 minutes in May 2007 to 23.6 minutes in August 2007. Finally, at the Blue Water Bridge, delays of at least one hour were experienced on 38 days between July 2007 and August 2007. The problem was so severe last summer that the Ontario Ministry of Transportation installed portable toilets along Highway 402 for travelers. Similar examples of increased border

delays can be found all along our shared border.

The cause of these inordinate delays has been attributed to a number of factors, including:

- Inadequate border infrastructure relative to traffic volumes;
- Limited primary inspection lanes being operational during peak hours because of inadequate staffing of Canada Border Service Agency (CBSA) and U.S. Customs and Border Protection (CBP);
- Increased processing times for passenger vehicles;
- Inspections of increased frequency and duration for all cargo and travelers—including those deemed to be low-risk;
- Lack of clarity on admissibility requirements;
- Technological issues with CBP computers, particularly with the recent introduction of the Automated Commercial Environment (ACE) program; and
- Exacerbation of the above challenges by currency fluctuations that increased cross-border shopping.

Increased border wait times have resulted in just-in-time deliveries being unable to meet their crucial deadlines, leading to both interrupted delivery of goods and a cascading effect that disrupts the complex Canada-U.S. supply chain. More disturbing from a long-term competitiveness perspective is that companies have to revert to warehousing inventory systems to ensure timely deliveries across

⁴ Public Border Operators Association. 2007.



the border. These costly and inefficient processes have a heavy impact on investment, jobs, and productivity within North America. The business community recognizes its role as a key partner in ensuring a secure North America. Our companies have made significant investments to strengthen the security of their supply chains and to ensure the integrity of their employees. While certain aspects have been successful, this partnership is at risk and trusted shipper and traveler programs are being undermined. Companies participating in trusted shipper and traveler programs have not fully realized stated program benefits. For example, people certified for expedited processing under these programs have been unable to quickly access dedicated lanes because they are blocked by long lines of passenger traffic at border approaches. These lineups also cause extensive delays for commercial trucks that are not eligible for trusted shipper programs.

The negative impacts extend beyond intra-North American supply chains: cross-border healthcare workers have been subjected to lengthy waits; smog levels in border communities have increased significantly because of the thousands of vehicles idling for hours in hot and humid conditions; and the health of livestock have been endangered during long wait times in hot weather.

The increased border-processing times have also had a significant impact on many small businesses and communities on both sides of the border. Tourism, hospitality, shopping, and cultural activities have been seriously affected because casual border traffic in both directions is deterred by long border wait times, the vagaries of customs procedures, and sheer uncertainty of how long the process will take.

Direct Fees Applied to Cross-Border Commerce

Another factor leading to increased costs is the layering of additional direct border-crossing fees. For example, the U.S. Animal and Plant Health Inspection Service (APHIS) fee is applied to cover the cost of inspection for imported fruits and vegetables into the United States. All commercial conveyances and airline passengers must pay the fee, irrespective of the cargo being carried. There is a real concern that more fees may be introduced in both countries. Canada is currently reviewing its user fee system under its Core Services Review program and concern exists that this may lead to increased fees for business for a variety of CBSA programs and services. Furthermore, proposed legislation currently under consideration in the U.S. Congress would restrict all agriculture imports to only a limited number of locations with laboratories operated by the Food and Drug Administration (FDA), significantly driving up costs for many businesses. Perhaps most frustrating is that the new and prospective border fees may also apply to businesses that our respective governments have certified as trusted shippers, or otherwise present a low risk.



Cross-Border Programs and Increased Inspection Rates

Businesses from all links of the supply chain are joining trusted shipper and traveler programs such as Free and Secure Trade (FAST), Customs-Trade Partnership Against Terrorism (C-TPAT), Partners in Protection (PIP), Customs Self Assessment (CSA), and NEXUS. While applying for and maintaining certification in these programs is costly, businesses view the cost and effort as worthwhile to gain predictable, expedited border crossings.

Certification in these programs can cost a company well in excess of \$100,000 USD. The overall benefits are now being questioned as participating companies are continuously subjected to secondary inspections at the border. One major North American company reported that inspection rates for low-risk shipments entering Canada increased approximately 30 percent in 2007 from the previous year, despite the fact that the company is a longstanding participant in trusted shipper programs. Companies tell us shipments entering the United States are also facing increased inspection rates.

Canadian and U.S. businesses are very concerned about the associated costs of complying with new and expanded border security programs, often with duplicative requirements. These programs are layered on top of each other adding to the complexity and cost of moving goods and people across our borders. One company reported an annual expense of \$1 million USD because of the inspections and delays from increased security measures, coupled with participation in trusted shipper programs.

Clearly these costs are reaching the breaking point and risk becoming an unmanageable burden on Canadian and U.S. job producers. It is in neither government nor industry's interests to create or maintain a business environment that encourages the work and jobs to move offshore.



Current Initiatives Addressing Border Cost Concerns

We see encouraging signs in a number of government initiatives that show progress can be made. Recent U.S. legislation has delayed implementation of the Western Hemisphere Travel Initiative (WHTI) at land and sea ports of entry until June 2009. Now governments on both sides of the border must tackle the significant tasks of ensuring that a critical mass of acceptable documentation is in circulation and Radio Frequency Identification (RFID) technology is implemented at all major border crossings before June 2009 to enable a smooth introduction of the new processes. Beyond passports, expanding participation in trusted traveler programs, such as NEXUS and FAST, and implementing enhanced drivers' licenses will provide an advanced level of security to tackle the challenge of ensuring that security needs do not impede the movement of people, goods, and services across our border. We remain committed to working with government on the promotion of these programs. We need to recognize that border travelers must see demonstrable benefits from these expedited programs or they will not use them. At times, it is not clear that these programs are delivering the benefits promised.

Other positive developments include a bill passed and signed into U.S. law at the beginning of 2008 which authorizes a study of the impact of border wait times at high-volume U.S. land-border crossings.

The expansion of the NEXUS program and the start of the Electronic Primary Inspection Line (E-PIL) pilot project are also good news. E-PIL, set to commence in June 2008 at Vancouver International Airport, is designed

to help passengers quickly navigate border procedures by automating the processing that takes place at primary inspection lines. It will allow CBSA to target more resources to unknown and potentially high-risk passengers and goods. Harnessing new technology provides a more practical and cost-effective solution to eliminate congestion in airport arrival areas.

These measures are positive steps in the right direction. Unfortunately, these steps alone are not enough. Both the Canadian and U.S. governments should continually reexamine the benefits, costs, redundancies, and complexity of border measures, ensure any new initiatives are properly funded, and initiate a clear plan to undertake the recommendations from this report for the collective good. The recommendations from this report will aid policymakers in facilitating cross-border business, while at the same time ensuring the security of North America.



Moving Forward

Security and prosperity in North America are mutually dependent and complementary. Our respective governments should address the twin goals of security and the facilitation of legitimate trade and travel. We support the development of a comprehensive, layered, and risk-based strategy to manage our shared border. This approach offers the greatest degree of security and optimal use of facility, personnel, and financial resources without impeding legitimate travel and trade.

We need to keep in mind the degree of Canadian and U.S. social and economic integration. Canadians and Americans do not just sell things to each other. More importantly we make things and we do things together – activities which provide benefits on both sides of the border. For example component parts of a vehicle produced in North America may cross the border approximately seven times during the production cycle. Because of fees, unpredictable wait times, and security compliance costs associated with each border crossing, products manufactured within North America may face a competitive disadvantage compared to their foreign competitors whose finished products cross the border only once. For vehicle manufacturers, this can add several hundred dollars⁵ to the cost of manufacturing a vehicle domestically that imported vehicles do not incur. For Canadian and U.S. companies dependent upon intra-North American supply chains, these additional costs and regulatory burdens have a direct impact on a company's bottom line—and on the jobs that depend on that company's success.

With billions of dollars worth of goods and services and several hundred thousand people moving across the border every day, our

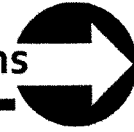
mutual economic growth is dependent on how quickly – and securely – we can expedite products, people, and ideas. Effective border management has become a key economic driver for both countries.

It is important to note that this report does not address the real need for both governments and industry to develop a long-term border strategy that addresses North American security and competitiveness challenge in the 21st century, especially the importance of keeping North America competitive in the face of economic challenges from other parts of the globe. A long-term strategy should include the urgent need for continued investment in building and modernizing border infrastructure including expanding capacity at the Detroit-Windsor border crossing—the busiest land crossing in the world; expanding preclearance capacity, including at marine crossings; lengthening dedicated lanes for trusted shippers and travelers; and a coordinated clearance and point of departure determination program that works to ensure only low-risk goods and people arrive on Canadian and U.S. soil. A long-term strategy is needed for economic security, benefiting Canada and the United States.

However, border-dependant businesses cannot wait for these long-term solutions. We must act now to reduce border costs. Given the litany of challenges and even longer list of areas where action is being sought, this report attempts to lay out what Canadian and U.S. businesses see as among the most critical priorities for what must be accomplished within the next 18 months.

⁵Canadian Vehicle Manufacturers' Association.

2 Priority Near-Term and Achievable Recommendations



Movement of Cargo

Trusted Shipper Programs

We strongly support voluntary trusted shipper programs such as Canada's Partnership in Protection (PIP), the U.S. Customs Trade Partnership Against Terrorism (C-TPAT), and the Free and Secure Trade (FAST) Program, which serve to enhance supply chain security without imposing one-size-fits-all regulatory burdens on businesses. These programs allow border agencies to redirect their limited resources to the inspection of unknown cargo—in essence making the search for the proverbial needle to be in a smaller haystack.

Unfortunately, participation in these programs is providing few benefits. Of concern are the increasing rate of inspections and the imposition of additional border fees that are being put in place without consideration to the level of risk of the shipments or the compliance level of the importer. Participants face similar increases in fees, border delays, and compliance burdens as those outside the program. The benefits of participation may not outweigh the costs.

A number of companies reported that compliance with trusted shipper programs costs approximately \$100,000 USD and may take up to two years to be granted certification. In return for participation, inspection rates on one major North American company's low-risk shipments entering Canada increased approximately 30 percent in 2007 despite approval and acceptance into the Canadian Customs Self-Assessment (CSA) program in 2006 and participation as a long standing member in the C-TPAT and PIP programs. In addition, the cost of offloading shipments for inspections at the border can cost carriers

several hundred dollars per occurrence, and delay the truck, the driver, and all the shipments on board for hours. Similar costs and incidents occur on products entering the United States. For example, another company reported that during the melamine testing of May 2007, multiple loads of their product were detained and tested at the border despite being C-TPAT and PIP approved, using FAST-certified drivers and FDA registered manufacturing plants. In addition, this company reported that low-risk certified products were held up in excess of three weeks. Increased inspection rates add to the cycle time for customs clearance, negatively impacting just-in-time delivery. This is contrary to the benefits anticipated by industry who participate in these programs.

Canadian and U.S. ports are also important North American hubs of entry for cargo, with cargo entering U.S. ports destined for Canada and vice-versa. It is important that security measures be recognized from port to port. For example, no duplication of effort should be required for inspected, secured, and in-transit containers moving through Canada to the United States. Today, 100 percent of containerized cargo entering via Canadian ports and destined for the United States is subject to cargo and vehicle screening using non-intrusive inspection (NII), scanning and may be subject to additional inspections. NII systems have been installed at nine rail border points, scanning virtually 100 percent of rail traffic entering the United States from Canada. The system can penetrate tankers, grain cars, and boxcars using a low-level gamma ray radiation source, generating a



radiographic image for each car. All Class 1 railways are also C-TPAT-certified, providing another level of enhanced security. As such, there is little need for duplicative inspections of intermodal containers, at rail border points, that have been cleared at the Canadian port of entry.

In addition to duplicative border inspections, we also see duplicative costs. Currently, carriers that want to take advantage of FAST into the United States and CSA-FAST into Canada are required to belong to both the C-TPAT and PIP programs. We are pleased to see that CBSA has begun the process of strengthening the PIP program and has engaged the United States in dialogue about mutual recognition. However, we are concerned that CBSA may end up with a more rigorous PIP program that still requires carriers to belong to C-TPAT. The goal must be to achieve nothing short of mutual recognition, i.e. Canada and the United States accepting the equivalency of each other's supply chain security programs (not harmonization). Therefore, companies interested in trusted shipper programs will only need to apply to one program with certification being recognized by both Canada and the United States. A similar case can be made for the U.S. Transportation Worker Identity Credential (TWIC) and Canada's Seafarers' Identity Document (SID).

Additionally, FAST requires a specific transponder to be assigned to a specific Vehicle Identification Number (VIN). This poses unique challenges for carriers without a dedicated cross-border fleet. The inability of a carrier to transfer its transponders to multiple vehicles results in increased operating expenses, late deliveries, and the potential loss of revenue. We recommend allowing carriers to have a pool of transponders and assign them

to specific vehicles as needed. Additionally, carriers using this option should be allowed to enter transponder and corresponding vehicle information for each load into the ACE portal.

Another example of duplicative costs can be seen through the October 2007 introduction by the Department of Homeland Security (DHS) of the TWIC-certification in the United States. TWIC has created a situation where drivers who have been security screened for FAST must still pay a fee of \$105 USD to obtain a TWIC card. Currently, the focus is on port workers and other workers, such as truck drivers, who require access to port property. It is expected that the card will eventually be required for access to other transportation facilities (airports and rail yards).



Recommendations

- The Canadian and U.S. governments should establish goals and develop metrics to drive agency behavior and priorities that demonstrate tangible benefits to program participants in trusted shipper programs within the next six months.
- The Canadian and U.S. governments must implement a strategy to agree on requirements and establish reciprocity for all complementary freight security programs (including trusted shipper and credentialing programs). This strategy must also improve efficiency for both government and industry by reducing duplicate fees and redundant implementation costs.
- As committed in the SPP, Canada and the United States entering into an agreement to mutually recognize companies participating in the Canadian PIP program and the U.S. C-TPAT program no later than June 2008.
- Canada and the United States ensuring that rail and truck cargo inspected, cleared, and secured at a Canadian port is not subject to further inspections at the U.S. border.
- Canada and the United States allowing carriers without dedicated cross-border fleets to have a pool of FAST transponders and assign them to vehicles as needed, and
- DHS should develop a process for automatically enrolling FAST-certified drivers into the TWIC program without requiring the driver to undergo additional screening, fees, or application process.

APHIS Recommendations

In 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) published an Interim Final Rule that removed a long-standing exemption from animal quarantine and inspection (AQI) and fees for conveyances originating in Canada. Despite objections from Canadian and U.S. carriers, manufacturers, and shippers, the USDA fully implemented the rule in 2007. Under the rule, APHIS fees and AQI apply equally to all shipments, irrespective of cargo type or associated risks. This has significantly increased the costs of Canada-U.S. trade and cross border manufacturing.

While the enhanced inspections generated by the fees only covers fruits and vegetables, all commercial conveyances and airline passengers must pay the fee, irrespective of the cargo being carried. The APHIS fee is \$5.25 USD per entry or \$105 USD annually with a purchased transponder for commercial trucks; \$490 USD per entry for commercial vessels carrying 100 net tons or more; \$7.75 USD per rail-car entry for railway service providers; \$70.50 USD per arrival per commercial aircraft, and \$5 USD per arrival for international airline passengers with a total cost of approximately \$78 million USD plus industrial processing costs. Furthermore, CBP border officials must collect the fee payment and distribute change, leading to further border delays.

The rule does not follow the targeted risk management model that has been driving customs reforms in North America. For instance, Canadian Class 1 railways and truck carriers have invested heavily in partnering with CBP programs such as C-TPAT and FAST to secure the supply chain. As such, there is no demonstrated need for additional inspection under the APHIS proposal.



Nor is there an exemption for the conveyance that pose little or no threat of importing plant pests or animal diseases, such as shipments of automotive parts.

Recommendation

The USDA should immediately waive the APHIS fee for all modes of transportation for participants in trusted shipper programs such as C-TPAT and FAST.

Food and Agriculture Exports: Low-Risk Food Importer and Preclearance

Since 9/11, the United States has enacted the largest expansion of enforcement authority since food safety laws were first implemented in the early 20th century. As a result of these new laws, regulations, and border process fees, such as APHIS, wait times at U.S. ports of entry have increased, resulting in costly delays. For example, though recently lifted in the last few months, Canadian meat exporters had faced a whole new wave of "hold and test" at the border, including for ready-to-eat meat products where the rate of random testing for Listeria and Salmonella had doubled as a result of the E.coli contamination of beef in Alberta. The entire Canadian industry, including companies with a U.S. parent, paid the price for one bad event at one plant.

The creation of C-TPAT, PIP, FAST, NEXUS, and other expedited treatment of goods and people demonstrates both Canadian and U.S. government support for trusted shipper and traveler programs. However, because of U.S. regulations that govern meat imports from Canada (i.e. the so-called "Minimal Risk Region Rule"), most food shipments from

Canada are subject to secondary inspections. Although agri-food shippers would be willing to participate, they cannot take advantage of C-TPAT or other programs that commit to expedite entry of products through U.S. ports of entry, even for the many FDA regulated products that contain minimal amounts of beef or poultry ingredients. This has resulted in blanket regulation for agri-food, no matter how low the risk, and an inefficient and costly allocation of scarce public resources to inspect, test, and analyze imported foods. In the highly integrated North American agri-food industry one cannot "inspect your way to safety". Food safety risk management begins far back in the growing and production process, where both Canada and the United States have very sophisticated regulatory standards and enforcement mechanisms.

The Canadian and U.S. governments should develop a program that expedites shipments for qualified agri-food exporters. The first step would be to launch a program for low-risk food Canadian and U.S. exporters. Foods produced by companies with a demonstrated history of compliance and safety would receive expedited treatment at the border, reducing both costs and delays.

Furthermore, the Canadian and U.S. governments should commit to the development of preclearance processes for low-risk food processors. For instance, most major Canadian and U.S. processors, many of which are owned by a U.S. parent, who export to the United States have facilities within one to two hours of U.S. ports of entry. As part of any reputable company's supply chain, food shipments are securely sealed at processing facilities to ensure integrity. Those seals are often broken at ports for inspections, and then replaced with new government seals.



Since Canadian Food Inspection Agency (CFIA) inspectors, operating under Memoranda of Understanding (MOUs) with the FDA and USDA, are often present at processing facilities (especially for meat and poultry products regulated by the USDA), many processes conducted at ports of entry could be conducted at the processing facility. This includes conducting all the processes associated with secondary inspections, including pulling samples for further analysis, reviewing all documentation, and applying secure government seals to shipments as they leave the manufacturing facility. With such a system in place, trucks could be precleared and expedited across the border by amending prior notification procedures to include some indicator that the shipment has been approved for entry into the United States and by simply ensuring that the seal is still intact. These programs would be further enhanced by making progress on mutual recognition with various food safety programs.

Recommendations

- Within the next six months, the Canadian and U.S. governments should commit to the development of a pilot program along the Canada-U.S. border to expedite processing of qualified low-risk food importers from Canada and the United States.
- The Canadian and U.S. governments should commit to the development of preclearance processes for food processors. The CFIA, FDA, and USDA should begin discussions on a pilot program to test this concept, involving a pilot with a small number of volunteer processors and one port of entry within the next 12 months.

Application of Health Certificate Stickers on Individual Case Shipments

In November 2005, the USDA changed an important policy that dramatically increased costs related to shipping meat and poultry food products from Canada. They required that health certificate numbers – obtained from a veterinarian late in production – be printed on each individual case shipment. Previously, it was common practice to place a placard on a pallet so that border inspectors could see that regulations were being followed. Complying with this new regulation costs one food exporter approximately \$700,000 USD annually.

Not only must this information now be placed on each individual case, usually through a labor-intensive procedure, each case on a pallet must be situated so that the sticker can be seen from the outside of the pallet. The new regulation conveys no benefit to consumers, because the information is only meaningful to border inspectors to ensure all applicable food safety regulations are being met. Each case, and even each individual food package, comes with preprinted lot numbers that permit food safety officials to trace any questionable products back to the time and location of production. This regulation has not increased food security in any way.

Canada also imposes the same regulation on U.S. exporters of meat and poultry. Rescinding this regulation in both countries will greatly reduce costs to agri-food companies with highly integrated North American supply chains and distribution systems.



Recommendation

The Canadian and U.S. governments should cease requiring that health certificate numbers—obtained from a veterinarian late in production—be printed on each individual case shipment.

Other Government Departments: Single Window Initiative

A major frustration for industry is the lack of a single window or integrated trade data management system on the Canadian and U.S. sides of the border. Currently in the United States, there are four systems serving the various mandates in relation to customs administration, food safety, and bio-security: two under CBP, one FDA system, and one USDA system. Often the same information has to be entered into each system.

We are supportive of the U.S. International Trade Data System (ITDS) initiative. The ITDS would provide a single window through which the trade community would submit its commercial data. Participating government agencies would have access to ITDS, eliminating duplicative procedures and providing access to more accurate and timely information. While this initiative was introduced in the 1990s, progress has been modest. We strongly support the requirement in U.S. Executive Order 13439 that all relevant U.S. government agencies use ITDS by 2009.

In Canada, CBSA is not the sole government agency responsible for regulations on the import and export of goods but is expected to enforce many of the regulations of other government departments (OGDs) such as CFIA and Transport Canada. Current OGD regulations significantly restrict the ability of

the trade community to participate in valuable CBSA policy and programs, such as advanced electronic reporting and CSA. Furthermore, duplicative information must be submitted to a number of different agencies in different formats (electronic or paper-based). We strongly support that the Single Window Interface being led by CBSA and urge all OGDs to join CBSA and move beyond paper-based systems. This will eliminate burdensome duplicative requirements and facilitate compliance with cross-border procedures.

Recommendations

- Both the Canadian and U.S. governments should work with their respective agencies and departments and implement the Single Window Interface and International Trade Data System (ITDS).
- The United States should ensure that all relevant federal agencies comply with Executive Order 13439 and ensure that they are actively using ITDS by 2009.
- Within the next 12 months, all Canadian agencies and departments with border-related requirements should produce a publicly-stated timeline for adapting their requirements to meet the single window platform within the next three years.

The implementation of the above recommendations will ensure cross-border trade information is more accurate and easily accessible by all government departments and agencies and can be the starting point of a more long-term strategy to develop a fully secure and interoperable customs system within North



America. This will further reduce costs and duplicative efforts, while improving risk modeling and the predictability of the Canada-U.S. border.

Support for Inland Clearance

For some time now, CBSA has been talking about a new requirement to release all goods at the first point of arrival into Canada. Carriers that currently move some shipments into bonded sufferance warehouses for release, or in some cases to their own secure warehouses would lose this option. This would be especially problematic for less-than-truckload carriers that could see dozens of shipments from a single truck held up at the border while CBSA either examines, or waits for additional data on a single shipment.

Recommendation

CBSA should retain the bonded sufferance and secure warehouses for carriers and should state its intention to do so as soon as possible.

Harmonized Electronic In-Transit Process

Introduction of ACE and prior notice in the United States has created a situation where there is no longer a harmonized Canada-U.S. in-transit process. Furthermore, the Bioterrorism Act also requires prior notice, affecting the movement of FDA regulated products. As a result, data requirements are such that much of the trucked freight that previously moved south of the Great Lakes now must move through Canada. This adds significant extra mileage on moves between eastern and western Canada, driving up costs and removing economic benefits for many

U.S. businesses that provide goods and services to these carriers. One trucking company reported additional costs of \$1,000 CAD per load associated with moving shipments through northern Ontario

instead of south of the Great Lakes as a result of increased mileage, accident risk, and transit delays. CBSA and CBP are currently working on the issue.

Recommendation

The Canadian and U.S. governments should work together to simplify data requirements for domestic in-transit freight movements.

Short Sea Shipping Pilot Program in the Great Lakes Area

Another way of reducing border costs and wait times is to provide additional modes of transportation. Short Sea Shipping involves operation of a scheduled freight ferry service in the Great Lakes area. The intention is to use ferries to transport only commercial cargo. The proposed service would transport truck trailers containing commercial cargo with the cabs and drivers not accompanying the loaded trailers. Instead, the trailers would be delivered to the ferry by one driver and picked up at the destination by a different driver. In comparison, a truck must travel more than five and a half hours (466 km) from London, Ontario to Cleveland, Ohio to navigate around Lake Erie. In the marine mode, the water portion of the multimodal journey is only 105 km across Lake Erie. The marine mode is not only efficient but also a proven environmentally friendly form of transportation, resulting in a significant reduction in greenhouse gases and congestion at bor-



der crossings by providing another transportation option.

Short Sea Shipping provides savings to truck companies through fuel savings, driver waiting time cost savings, insurance and other driver costs. Furthermore, it helps relieve congestion at truck border crossings and removes some traffic from over crowded highways. A similar case can also be made for short sea shipment of low-risk bulk cargo.

Current interpretation of U.S. legislation on the definition of a ferryboat would classify this operation as 'vessel driven', and therefore require the operators to send border officials an electronic manifest 24 hours before the cargo is loaded on to the vessel—even though the exact same trailers would only require one or two hours notice if they were 'ferried' into the United States using a truck or rail respectively. Based on the short-term cargo turnover in a Short Sea Shipping operation, the regulation's interpretation makes this initiative unfeasible. Short Sea Shipping operations should be treated in the same manner as rail and truck.

Recommendation

Within the next 12 months the Canadian and U.S. governments should work together to launch a private sector driven Short Sea Shipping pilot project in the Great Lakes area and ensure that Short Sea Shipping operations face the same entry and clearance requirements as rail and truck.

Trusted Travelers and Legitimate Business/Personal Travel

NEXUS

We strongly support the NEXUS program as another example of a way to meet the mutually dependent goals of North American security and prosperity. NEXUS is an established biometric-based program designed to expedite border clearance for low-risk, pre-approved travelers in Canada and the United States. Applicants go through a detailed registration and interview process and must pass risk assessment in both countries to be deemed eligible for participation in the program.

NEXUS members bypass lengthy international arrival lines, and can clear customs and immigration in as little as a minute. It is an integrated program and can be used in air (using dedicated kiosks at eight Canadian airports), land (using dedicated lanes at 13 land border crossings), and marine travel between Canada and the United States. CBP and CBSA are able to focus their limited inspection resources on higher-risk travelers.

With NEXUS being rolled out widely in the summer of 2007, it has not yet enjoyed widespread participation. Currently there are approximately 170,000⁶ participants. NEXUS lanes at some border crossings and airports have the capacity for higher traffic especially when compared to adjacent, congested lineups going through the regular channels. At some border-crossing points, infrastructure constraints limit access to NEXUS lanes until just before the border, limiting its attractiveness for travelers who cross frequently. Some NEXUS users report higher levels of spot

⁶Canada Border Services Agency, 2008.



checking, which makes them question the value of their enrollment.

Increasing enrollment will boost the number of preapproved and low-risk travelers between Canada and the United States, facilitating cross-border travel and in the end, enhancing North American security. To ensure more success, there is a need for further expansion of current marketing campaigns undertaken by CBP, CBSA, and business stakeholders, an enhancement of the programs accessibility and transparency, and better infrastructure that allows NEXUS to deliver its promised benefits.

Furthermore, NEXUS cards can be revoked and renewal denied without explanation. Since the establishment of the NEXUS program, there has been concern about the inability to request a review of NEXUS denial and/or revocation. Providing the option for a secondary examination/review will enhance fairness and eliminate the uncertainty without jeopardizing the security of the program.

Recommendations

- The Canadian and U.S. governments should continue to market the benefits of the NEXUS program with the target of one million NEXUS participants within the next 18 months.
- CBP and CBSA should create a formal review process for NEXUS rejections or revocations within the next 12 months.

Cross-Border Business Travel Facilitation

With the growth of cross-border business, the increasing demand for qualified personnel and the increasing scarcity of skilled personnel, there is a need for accelerating travel between Canada and the United States for executives, professionals, and technical specialists.

Labor market conditions and skills shortages are different now than when the North American Free Trade Agreement (NAFTA) established a framework for expediting legitimate cross-border travel. Cross-border business travel needs targeted interagency collaboration to remove unnecessary obstacles. Business travelers frequently use one of two visas for travel to Canada and the United States; the intra-company transfer visa and the NAFTA Professional visa. Rules designed to facilitate business travel exempt these visas from the requirement for approval by a consular post. Applicants present their completed documentation at a port of entry, where CBP or CBSA officers are authorized to adjudicate the visa. However, there is no assurance that the qualified individual will be granted entry into either country.

This inconsistent treatment is due mostly to the lack of adequate training for inspecting officers of the visa's requirements and the applicable business arrangements and relationships—leading to undue delays or incorrect denial of entry. The slightest irregularity may trigger a refusal from the inspecting officer—a refusal that cannot be appealed. The business traveler must then cancel his or her obligations in Canada or the United States without notice.



While some positive steps have already been taken on both sides of the border to address this issue, more must be done. For instance, some U.S. border-crossing posts have instituted a practice of accepting required forms and documents in advance to adjudicate visas. In Canada, Citizenship and Immigration Canada introduced Temporary Foreign Worker Units (TFWUs), currently located in Calgary, Montreal, and Vancouver, to facilitate legitimate business travel by offering guidance and prescreening to employers seeking temporary foreign workers and foreign professionals, including those that meet NAFTA qualifications.

Both these programs greatly reduce the unpredictability of professionals and intra-company transferees from Canada and the United States crossing the border because both prescreen all supporting documents in advance, facilitating the issuance of the work permit at the border.

Inconsistencies with visa issuance for legitimate business travel impede the normal conduct of business between Canada and the United States. Expanding current preclearance services and enhancing the trusted traveler program would provide assurance that qualified individuals have predictable access to the border, facilitating the movement of legitimate business travelers, while ensuring security needs have been met.

Recommendations

- The Canadian and U.S. governments should establish a mechanism for multiple entries by executives, technical, and professional citizens and permanent residents of Canada and the United States. This would include an optional preapproval process for qualified individuals to obtain necessary visas/approvals. Under this new program, qualified personnel would be required to be accepted under a trusted traveler program (e.g. NEXUS). The enhanced NEXUS Global Enrolment System database would include both the trusted traveler data and essential visas/approvals information needed for multiple entries. A pilot should commence within the next 12 months.
- Some U.S. border-crossing posts have instituted a practice of accepting required forms and documents in advance to adjudicate visas, and this practice should be universally adopted at all ports of entry.
- Citizenship and Immigration Canada should expand the Temporary Foreign Worker Units (TFWUs) to other provinces such as Ontario and in the Maritimes to create more certainty for temporary U.S. workers or business visitors entering Canada.



Enhanced Drivers' Licenses

The Canadian and U.S. business community is concerned that there will not be a critical mass of WHTI-compliant documentation in circulation before its target June 2009 implementation. Without this critical mass, WHTI implementation will lead to further congestion at the border with travelers arriving without proper documentation. The resulting lengthy wait times will have many Canadian and U.S. tourists and business people avoiding cross-border travel, worsening an already critical situation.

Enhanced drivers' licenses (EDL), denoting identity, citizenship, and containing vicinity radio frequency identification (RFID) technology and security features, hold significant potential to represent a less expensive and more practical form of documentation than a passport for the many Americans and Canadians whose international travel interests are limited to our two countries. EDLs are vital to ensuring WHTI is smoothly implemented and the security needs of North America are met without impeding the movement of people, goods, and services across the border. We firmly support the CBSA and DHS determination that they will be considered WHTI-compliant documentation.

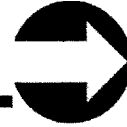
These drivers' licenses must be more affordable than a passport and be more easily attainable through provincial or state licensing offices. We are very encouraged by the positive first steps that have taken place. For example, the enhanced drivers' license currently available in Washington State only costs an additional \$15 USD. The Province of British Columbia will be offering EDLs shortly and exploratory expressions of interest are coming from other Canadian provinces and

U.S. states. We applaud the foresight of the governments who have become early adopters.

One of the limitations of the EDL is that it is available only for land and sea and is not acceptable documentation if a person who normally crosses the border by automobile needs to return travel by air. A broader, more universal acceptance of the EDL is needed to facilitate travel in all modes of transportation across the Canada-U.S. border.

Recommendations

- The federal, state, and provincial governments of Canada and the United States should devote the necessary funds and resources to ensure that the development of EDLs are undertaken and accepted at all border crossings. An extensive and broad communications plan, aimed at all drivers and clearly identifying the benefits of the optional enhanced identification, is needed. Finally, the implementation must be rapidly deployed to ensure a critical mass of EDLs is in circulation before WHTI comes into effect in mid-2009.
- The EDL should be a compliant document for Canada-U.S. air travel.



People Access Security Service (PASS) Cards

The People Access Security Service (PASS) Cards, also referred to as the U.S. Passport Card, will be another wallet-sized alternative to a U.S. Passport designed to facilitate efficient and secure cross-border travel at land and sea ports of entry. Business has long advocated for the development of this alternative prior to full implementation of WHTI and continues to urge the U.S. government to make it truly economical to obtain and acceptable at all ports of entry, including air.

*The application fee is \$20 USD for adults and \$10 USD for minors. However, those submitting the application in person would have to pay an additional "execution fee" of \$25 USD. Many applicants will be required to apply in person and will thus be subject to this fee, such as first time adult passport applicants, all minors (under age 16), adults holding expired passports issued more than 15 years previously or when the bearer was a minor, and those applying for replacement passports that have been lost, stolen, or mutilated. In addition, there is currently about a \$15 USD fee for pictures taken at the government application center. Thus, what starts as a \$20 USD alternative to the \$115 USD passport (\$75 USD-application fee, \$25 USD-execution fee, and \$15 USD-picture fee) becomes a \$60 USD alternative (\$20 USD-application fee, \$25 USD-execution fee, and \$15 USD-picture fee). These costs do not take into consideration possible expediting fees, given there is no indication the time frame for production of a PASS Card will be any shorter than for a passport.

* This paragraph has been updated in the electronic version of this report subsequent to its publication.

Recommendations

- The PASS Card should be accepted at air ports of entry when travelling from Canada, as well as the proposed land and sea ports of entry, making it a full passport substitute under WHTI.
- The cost of the PASS Card should be \$20 USD for adults and \$10 for minors, regardless of whether it is a renewal or original application, if it is truly to be an economical substitute to a passport.
- The PASS Card should not be burdened with the same additional "fees" and "charges" already imposed on passport applications, e.g., there should be no execution or picture fee, making PASS Cards a truly economical alternative to a passport. Furthermore, special discounts should be made available to families applying for several PASS Cards at a time.
- The time frame for production of a PASS Card should be significantly shorter than for a passport, increasing its appeal and eliminating the need to increase its cost even further with expediting fees.



Secure Vicinity RFID Technology

In the coming months, vicinity RFID technology will be installed at 39 U.S. border crossings, representing 95 percent of all U.S. cross-border traffic, to screen those entering the United States⁷. This technology will transmit a number, with no personally identifiable information included, to a DHS database, providing CBP border officers with the necessary information to make critical decisions about passengers entering or reentering the United States.

This technology is expected to substantially decrease border wait times. For instance, the average wait time at the Peace Arch crossing is 65 minutes. If all border crossers have identification with RFID proximity capabilities, such as passports, and all booths are equipped with such technology, the average wait time is expected to decrease to 26 minutes. The use of vicinity RFID cards, such as NEXUS, FAST, and EDL, would reduce the average wait time even more (to an estimated eight minutes if every traveler had this type of identification)⁸. Today, it has been estimated to take eight seconds for border officers to gather documents from occupants in a vehicle and fifteen seconds to process the information⁹. Multiply this by even a thousand border crossings, it is no surprise there are significant wait times. Secure vicinity RFID technology will completely eliminate such a process with the occupant's information appearing on the border official's computer as they arrive at the border. With the forthcoming implementation of the WHTI, wait times would be reduced by a critical mass of border crossers having a piece of documentation that uses secure vicinity RFID technology.

Recommendation

The Canadian and U.S. governments must advance the implementation of secure vicinity RFID technology at all major border crossings and encourage travelers to obtain documentation that uses this technology.

Secure Flight/APIS Quick Query (AQQ) Notice of Proposed Rule Making (NPRM)

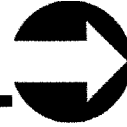
In August 2007, the U.S. Transportation Security Administration (TSA) published a Notice of Proposed Rulemaking (NPRM) requiring air carriers to collect and transmit additional passenger information. While we support the goals of the Secure Flight Program to identify and focus aviation security efforts on high-risk passengers, we are very concerned about the proposed rule's potential impact on North American air travel.

Of particular concern is the requirement for Canadian carriers to provide full passenger data from all carriers' overflights through U.S. airspace on their way to another country. Under the proposed rule, Canadian carriers would be required to collect and submit passenger data to TSA up to 72 hours in advance, for flights that originate in Canada, never land in the United States, and terminate in a third country. This requirement would place an undue burden on Canadian carriers who would be required to modify their systems to collect, store, and transmit significant amounts of new information on their passengers.

⁷Bob Brevin. 2008. "State, DHS grant RFID contracts to speed border crossings". Government Executive.

⁸US-VISIT Time Study provided by the Car/Arm Border Trade Alliance.

⁹Public Border Operators Association. 2007.



Canada already requires that all airlines with flights in or out of Canada check their passenger lists against Canada's own Specified Persons List, which was developed in close cooperation with the U.S. government. Additionally, U.S. carriers regularly over-fly Canada. The Secure Flight Program could potentially expose U.S. carriers to costly and burdensome reciprocal requirements.

Recommendation

The U.S. government should exempt Canadian overflights that originate from or destined to a third country from the data requirements of the Secure Flight Program.

Additional Measures

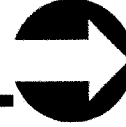
Increasing Staffing, Training, and Hours of Services at Border Crossings

A major concern for the Canada-U.S. business community is that not all border booths are operational during peak commercial and tourist travel times at major crossings, resulting in increased border wait times for everyone. This has a direct negative impact on just-in-time logistics practices and indeed affects all cargo, business travel, and tourism between Canada and the United States. Traffic patterns, especially for commercial traffic, are, to a large extent, predictable and should drive staffing levels rather than time of day. Offering 24/7 services, including those of other government departments and agencies that conduct border inspections, and operating all booths at major border crossings during key operating hours will ensure the efficient use of existing facilities and support Canada-U.S. competitiveness. Of course, the

critical importance of the border requires funding for adequate numbers of officials who are fully trained and consistently apply all needed border procedures.

Under the current contract between CBSA and a service provider, offload services for inspections are available during only a portion of regular business hours. After these arbitrarily set hours, when much of the freight crosses the border, a carrier will have to wait up to two hours for personnel to arrive at the border and conduct an inspection. The entire process of offloading, inspecting, and reloading can take up to six hours. The actual cost per inspection can be several hundred dollars. The minimum hourly charge, in addition to attendant delays, drives up costs, causes carriers to miss delivery windows, hampers just-in-time delivery practices, and in some cases puts a driver over the legal duty time limit.

Another serious impediment is the limited number of hours of operation for other government agencies that inspect cargo, such as the FDA. Canadian and U.S. companies are constantly experiencing delays as a result of the lack of resources. This is especially acute on weekends where shipments can be held up for days. Border and inspection services must be offered on a 24/7 basis at major crossings, meeting the needs of the movement of cargo and travel.



During the past year, CBP began rolling out a phased requirement that trucks transmit advance cargo information to CBP via the ACE Truck Manifest System (e-Manifest). An ongoing complaint from carriers during this startup phase has been the quality and timeliness of help desk/technical support. Businesses experiencing a problem with an electronic manifest need access to 24/7 support from qualified individuals to ensure trucks and drivers are not delayed at the border for hours on end. Today, delivery schedules are being disrupted and drivers are put over their legal duty time limit. While CBP has made efforts to improve the situation, more needs to be done to address the volume of inquiries. While this is not a relevant matter today with CBSA, it could become an issue when the Canadian equivalent, Advanced Commercial Information (ACI) truck manifest, is implemented.

Recommendations

- CBSA, CBP, and other government departments with border mandates should make a priority of offering 24/7 border services at all major crossings with a published timeline on how this will be achieved within the next 18 months. This includes the operation of border booths, secondary inspections, and border-related support services.
- Both the Canadian and U.S. governments must ensure adequate funding is provided to efficiently deliver this report's recommended border services, including the training of border officials.

A Workaround for the Peace Arch Border Crossing

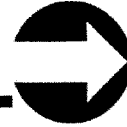
In the British Columbia (B.C.) lower mainland, there are only three full-service border crossings for the 10 million people that live in B.C. and Washington State and the almost three million people along the B.C.-Washington State border: the Douglas (Peace Arch), Pacific (truck), and Huntingdon/Sumas crossings. The Aldergrove crossing is another option for general and commercial traffic, but is currently only open from 8:00 a.m. until midnight.

The relationship between British Columbia and Washington State is an excellent example of the highly integrated nature of the Canada and U.S. economies. For instance, more than \$10 billion USD in two-way trade travels between British Columbia and Washington State annually and approximately 32,000 vehicles cross the B.C.-Washington State border every day. Furthermore, approximately 30 percent of foreign visitors to British Columbia also visit Washington State and the Pacific Northwest. This is expected to increase with 25 percent of visitors to the 2010 Olympic and Paralympics Winter Games in Vancouver, B.C. projected to travel through Washington State on their way to the games¹⁰. It is imperative that the necessary resources and functioning infrastructure be in place to facilitate this integrated relationship both today and for the 2010 Olympics.

The Peace Arch is the busiest border crossing in the B.C. lower mainland, receiving more than 4 million travelers in 1.4 million non-commercial vehicles in 2006/07¹¹. Forthcoming construction on the U.S. side of the Peace Arch border crossing is expected to

¹⁰Office of the Premier of British Columbia and Office of the Governor of Washington State. June 20, 2006. "B.C. and Washington Call to Delay Passport Requirement". News Release.

¹¹Canada Border Services Agency. 2007.



reduce the number of lanes from nine to three with construction expected to begin this spring and not completed until January 2010. This needed upgrade will limit the movement of cross-border travel at one of the busiest land-border crossings until all work is completed. To ease pressure off of the Peace Arch crossing, traffic will be encouraged to use the Pacific Highway truck crossing and the Huntingdon/Sumas crossing. The increased traffic will undoubtedly result in increased wait times, including at the truck crossing, as passenger traffic is rerouted. This has already created uncertainty around shipment arrivals and just-in-time logistics practices. The Aldergrove crossing is the most convenient alternative because it is only 20 minutes from the Peace Arch; however, it does not offer 24/7 border services.

Recommendation

To accommodate the upgrading of the Peace Arch border crossing, without creating undue wait times at the other ports of entry, the Aldergrove crossing should provide 24-hour access for both passenger and commercial traffic, and both the Peace Arch and nearby ports of entry should have sufficient staffing to operate all booths. Given the aging infrastructure in a number of locations along our shared border, the model used to facilitate the movement of traffic during the upgrade of the Peace Arch crossing can set a formal framework for future border construction projects.

A Border Contingency Plan: Deliver on Montebello Commitments

A smart and secure border is critical to the future well-being of the North American economy. A pandemic, a natural disaster or terrorist activity could lead to a partial or full border closure. The inherent importance of the border necessitates a strong contingency plan to deal with such a situation. While progress has been made, Canada and the United States have not fully developed a formal border contingency plan to be used in the event of a full or partial closure to the Canada-U.S. land, sea, and airport border points.

The SPP announced in June 2005, that Canada, Mexico, and the United States were committed to developing coordinated business resumption protocols for the border. Following the announcement, Canada and the United States, through the impressive work of its officials at CBSA and CBP, have started to develop a border contingency plan in consultation with industry in both countries. We are encouraged by the recent Communication and Coordination Plan developed by both agencies and the prioritization framework efforts underway in Canada. Furthermore, at the August 2007 SPP North America Leaders Summit, the leaders announced the commitment to further develop a coordinated plan for the movement of goods and people during and after an emergency.

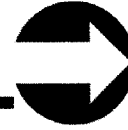


We strongly support the accelerated development of a plan that could be used to prioritize 'what should be expedited' ensuring that people or cargo that must get across the border in an emergency or serious situation can do so. Further work is also necessary on the two-way, iterative communications framework that will provide governments with the relevant information needed for decision making and keeping business informed and on testing the frameworks to ensure they work in practice.

Recommendation

The Canadian and U.S. governments should work in partnership with the business community on both sides of the border to further develop the plan to manage the movement of people and goods during and following a full or partial closure of the border.

3 List of Recommendations



We call on the governments of Canada and the United States to commit to fully deliver on these recommendations within the next 18 months.

Trusted Shipper Programs

The Canadian and U.S. governments should establish goals and develop metrics to drive agency behavior and priorities that demonstrate tangible benefits to program participants in trusted shipper programs within the next six months.

The Canadian and U.S. governments must implement a strategy to agree on requirements and establish reciprocity for all complementary freight security programs (including trusted shipper and credentialing programs). This strategy must also improve efficiency for both government and industry by reducing duplicate fees and redundant implementation costs. This would include:

- As committed in the SPP, Canada and the United States entering into an agreement to mutually recognize companies participating in the Canadian PIP program and the U.S. C-TPAT program no later than June 2008;
- Canada and the United States ensuring that rail and truck cargo inspected, cleared, and secured at a Canadian port is not subject to further inspections at the U.S. border;
- Canada and the United States allowing carriers without dedicated cross-border fleets to have a pool of FAST transponders and assign them to vehicles as needed; and
- DHS should develop a process for automatically enrolling FAST-certified

drivers into the TWIC program without requiring the driver to undergo additional screening, fees, or application process.

APHIS Recommendations

The USDA should immediately waive the APHIS fee for all modes of transportation for participants in trusted shipper programs such as C-TPAT and FAST.

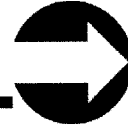
Food and Agriculture Exports: Low-Risk Food Importer and Preclearance

Within the next six months, the Canadian and U.S. governments should commit to the development of a pilot program along the Canada-U.S. border to expedite processing of qualified low-risk food importers from Canada and the United States.

The Canadian and U.S. governments should commit to the development of preclearance processes for food processors. The CFIA, FDA, and USDA should begin discussions on a pilot program to test this concept, involving a pilot with a small number of volunteer processors and one port of entry within the next 12 months.

Application of Health Certificate Stickers on Individual Case Shipments

The Canadian and U.S. governments should cease requiring that health certificate numbers—obtained from a veterinarian late in production—be printed on each individual case shipment.



Other Government Departments: Single Window Initiative

Both the Canadian and U.S. governments should work with their respective agencies and departments and implement the Single Window Interface and International Trade Data System (ITDS).

The United States should ensure that all relevant federal agencies comply with Executive Order 13439 and ensure that they are actively using ITDS by 2009.

Within the next 12 months, all Canadian agencies and departments with border-related requirements should produce a publicly-stated timeline for adapting their requirements to meet the single window platform within the next three years.

Support for Inland Clearance

CBSA should retain the bonded sufferance and secure warehouses for carriers and should state its intention to do so as soon as possible.

Harmonized Electronic In-Transit Process

The Canadian and U.S. government should work together to simplify data requirements for domestic in-transit freight movements.

Short Sea Shipping Pilot Program in the Great Lakes Area

Within the next 12 months the Canadian and U.S. governments should work together to launch a private sector driven Short Sea Shipping pilot project in the Great Lakes area and ensure that Short Sea Shipping operations face the same entry and clearance requirements as rail and truck.

NEXUS

The Canadian and U.S. governments should continue to market the benefits of the NEXUS program with the target of one million NEXUS participants within the next 18 months.

CBP and CBSA should create a formal review process for NEXUS rejections or revocations within the next 12 months.

Cross-Border Business Travel Facilitation

The Canadian and U.S. governments should establish a mechanism for multiple entries by executives, technical and professional citizens, and permanent residents of Canada and the United States. This would include an optional preapproval process for qualified individuals to obtain necessary visas/approvals. Under this new program, qualified personnel would be required to be accepted under a trusted traveler program (e.g. NEXUS). The enhanced NEXUS Global Enrolment System database would include both the trusted traveler data and essential visas/approvals information needed for multiple entries. A pilot should commence within the next 12 months. Some U.S. border-crossing posts have institut-



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The EDL should be a compliant document for Canada-U.S. air travel.

People Access Security Service (PASS) Cards

The PASS Card should be accepted at air ports of entry when travelling from Canada, as well as the proposed land and sea ports of entry, making it a full passport substitute under WHTI.

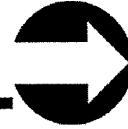
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The PASS Card should not be burdened with the same additional "fees" and "charges" already imposed on passport applications, e.g., there should be no execution or picture fee, making PASS Cards a truly economical alternative to a passport. Furthermore, special discounts should be made available to families applying for several PASS Cards at a time.

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A Border Contingency Plan: Deliver on Montebello Commitments

The Canadian and U.S. governments should work in partnership with the business community on both sides of the border to further develop the plan to manage the movement of people and goods during and following a full or partial closure of the border.

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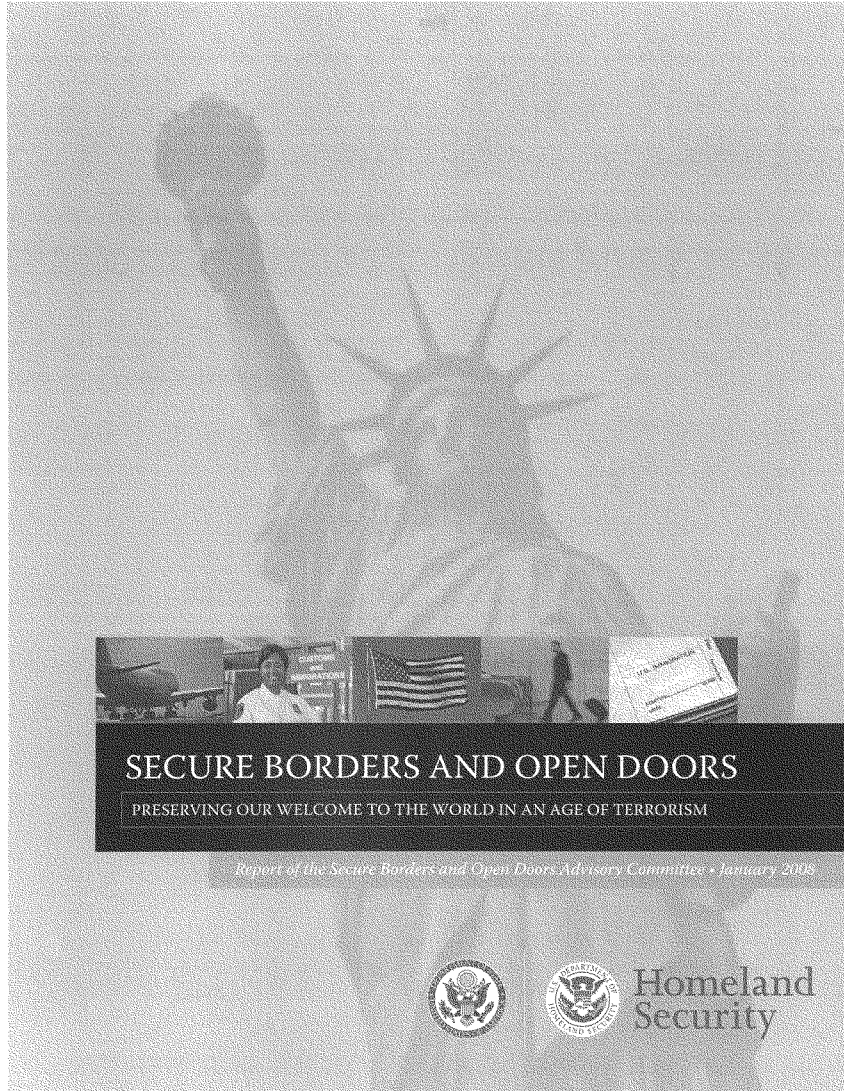


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SECURE BORDERS AND OPEN DOORS

PRESERVING OUR WELCOME TO THE WORLD IN AN AGE OF TERRORISM

Report of the Secure Borders and Open Doors Advisory Committee • January 2005



Homeland
Security

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Message from the Co-Chairs

Secure Borders and Open Doors. It is a phrase that summarizes the goal of our federal government charged with interviewing, assessing, processing, analyzing, and welcoming hundreds of millions of international visitors while finding the small numbers of people – the needles in the haystack – intent on using our openness against us. It is also the name of our Advisory Committee tasked with advising the Departments of Homeland Security and State in their mission to protect not only America's security but also our economic livelihood, ideals, image, and strategic relationships with the world.

Our long-term success requires not only that we deter and detect determined adversaries, but also that we persuade millions of people around the globe of our ideals – democratic freedom, private enterprise, human rights, intellectual pursuit, technological achievement. That persuasion requires human interaction, and each visitor to the United States represents such an opportunity. Raw statistics are important in analyzing our achievements and challenges, but so are the attitudes we display. Treating prospective and actual visitors with dignity and respect will reinforce, not diminish, our security.



Homeland Security Secretary Michael Chertoff addresses the first meeting of the SBODAC, December 6, 2006.
 Left to right: Henrietta H. Fore, former Under Secretary of State for Management; John S. Chen, Chairman, CEO, and President, Sybase, Inc., and SBODAC Co-Chair; Jared L. Cohon, President, Carnegie Mellon University, and SBODAC Co-Chair; Michael B. Chertoff, Secretary of Homeland Security; Alfonso Martinez-Fontes, Assistant Secretary for the Private Sector Office, DHS.

We are not alone in responding to this challenge. Globalism and terrorism are facts of life throughout the world, and we are competing with – and collaborating with – many nations in managing multiple goals. The stakes are high. As Thomas Friedman wrote, “We cannot let the FBI, CIA, and Homeland Security, in their zeal to keep out the next Mohammed Atta, also keep out the next Sergey Brin.”¹

Our report describes the problems we hope to help solve and recommends major changes to the budgets, priorities, business processes, and legal authorities of the executive branch. We believe that adopting our recommendations would improve critical security measures, enhance the world’s view of the United States, and attract more businesspeople, students, scientists, and tourists to our shores. We make our recommendations in full appreciation of the significant achievements made by the government to secure our borders and facilitate international commerce since 9/11. We have accomplished much, but we must do much more to position our nation for long-term prosperity and security.

We were honored to be appointed by Secretaries Condoleezza Rice and Michael Chertoff to co-chair this Advisory Committee and are proud to present this report with the belief that it will move us closer to the goal of Secure Borders and Open Doors. The members of the Committee have been assisted in this effort by able staff within our respective companies, universities, think-tanks, and associations and by formal and informal interactions with government officials from the frontline inspector to the Cabinet level.

We look forward to 2008, during which we will work with the Departments on the implementation of these recommendations and to educate policymakers about our proposals. We are grateful for the opportunity to provide continued counsel to the Departments of Homeland Security and State, whose men and women bear the burden of fulfilling the vision of Secure Borders and Open Doors.

John S. Chen, Chairman, CEO, and President, Sybase Inc., Co-Chair

Dr. Jared L. Cohon, President, Carnegie Mellon University, Co-Chair

¹ Thomas Friedman, *The World is Flat*, p. 292 (2005).

Executive Summary and Recommendations

As an international beacon of freedom and economic opportunity, and offering unique and attractive opportunities for international businesspeople, students, researchers, and tourists, America has long been a premier destination for people from all over the world. The unfortunate reality that our openness also provided an opportunity for the terrorists who struck on September 11, 2001 has created difficult challenges to this singular national attribute. These challenges exist not only for those industries and institutions who rely on international mobility to create jobs and economic growth in the United States but also for our government, universities, and businesses whose interactions with citizens of foreign nations encourage the growth of democratic freedoms, free markets, and human rights around the world.

Since the 9/11 attacks, America has struggled to make our borders – both physical and virtual – more secure while maintaining the freedom and openness for which our country is celebrated. In the past six years, nearly every aspect of the visa and entry process has been overhauled. We have created a new U.S. Department of Homeland Security, established new agencies, deployed an alphabet soup of security programs across the U.S. government, reached security and facilitation agreements with foreign governments and international organizations, and placed new mandates on private sector and educational institutions. In particular, new security measures carried out as part of the visa application and review process, before international travel, at the point of departure, during a border inspection, and via other means have responded to particular weaknesses in our systems, including many identified by the 9/11 Commission.

The impacts of this wave of policy and operational changes are immense. The most important fact is that the United States has not experienced a successful terrorist attack clearly orchestrated from abroad, even as terrorists have carried out lethal operations in Europe, Asia, the Middle East, and elsewhere. The federal government, and the Departments of Homeland Security (DHS) and State in particular, have made Herculean efforts to meet the goals of a Secure Borders and Open Doors policy. From Cabinet Secretaries to agency and office heads to frontline inspectors and examiners, the U.S. government has tried to fulfill its twin security and facilitation missions. However, it is no indictment of the effort or thoughtfulness of government officials or employees to state that we can and must do better.

The value of the U.S. dollar has dropped significantly and travel to America is a tremendous bargain. Yet, statistics, public opinion studies, and anecdotal evidence show that the policies put in place to make our borders more secure are perceived as making travel to the U.S. more difficult and unpleasant for many foreign visitors than before 9/11 and in comparison to other countries. Many opinion leaders overseas have been more than happy to label our new security programs as the construction of a “Fortress America.”

The numbers are striking and disturbing. Overseas travel to the United States declined 17% from 2000 through 2006. Visits from our most common departure countries – the United Kingdom, Japan, Germany, and France – collapsed from around 12 million visitors in 2000 to around 10 million in 2006.²

At a time when global mobility has been growing substantially, our share of overseas travelers has fallen significantly. While increases in travel within North America have been impressive and are truly significant in their own right, the financial impact and public diplomacy benefits of true overseas travel require the different departure locations to be viewed separately. The charts included at the back of this report demonstrate the trends from 2000 through 2006 regarding travel to the United States from Visa Waiver Program (VWP) countries, from countries requiring visas, and from contiguous neighbors.

As author Fareed Zakaria noted recently about travel to the U.S. from the U.K., one of our closest international allies:

For Brits, the United States these days is Filene's Basement. The pound is worth \$2, a 47 percent increase in six years. And yet, between 2000 and 2006, the number of Britons visiting America declined by 11 percent. In that same period British travel to India went up 102 percent, to New Zealand 106 percent, to Turkey 82 percent and to the Caribbean 31 percent. If you're wondering why, read the polls or any travelogue on a British Web site. They are filled with horror stories about the inconvenience and indignity of traveling to America.³

Former U.S. Secretary of State Colin Powell has commented:

Some argue that we should raise the drawbridge and not allow in any more foreign visitors. They are wrong. Such a move would hand a victory to the terrorists by having us betray our most cherished principles. For our own nation's well being, and because we have so much to give, we must keep our doors open to the world.⁴

By January 2006, however, concerns that this vision was not being implemented led his successor, Secretary of State Condoleezza Rice, and Secretary of Homeland Security Michael Chertoff to announce the Secure Borders and Open Doors vision, generally known as the Rice-Chertoff Initiative (RCI). RCI reflected a renewed effort by the two Departments to enhance America's attractiveness to international tourists, students, and businesspeople while also preventing those who wish our country harm from entering. In a joint statement, Secretaries Rice and Chertoff announced a three-part vision – Renewing America's Welcome with Improved Technology and Efficiency, Improved Travel Documents, and Smarter Screening – “to guide the current and future development of solutions that ensure the best use of new technologies and the most efficient processes — all of which will ensure that our joint facilitation and security objectives are met.”⁵

Since the 9/11 attacks, America has struggled to make our borders — both physical and virtual — more secure while maintaining the freedom and openness for which our country is celebrated. It is no indictment of the effort or thoughtfulness of government employees to suggest that we can and must do better.

Some statistical evidence over the past two years indicates progress has been made to implement RCI and restore the attractiveness of the U.S. as a location for business and study and as a travel destination. Travel from Western Europe has started to recover, visa approvals in growth markets such as China, India, and Brazil are up, and the overall number of international students

² U.S. Department of Commerce, International Trade Administration, Office of Travel and Tourism Industries, http://aintetlita.doc.gov/outreachpages/inbound_general_information_inbound_overview.html.

³ Fareed Zakaria, “America the Unwelcoming,” *Newsweek*, November 26, 2007, <http://www.newsweek.com/id/70991>. Travel from the U.K. to the U.S. in the first nine months of 2007 was up 6% over 2006. <http://www.tinetlita.doc.gov/viewtm-2007-001/table5.html>.

⁴ Colin Powell, “Secure Borders, Open Doors,” *Wall Street Journal*, April 21, 2004, <http://www.state.gov/secretary/former/powell/remarks/31634.htm>.

⁵ Department of Homeland Security, “Factsheet: Secure Borders and Open Doors in the Information Age,” January 17, 2006, http://www.dhs.gov/xnews/releases/press_release_0838.shtm.

has recovered to pre-9/11 levels.⁶ These trends are very encouraging but we must continue to improve all aspects of our immigration and travel processes if we expect them to continue in the face of global competition and security risks.

To gather expert input on travel and border issues, the Secretaries of Homeland Security and State appointed the Secure Borders and Open Doors Advisory Committee (SBODAC) in December 2006. The advisory committee consists of members from academia, the private sector, and nongovernmental organizations.⁷ To help facilitate research in particular areas, the SBODAC Co-Chairs appointed four working groups, each chaired by SBODAC members and focused on key aspects of the issues: Public Diplomacy and International Outreach, Visa Policy and Processing, Ports of Entry, and Metrics and Critical Success Factors.

This report was prepared following numerous briefings from DHS, State, and other public and private entities and after extensive deliberation by and input from all Committee members.

The Committee formulated 44 policy recommendations, all of which are discussed in the main body of this report. While many of the recommendations could be implemented solely by the executive branch, many require additional funding from the Congress and some require legislative changes. The following list of 12 priority recommendations is representative of the full set. The Committee believes that implementing all of its recommendations will help restore America's openness while maintaining the security of our borders.

PUBLIC DIPLOMACY AND INTERNATIONAL OUTREACH

- The federal government and the private sector should work cooperatively to establish a national-level strategic communications campaign to promote the United States as the premier visitor destination in the world.
- The United States should articulate a comprehensive national policy for attracting international students and place a White House official in charge of coordinating implementation of the policy.
- The responsibility for creating, conducting, and evaluating most public diplomacy programs should be removed from the Department of State and housed in a new quasi-governmental entity, the Corporation for Public Diplomacy.

VISA POLICY AND PROCESSING

- The Department of State should expand its use of management practices related to visa processing to include more monitoring of outcomes and the achievement of specific results—including a maximum 30-day wait time for visa interviews and improvements in security and error reduction—with systematic goals, performance metrics, feedback, and improvements in outcomes from year to year.
- The Departments of State and Homeland Security should improve collaboration, including establishing a joint Business Process Task Force to set standards for a single enterprise file on businesses that seek to sponsor travel and immigration and/or move goods across U.S. borders and a voluntary Business Movement Service and Security Partnership to facilitate movement of working people and goods.

⁶ Institute of International Education "Open Doors 2007: Report on International Educational Exchange," November 2007, <http://opendoors.iienetwork.org>. See also, fn 2.

⁷ "DHS and State Announce Members of the Secure Borders and Open Doors Advisory Committee," December 6, 2006, http://www.dhs.gov/xnews/releases/pr_1165414188787.shtm. The SBODAC is legally a subcommittee of the full DHS Homeland Security Advisory Committee.

- The Department of State should address the need for new consular officers and posts, particularly in large countries with increasing visa demand, by elevating the role of consulate and other border management personnel planning and consulate construction in State's planning process. The Department also should continue to develop videoconferencing as a way to expand access to consular offices.

PORTS OF ENTRY

- The Department of Homeland Security should establish a pilot program for International Registered Travelers as soon as possible and promptly expand the program to the top 20 international airports.
- The Departments of Homeland Security and State should accelerate and expand the Model Ports Program and fully include the Transportation Security Administration to eliminate redundant re-screening of baggage and passengers.
- The Department of Homeland Security should continue to improve security performance while reducing the average amount of time U.S. Customs and Border Protection officers spend with each traveler to less than pre-September 11 levels and staff ports of entry sufficiently to complete primary inspection of foreign passengers in less than 30 minutes by December of 2009.
- The Departments should implement the Western Hemisphere Travel Initiative (WHTI) and US-VISIT on the land border without degrading the travel experience.

METRICS AND CRITICAL SUCCESS FACTORS

- A consistent set of metrics that indicate the efficiency, effectiveness, and consumer friendliness of visa application and adjudication should be maintained longitudinally and used to analyze and continually improve performance and optimize deployment of resources.
- The performance metrics related to visa application and adjudication, and those related to entry of international travelers, both citizens and non-citizens, should be globally benchmarked.

Public Diplomacy and International Outreach

DISCUSSION

The term “public diplomacy” refers to aspects of international relations that go beyond official interactions between national governments.

While the term “public diplomacy” may trigger thoughts about how the image of the United States is portrayed overseas in film, television, music, sports, video games, and other social/cultural activities, the opportunities for direct interactions between Americans and residents of other countries created by international travel are perhaps the most important asset of public diplomacy at our disposal.

The public diplomacy benefits of travel to the United States are manifold and critical to the economic and political future of the nation. People-to-people diplomacy resulting from various forms of international travel to and from the United States ensures that our country remains vitally connected to the world. While it may seem counterintuitive in an era of international terrorism, “open doors” to the United States can be a means to make our country more admired and thus more secure, not less. The benefits of increased international travel to the U.S. are not merely more visitor spending and the American jobs such spending supports. What has escaped the notice of most reporters and political experts is the potential that exists within the travel experience to win hearts and minds around the world one visitor at a time. For a nation that has seen its favorability rating decline dramatically in recent

years, we should be making every effort to invite and facilitate the entry of millions more international visitors. Every international traveler entering the United States is a potential friend of the United States.

Travelers’ concerns related to security and possible subsequent terror attacks were in large part responsible for the dramatic drop in international travel in the period immediately following September 11, 2001. As we moved beyond the immediate aftermath of those attacks, the real and perceived barriers associated with U.S. visa and entry policies and procedures have become the primary cause of a continued decline in travel to the U.S. In addition, beyond what prospective visitors may perceive as unwelcoming policies and procedures, what they are not hearing or seeing from the United States also matters greatly. While individual travel-related companies and city and state destinations may advertise their products and services abroad, the United States currently has no official, comprehensive program in place to extend an explicit welcome to prospective visitors around the world.

The precipitous decline of the U.S. image abroad has been widely and frequently reported in the media. According to the Pew Global Attitudes Project report issued in June 2006, the U.S. image declined over the previous year in most of the 15 countries surveyed. Favorable opinions of the U.S. fell in Spain (41 percent to 28 percent), India (71 percent to 56 percent), and Russia (52 percent to 43 percent).⁸

⁸ Pew Global Attitudes Project, 2006 Report, “America’s Image Slips, But Allies Share U.S. Concerns Over Iran, Hamas,” <http://pewglobal.org/reports/display.php?ReportID=262>.

In comparison, research demonstrates that after visiting the United States, foreign citizens have significantly improved perceptions about the U.S., its people, and even its policies. For example, the Discover America Partnership's 2006 survey of more than 2,000 international travelers discovered that 63 percent of foreign travelers feel more favorable towards the United States as a result of their visits.⁹

To be sure, there are numerous other possible factors affecting aggregate travel numbers, including: the introduction of direct air routes between more non-U.S. destinations; increased competition from other countries that actively market themselves to international travelers; changing economic conditions in source markets; and currency fluctuations. Some of these factors, though, also should be encouraging additional travel to the U.S., especially the relative weakness of the dollar versus other currencies.¹⁰

University Outreach

As Harvard scholar Joseph S. Nye Jr. has written, public diplomacy entails not only "conveying information and selling a positive image," but also "building long-term relationships that create an enabling environment for government policies." It is in that latter respect that universities make their unique and indispensable contribution. The universities' domain lies in what Nye calls the "third dimension" of public diplomacy: "the development of lasting relationships with key individuals over many years through scholarships, exchanges, training, seminars, conferences, and access to media channels."¹¹

Universities recruit international students, professors, and researchers. They send students and scholars abroad. They develop partnerships with foreign institutions under which they engage in exchanges for mutual benefit. In each case, they are building the lasting relationships that Nye refers to.

International student enrollment at America's colleges and universities declined for each of the academic years ending in 2004-2006. It is welcome news that studies published in November of 2007 indicate that enrollment for the 2006-2007 academic year had increased 3% over the prior year.¹² Nonetheless, the United States still has lost a significant share of the international student market during a period when the United Kingdom, France, Australia, and other major competitors are experiencing robust growth.

Every international traveler entering the United States is a potential friend of the United States.

Regarding international students, generations of foreign policy leaders have testified to the power of this public diplomacy tool. Speaking at the January 2006 University Presidents Summit, President George W. Bush spoke to the difficulty of striking the right balance in visa policy and said, "We're going to get it right, because the more youngsters who come to America to get educated, the more likely it is people in the world will understand the true nature of America."¹³ Many leading officials at State, such as recently departed U.S. Ambassador for Public Diplomacy Karen Hughes and outgoing Assistant Secretary of State for Consular Affairs Maura Harty, have made efforts to leverage America's vast academic assets for public diplomacy. However, the President's commitment to strike the right balance is not yet fulfilled.

Without question, universities themselves have unique responsibilities in this area. They must continue the stepped-up recruitment efforts they have put in place since 9/11 and do everything possible to make their institutions more attractive and accessible to international students.

⁹ Discover America Partnership/RT Strategies Survey of International Travelers
http://www.poweroftravel.org/pdf/international_travel_survey_summary.pdf

¹⁰ Agence France Presse, "Ailing dollar falls to historic low against euro," November 20, 2007,
http://info.google.com/article/ALeqM5hCSYw933eOLfwsS2HhAe01_1w

¹¹ Joseph S. Nye Jr., *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004), pp. 107, 109.

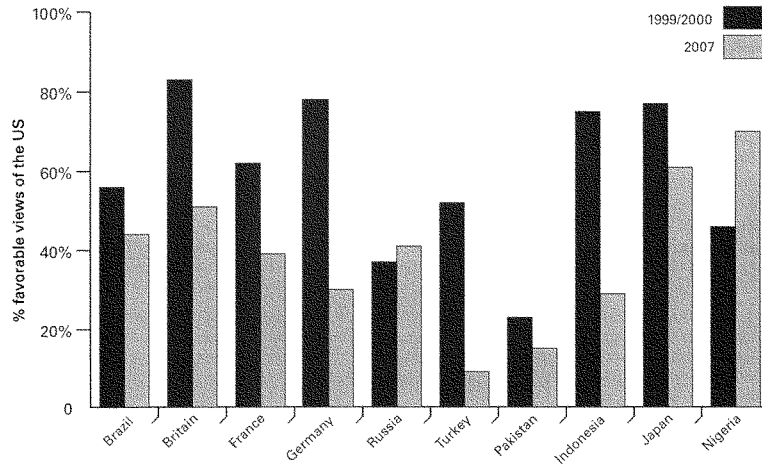
¹² Institute of International Education, "Open Doors 2007: Report on International Educational Exchange," November 2007,
<http://opendoors.iienetwork.org>

¹³ George W. Bush, "Remarks by President Bush to the U.S. University Presidents Summit on International Education," January 5, 2006,
<http://www.state.gov/summit/68734.htm>

America is losing competitiveness for international students for one primary reason, and it is not related to how the Bureau of Consular Affairs (CA) at State is performing their operational responsibilities. Rather, it is because our competitors have – and America lacks – a proactive national strategy that enables us to mobilize all the tools and assets at our disposal, and that enables the federal bureaucracy to work together in a coherent fashion, to attract international students. Instead, the U.S. effort is characterized by a bureaucracy that often works at cross purposes.

An equally important way to leverage universities for public diplomacy is to encourage more Americans to study overseas. The United States simply cannot conduct effective diplomacy – public or otherwise – if our citizenry does not have an understanding of the people we are trying to influence. The most effective thing we can do as a nation to ensure that Americans possess the international knowledge and cross-cultural skills that are vital to national security and economic competitiveness is to have more Americans living and learning overseas. As President Bush has said, “America’s leadership and national security rest on our commitment to educate and prepare our youth for active engagement in the international community.”¹⁴

International public opinion of the United States



Source: Pew Global Attitudes Project, 2007 Report “Global Unease With Major World Powers” <http://pewglobal.org/reports/display.php?ReportID=256>

¹⁴ George W. Bush, “International Education Week 2001 Statement,” November 13, 2001, <http://exchanges.state.gov/iew2001/message.htm>.

Yet today, only about 1 percent of U.S. undergraduates study abroad as part of their education.¹⁵ Those that do, as a group, are not representative of the ethnic, socioeconomic, and academic diversity of our nation. Although 95 percent of the world's population growth over the next 50 years will occur in developing nations, and many of the challenges that our country faces emanate from the non-Western world, nearly 60 percent of students currently study only in Europe, approximately 43 percent in only four countries: the United Kingdom, Italy, Spain, and France.¹⁶ Updating study-abroad programs to better align them with 21st century realities is a compelling national need, and a national effort is required to accomplish it.

Corporate Outreach

In many ways and on many occasions, State has stressed the need to engage corporate America in public diplomacy. A world that admires America is more likely to welcome and value American goods and services. More fundamentally, U.S. corporations should rise to the challenges of public diplomacy by lending expertise to the country's need to defend its reputation and interests in the world. American statesman Pete Petersen calls this idea "Business Patriotism."¹⁷

It is also true that in addressing certain public diplomacy challenges, business has a number of clear advantages, including:

- American business is admired: Surveys show that the "American Way of Business" is still greatly admired around the world.¹⁸

- The reach of American business is vast: Through their people and their brands, American business touches millions of lives throughout the world every day.
- American business is culturally sensitive: An estimated five to six million of the approximately nine million people employed by U.S. companies outside the U.S. are local nationals who are sensitive to local cultures and social mores.¹⁹
- Business knows how to get along: U.S. companies, especially multi-nationals heavily dependent on foreign markets, have learned how to excel across cultures and borders.
- Business is a credible messenger: In many countries, global companies are viewed as more credible messengers than the U.S. government.

Individual companies can take action to promote American public diplomacy. However, the U.S. government should leverage the strengths of corporate America as a community for public diplomacy. Business should lend its expertise to the federal government in a variety of ways such as technology to streamline the visa process, media training for foreign-service officers, marketing and communications skills for the many voices of government, and analytical and organizational skills to facilitate action and accountability.

¹⁵ NAFSA, Association of International Educators "Study Abroad Participation by State 2005-2006," November 2007, <http://www.nafsa.org/saps0506>.

¹⁶ Institute of International Education "Open Doors 2007: Report on International Educational Exchange," November 2007, <http://opendoors.iienetwork.org>.

¹⁷ Council on Foreign Relations, "Finding America's Voice: A Strategy for Reinvigorating U.S. Public Diplomacy," September 18, 2003, http://www.cfr.org/content/publications/attachments/public_diplomacy.pdf; Peter G. Petersen, "Where Are the Business Patriots? CEOs Need to Be Statesmen Again," *Washington Post*, June, 18, 2004.

¹⁸ See, e.g., Edelman Trust Barometer 2007, p. 29, http://www.edelman.com/trust/2007/trust_final_1_31.pdf.

¹⁹ Survey of Current Business, November 2007, p. 45; Park Hyon-ki, "AMCHAMS Fight Tax Increase," *Korea Times*, June 9, 2006; Elizabeth Olson, "Tial Census Count Is Planned for Overseas Americans," *International Herald Tribune*, October 25, 2003.

RECOMMENDATIONS

The federal government and the private sector should work cooperatively to establish a national-level strategic communications campaign to promote the United States as the premier visitor destination in the world.

This new public-private partnership – including representatives of the travel industry and the broader business community – would be designed to carry out two main missions: changing perceptions about the U.S. visa and entry process, and promoting the U.S. as a top destination for all types of visitors.

"The more youngsters who come to America to get educated, the more likely it is people in the world will understand the true nature of America." – President George W. Bush

As part of this campaign, DHS and State should create a formal mechanism to identify inaccurate or distorted reporting concerning the visa issuance or arrivals inspection process and respond actively to set the record straight. The Departments should work with private sector travel organizations to leverage industry channels to disseminate information concerning changes and improvements in the visa and entry process. The promotion program should be accountable to the Congress and the executive branch and be funded through a combination of in-kind and cash contributions from private sector organizations with an interest in promoting

travel to the United States. These monies could be supplemented by fees from foreign travelers similar to those paid by Americans traveling abroad.²⁰

This new entity would build on an impending industry-based opportunity to promote the U.S. to international visitors. The DiscoverAmerica.com Web site, which is expected to be launched in 2008, was developed through a cooperative agreement between the U.S. Department of Commerce and the Travel Industry Association and will be designed to serve as the "Official Travel & Tourism Web site of the United States."²¹ The site will be initially serving five markets: the United Kingdom, Germany, Japan, Canada, and Mexico. The site will feature a variety of information about U.S. destinations including attractions, natural resources, dining, lodging, transportation, shopping, and activities, in addition to the most up-to-date information on entry documentation requirements and the arrivals inspection process.

Until and even after such a partnership is established, DHS and State should consult with other affected governments to explain the nature of the U.S. programs and educate the traveling public on the requirements and procedures involved, including possible benefits to the travelers themselves. The public outreach should involve all forms of media including television and print, not just government Web sites. The Departments should work with airlines, airports and the rest of the travel industry in disseminating accurate information and responding to questions and concerns raised by the local media and communities. Among the success stories in this regard have been US-VISIT and TSA's "3-1-1" campaign regarding liquids and gels.

²⁰ Discover America Partnership, "A Blueprint to Discover America," January 31, 2007, http://www.poweroftravel.org/pdf/DAP_blueprint.pdf, p. 29.

²¹ Office of Travel & Tourism Industries, "Commerce Department Announces \$3.9 Million to Increase Awareness for America's Travel and Tourism Industry," February 1, 2007, <http://tinet.ita.doc.gov/tinews/archive/tinews2007/20070201.html>.

The Departments of Homeland Security and State should ask Congress to eliminate the media or "I" visa requirement for journalists from Visa Waiver Program countries entering the United States for the purpose of engaging in media activities.

Reshaping the U.S. image abroad will necessitate reaching out to international media and inviting reporters to see and experience the United States. The process of inviting the international media to the U.S. for familiarization or "fam" tours, as well as any other reporting, would be greatly enhanced if members of the press from Visa Waiver Program (VWP) countries were no longer required to obtain "I" visas for official business visits to the United States.²² Even if State is issuing "I" visas to journalists quickly and efficiently, the requirement to obtain such visas is a major irritant for the foreign press even though the security concerns that led to the creation of this visa category decades ago are no longer relevant for VWP countries.

State has concluded that they do not have regulatory flexibility to eliminate the "I" visa requirement for journalists from VWP countries. Thus the Department of Homeland Security, which has legal authority to manage the VWP, should request legislation from Congress to place journalists from VWP countries on equal footing with other business professionals who may enter the U.S. for less than 90 days without the need for a visa. Eliminating this visa requirement could accomplish a great deal to produce a more positive attitude among journalists covering stories in and about the United States.

The United States should articulate a comprehensive national policy for attracting international students and place a White House official in charge of coordinating implementation of the policy.

The best and brightest from around the globe are now a sought-after commodity, able to choose from many centers of excellence where they can ply their creative skills. Other countries are working hard to attract the next generation of the world's scientific, technological, and intellectual elite.

An intelligent, comprehensive approach would necessarily involve numerous federal agencies that affect the propensity of international students to study in the United States. These agencies include not only DHS and State, but also the Departments of Commerce, Education, and Justice, the Social Security Administration, the Internal Revenue Service, and the investigative and intelligence agencies involved in background check processes. Only an official policy issued under the name of the President can effectively direct a multi-agency approach.

Congress should enact legislation to facilitate the goals of dramatically increasing the number and diversity of U.S. undergraduates who study abroad to 1 million per year and increasing the diversity of the locations they choose.

Increasing the number of Americans who study abroad to 1 million per year would constitute a fivefold increase over today's numbers.²³ One way to accomplish this goal would be congressional passage of the proposed Paul Simon Study Abroad Foundation Act, which would provide seed money to encourage colleges and universities to take the necessary steps to make study abroad the routine,

²² 8 CFR Part 214 Sec. 214.2 (i)

²³ House Foreign Affairs Committee "Lantos Hails Passage of Study Abroad Act," June 5, 2007, http://foreignaffairs.house.gov/press_display.asp?id=365.

rather than the exception, on American campuses.²⁴ This proposal was put forward by a blue-ribbon, bipartisan commission with members appointed jointly by the President and the congressional leadership²⁵ that has broad support among all types of higher education institutions and strong bipartisan support in Congress.²⁶ Through this democratization of study abroad, our nation can help ensure that future generations of Americans will possess greater knowledge and cross-cultural skills to better understand and engage the world. Their skills and relationships would become a major asset to public diplomacy that does not exist today.

The educationusa.state.gov Web site should be improved to be a better tool for American public diplomacy and international outreach.

Although this Web site is a very comprehensive and informative "one-stop shop" for students hoping to study in the United States, it should be thought of not merely as an information source, but also as a marketing and recruiting tool. The site should be improved in areas including:

- Ease of access: The site should be better known and easier to find, including use of search engine marketing and online media planning and placement.
- Relevant links: Educational sites with similar offerings should link to <http://educationusa.state.gov>.
- Appearance and functionality: User-friendliness and overall visual appeal should be improved, for example, by adding a Frequently Asked Questions link, a section debunking myths and horror stories, foreign language capabilities, and a live chat feature.

- Coordination with other government Web sites: State, State's Bureau of Consular Affairs, and DHS all have Web sites for international students which should be linked, and information contained on these sites should be coordinated with the EducationUSA site.

The Departments of Homeland Security and State should incorporate the use of cross-cultural tools and training offered by universities and private sector entities.

Many officials at ports of entry and in our immigration system have not been thoroughly trained in cross-cultural sensitivity, resulting in missed opportunities for creating positive impressions among visa applicants in the communities where they serve and among travelers. Foreign Service officers, including those performing consular duties, undergo extensive language and other training before arriving at posts and further training upon arrival. They can benefit nonetheless from the global perspectives and skills honed in the multinational business environment. For example, CultureSpan is a one-day workshop developed by Business for Diplomatic Action in cooperation with the Thunderbird School of Global Management. Similar programs are offered at the University of North Carolina and the University of South Carolina. Such courses are designed to give participants a global mind-set and provide them with new tools for managing global teams and communicating across cultures. These types of training opportunities may serve as important elements of DHS training and as useful supplements to the training by the Foreign Service Institute.

24 H.R. 1469 was passed by the U.S. House of Representatives on June 5, 2007. The bill and companion legislation, S. 991, are awaiting action in the U.S. Senate.

25 NAFSA: Association of International Educators, "Securing America's Future: Global Education for a Global Age," November 2003, <http://www.nafsa.org/securingamericafuture>.

26 NAFSA: Association of International Educators, "Senator Paul Simon Study Abroad Foundation Act," <http://www.nafsa.org/simon>.

Likewise, many ambassadors and other foreign-service officers who may have occasion to deal with reporters have not received the kind of media training from experienced professionals on which the business world now relies. Such training could help diplomatic personnel learn how to deal more effectively with negative perceptions, hostile reporters, and inaccuracies in reporting which are unfortunate realities of the modern media environment.

The responsibility for creating, conducting, and evaluating most public diplomacy programs should be removed from the Department of State and housed in a new quasi-governmental entity, the Corporation for Public Diplomacy.

Whereas State's primary responsibility is to formulate and advocate U.S. foreign policy, the role of public diplomacy should be an independent effort to engage all sectors of American society in improving world opinion of our country. Given the decline in America's reputation in the world, a dramatic reappraisal of U.S. public diplomacy strategy and tactics is long overdue. As it will take years to revive America's reputation, the government should establish a vehicle for public diplomacy, such as a new Corporation for Public Diplomacy that would take a long-term approach insulated from year-to-year partisan politics.²⁷

The U.S. government should elevate and institutionalize the role currently being played by the Strategic Communication and Public Diplomacy Policy Coordinating Committee by establishing a National Communications Council, reporting to the President.

The U.S. government has many messengers sending out uncoordinated, sometimes conflicting, messages to foreign audiences. While the government has increasingly recognized the need to coordinate public diplomacy initiatives and strategic communications to foreign audiences across the many agencies involved in these activities (especially the Departments of State, Defense, and Homeland Security, as well as the U.S. Agency for International Development, the Broadcasting Board of Governors, and others), very little actual coordination has been accomplished. At present, the Undersecretary of State for Public Diplomacy and Public Affairs chairs the Strategic Communications and Public Diplomacy Policy Coordinating Committee, which has been given the task of inter-agency coordination. However, over the long term this responsibility should rest in a White House National Communications Council because of the cross-agency responsibilities.



Members of the SBODAC and the DHS Homeland Security Advisory Council tour the site of the former World Trade Center in New York City, June 11, 2007

²⁷ Council on Foreign Relations, "Public Diplomacy Steps Taken Since 9/11 Not Enough; Council Task Force Urges the Bush Administration to Counter America's Deteriorating Image as Anger at U.S. Deepens Post-Iraq War," <http://www.cfr.org/publication.html?id=6262>.

Visa Policy and Processing

DISCUSSION

Non-immigrant visas authorize temporary travel to the United States for approximately 5 million tourists, businesspeople, academics, students, and other visitors each year from at least 160 countries.²⁸ The more than 15 million annual visitors fuel prosperity, nourish society, create political ties, and often lay the foundation for immigration.²⁹ Visas thus serve both people and institutions and are a key economic and security tool of the United States. For many foreign visitors, the first American they meet will be the consular officer who adjudicates their visa application. Consular officers' skills, judgment, and courtesy therefore have a powerful influence on American interests.

Visa issuance requires collaboration between the Bureau of Consular Affairs (CA) at the U.S. Department of State (State), which adjudicates visa applications; the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS), the primary adjudicator of petitions sponsored by U.S. businesses and universities on behalf of individual applicants; and U.S. Customs and Border Protection (CBP), which adjudicates visas for certain visitors from Canada and determines entry for all visa-holders.

Actual and perceived visa service, including efficient management of security needs, and visa demand are both pressing issues. U.S. businesses report that many meetings are now held in Europe instead of the United States because of the greater certainty of and, often, shorter wait times associated with the European visa processes.³⁰ Frustrations with inaccurate decisions and in obtaining redress are persistent. Rising demand from major developing countries, especially India, China, Mexico, and Brazil, if present practices and trends continue, cannot be met and is already creating slow processing times.

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²⁸ Information provided by the Department of State.

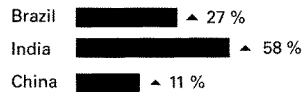
²⁹ *Ibid.*

³⁰ Business representatives have received numerous reports from their colleagues that they have chosen to hold meetings in other countries, such as the United Kingdom, Australia, or Canada, because they feel more certain that their associates will be approved for visas and in less time. See, e.g., Jeff Bliss and John Hughes, "World's 'Worst' Visa System Scores Business Away From the U.S.," Bloomberg News, December 26, 2006, <http://www.bloomberg.com/apps/news?pid=20601087&sid=a1F10udsixLM&refer=home>.

The Rice-Chertoff Initiative envisions a visa system that enables the maximum number of people to visit the United States with optimum security and efficiency. RCI emphasizes the need for 21st century information technology to achieve this goal, specifically directing: a single original capture of data from applicants accessible to all border and immigration functions, paperless processing, videoconferencing technology to enhance access to visa services, expanded business facilitation programs, and reduced time to obtain a visa.

Rising visa demand

Fiscal Year 2006-2007 (October 2005 to October 2007)



Source: U.S. State Department

The Department of State, in particular, has made important progress toward these goals. CA is on track to launch a paperless, Internet-based visa application system by 2008 as part of a single portal that will take applications, schedule appointments, and allow fee payment by the end of 2009. Outsourced enrollment capability is being piloted to determine the impact on the visa process on State and on applicants going first to a kiosk then to a consulate. State has added 40 percent more consular officers since 2001, reinvigorated business facilitation programs, and trimmed visa wait times for most students and, to some extent, for tourists and business travelers.³¹

State's continuous technology improvements are impressive and essential. But meeting the new challenges requires further evolution in visa management practices, including more use of analytic tools and measures of accountability for meeting specific goals. These have the potential to support continuous improvement in the quality of visa decisions generally, including security, and of public perceptions of the system.

³¹ Information provided by the Department of State.

³² This series of recommendations is primarily aimed at executive branch policies and programs, rather than significant legislative changes to the types and numbers of immigrants and non-immigrants granted visas to travel temporarily or permanently to the United States to work, study, or perform other legal activities. The SBODAC membership recognizes the critical importance of attracting and admitting foreign visitors who wish to attend U.S. universities, travel for short-term business or pleasure, or obtain short-term or permanent employment in the U.S. However, the SBODAC concluded that advocating legislative changes in these areas was beyond the core function of this report.

The system would also benefit from sustained attention to presentation of information, and to error reduction and resolution. The lack of consistent, high-quality Web site information and of reliable avenues for redress and review are two factors that escalate costs and exacerbate negative perceptions.

But visa system managers need greater support in making such changes and investments. The U.S. foreign affairs system treats visa matters as distinctly subordinate to traditional diplomacy, and optimizing the visa system remains a relatively low policy and budget priority for both State and DHS. To manage higher levels of risk, respond to global economic competitiveness, and support U.S. diplomacy, this must change. The visa system – as a service vital to the U.S. economy and as a critical security tool – must be accorded more prominence and resources. Consular operations are funded nearly exclusively through visa fees, making it difficult to innovate and to meet needs that arrive suddenly. Moreover, there are simply not enough visa officers or consulates, and the future shortfalls in officers and in the number of consulates are guaranteed to be greater than today.

The division of authority over the visa process complicates progress in service and in security. DHS has authority for policy and for business petitioners, State for operations and law enforcement relating to visa applications and passports, and DHS, the Federal Bureau of Investigation (FBI), and other agencies for terrorism and crime-related inputs. The USCIS has not developed an Internet-based system for business petitioner applications that can be linked with State's electronic visa application system. The lack of connectivity prevents development of a joint business traveler facilitation program analogous to CBP's Customs-Trade Partnership Against Terrorism (C-TPAT), a useful shipper facilitation and security program. Security checks outside of the control of State can be unnecessary or drag on unnecessarily for months.

The steps suggested below are specific ways to move forward.³²

RECOMMENDATIONS

Management Practices

The Department of State should expand its scope of management practices related to visa processing to include more monitoring of outcomes and the achievement of specific results—including a maximum 30-day wait time for visa interviews and improvements in security and error reduction—with systematic goals, performance metrics, feedback, and improvements in outcomes from year to year.³³

Modern management practices rely on agreed criteria and data sources for monitoring progress, setting goals, and improving communications. Visa officials work energetically to improve the visa process; at present, however, CA lacks a systematic process for analyzing cumulative service and security outcomes. CA should use the data to set specific goals, improve operations, and communicate those specific improvements to the public using empirical data.

For example, State has established a performance goal of taking no more than 30 business days to interview and provide visas to successful applicants, but it has no mechanism to ensure the goal is met, or to optimize business processes to that end. While CA instituted a helpful new practice in which all 212 offices taking visa applications post a Web site notice of current visa wait times, the standards for performance measurement still differ among the various posts, and are not always updated in a timely manner. Most importantly, CA does not track and report annual performance by country or globally, so that State managers and personnel, Congress, the travel community, and the broader public can know where the United States stands in meeting its timeliness goals.

CA would achieve greater success, including in its communications, by expanding its use of a “continuous improvement” model that defines objectives, seeks to achieve them, regularly assesses achievements, and makes changes that respond to those findings, in collaboration with DHS when appropriate. Goals should include:

- Increasing the number of applicants for whom visa adjudications are completed within 30 days until the goal is achieved and a new, faster goal may be adopted;
- Basing wait-time goals on comparisons with competitor countries;
- Reducing the number of individuals granted visas who, at ports of entry, are sent to secondary processing or denied entry;
- Reducing the number of visas granted to individuals who are subsequently determined to be security risks, convicted criminals, or violators of immigration laws;
- Improving results in public opinion polls that measure attitudes toward the U.S. visa process; and
- Reducing the number of individuals erroneously denied entry and related complaints from applicants, stakeholders, and Members of Congress.

Because outcomes may not be not fully under State’s control, the process of determining and measuring outcomes may require collaboration with DHS and other agencies that participate in the visa process. Assessments also need to take current law into account; when approximately one quarter of visa applications are denied based on legal requirements,³⁴ there will inevitably be disappointed – and disgruntled – applicants.

³³ The Metrics section of this report discusses general metrics to measure success of U.S. visa and border security programs.

³⁴ Under 8 U.S.C. Section 214(b) of the Immigration and Naturalization Act, a visa applicant bears the burden of showing that he or she is not an immigrant by meeting the terms of the specific visa classification for which the application is being made.

Planning related to all of the Department of State's immigration, migration, and travel functions — visas, passports, overseas citizen services, refugee, asylum, and border security functions — should become more defined, regular, and formal through a Quadrennial Service and Security Review in collaboration with DHS, to improve security and performance.

Inaccurate forecasts have major consequences for risk, resources, outcomes, and perceptions. The passport availability crisis in the summer of 2007, for example, imposed major costs on the public as travel schedules were canceled and trips were delayed. Growing demand for visas in China, India, Brazil, and Mexico likewise has the potential to impose high costs on the United States if forecasts and plans are off the mark.

At present, CA does undertake some planning and conducts internal and outsourced studies to determine demand. Most recent studies, however, have already been demonstrated to significantly understate demand.³⁵ Although factors like visa law changes, currency fluctuations, natural disasters, and wars may pose unexpected challenges, better planning can improve the likelihood that service and security needs are met more consistently and are not subject to extreme disruptions.

While annual budget deadlines are based on a two-year planning cycle, the medium-term planning for ensuring needed visa and passport personnel and infrastructure is not a core function in State's travel- and immigration-related processes. New consular officers begin service 18 months after selection, a factor that alone compels more extended planning.

The visa system — as a service vital to the U.S. economy and as a critical security tool — must be accorded more prominence and resources.

More fundamentally, consular planning is almost entirely subordinated to unrelated diplomatic needs. Planning and construction of new embassy and consular facilities is controlled and driven by State's regional bureaus; CA is consulted but does not have decision authority. Embassy building planning procedures lock in projects eight years in advance — too inflexibly to respond to new visa security mandates, business process and technology improvements, and unanticipated shifts in demand.

The Department of Defense conducts periodic strategic reviews to better educate Congress and stakeholders about long-term issues. Recently, the Homeland Security Advisory Committee, approving a recommendation from its Advisory Committee on the Future of Terrorism, recommended that DHS conduct a Quadrennial Service and Security Review of all homeland security threats, assets, plans, and strategies, and DHS is currently implementing this recommendation.³⁶ State's planning for its many functions related to travel and immigration should be elevated to an equally rigorous and independent level, in close coordination with DHS.

³⁵ Change Navigators, Inc., *Consular Affairs Futures Study*, July-September 2005. The study predicted that combined demand for visas for 2007 from China, India, Brazil, and Mexico would be 2,350,437, but demand was actually 3,316,658. For 2006, demand was expected to be 2,359,915, but the actual demand was 2,721,895.

³⁶ Homeland Security Advisory Council, *Report of the Future of Terrorism Task Force*, January 2007, <http://www.dhs.gov/xlibrary/assets/hsac-future-terrorism-010107.pdf>.

Visa Service

The Department of State should resume domestic re-issuance of visas for business travelers in categories E, H, I, L, O, and P, and expand it to include student (F) and exchange visitor (J) visas, for those visa holders who have remained in status and applied for re-issuance in the same visa classification within six months prior to their status expiring.

In 2004, State suspended its long-time practice of re-issuing or revalidating visas in the United States for certain visa holders.³⁷ The State Domestic Revalidation division processed 64,115 applications in 2003 and 95,065 applications in 2004.³⁸ Since such individuals must now travel to a consular post abroad to re-file their visa applications, backlogs have swelled in some posts in Canada (because of its proximity to the United States), as have costs for employees and employers alike.

A convincing business and security case has not been made for the continued suspension of domestic reissuance for certain low-risk visa categories. State suspended the practice because it lacked the capacity to take fingerprints and conduct interviews domestically. But today numerous options exist for taking fingerprints domestically. Consideration should be given to establishing a dedicated visa reissuance unit, facilitating such processing at border posts, accepting applications including biometrics at the DHS Customer Service Centers, and/or using the kind of outsourced enrollment that CA is seeking to develop in Mexico.

Security issues need not be an obstacle. In addition to the biometric checks, there should be rules-based security screening of initial applications and any

applicants requiring post-issuance review. If there is no indicator of suspicion and the visa is clearly approvable – as a renewal in the same category previously vetted by the U.S. consulate abroad – the interview requirement should be waived. If there is a “hit” on a watch list or other indicator of suspicion, the matter should be reviewed by U.S. Immigration and Customs Enforcement and other appropriate agencies. In such cases, after consultation, the consular officer could either determine that the visa is not clearly approvable and direct the individual to apply overseas, or deny the visa outright.

Under this approach, most visa holders in business classifications likely would be reissued visas readily, as would those students in compliance with the Student Exchange Visitor Information System (SEVIS). For instance, the rejection rate for H-1B visa holders during the last year of active domestic reissuance was 7.6 percent;³⁹ the number of identified security risks among this group is likely to be tiny. With the introduction of an Internet portal for applications and possible outsourced enrollment capability, this small number of rejections should not constrain the work and lives of thousands of legitimate visa holders and their employers. There is the potential that an applicant of concern may prove not to be removable by law, but there is no indication that this risk is so great that it warrants depriving more than 100,000 business and student visa holders a year annually of a highly efficient process.⁴⁰

³⁷ This change affected employees of multinational corporations, treaty traders and investors, highly gifted individuals, and employees brought in by businesses with approval from DHS.

³⁸ Information provided by State.

³⁹ *Ibid.*

⁴⁰ More than 95,065 visa applicants revalidated their visas in 2004, according to State information. If more visa categories were added, revalidation would likely result in more than 100,000 applications.

The Departments of Homeland Security and State should improve collaboration, including establishing a joint Business Process Task Force to set standards for a single enterprise file on businesses that seek to sponsor travel and immigration and/or move goods across U.S. borders and a voluntary Business Movement Service and Security Partnership to facilitate movement of working people and goods.

While State adjudicates visa applications for business travelers (under its immigration authority), DHS is responsible for adjudicating business petitions and some entry visas (under its immigration authority) and qualifies manufacturers to ship goods (under its customs authority). The existing State-DHS screening processes for companies, employees, and short-term business travelers are unnecessarily unpredictable, duplicative, and complex, often depriving CA access to vital information and/or requiring businesses to submit the same information to multiple entities.

A major obstacle to streamlining the process is that the visa application system is electronic whereas the petitioner application system is still a paper system. State and DHS should collaborate to establish a virtual file of businesses, modeled after C-TPAT,⁴¹ which would contain all the data needed by different government entities to meet security, immigration, and trade mandates. This virtual file could become the platform for a business facilitation program, in which companies could opt to keep their file updated in return for more efficient processing for their employees. As a first step, State should grant all posts and DHS electronic access to its files on treaty investors and traders, and DHS should provide direct electronic access to all posts and other agencies to its files on foreign manufacturers participating in C-TPAT. DHS also should develop a virtual file of business petitioners granted and denied petitions to which State will have access. As DHS and State move to electronic applications and petitions, the task force should also ensure that these systems are compatible.

The Departments of Homeland Security and State should fix a longstanding obstacle to reliable business traveler entry from Canada by increasing visa training for CBP officers and establishing an optional pre-travel approval process for qualified Canadian business visa applicants.

Business travel from Canada is another arena where targeted interagency collaboration can remove an unnecessary obstacle to legitimate travel. Canadian business travelers frequently use one of two visas for business travel to the United States, the intra-company transfer visa (L) and the NAFTA Professional (TN) visa. Rules designed to facilitate business travel exempt these visas from being required to be approved at a consular post; Canadian applicants may present their completed documentation at a border port of entry, where CBP officers are authorized to adjudicate the visa. CBP officers, however, are not consistently trained in the practice. Many exhibit little knowledge of the visa's requirements and the applicable business arrangements and relationships, and unduly delay or incorrectly deny entry. Some border crossing posts have instituted a practice of accepting the required forms in advance so as to speed adjudication. This process should be adopted as a best practice at all Canadian border posts. At a minimum, CBP officers at Canadian border posts should be fully equipped and trained to handle all approved visa processes.

The Department of State should ensure that its consular Web sites are helpful, easy to use, and provide consistent guidance to applicants. The sites should be standardized worldwide, with space allocated for local information. State should assign dedicated personnel by region to oversee the Web sites on a regional basis.

Web sites that communicate effectively have the potential to increase efficiency for consular officers and potential business, student, tourist, and other visitors. Clear directions should enable visa

41 C-TPAT provides approved entities involved with the importation of goods with defined benefits if they meet stringent security criteria. http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ctpat/ctpat_validation/validation_fact_sheet.xml.

applicants to come better prepared, saving them time while also assisting the consular officer in determining the case in a timely and accurate way.

While many consular Web sites are helpful, the level and quality of information provided is uneven and, more importantly, directions are inconsistent worldwide concerning the application process for different types of applicants, what to bring to visa interviews, wait times, and what to do if applicants believe that visas were wrongly denied. While varying local conditions can result in different requirements, the fundamentals do not vary. Content should be standardized as much as possible to permit Web sites to communicate with maximum simplicity, clarity, and consistency.

Achieving clarity and optimum standardization is a deceptively simple task given the complexity of immigration laws and rules and the variety of country circumstances.⁴² Therefore State should make Web site design a higher management priority, including making it a job assignment for personnel dedicated to overseeing Web sites in each of the world's regions, with the authority and capacity to change post websites.

Resources

The Department of State, consulting with the Department of Homeland Security, should commission an internal study to identify options for closing the gap in consular human resources while deepening U.S. government capacity relating to border management through joint service among border and immigration agencies.

The personnel gap in State's visa function was dramatized in 2006 when the U.S. ambassador to India appealed to headquarters for help in reducing an enormous backlog of visa applications. The

backlog was reduced temporarily, but the extra personnel that made that reduction possible were drawn from other posts and then were re-deployed to deal with still other problems that had emerged.⁴³ Across the board, experts, frontline officials, and routine CA metrics all indicate that there are simply too few officers and investigators to fulfill the many the critical roles needed to support visa processing, whether frontline adjudications, supervision, analysis and reporting, investigations, or the public communications and diplomacy associated with visa, passport, and citizen services. This gap is likely to grow with rising demand from China, India, Brazil, and Mexico.

There are significant obstacles to addressing the gap within the current organization and personnel structure of the Department of State. The Foreign Service system requires consular officers to be Foreign Service officers and subordinates hiring of consular personnel to the needs of the diplomatic function generally; it does not treat the Department's visa-, travel- and immigration-related duties as a function demanding independent consideration, much less as a priority. For example, critical personnel shortages arise predictably in the summer months when Foreign Service officers and their families transfer posts. Frequent job changes at entry levels due to rotations and the assignment of junior officers to more senior posts leave a shortage of qualified supervisors.⁴⁴ The consular personnel gap mirrors the lack of attention given to consular facilities. Both are accepted as normal attributes of the diplomatic system.

Today, due to travel and trade globalization and the new security environment, visa, immigration, travel, and related law enforcement functions have become vital to U.S. diplomacy, security, and prosperity. The United States can no longer afford to treat them as a "poor stepchild" of the Foreign Service system. To close the visa personnel gap over the long term, State must fundamentally re-examine its model of hiring, training, promotion, and retention of personnel involved in the mission of travel, border,

⁴² The SBODAC examined 22 consular Web sites, specifically assessing presentation of information for students, business travelers, and for seeking redress, among other reviews.

⁴³ In the summer of 2007 during peak demand in India, wait times again bounced upwards to more than two months in many places. State has noted that a commitment by the U.S. ambassador to India has been a primary driver in reducing wait times.

⁴⁴ The Government Accountability Office has consistently pointed out personnel problems: "Long-term Strategy Needed to Keep Pace with Increasing Demand for Visas," <http://www.gao.gov/new.items/d07847>, p. 20 (2007).

and immigration management. Options include adopting various forms of shorter term service. Whatever models are selected, State should work with DHS to identify options for cross-service with other departments and agencies with border-management related responsibilities. Joint service among border and immigration agencies offers a critical means of deepening expertise, improving interagency collaboration, integrating standards and methods across agencies, and, most importantly, offering new career opportunities that can assist in closing the personnel gap in visa, passport, and other travel-related services. In conjunction with cross-service, training in all aspects – security, personal service, immigration law – should be expanded and deepened.

The Department of State should address the need for new consular officers and posts, particularly in large countries with increasing visa demand, and ensure action by elevating the role of consular and other border management personnel planning and consulate construction in State's planning process. The Department also should continue to develop videoconferencing as a way to expand access to consular offices.

Insufficient access to consular offices and an insufficient number of consular officers to staff the visa function are growing concerns. Consular operations were terminated at a number of posts following the end of the Cold War and, in spite of surging visa demand, have not been reinstated: these decisions should be revisited in light of new sources of global competition. Visa applicants in large countries with significant economic growth such as India, China, Brazil, and Mexico have been the most likely to experience long delays in recent years

– sometimes well over 100 days.⁴⁵ Visa applicants often have to travel hours or days to reach a U.S. consular post. It is evident from wait time data, and State has acknowledged, that the existing consular network cannot be relied upon to handle the demand. One reason for the looming deficiency is that countries may be seen by State as having adequate diplomatic representation and facilities. Visa access, however, should be taken into consideration as well as foreign policy factors when determining resource needs. The access problem arises in part from Congress's requirement that even repeat visa applicants applying for visas in the same visa category be interviewed (rather than being part of a registered traveler regime involving domestic revalidation), and in part from the need for fully secured U.S. consulates for visa issuance. China presents a significant challenge because visas issued to Chinese citizens are of particularly short duration (due to U.S. adherence to a rule of reciprocity that requires U.S. visas to mirror Chinese visa rules), creating a higher percentage of repeat, recently approved applicants.

A combination of additional facilities and personnel, new technology, and new visa processes will be required to address demand in India, China, Brazil, and Mexico. Under the Rice-Chertoff Initiative, DHS and State agreed to test the use of videoconferencing technology as one potential tool by which to address the distance factor in large countries. Such technology has the potential to greatly increase accessibility if appropriate standards can be met. A number of legal and business process issues have constrained progress in this area, but State should continue to explore this proposal, design and execute a pilot program to test videoconferencing, and work with Congress to implement its use if successful.⁴⁶

45 Data collected from http://www.travel.state.gov/visa/temp/wait/tempvisitors_wait.php. The testimony of Elizabeth C. Dickson, U.S. Chamber of Commerce, presents a sample of the delays in 2006: http://www.uschamber.com/issues/testimony/2006/060404_consular_processing.htm.
46 The consolidated appropriations bill for FY2008, H.R. 2764, contains \$5 million for expanding access to consular operations. See H. Rpt. 110-497 at 441.

The Department of State should seek a change in its visa operations funding mechanism to add a specific appropriation to the current fee-based financing in order to fund innovation, pay for national security requirements, and to provide flexibility in responding to surges in demand for consular services. Increases in fees should not be instituted without consideration of the impact on demand and should be accompanied by public communications campaigns.

The recent fee increase of nearly a third, from \$100 to \$131, coming during a peak travel season highlights the problems with Congress's fee-based funding for visa operations.⁴⁷ Partly paying for FBI fingerprint processing and partly for CA costs, including costs incurred but not charged since 2004, the increase imposes a financial burden on visa applicants beyond State's current costs. Allocating costs of other agencies to their own budgets and establishing an appropriation to afford State the flexibility to handle unexpected events such as the 2007 surge in passport demand would reduce necessary fee increases and any impact on demand for visas.

Visa Review and Redress

Unlike other administrative decisions, which are subject to formal review processes, consular officers are granted nearly unfettered authority to make visa decisions. Supervisory review is mandated for only a fraction of decisions, and the process is entirely internal. In many cases, problems in visa processing are compounded by the applicants' inability to obtain explanations for decisions and the lack of clear channels for pursuing redress other than reapplication requiring another payment of the full application fee.

The lack of more formal review mechanisms is an anomaly from a legal and business management perspective, and there is a widespread perception that the absence of accountability results in unnecessary

mistakes. Today's visa process is not necessarily more error-prone than in the past, however the omnipresence of telecommunications and news media, as well as enhanced global competitiveness, magnifies the impact of actual and perceived errors.

While any specific category of error may be small, their impact can be great on individuals and specific groups, and on the cumulative perception of the process. State therefore should take a series of steps to improve the visa review and redress processes in order to address individual applicants' cases more effectively, improve overall outcomes over time, and project the U.S. commitment to fairness for all applicants.

The Departments of Homeland Security and State should continue to improve the reliability, responsiveness, and integration of processes to ensure that visa-related errors in the consular and port-of-entry systems are corrected in a timely and effective manner.

DHS has instituted two processes of error correction at ports of entry: the Primary Lookout Over-Ride (PLOR) system that DHS officials use to correct their databases for individuals whose names are falsely identified as security risks; and, working closely with State, the Traveler Redress Inquiry Program (DHS TRIP), which travelers may initiate.⁴⁸ Visa applicants may seek correction of errors in State's database through TRIP, in addition to existing means of contacting CA in Washington and abroad. DHS TRIP appears to be a sound program, but its impact is still being ascertained. Concerns have been raised concerning how well the program has been promoted, the time it takes applicants to be processed, and the adequacy of processes to ensure errors are communicated across agencies. The systems, however, are still new and insufficiently reliable, responsive, and integrated. For example, when a CBP officer corrects a problem in CBP's own lookout system, the consular officer's original notes

47 U.S. Department of State Media Note, <http://www.state.gov/pa/prs/ps/2007/dec/97384.htm>.

48 DHS TRIP was launched in 2007 and had received over 15,000 applications as of November 2007, approximately half of which had been successfully resolved for travelers being identified as not a security risk for future screening encounters. Testimony of Kathleen Kraininger, U.S. House of Representatives Committee on Homeland Security, "The Progress and Pitfalls of the Terrorist Watch List," <http://hsc.house.gov/SiteDocuments/2007/1108115306-23047.pdf> (November 8, 2007).

in State's own system remain unchanged and so will still reflect a problem. Consular officers in an excess of caution sometimes still rely on the outdated notes, insisting on additional checks despite an explanatory letter issued by CBP or the lack of any derogatory information in the CBP database. To prevent such circumstances, DHS officials should be allowed to enter their most recent findings in a special area of the Consular Consolidated Database so that consular officers receive timely information and a point of contact. In general, State and DHS should continue to review CA and DHS databases and redress processes to better communicate and respond to errors.

The Department of State should establish and publish a process to permit correction of technical errors on issued visas by mail rather than in-person appearance.

If a consular officer issues a visa with a technical error, such as a misspelled name, a faulty duration of the visa, or a wrong visa category, the applicant often has to present themselves again in person to the consular post to have the error corrected. This is especially burdensome in countries where an applicant must travel a long distance. Electronic systems may reduce the incidence of and increase the ease of correction of technical errors, but in the interim, State should take greater responsibility for correction of its technical errors, such as encouraging the use of couriers to receive and deliver corrected documents.

The Department of State should monitor and compile results of supervisory reviews — by adjudicator, visa category, post, country, and globally — to ensure that supervisory reviews of adjudications are conducted in a timely, consistent, and complete manner, and to derive lessons learned and set benchmarks to improve outcomes over time.

Current rules require supervisory personnel to review a minimum of 10 percent of issuances a day and 20 percent of overall refusals based on certain criteria

and assisted by randomized computer selection. The findings from these reviews should be documented and analyzed annually. A systematic analysis over time would allow for a clearer diagnosis of problems and would inform ways to fix them through new processes, training, structures, regulation, or law. Until early 2007, 100 percent of refusals were reviewed.⁴⁹ An ongoing assessment of supervisory reviews may show that this practice should be restored to improve the quality of decision-making.

The Department of State should provide written reasons to applicants who are denied visas based on their failure to disprove their intent to immigrate and should restore the practice of stamping passports to indicate such denials for the benefit of DHS frontline inspectors.

Nearly 78 percent of applicants for business or tourist visas to the United States are granted, while 22 percent are rejected.⁵⁰ Almost all rejections occur because applicants have failed to satisfy the adjudicating officer that they comply with specific visa terms of the visa classification for which they are applying; a relative few are denied due to a specific security concern, such as a criminal violation. The consular officer may be concerned by the lack of a residence abroad, incongruous interview answers, or inadequate documentation. Consular officers provide applicants with refusal letters that explain in a generalized way the basis for denial under the law. However, the high-level explanation when given is often unclear. It is imperative that the consular officer provide an articulate explanation both orally and in writing so that the applicant understands the basis for denial. Although this involves extra time up front, the practice could have the ancillary benefit of cutting down on post-decision contacts from applicants and their representatives. A high incidence of fraud in certain countries is not a reason to deny clear explanations to applicants who may legitimately follow up. State recently ended its practice of stamping the last page of passports with an "application received" stamp indicating that a visa was denied. Such stamps functioned as a helpful back-up system for

⁴⁹ Procedures on new Supervisory Review Process from a State cable issued to all consular posts in June 2007.

⁵⁰ Information provided by State on B-1, B-2, and B-1/B-2 visa overall issuances and refusals for 2007.

visa applicants not receiving or understanding the reason for a visa denial. By providing information to CBP officers who do not routinely take extra time to access State databases, the stamps also reduce the risk of people being admitted erroneously or being restricted in bona fide travel in the future.

The Department of State should study and report to Congress on options to establish administrative review of consular visa decisions.

For more than 40 years State has viewed its governing statute, case law, and practical realities as requiring it to adhere to a practice of not providing any administrative review options for individuals whose visa applications are denied. Yet Australia and the United Kingdom do provide for such review in some cases.⁵¹ A fuller airing of the pros and cons of such review could help strike a better balance among security, efficiency, and fairness.

Improved Risk Management and Public Reporting

CA employs risk management tools that are partly under its control and partly under other agencies' control. Both sides of the risk management equation, internal and external, have some distance to go before reaching an optimal level to meet security and service needs, and to respond effectively to negative public perceptions. Use of automated checks, more analysis and feedback, public reporting, and dropping what does not work are all needed.

Once the visa application process is made fully electronic, the Department of State should institute a rules-based review that pre-screens applications before they are transmitted to adjudicating officers.

Unpredictable and prolonged delays for visa adjudication are major sources of frustration to the tourism industry and the broader business

community. While the visa process is inevitably responsive to local circumstances, modern information management practices, such as automated information analysis and rules-based decision-making, can make the visa process much more efficient, particularly in the security arena. State should continue its efforts to design and implement programs for advance screening of visa applications. The screening rules should be continuously reassessed and adjusted in response to conditions in particular countries and posts. A rules-based system is likely to expose additional problems and effectively drive the development of specialists in particular kinds of problems, such as false supporting documents or front companies. Such specialization is needed to improve the quality and efficiency of the visa process, including for security purposes.

The Department of State should conduct "validation studies" more frequently, build the results into automated decision-support systems, and use the results as benchmarks against which to measure and report on improvements.

Validation studies are conducted by consular officers at particular posts to assess the level of compliance by visa-holders with the terms of the visas issued to them. Consular officers, for example, conduct telephone surveys to see if visa-holders have returned within the permitted period. Especially in the absence of an automated exit tracking system, validation studies are an important tool for determining accurate information about the compliance of specific groups of applicants. Such studies should be supported centrally, conducted regularly and at a rigorous standard, and the results should be built into automated decision-support systems.

51 Australia's Migration Review Tribunal (<http://www.mrt-rtt.gov.au>) and the United Kingdom's Asylum and Immigration Tribunal (<http://www.ait.gov.uk>) are statutorily created bodies, both of which hear appeals from certain categories of visa applicants.

The Department of State should conduct special validation studies to address important risk-management issues, report the results publicly, and use them to support public diplomacy by assertively dispelling myths about U.S. visa practices.

Discontent with the conditions for travel to the United States has been a prominent issue in U.S. diplomacy and should be answered. When specific classes of cases become the subject of widespread speculation or rumor – for example, that grandparents cannot obtain visas, or that women or men are disproportionately denied visas – there may be clear explanations and/or quick fixes. But absent credible documentation, the rumors and problems will persist. State has indeed improved the visa process in many countries; it should continue to inform the public of such changes and improvements. But additionally, the results of properly designed countrywide, regional, or worldwide validation studies should be used to support diplomacy by publicly correcting misunderstandings and reporting publicly on the basis for decisions.

The Departments of Homeland Security and State should institute a system to measure, assess, and continuously improve security procedures used in the visa process, and report annually to the National Security Council on security process cost-effectiveness and improvements.

Security concerns are and will continue to be central to the visa process. But six years after 9/11, certain security processes still impose excessive and extraordinary delays on many legitimate travelers to the United States. The security measure that causes the most frustration for business and pleasure travelers is the congressionally mandated requirement to interview 100 percent of all applicants – even those who are

long-term, frequent business travelers reapplying for the same business category visas. While all first-time visa applicants must be interviewed, the introduction of the new 10-fingerprints check with greater access to FBI criminal records affords an opportunity to eliminate subsequent interviews for some travelers in the same exact visa classification. Unless State can demonstrate that successive interviews of repeat travelers in the same visa category are in fact yielding critical information, greater use should be made of permissible waivers, and State should work with Congress to craft a more risk-based interview requirement.

Another source of delay and frustration are the “Mantis,” “Donkey,” and “Condor” security advisory opinion (SAO) checks.⁵² These apply to fewer cases – fewer than three percent of all visa applicants undergo them – but when they give rise to misplaced reviews, excess delay, or actual error the deleterious impact on individual lives can be considerable. State and DHS have established an interagency requirements review board to better analyze and target SAO screening criteria, and State has made significant improvements to process and technology to expedite and regularize these processes. However, the Condor check, established to detect terrorists, has subjected thousands of applicants to delays without detecting a single terrorist. More should be done to increase the training, timeliness, and cost-effectiveness associated with screening processes, including a rigorous annual State-DHS assessment reviewed by the NSC.

⁵² The various SAO reviews subject a visa application to an interagency review in Washington, rather than the consular official adjudicating a visa at a particular post. Mantis refers to applicants with specialized scientific skills. Donkey refers to applicants from certain countries sparking concerns regarding state sponsors of terrorism, export controls, and espionage. Condor refers to applicants born in a classified list of countries with a high risk of terrorism.

Ports of Entry

DISCUSSION

Since September 11, 2001, the United States has implemented many new laws and regulations aimed at improving border security, which has had major impacts on passenger perceptions and actual experiences at U.S. Ports of Entry (POEs). While many of these measures have been necessary in order to improve security, the consequent changes in passenger processing, uneven implementation, insufficient staffing, and poor communications have caused many foreign travelers to feel confused, offended, and/or apprehensive about what they will encounter at U.S. POEs.

As the U.S. Travel and Tourism Advisory Board observed in its September 2006 report, *Restoring America's Travel Brand*, negative perceptions regarding real and perceived experiences at U.S. borders are playing a significant role in deterring prospective travelers to the United States.⁵³ A survey conducted by RT Strategies and released by the Discover America Partnership in January 2007 concluded that foreign travelers rank the United States as having the world's worst entry process.⁵⁴ Interviewees expressed concern about

their potential treatment during entry processing and the risk of being detained due to simple errors. In short, traveling to the United States is becoming viewed as at least an uncertain, potentially unpleasant experience and at worst a major hassle.

Expanding U.S. Government Requirements

In addition to the difficulty of obtaining U.S. entry visas discussed above, the uncertainty for prospective travelers has been heightened by the plethora of new U.S. security programs built into the airline process, new identity document standards, and new biographic and biometric data requirements. These measures include, but are not limited to:

- Requirements for machine readable, biometric, and RFID-enabled "e-passports";⁵⁵
- Collection of expanded Advanced Passenger Information System (APIS) data elements and Passenger Name Records (PNRs);⁵⁶

53 U.S. Travel and Tourism Advisory Board, *Restoring America's Travel Brand: National Strategy to Compete for International Visitors*, September 5, 2006, http://www.tinet.ita.doc.gov/TIAB/docs/2006_FINALTTAB_National_Tourism_Strategy.pdf.

54 Discover America Partnership, "A Blueprint to Discover America," January 31, 2007, http://www.poweroftravel.org/pdf/DAP_blueprint.pdf.

55 U.S. Department of Homeland Security, *Visa Waiver Program: Passport Requirements Timeline*, http://www.dhs.gov/xtrvlssec/programs/content_multi_image_0021.shtm.

56 U.S. Department of Homeland Security, *Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft*, 70 Fed. Reg. 66, (April 7, 2005), <http://a257g.akamatech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-6523.pdf>; *Passenger Name Record Information Required for Passengers on Flights in Foreign Air Transportation to or From the United States*, 67 Fed. Reg. 122 (June 25, 2002), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-15935-filed.pdf.

- The National Security Entry-Exit Registration System (NSEERS), which requires visitors from designated countries to be fingerprinted, interviewed, and photographed at secondary processing areas at POEs;⁵⁷
- US-VISIT Entry, which requires the capture of fingerprints and digital photos from most foreign visitors upon arrival at POEs; and⁵⁸
- The Western Hemisphere Travel Initiative (WHTI), which ended or will end the ability of Americans, Canadians, and Bermudian citizens to enter or reenter the U.S. without formal travel documents and is being currently implemented in phases.⁵⁹

Traveling to the United States is becoming viewed as at least an uncertain, potentially unpleasant experience and at worst a major hassle.

While there are good security rationales behind these initiatives, three points about them are worth bearing in mind. First, they generate the sense of an ever-tightening set of U.S. entry requirements that can create problems for entirely lawful would-be visitors. Second, due to the focus on personal information about travelers, U.S. entry requirements create genuine and often well-publicized privacy concerns, such as the reaction of some in Europe to the E.U.-U.S. PNR agreements in 2004, 2006, and 2007.⁶⁰ And third, with all of the new measures to vet travelers

before their arrival, why cannot entry into the United States be made simpler and more welcoming?

Meanwhile, the U.S. government is planning to implement further requirements that are intended to improve the security of the entry process. Great care must be taken so that these requirements actually enhance security and not add undue hassles or confusion. For example, U.S. Customs and Border Protection (CBP) will require pre-departure data under the Advanced Passenger Information System (APIS) in February 2008.⁶¹ In addition, visitors from Visa Waiver Program (VWP) countries will be required to obtain an Electronic Travel Authorization (ETA) after completing a questionnaire before they plan to travel.⁶² The implementation details have not yet been developed, but some press reports have contained erroneous information, highlighting the need for vigilance and accuracy in government communications.⁶³ Lastly, DHS has announced it will introduce US-VISIT Exit at U.S. airports by December 2008 — an entirely new process that most departing foreign visitors will have to complete.⁶⁴

Even domestic security programs must be evaluated for impacts on foreign travelers. For instance, the Transportation Security Administration (TSA) has a rulemaking in progress for the Secure Flight program, which proposes that airlines forward passenger data to TSA approximately 72 hours before flight departures to compare against appropriate watchlists.⁶⁵ These new requirements could mean that travelers who make reservations on short notice — disproportionately business travelers including international visitors — will encounter more problems in traveling domestically as well as internationally.

57 U.S. Department of Homeland Security, Fact Sheet: Changes to National Security Entry/Exit Registration System (NSEERS), December 1, 2003, http://www.dhs.gov/xnews/releases/press_release_0305.shtm.

58 U.S. Department of Homeland Security, Fact Sheet: US-VISIT, http://www.dhs.gov/xnews/releases/pr_1160495896724.shtm.

59 U.S. Department of Homeland Security, Western Hemisphere Travel Initiative: The Basics, <http://www.dhs.gov/xr/vlsec/crossingborders/whtibasics.shtm#content>.

60 69 Fed. Reg. 131, July 9, 2004; http://useu.usmission.gov/Dossiers/Data_Privacy/Jan0407_PNR_Federal_Register.asp; <http://www.dhs.gov/xlibrary/assets/pnr-2007agreement-usversion.pdf>.

61 U.S. Customs and Border Protection, Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels, August 23, 2007, <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-15985.pdf>.

62 Public Law 110-53, Section 711.

63 Michelle Jana Chen, "48-Hour Warning," August 6, 2007, <http://www.cnn.com/2007/TRAVEL/business.travel/08/06/biztrav.48hours/index.html>; Letter from Bill Connors, Chief Operating Officer, National Business Travel Association, to Secretary Chertoff, October 17, 2007, <http://www.nbta.org/NR/rdonlyres/3061543A-5A52-494C-BF5E-3461B4DC8680/0/NBTAlettertoDHSreETA.pdf>.

64 Testimony of Robert A. Moory, Director, US-VISIT program, and Robert Jacksta, Executive Director, Traveler Security and Facilitation, Office of Field Operations, U.S. Customs and Border Protection, U.S. Department of Homeland Security, to the Subcommittee on Border, Maritime, and Global Counter Terrorism, House Committee on Homeland Security, "US-VISIT Exit: Closing Gaps in Our Security," June 28, 2007, <http://hsc.house.gov/SiteDocuments/20070628154438-18461.pdf>; "DHS to issue plan for US-VISIT Exit program by January," FCW.com, October 18, 2007, <http://www.fcw.com/online/news/150564-1.html>.

65 Transportation Security Administration, Secure Flight Program, http://www.tsa.gov/what_we_do/ layers/secureflight/index.shtm.

Challenges at Airports

Since 9/11, CBP officers have intensified their scrutiny of arriving passengers. They are required to perform additional tasks (e.g., NSEERS and US-VISIT Entry requirements) while also facing growing traffic, including Americans returning home and a recovery in overall international travel to the United States, supported by the low value of the dollar.⁶⁶ Some changes increase the amount of time CBP officers spend on average with each passenger, leading to congestion in Federal Inspection Services (FIS) facilities, and exacerbating the underlying and historically inadequate FIS staffing at U.S. POEs. CBP often uses overtime funds to mitigate the shortfall in CBP staffing during peak periods. However, their own analysis shows that CBP does not have enough officers to staff 19 of the top 20 U.S. airports adequately.⁶⁷

As CBP does not have enough officers to assure staffing of all primary lanes during peak arrival times, passengers (especially foreign travelers) may be forced to wait in long lines in the FIS area and sometimes are confined to the arriving aircraft until space opens up in the inspection facilities. Delays in CBP processing also can cause passengers to miss connecting flights. While technology has increased security and facilitation, breakdowns can trigger disastrous consequences, such as the failure of the CBP computers on August 11, 2007, at Los Angeles International Airport, which resulted in long delays for arriving international passengers.⁶⁸ These experiences harm the passenger, the airport, and the airline and create an unfavorable impression of the United States.

CBP staffing shortages result not only in long wait times during peak periods but also in airlines not being able to schedule flights they would have otherwise operated during off-peak, early morning, or late evening hours. New flights cannot be initiated or added if CBP officers are not available to accommodate the passengers. Insufficient CBP staffing undermines the U.S. international policy goal of expanding air service and the economic growth that comes with it. Open Skies air liberalization agreements⁶⁹ can “open” skies only when there are CBP officers available upon landing.

In addition, the introduction of US-VISIT Entry has increased the workload and “touch time” that CBP officers are required to spend with most foreign visitors. The implementation of US-VISIT Entry went fairly smoothly since it was built on the arrivals process and adds only 10-15 seconds to the time a CBP officer spends with a foreign visitor.⁷⁰ Unfortunately, even this small marginal increase translates into increasing the overall time it takes to process foreign visitors and thus increases the congestion in the FIS area.

DHS announced that it plans to phase in the capture of ten fingerprints upon entry for first-time passengers from Visa Waiver Program (VWP) countries, beginning with pilots at 10 airports beginning in November of 2007.⁷¹ Repeat VWP visitors or those traveling with U.S. visas will have their biometrics verified upon arrival. Many travel industry stakeholders have supported this move, as it will reduce the number of fingerprint “false positives.”⁷² The change, however, may further increase the processing time per foreign visitor, the overall processing time for foreign visitors, and congestion in the FIS area.

66 U.S. Department of Commerce, Office of Travel and Tourism Industry, http://www.tinet.ita.doc.gov/outreachpages/download_data_table/Historical_arrivals_2000_2006.pdf.

67 Discover America Partnership, “A Blueprint to Discover America,” January 31, 2007, http://www.poweroftravel.org/pdf/DAP_blueprint.pdf; see also 2008 Department of Homeland Security Appropriations bill, H.Rpt. 110-181, p. 28.

68 Amanda Beck, “Computer Glitch Causes Delays at LAX,” *Washington Post*, August 12, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/11/AR2007081101502.html>.

69 Emma Clark, “Open Skies for Business,” CNN, August 22, 2007, <http://www.cnn.com/2007/TRAVEL/08/21/BT.openskies/index.html?ref=newssearch>.

70 “US-VISIT Transition to 10-Fingerprint Collection,” Robert A. Mooney, Director, US-VISIT Program, Department of Homeland Security, and Paul Morris, Director of Admissibility and Passenger Program, Office of Field Operations, U.S. Customs and Border Protection, November 20, 2007, <http://fpc.state.gov/fpc/96128.htm>.

71 U.S. Department of Homeland Security, “DHS Begins Collecting 10 Fingerprints from International Visitors at Washington Dulles International Airport,” December 10, 2007, http://www.dhs.gov/xnews/releases/pr_1197300742984.shtm.

72 Mimi Hill, “Customs to Collect Full Sets of Visitors Prints,” *USA Today*, December 2, 2007, http://www.usatoday.com/news/nation/2007-12-02-fingerprints_N.htm.

DHS also has announced that it will require airlines to capture fingerprints of departing foreign visitors during check-in at U.S. airports beginning in 2008.⁷³ Much of the travel industry supports the concept of US-VISIT Exit, as it is tied to VWP expansion under recent congressional legislation.⁷⁴ However, implementation of this requirement at check-in counters could cause significant disruptions. U.S. airlines have objected to being given a responsibility that they regard as an inherently governmental function.⁷⁵ Considering the airlines' position and the fact that the rule-making process has not started officially, this proposal represents a significant concern for impacted foreign visitors, especially if DHS seeks a 2008 implementation schedule.

Nearly one-third of international arrivals to the U.S. must take a connecting flight to reach their final destination.⁷⁶ Once these passengers have cleared through CBP processes, they must obtain their checked luggage, plan for additional regulations (e.g., rules on liquids and gels), and undergo a TSA re-screening process before continuing to their connecting flight. This process affects not only connecting passengers but also other international arriving passengers who may be forced to wait in the FIS area because of congestion in the TSA screening area.

Meanwhile, the current requirement that the TSA re-screen bags from arriving international flights is often redundant, particularly in the case of baggage arriving from Canadian and other pre-clearance points (airports where U.S. inspection services are in operation). The bags already have been screened at the foreign departure airport and transported on the arriving international flight. This duplication impedes the efficient use of limited TSA and CBP resources and degrades the visitor's arrival experience.

Challenges at Land Ports of Entry

The policies and procedures designed to facilitate secure trade and travel at land border crossings have changed dramatically in recent years. Like the changes at airports, the land border changes have impacted legitimate trade and commerce, especially considering the enormous growth in North American trade and traffic. The infrastructure at our border crossings has not kept up in most locations, with the increased volume of trade and travel.

DHS and State have deployed programs designed to facilitate legitimate travelers, including a series of trusted-traveler programs: NEXUS for U.S.-Canadian travel, SENTRI for U.S.-Mexican travel, and FAST for truckers. However, the challenges in years ahead related to WHTI implementation at the land borders and possibly to U.S.-VISIT Entry and Exit for land travelers pose significant risks to the normal flow of travelers and traffic upon which our communities and businesses have learned to depend.

RECOMMENDATIONS

Airports

The Department of Homeland Security should establish a pilot program for International Registered Travelers as soon as possible and promptly expand the program to the top 20 international airports.

International Registered Traveler (IRT) programs have the potential to enhance security and facilitation by expediting the clearance of low-risk, pre-screened passengers and by freeing CBP officers to focus on passengers who have not been vetted. The governments of Germany, Netherlands, and the

⁷³ Moony and Jackstra testimony, see fn. 64.

⁷⁴ Public Law 110-53, Section 711.

⁷⁵ Testimony of James C. May, President and Chief Executive Officer, Air Transport Association of America, to the Subcommittee on Border, Maritime, and Global Counter Terrorism, House Committee on Homeland Security, "US-Visit Exit: Closing Gaps in Our Security," June 28, 2007, <http://hsc.house.gov/SiteDocuments/20070628154235-32274.pdf>.

⁷⁶ U.S. Department of Transportation Air Carrier Traffic Data, <http://www.bts.gov>.

United Kingdom have successfully implemented IRT programs.⁷⁷ CBP itself, working with the Canada Border Services Agency, has successfully rolled out an IRT program, NEXUS, for U.S. and Canadian citizens, permanent residents, and lawful temporary residents to be admitted into the United States at Canadian pre-clearance airports.⁷⁸

CBP has been working informally on a new U.S. IRT program to replace the defunct INSPASS program. However, deployment of this new program, sometimes referred to as US-PASS, has been stalled for several years. Therefore, CBP should implement a pilot program as quickly as feasible to test an IRT program at the two "model" airports, Houston's George Bush Intercontinental Airport (IAH) and Washington Dulles International Airport (IAD), as well as JFK International Airport, which already has the appropriate kiosks. CBP should engage in meaningful, expedited consultations with airports and airlines about the preparation, implementation, and evaluation of the IRT pilot program and how to expedite the roll-out of the program to other U.S. airports, particularly the top international airports, as required by recent congressional legislation.⁷⁹ DHS should also negotiate reciprocity with foreign nations with which the U.S. has aviation agreements, particularly those that already have IRT programs. The governments of Dubai, Hong Kong, and the United Kingdom recently demonstrated the viability of an international approach to IRT.⁸⁰ Finally, other applications of IRT should be considered based on demonstrable security and facilitation benefits.

The Departments of Homeland Security and State should accelerate and expand the Model Ports Program and fully include the Transportation Security Administration to eliminate redundant re-screening of baggage and passengers.

The Rice-Chertoff Model Ports of Entry airport program, which is being led by CBP and carried out at IAH and IAD, has made progress in improving the arrival process and identifying policy recommendations. The airports, airlines, and other private-sector participants are also bringing their insights and resources to bear. The program includes instructional and informational videos,⁸¹ enhanced customer service training for CBP officers, queue management strategies, improved staffing models, and improvements in location and content of signage.⁸²

Recent congressional legislation requires CBP to expand the Model Ports program to the top 20 international arrival airports.⁸³ CBP should take steps such as the CBP video and signage improvements in all such 20 airports now. In addition, DHS should accelerate its Model Ports effort so that more ideas can be tested at IAD and IAH and then, if successful, can be modified and rolled out to other airports and POEs. However, the Model Ports program should not be seen as precluding the Departments and their component agencies from testing ideas at other U.S. airports.

77 The U.K. operates the Iris Recognition System in which enrolled passengers can enter the U.K. through automated immigration control barriers, <http://www.ind.homeoffice.gov.uk/applying/iris/>. Germany offers frequent travelers the option of enrolling in Automated and Biometrics-supported Border Controls, <http://www.oki.com/en/press/2004/z03084e.htm>. The Privium program operated at Schiphol Airport allows frequent travelers a number of benefits, including a priority security line, http://www.schiphol.nl/media/portal/privium/pdf/pdf_files/Update17_EN_def_v1_m56577569830816799.pdf.

78 U.S. Customs and Border Protection, NEXUS Program, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/nexus_prog/.

79 H.R. 2764, Section 565, H.Rpt. 110-487 at 253.

80 "miSense: Biometrically enabled access control trial at Heathrow Airport 2006/07 Summary Report," http://www.misense.org/documents/miSense_summary_report_v.1__June_2007.pdf.

81 In October 2007 the Walt Disney Company presented State and DHS with a "Welcome to America" video now being displayed at CA posts and Model Ports airports, http://blogs.state.gov/index.php/entires/disney_video/. Also, Business for Diplomatic Action provided the "I Am America" video to State for use in CA posts, http://www.businessfordiplomaticaction.com/news/press_release.php?id=5790.

82 U.S. Customs and Border Protection, "CBP Launches Nation's First 'Model Port' at Houston Intercontinental," April 4, 2007, http://www.cbp.gov/xp/cgov/newsroom/news_releases/042007/04042007_2.xml.

83 Public Law 110-53, Section 725. The consolidated appropriations bill for FY08, H.R. 2764, includes \$40M for the Model Ports program, <http://www.rules.house.gov/110/text/omni/jes/jesdive.pdf> at 13.

In addition, while the Model Ports task force has identified the TSA re-screening process as a significant area of focus, TSA has not to date identified a lead official to manage this aspect of the project. As part of an evaluation of the effectiveness of the rescreening process, DHS should measure the queuing time at the TSA checkpoints for international connecting passengers at major U.S. airports.

Wherever possible, the redundant requirement to re-screen checked bags from international connecting flights should be removed. Re-screening checked baggage from Canadian and other pre-clearance points and Mexico, should stop by June 30, 2008, as called for in a joint statement by the leaders of Canada, Mexico, and the United States in August 2007.⁸⁴ Then, re-screening checked baggage from the European Union should stop by the end of 2008, and from the rest of the world, where appropriate, by the end of 2009. DHS should work with its foreign partners and industry to leverage technology and the growing passenger database to eliminate re-screening of arriving international passengers who do not enter any public areas of the U.S. airport by the end of 2010.

In the meantime, it would be helpful to develop clear and effective communications processes so that visitors understand how to navigate the re-screening process. CBP has taken steps to address this need through an instructional video and improved signage. DHS should also examine the feasibility of creating a process before the re-screening point to allow international passengers to re-pack liquids and gels prior to arriving at the TSA checkpoint.

The Department of Homeland Security should continue to improve security performance while reducing the average amount of time CBP officers spend with each traveler to less than pre-September 11 levels and staff POEs sufficiently to complete primary inspection of foreign passengers in less than 30 minutes by December of 2009.

DHS should review its screening programs to find ways to reduce the "touch time" that each CBP officer spends with each passenger, while preserving security. This change would relieve some of the pressure on individual CBP officers, CBP staffing requirements, and congested FIS facilities. DHS can accomplish this by leveraging technology and eliminating duplicative procedures. For example, DHS should eliminate the paper I-94 Arrival-Departure Record because CBP is already collecting the data electronically.⁸⁵

The Department also should consider eliminating the NSEERS process for arriving foreign visitors from designated countries. NSEERS is intrusive and time-consuming, not only for the travelers but also for CBP officers. These visitors already have been interviewed and fingerprinted by CA before being issued a visa; their fingerprints and digital photos could be confirmed during the US-VISIT Entry process, and any particular traveler could be referred for secondary screening.

In addition, DHS should seek and Congress should allocate the funding needed to provide defined levels of service for arriving U.S. and foreign travelers at current and any new U.S. POEs that are needed to handle traffic loads. DHS should establish a performance standard that foreign travelers and returning U.S. residents be processed through CBP primary inspection in 30 minutes or less at U.S. airports and pre-clearance airports. Even though clearing passengers into the United States is a national security function, there has been little or no increase in general fund contributions to CBP staffing at airports, in sharp contrast to the substantial additional funding that has been allocated

84 Joint Statement by Prime Minister Harper, President Bush and President Calderón, Montebello, Quebec, Canada, August 21, 2007, <http://www.whitehouse.gov/news/releases/2007/08/20070821-2.html>.

85 The transition from the collection of two fingerprints to ten for first-time visa applicants or VWP traveler and verification of four fingerprints on subsequent arrivals is cited by DHS as a means to reduce delays for travelers. This transition was scheduled to be nearly completed at consular posts by the end of 2007 and began at domestic arrival airports on December 10, 2007, http://www.dhs.gov/news/releases/pr_1197300742984.shtm.

to the Border Patrol. International air passengers pay three user fees (Immigration, Customs-COBRA, and Agriculture), yet CBP staffing at airports is insufficient to meet travel demand. Congress and DHS should rectify the funding and staffing situation by 2010 without increasing passenger fees, so that the lack of CBP staffing will not prevent a community from obtaining and expanding international transportation links that airlines are willing to provide. CBP should consult with the industry on its Resources Allocation Model to assure that all factors that affect workload, including local conditions, are considered.

The Department of Homeland Security should insert US-VISIT Exit into the airport visitor departure process without degrading the travel experience.

The implementation of US-VISIT Exit will be a challenge for the federal government and industry because it will insert a new process where previously there were no requirements and new equipment where space is scarce. DHS has proposed that airlines be required to capture the departing visitors' fingerprints in check-in areas at U.S. airports.⁸⁶ The airlines have expressed opposition to this proposal because they view it as an inherently governmental function.⁸⁷ Moreover, this proposal has the potential to create security risks if the exit process results in long lines in the check-in area prior to TSA screening.

US-VISIT Exit should be integrated into the passenger's normal departure process, be implemented in full consultation with industry stakeholders, and be funded and performed by the U.S. government. The process should not burden airports or airlines, particularly smaller airports and airlines that will be forced to implement US-VISIT Exit even though they do not have international departures. DHS and/or the U.S. Government

Accountability Office (GAO) should conduct a comprehensive study to analyze all the options, costs, and benefits available from implementing US-VISIT Exit and share the results of that study with affected stakeholders for their review and comment.

In particular, DHS should give careful consideration to the proposal to utilize domestic Registered Traveler kiosks capable of scanning identification documents and collecting biometrics to handle the exit function for US-VISIT. This proposed solution may address the concerns of both the airlines and TSA.

Land Borders

The Department of Homeland Security should continue to improve security performance while pursuing reduced border wait-times through improved infrastructure and increased staffing following discussions with Canadian and Mexican governments and industry.

DHS should reach agreement as soon as possible with industry and its Mexican and Canadian counterparts to adopt common metrics for border wait-times. Industry and CBP data vary widely, with industry generally showing much longer wait-times than DHS/CBP data, especially for the most extreme delays. These discrepancies need to be reconciled to assess the severity of delays, their causes, and possible solutions.

In order to have useful metrics, CBP should improve its ability to collect data on wait-times for commercial and passenger vehicles. CBP measurements typically do not include time beyond that spent in the primary inspection lane (PIL), such as time spent on backed-up roads approaching the PIL or time spent after the PIL, including secondary inspections.

⁸⁶ Moony and Jackstra testimony, see fn. 64.

⁸⁷ Air Transport Association Issue Brief, "US-VISIT Biometric Exit," <http://www.airlines.org/government/issuebriefs/US-VISIT+Biometric+Exit.htm>.

Coordinated efforts by DHS, the U.S. Department of Transportation, and the General Services Administration are needed to address infrastructural challenges and security procedures that contribute to increased wait-times for persons and cargo. Also, staffing levels of CBP personnel at land border POEs should be increased to meet operational requirements. In the short term, CBP should adjust its personnel scheduling practices to better accommodate traffic flows and avoid unnecessary delays caused by lane closures.

CBP should increase the effectiveness of NEXUS, SENTRI, and FAST trusted traveler programs.

CBP should build upon the success of trusted traveler programs such as NEXUS, SENTRI, and FAST by ensuring that there is adequate infrastructure and staffing to facilitate participating travelers. CBP should expand the number of dedicated lanes at high-volume border crossings and ensure that the lanes are adequately staffed to remain open during peak hours. CBP also should expand the days and hours that the lanes are open to accommodate travelers on weekends, holidays, and evenings.

The Departments should implement the Western Hemisphere Travel Initiative (WHTI) and US-VISIT on the land border without degrading the travel experience.

Successful implementation of WHTI on the land border will require careful consideration of the economic impacts on border communities, which are dependent on cross-border tourism and commerce. The Departments should apply their experiences with US-VISIT at the land POEs to WHTI on the land border. Development of alternative travel

documents that are not cost prohibitive, such as the proposed State passport card⁸⁸ and Enhanced Driver Licenses issued by U.S. states and Canadian provinces⁸⁹, and the installation of necessary technological infrastructure at the land borders should be completed before the legal requirements change. The Departments also should engage in strong community outreach efforts to educate the public about the program's requirements, including information about the passport card, EDL, and other acceptable WHTI documents.

With respect to US-VISIT biometric requirements, DHS should optimize the current entry process before committing scarce resources to any form of an exit process at land borders. Further, DHS must ensure that our security programs are in compliance with the broader trade and security agreements among the United States, Canada, and Mexico.

The Departments of Homeland Security and State should coordinate security initiatives with key stakeholders to maximize use of resources and minimize problems for border crossings.

A critical component of success is effective and open communications between land border communities and the federal government, including testing of technologies and contingency planning. In doing so, the departments will gain a better understanding of travel and market trends and of the implications of any proposed actions on the travel industry and the traveler. This consultation and coordination should also take place at the regional and local level, not only in Washington, D.C. In contrast, without adequate planning, border security policies become a tax on border communities and border trade.

88 U.S. Department of State, Card Format Passport, Changes to Passport Fee Schedule, 72 Fed. Reg. 249 at 74169 (December 31, 2007).

89 U.S. Department of Homeland Security, Fact Sheet: Enhanced Driver's Licenses (EDL), December 5, 2007, http://www.dhs.gov/xnews/releases/pr_1196872524298.shtm.

General

The Department of Homeland Security should assess its traveler screening programs within nine months to share and harmonize best practices and technology among agencies.

There are many traveler screening programs being administered or developed by DHS (e.g., WHTI, US-VISIT, TSA Passenger Checkpoint 2.0, ETA, etc.). While each program is unique and serves particular purposes, it is necessary to evaluate how limited federal resources can be maximized and to ensure that the multiple technology platforms are better coordinated. One of the principal goals of this effort should be to harmonize government requirements for the collection of traveler information as uncoordinated requirements impose substantial costs and inefficiencies.

The DHS Office of Screening Coordination and the Under Secretary for Science and Technology should conduct a broad assessment of these programs to ensure that best practices are being shared, that demands for passenger data are as uniform as practicable, and that the technology is leveraged across programs to improve security as efficiently as possible. Technology is an effective but imperfect tool for increasing security and facilitation. Departments should have backup systems and procedures in place to deal with those times when technology fails.

The Departments of Homeland Security and State should encourage increased passport ownership by U.S. citizens.

The WHTI outreach effort generally succeeded in informing U.S. citizens about the phased requirements that they hold passports to enter and depart the United States for travel in the Western Hemisphere, although it was not without pain and confusion: passport delays escalated and DHS was forced to relax the WHTI passport requirement for U.S. citizens between June and September 2007. The percentage of U.S. citizens holding passports is approximately 27 percent, up from about 20 percent prior to WHTI.⁹⁰

Now that State has resolved extreme delays in issuing passports to U.S. citizens, DHS and State should develop and implement a plan to further increase the number of U.S. citizens holding passports. This would increase the security and efficiency of the process and might even prompt more Americans to travel abroad, where they will serve as informal U.S. ambassadors. The Departments also should develop a national program to encourage all high school graduates to obtain a passport at the same time they receive their diploma and/or register for the Selective Service.

⁹⁰ Information provided by the Department of State.

Metrics and Critical Success Factors

DISCUSSION

A widely accepted tenet of management in the information age is "If you can't measure it, you can't manage it." Thus in the business world, performance of individuals, organizations, and entire corporations are keyed to specific metrics. The highest-level metrics are generally financial, because the ultimate purpose of a corporation is to return a profit to its stockholders or other owners. However, the use of metrics in business and other organizations runs much deeper than just financials. Particularly since the quality management revolution of the 1980s and 1990s, many more individual processes are now monitored and analyzed by measuring relevant variables. These calculations are usually referred to as metrics.

In order to make metrics useful, several things must be done. First, these metrics must be maintained longitudinally, so that managers can observe changes in performance over time. Second, the metrics must be integrated to present a view of the entire system so that managers can understand how the individual processes interact and behave cumulatively. Third, at both the process and system level, there must be feedback from these metrics that enables managers to identify and correct problems, and to strive to continuously improve performance.

No enterprise can survive if it does not continuously use metrics to determine what operations add value and how its various elements interact. An indispensable element in managing and measuring performance by metrics is benchmarking. Benchmarking means comparing one organization's

metrics against those of other organizations that perform similar processes. It is through such benchmarking that businesses can identify what needs to be improved in order to become competitive.

Government agencies are expected to perform their missions in a manner that properly implements policy, provides effective services to constituents, and spends taxpayer dollars wisely and efficiently. Metrics and critical success factors should be just as important to them as they are to for-profit businesses. Congress mandated a government-wide program to expand the use of metrics under the Government Performance Results Act of 1993 (GPRA). The Departments of Homeland Security and State are subject to GPRA and undergo a metrics-based performance review each year.

Despite this, much of the federal government is not highly driven by metrics. Possible reasons for this fact include the absence of competitive pressures such as those imposed on businesses by the marketplace, the frequent tendency not to benchmark, the inertia of bureaucratic structures, lack of budgetary fungibility, and changing congressional priorities.

Generally speaking, the progress and performance sought to implement border security in order to meet a Secure Borders and Open Doors goal lend themselves to measurement and tracking. It is possible to identify a number of critical success factors, but before doing so, it is useful to note some of the factors that might work against the use of business-like performance metrics:

- International travel policy must be implemented through the work of two Cabinet-level departments and several sub-Cabinet organizations that have little history of sharing data and viewing their interactions as an integrated system. The problem of data sharing in part derives from security concerns.
- Some of the metrics that should be used for rational management and deployment of resources are considered politically sensitive — especially those dealing with countries considered unfriendly to the United States.
- There is no history of benchmarking the performance of most of the agencies and organizations against their counterparts in other countries.
- Frequently, the concept of using quantitative measurements or estimates of costs and benefits to drive decisions is simply absent.
- Many of the underlying measures of success are in fact “soft” and qualitative.
- The scale of operations is enormous, encompassing hundreds of millions of international travel transactions annually.
- Establishing operational and success metrics regarding security against terrorists and other threats is very challenging because detection of such threats is an extremely difficult “needle in the haystack” problem that differs in many dimensions from traditional business processes.

The foregoing sections of this report have proposed a number of new metrics and performance goals that should be among those tracked to measure the effectiveness of U.S. policies. For example, the Visa Policy section proposes measuring the experience of those who apply for U.S. visas, including the average number of days required for adjudication of visa applications, the number of “false positives” and “false negatives” in the adjudications,⁹¹ and other variables. The Ports of Entry section has delineated several

metrics for detailed analysis of the processes encountered by international travelers as they enter the country through all POEs. This lends itself rather directly to business process metrics and feedback for continuous improvement efforts. A clear and very important example is the wait-time associated with crossing borders, including the time spent in line to approach CBP inspection areas, as well as actual time in the inspection zones.

Metrics and critical success factors should be just as important to government agencies as they are to for-profit businesses.

As an illustration of using customer surveys to obtain “soft” metrics such as friendliness, the U.S. Department of Commerce’s Office of Travel and Tourism obtained more than 25,000 responses each year from 2000 through 2006 to a survey of international air travelers. The mean rating of passport control staff courtesy varied from 3.4 to 3.5, on a scale that ranged from 1 = Poor, 3 = Average, to 5 = Excellent. The mean rating of Customs or CBP staff courtesy was 3.6 for every year except 2005, when it was 3.5. These data tell us that the typical responding traveler feels the courtesy with which they were dealt was slightly better than “average,” not “good” or “excellent.” Tracking these metrics over time suggests that process changes made during these seven years have neither improved nor worsened the way the average international travelers perceive their treatment. The good news may be that maintaining a constant level of this perception throughout the post-9/11 period may be a notable achievement.

The bad news is that these figures are not being replicated in surveys taken by non-governmental entities and clearly do not reflect influential anecdotal evidence regarding extreme cases. Given the desire to project our national values, meet the goal of being welcoming, and meet the objective of forming long-term positive views

⁹¹ A false positive means a person judged likely to be a terrorist, upon further investigation, is found to have no terrorist connection at all. A false negative means a person judged unlikely to be a terrorist, upon further investigation, is found to have terrorist connections.

of the U.S., the most important content of these surveys may not be the average response, but rather the distributions and extremes. Those travelers who feel most strongly that they were not treated courteously or fairly may contribute the most to negative attitudes and views of the United States. The individual experiences the totality of this system, not just a sequence of activities. Individual processes like cargo inspections, having a visa examined and stamped, or moving through a security checkpoint may be rapid, but if the person undergoing them had to wait for months for the necessary visa in the first place, her encounter with the system is not welcoming overall. Likewise, if the x-ray technology at a checkpoint works perfectly, but an agent has not been well trained to interpret the image on the screen, the system may fail to meet its objectives. Therefore interpretation of metrics requires an understanding of how the effects being measured cumulate, and care must be taken to identify weak links and failure modes of the overall system.

RECOMMENDATIONS

The RCI vision can be achieved in a manner that improves our security while maintaining our values and openness and avoiding unnecessary damage to our economy and society. The resources that can and should be applied to attain this goal are finite. We are early in our learning curve as a nation in countering terrorist threats. It is essential to measure and track the performance of new systems designed to determine how welcoming and secure we are. Metrics also will allow us to rationally deploy resources and continually improve our capabilities and performance.

The primary success factor for Secure Borders and Open Doors is the number of terrorist attacks or incidents involving people, materials, or equipment that have crossed our borders (with a goal of zero), and the number of such attacks or incidents that are detected and averted.

The simplest success factor regarding security is whether or not our country is attacked. The desired value of this factor is zero. America's track record in detecting and disrupting or averting attacks

determines how safe we are and are likely to remain. This is the ultimate measure of the result of our intelligence work, and of the integrated effect of all components of the Rice-Chertoff Initiative.

All relevant agencies must actively engage in benchmarking and increase the extent to which they measure progress using metrics.

State and DHS must systematically collect, share, and analyze longitudinal data to measure performance and use it to improve their operations. They should also benchmark performance metrics against those of comparable nations and appropriate groups of nations like the E.U., and use what they learn to improve processes. The departments should not shy away from "soft" goals; they too can be addressed and tracked to a large extent by using surveys and other social science tools, in which there has been substantial methodological progress in recent years.

Metrics must be consistently tracked over time, and attention should be focused on the variation and extremes as well as on mean performance. Additionally, metrics should be developed to identify the impact on the business, tourism, and academic industries as policies and practices are changed. These metrics will be most useful if they are disaggregated by country of origin and categories of applicants, allowing these data to be used to guide deployment of resources. It will also be important to determine the costs, benefits, and justice of extreme cases in the context of national security.

A consistent set of metrics that indicate the efficiency, effectiveness, and consumer friendliness of visa application and adjudication should be maintained longitudinally and used to analyze and continually improve performance and optimize deployment of resources.

The Visa Policy section of this report recommends a number of data sets that should be maintained in this regard. State and DHS should jointly refine and enhance these data and build or modify the necessary procedures and databases. They should develop a clear plan, protocols, and oversight to ensure that

these metrics are fed back into the system to improve its performance. They should be used whenever possible to measure performance against ultimate goals and short-term outcomes. They also should be used as part of a process for evaluating the costs and benefits of systems and processes. What is learned should be used in making decisions about allocation of budget, personnel, and equipment. Elements of systems and processes should be evaluated periodically using these metrics and should be enhanced, modified, reduced, or eliminated over time if they do not materially affect achievement of the goals and objectives of the Rice-Chertoff Initiative.

The performance metrics related to visa application and adjudication, and those related to entry of international travelers, both citizens and non-citizens, should be globally benchmarked.

Increasingly, the United States competes with other nations in fields such as tourism, higher education, multinational business, and international conferencing. The ease, friendliness, consistency, rationality, and costs to visitors are major factors when individuals and organizations make decisions about where to travel. These matters are also important in forming long-term perceptions of our nation. Therefore, it is essential that the U.S. government benchmark its own practices against those of other countries, and use what we learn to continually improve our policies and processes. The U.K. and Australia are also frequently mentioned as countries from which we can learn how to manage visa risks with better facilitation.

How America competes with the European Union also is particularly important. Under the Schengen Agreement, originally signed in 1985, foreign nationals can obtain a visa for one European country

that is good in all 24 Schengen member countries.⁹² While applicants must supply fingerprints, in-person interviews are not required unless the consular official is not satisfied with the application. Accordingly it is very rare for an applicant to wait more than three weeks for a visa application to be acted upon. The U.S. personal interview requirement contains no such flexibility, even for repeat applicants. In addition, the E.U. currently provides visa-free travel to a number of countries not included in the U.S. Visa Waiver Program. Among these are Brazil, Israel, Malaysia, Mexico, Panama, and Paraguay.⁹³

A consistent set of metrics based on surveys, exit interviews, and other tools of state-of-the-art survey research should be collected, maintained longitudinally, and used to analyze and continually improve performance and optimize deployment of resources.

It is imperative that seasoned experts in modern survey research and related areas of social science be engaged to develop appropriate instruments and processes for sampling travelers and understanding customer satisfaction and perception formation. Experienced on-the-ground government personnel, e.g., from embassy staffs, TSA, and CBP should be engaged during the design of the survey instruments and processes. Experienced on-the-ground personnel from the private sector "user community," e.g., travel and tourist industry representatives, university admissions officers, professional conference organizers, and airline agents also should be engaged during the design of the survey instruments and processes.

92 Existing Schengen countries (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, and Sweden) were joined on December 21, 2007 by the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovakia and Slovenia. European Commission, "Passport-free travel spreads to eastern Europe," December 21, 2007, http://ec.europa.eu/news/justice/071221_1_en.htm.

93 Commission of the European Communities, "Third Report from the Commission to the European Parliament and the Council," September 13, 2007, p. 4-7, http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0533en01.pdf.

Large-scale surveys of public attitudes toward the United States should be conducted in many countries, structured in part to determine the influence of visa and entry processes.

Both the federal government and the private sector need to have a clear-eyed understanding of public perceptions and attitudes toward the United States, and how and why they vary over time and across geographic and political boundaries. This is not an easy task, but it is a critical one for helping to guide U.S. policy and public diplomacy.

A consistent, longitudinal, multi-agency record of successful intercepts of known or suspected terrorists at border crossings, together with all false positives and false negatives and their resolution, should be maintained and disaggregated according to the specific mechanism by which each correct or incorrect identification was made.

These data are clear, discrete, and fundamental to understanding, evaluating, and improving our security processes. They also should be reasonably straightforward to collect. Hopefully the number of actual or suspected terrorists attempting to cross our borders will be small, but greater study of false positives and false negatives is critical to improving security processes and allocating resources.

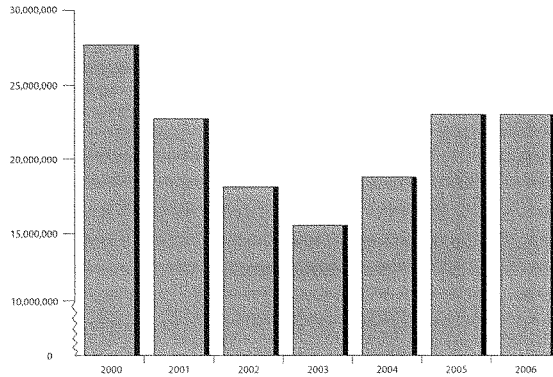
The manner in which individuals are falsely suspected or identified, and what subsequent actions result, ranging from secondary questioning to arrest, are extremely important for ensuring that we minimize disruption to innocent people and foster confidence and goodwill. When people have been falsely identified or even accused, compensatory actions ranging from eliminating them from the “no-fly” list to financial compensation must be considered. The conduct of our government triggered by false positives and false negatives is a major determinant of whether our policies and procedures properly reflect American values and laws.

A consistent, longitudinal, multi-agency record of successful intercepts of dangerous materials or devices at border crossings, together with all false positives and false negatives should be maintained and disaggregated according to the specific mechanism by which each correct or incorrect identification was made.

Measurement and analysis of the successes and failures of detecting dangerous materials and equipment crossing U.S. borders is essential to the improvement of such systems. This generally will involve both technology and human judgment. This is perhaps the clearest example of the application of industry-like metrics to the goal of Secure Borders and Open Doors. Both people and machines can continually learn and improve training, equipment, and processes such as baggage and airport checkpoint inspections.

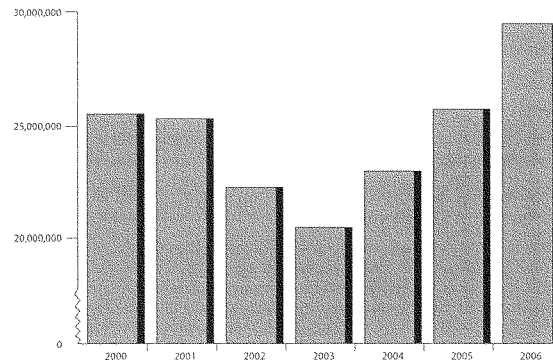
International Travel Statistics

Yearly number of international visitors to the United States, excluding Canada and Mexico



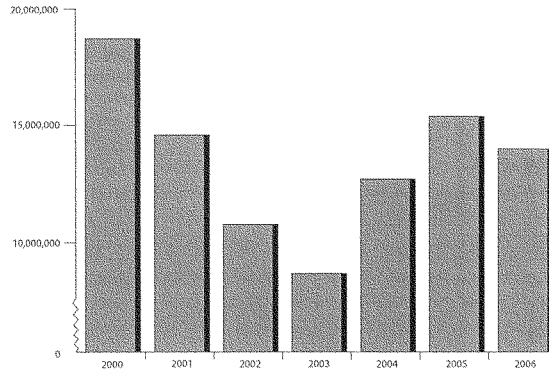
Source: The Office of Travel & Tourism Industries International Arrivals To U.S. By Country of Residency Historical Visitation — 2000–2006.
http://tinet.ita.doc.gov/outreachpages/inbound_intl_arrivals_historic_visitation_2000-2006.html

Yearly number of international visitors to the United States from Canada and Mexico



Source: The Office of Travel & Tourism Industries International Arrivals To U.S. By Country of Residency Historical Visitation — 2000–2006.
http://tinet.ita.doc.gov/outreachpages/inbound_intl_arrivals_historic_visitation_2000-2006.html

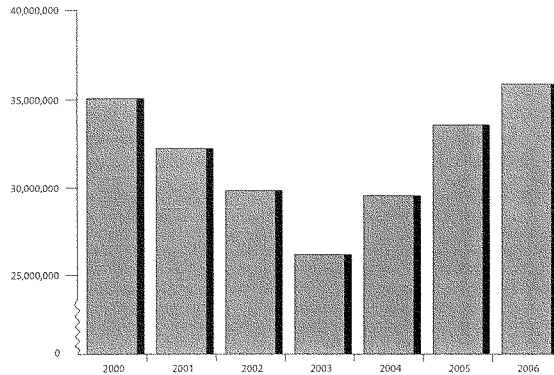
Yearly number of international visitors to the United States from Visa Waiver Program countries *



* Visa Waiver Program countries are: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Lichtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Source: The Office of Travel & Tourism Industries International Arrivals To U.S. By Country of Residency Historical Visitation — 2000-2006
http://tinet.ita.doc.gov/outreachpages/inbound.int_arrivals_historic_visitation_2000-2006.html

Yearly number of international visitors to the United States from countries that are not in the Visa Waiver Program



Source: The Office of Travel & Tourism Industries International Arrivals To U.S. By Country of Residency Historical Visitation — 2000-2006
http://tinet.ita.doc.gov/outreachpages/inbound.int_arrivals_historic_visitation_2000-2006.html

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Glossary of Terms

Agencies/Organizations

CA: Bureau of Consular Affairs,
U.S. Department of State

CBP: U.S. Customs and Border Protection,
U.S. Department of Homeland Security

CIS: U.S. Immigration and Citizenship Services,
U.S. Department of Homeland Security

DHS: U.S. Department of Homeland Security

DOT: U.S. Department of Transportation

GAO: U.S. Government Accountability Office

HSAC: Homeland Security Advisory Committee

NSC: National Security Council,
Executive Office of the President

SBODAC: Secure Borders and Open Doors
Advisory Committee, a subcommittee of HSAC

State: U.S. Department of State

TSA: U.S. Transportation and Security
Administration, U.S. Department
of Homeland Security

US-VISIT: United States Visitor and Immigrant
Status Indicator Technology program, U.S.
Department of Homeland Security

Terms/Acronyms

APIS: Advanced Passenger Information
System, an information system used to vet
arriving international passengers by CBP

Biometrics: The use of unique physical or
behavioral characters to verify identity

C-TPAT: Customs-Trade Partnership Against
Terrorism, a CBP program to provide facilitation
benefits for shippers and other supply chain
participants approved for security protocols

DHS TRIP: Department of Homeland
Security Travel Redress Inquiry Program

EDL: Enhanced Driver's License, a state-issued
driver's license approved a WHITI-compliant
document for land and sea travel into the U.S.

ETA: Electronic Travel Authorization,
an online application for VWP travel
required under 2007 legislation expected
to be implemented in 2008 and 2009

FAST: Free and Secure Trade, a trusted traveler
program for truckers crossing the U.S. land borders

FIS: Federal Inspection Services, the portion of
an international airport where CBP conducts
immigration and customs processing

GPRA: Government Performance
Results Act of 1993

H-1B Visa: Non-immigrant work visas for foreign
workers with the equivalent of a bachelor's degree.

INSPASS: INS Passenger Accelerated Service
System, a discontinued IRT program

IRT: International Registered Traveler program

The Model Ports Program: A DHS program
being implemented by CBP designed to make
the airport experience for foreign nationals
arriving in American airports more pleasant
and welcoming, including improved signage,
multilingual videos, and modernized procedures

NEXUS: A trusted traveler program operated by
CBP and the Canadian government for travelers
crossing the land and maritime borders between the
U.S. and Canada and flying from Canada to the U.S.

NSEERS: National Security Entry-Exit
Registration System, requiring visitors from
certain countries to be registered in secondary
processing with CBP upon entering the U.S.
and to provide departure notice to CBP before
leaving the country from designated POEs

PNR: Passenger Name Record, information collected by airlines related to a passenger's itinerary and ticket purchase

PLL: Primary Inspection Lane at land ports of entry

PLOR: Primary Lookout Over-Ride, a CBP program to alert inspectors concerning individuals with identical or similar biographical information as watchlisted individuals

POE: Port of entry

RCI: The Rice-Chertoff Initiative

RT: Registered Traveler, a program to provide expedited security screening for passengers enrolled by private sector entities who pass a voluntary TSA-conducted security threat assessment

SAO: Security Advisory Opinion, a program to have certain visa applications referred by a consulate to be reviewed by an inter-agency process

SENTRI: Secure Electronic Network for Travelers Rapid Inspection, a trusted traveler program operated by CBP for travelers crossing the land border between the U.S. and Mexico

SEVIS: Student Exchange Information System, a Web-based program to confirm enrollment in U.S. educational institutions and track admission and departure from the U.S.

VWP: The Visa Waiver Program, which enables nationals of 27 countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa

WHTI: Western Hemisphere Travel Initiative, a 2004 law requiring all citizens of the United States, Canada, Mexico, and Bermuda to possess a passport or other document indicating citizenship and identity when entering or re-entering the United States

Testimony of SOPHIA COPE
Staff Attorney/Ron Plesser Fellow, Center for Democracy & Technology

**Before the Senate Committee on Homeland Security and Governmental
Affairs, Subcommittee on Oversight of Government Management, the Federal
Workforce, and the District of Columbia**

**On “*The Impact of Implementation: A Review of the REAL ID Act and the
Western Hemisphere Travel Initiative*”**

Tuesday, April 29, 2008

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee:

On behalf of the Center for Democracy & Technology,¹ I am honored to have been asked to testify before the Subcommittee on the personal privacy and security risks of “vicinity” radio-frequency identification (RFID) technology in travel documents issued in compliance with the Western Hemisphere Travel Initiative (WHTI), specifically the State Department’s passport card and the state-issued “enhanced driver’s license” (EDL).

Because this hearing also focuses on REAL ID, I attach as an Appendix CDT’s REAL ID memo from February 1, 2008, analyzing the personal privacy and security risks of the REAL ID Act and the Department of Homeland Security’s (DHS) final regulations, and proposing legislative options for Congress.² However, my written testimony below focuses on WHTI, as will my oral testimony.

INTRODUCTION

From warrantless electronic spying, to expanded DHS funding of closed circuit television (CCTV) video camera surveillance systems without privacy standards, to numerous data breaches at federal agencies, the federal government does not have a good track record of protecting personal privacy. The use of insecure vicinity RFID technology in border crossing identification documents is no exception: With no proven benefit to the nation’s security, the Executive Branch has chosen a technology that jeopardizes privacy.

¹ The Center for Democracy & Technology is a non-profit, public interest organization dedicated to promoting civil liberties and democratic values in the digital age. Among our priorities is to ensure that government identification programs and the technologies they employ do not threaten personal privacy, security and civil liberties.

² CDT’s REAL ID memo from February 1, 2008, is also available at:
http://www.cdt.org/security/identity/20080201_REAL_ID_hillbrief.pdf

Though the passport card is issued by the State Department and EDLs are issued by states,³ DHS has played a key role in both programs, pushing for the use of insecure vicinity RFID technology in the border crossing context. However, the use of vicinity RFID technology in human identification documents:

- Poses clear and serious risks to personal privacy and security (**Section I**);
- Disregards concerns expressed by both Congress and the public (**Section II**); and
- Affords no clear operational benefits in the border crossing context (**Section III**).

CDT concludes that the use of vicinity RFID technology in human identification documents, such as the passport card and EDL, is inappropriate at this time due to the lack of meaningful security measures. The good news is that it is not too late to reverse course – no passport cards have been issued yet with the insecure technology and only one state has moved forward with using the insecure technology in driver’s licenses. CDT urges this Subcommittee to exercise its oversight authority to ensure that our nation is secure, our travel is not impeded, and our privacy is protected. Specifically, we urge Congress to direct DHS and the State Department to revise its plans and use machine-readable technologies in the passport card and EDL that provide privacy protections commensurate with those in the electronic passport.

CDT is also concerned with the potential uses of the REAL ID card, the passport card and the EDL to facilitate tracking of the movements and activities of Americans in contexts having nothing to do with highway safety, border control or airline passenger screening. The less secure the ID number and other information on these documents is, the more likely that they will be used by government and business to compile databases that can be used to track and profile citizens. To avoid this problem, it is necessary to encrypt the information on the card and limit its use by the public and private sector.

I. VICINITY RFID TECHNOLOGY IN ID DOCUMENTS POSES SERIOUS RISKS TO PERSONAL PRIVACY AND SECURITY

What is “Vicinity” RFID Technology?

RFID chips containing a serial number and relevant information about the tagged item communicate wirelessly with a reader, which is itself connected to a back-end computer and database system. “Vicinity” refers to those RFID chips that can be read at some distance (as opposed to “proximity” RFID, which refers to chips that can be read only within millimeters or inches). Vicinity RFID chips are generally readable from 20 to 30 feet.⁴ However, it was recently

³ Washington, Vermont, New York, and Arizona have signed Memoranda of Agreements (MOAs) with DHS. Washington began issuing EDLs in January 2008, and Vermont will issue them later this year.

⁴ Department of Homeland Security Privacy Office, “Privacy Impact Assessment for the Use of Radio Frequency Identification (RFID) Technology for Border Crossings” at 3 (Jan. 22, 2008) (“DHS RFID PIA”), http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cbp_rfid.pdf.

reported that a company has developed a new reader system to read passive (that is, non-battery powered) “Gen 2”⁵ chips from 600 or more feet away and pinpoint their location in 3-D space!⁶

Three Technical Features of Vicinity RFID Technology Implicate Privacy

Many of the privacy and security problems associated with the passport card and EDL can be traced to the government’s inexplicable decision to adopt so-called “Gen 2” vicinity RFID technology. The Gen 2 vicinity RFID chip is unsuited for use in human identification documents such as the passport card and EDL because:

1. **The information on the chip can be picked up directly (“skimmed”), or intercepted⁷ during a legitimate transaction, by an unauthorized or “rogue” reader because the information is transmitted wirelessly in the clear.**
2. **Any compatible, widely available, reader – not just those used by Customs and Border Protection (CBP) at the border – can copy the information on the chip.** As the DHS Privacy Office has acknowledged, “any Gen 2 reader can read any Gen 2 card.”⁸
3. **Vicinity RFID chips, due to the nature of radio waves, can be surreptitiously read from afar without line-of-sight and without the cardholder’s knowledge or consent.**

The Gen 2 chip was designed to track *things*, not identify people. It was designed to manage the movement of products through the supply chain, taking the place of the traditional barcode. The main design considerations for the Gen 2 chip were speed and interoperability: The Gen 2 chip was designed to be quickly and easily scanned by standardized readers, unencumbered by security features such as authentication and encryption, as products move through the supply chain.⁹

⁵ The standards body EPCglobal has developed the protocol for the Class 1, Generation 2 (“Gen 2”) Ultra-High Frequency (UHF) RFID chip, which is used in the passport card and EDL, http://www.epcglobalinc.org/standards/uhf1g2/uhf1g2_1_0_9-standard-20050126.pdf.

⁶ Mark Roberti, “Mojix Takes Passive UHF RFID to a New Level,” *RFID Journal* (April 14, 2008), <http://www.rfidjournal.com/article/articleview/4019/1/1/>.

⁷ Interception is also called “eavesdropping.” Data Privacy & Integrity Advisory Committee to the Secretary and the Chief Privacy Officer of the Department of Homeland Security, *The Use of RFID for Human Identity Verification*, Report No. 2006-02, Section VI.C. (December 6, 2006) (“DHS Privacy Committee RFID Report”), http://www.dhs.gov/xlibrary/assets/privacy/privacy_advcom_12-2006_rpt_RFID.pdf.

⁸ DHS RFID PIA, *supra* note 4, Section 9.2.

⁹ See, e.g., David L. Brock, *White Paper: The Electronic Product Code (EPC), A Naming Scheme for Physical Objects*, Massachusetts Institute of Technology Auto-ID Center, Section 4.14 (January 1, 2001) (“[W]e propose to leave Electronic Product Code simply as a method for naming and identifying objects,” and thus “propose to decouple the EPC definition from any security and cryptographic technique.”), <http://autoid.mit.edu/whitepapers/MIT-AUTOID-WH-002.PDF>.

What Are the Privacy Risks of Vicinity RFID Technology and the Passport Card/EDL Programs?

- Passport card and EDL holders' movements and activities may be tracked with the vicinity RFID chip.**¹⁰ DHS' and the State Department's number one response to concerns raised about the privacy risks of using vicinity RFID technology in the passport card and EDL is that the chips will not contain any personal information, just a **unique ID number** that corresponds to the citizen's record stored in a back-end database.¹¹ This overlooks the fact that governmental and commercial entities can collect the identifying information about the individual by other means – by visually inspecting the card, by scanning the non-RFID machine-readable zone on a driver's license, or by collecting the identifying information from a customer loyalty card or credit card used in a transaction when the passport card or EDL is also used. This identifying information can then be associated with the unique ID number skimmed or intercepted from the vicinity RFID chip. In this way government agencies and businesses can compile unauthorized databases associating RFID ID numbers with names and other personally identifying information. Once a person's identity is associated with the unique ID number, that person can thereafter be identified or tracked without his or her knowledge or consent by a network of Gen 2 compatible readers.¹² **The risk of creating unauthorized databases correlating ID numbers and other personal information would be reduced but not eliminated if the government were to shift from vicinity RFID to a machine-readable technology that requires the card to make physical contact with the reader (i.e., non-wireless), or at the very least proximity RFID.** To effectively protect individuals, the government should also **encrypt the ID number**, so it cannot be skimmed by governmental and commercial entities and used as the basis for compiling new databases of movements and activities unrelated to highway safety or border control.
- A person traveling abroad might be revealed as an American citizen and thereby be vulnerable to security risks.** In addition to the unique ID number, the vicinity RFID chip (Gen 2) also includes additional numbers that reveal information about the cardholder: namely, the issuing authority of the card, whether that be DHS, the State Department, or an American state (among others).¹³ Thus if an ill-intentioned individual with a rogue Gen 2

¹⁰ DHS RFID PIA, *supra* note 4, Section 1.5, at 8.

¹¹ See, e.g., Department of Homeland Security, "Fact Sheet: Enhanced Driver's Licenses (EDL)," ("The first layer [of privacy mitigation] will be that no personally identifiable information will be stored on the card's RFID tag or be transmitted by the card. The card will use a unique identification number which will link to information contained in a secure database. This number will not contain or be derived from any personal information.") ("DHS EDL Fact Sheet"), http://www.dhs.gov/xnews/releases/pr_1196872524298.shtm.

¹² See, e.g., Todd Lewan (Associated Press) "Chips: High-tech aids or tools for Big Brother?," MSNBC (July 23, 2007), <http://www.msnbc.msn.com/id/19904543/>.

¹³ DHS RFID PIA, *supra* note 4, Section 1.1 ("when the Gen 2 tag data is sent from the RFID card to the RFID reader, CBP will be able to identify the type of card in terms of providing a numeric identifier that can be associated by the back-end computer system with the particular issuer of the border crossing card"); Section 1.2 ("The border crossing travel document assigned to the traveler following enrollment contains an RFID chip with a unique ID number preceded by a header that identifies the issuing authority of the card. During border crossings, CBP collects the RFID number and header from the RFID enabled cross border travel document

reader picks up the presence of a vicinity RFID chip, and that person has figured out what the header number signifies (i.e., an issuing entity originating in the U.S.), the security of the American citizen may be put at risk.

- **Even if the vicinity RFID chip were protected from skimming or eavesdropping by unauthorized users, rules should be adopted to address the fact that authorized users will be able to use the card to build new databases of citizens' activities. For example, without further safeguards, state authorities will be able to compile logs of border crossing history as CBP pings state databases whenever an EDL is used to cross the border.**¹⁴ To avoid this problem and ensure that personal data is protected to the maximum extent possible, but also to provide one convenient document that can be used for two purposes, *the EDL should have two machine-readable zones*: one only for legitimate motor vehicle and law enforcement use (such as a magnetic stripe or a bar code), populated by the state only with information related to this purpose (e.g., name and driver's license number); and one only for re-entering the U.S. at the land borders, populated by the State Department only with information enabling the confirmation of the cardholder's U.S. citizenship (e.g., a unique ID number that *links to a State Department database*). Both back-end systems should be "fire-walled" from each other, avoiding the need for CBP to ping state databases and preventing the state from knowing when a licensee traveled to Canada or Mexico. CDT suggested this approach to DHS in our comments on the proposed REAL ID regulations,¹⁵ but the Department is nevertheless moving forward with its original cross-access model.¹⁶
- **Border crossing history and personal information associated with the passport card or EDL may be vulnerable to unauthorized access.** DHS acknowledges that "the RFID number could be used to access the back end system and reveal the PII contained in those systems"¹⁷ or "transaction data."¹⁸ DHS claims that even though the unique ID number may be easily obtained from a vicinity RFID chip, access to personal information associated with that number is limited by use rules and technical security features. However, recent privacy breaches at the State Department show it is possible for unscrupulous government

assigned to the individual during the aforementioned enrollment process."); Section 1.5 ("The new RFID tags to be used in the CBP border crossing documents . . . do contain header information which could reveal some overall category information, that is the type of RFID enabled card being carried.").

¹⁴ DHS RFID PIA, *supra* note 4, Section 1.2 ("DHS will receive information associated with the RFID number which will reference biographical and biometric (photo) information maintained in the issuing entities back-end database. Issuing entities could include state Department of Motor Vehicles (DMV) for enhanced driver's licenses"). See also Washington State Department of Licensing's flier on EDL "Security and Privacy Protection" ("The unique reference number will be matched to Department of Licensing (DOL) records to verify the information contained on the front of the EDL/ID card."), <http://www.dol.wa.gov/about/news/priorities/security.pdf>.

¹⁵ <http://www.cdt.org/security/20070508realid-comments.pdf> (p. 33).

¹⁶ Department of Homeland Security, *Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (Final Rule), 73 Fed. Reg. 5272, 5313 (Jan. 29, 2008) ("REAL ID Final Rule").

¹⁷ DHS RFID PIA, *supra* note 4, Section 1.5, at 8.

¹⁸ DHS RFID PIA, *supra* note 4, Section 1.5, at 7.

employees or contractors to access citizens' sensitive data held in government databases.¹⁹ Moreover, the DHS Inspector General concluded that Customs and Border Protection (CBP), the agency which reads border crossing documents, "has not implemented effective security controls over all components of its RFID systems" used in the Trusted Traveler programs.²⁰ The Inspector General "identified several weaknesses in user administration, access controls, and auditing," and went on to conclude that such "weaknesses may be exploited by a user to gain unauthorized and undetected access to sensitive data. Lacking procedures to ensure that all vulnerabilities and weaknesses are identified and reviewed, management cannot ensure that the data in its critical systems is secure."²¹

Privacy Risk Mitigation Strategies Are Insufficient

To mitigate the privacy risks associated with an insecurely-transmitted unique ID number, DHS explains that cardholders will be provided with a "protective sleeve" that blocks radio communications, in which the vicinity RFID-enabled card should be housed when not being used at the border. DHS also explains that all holders of vicinity RFID-enabled travel documents will be educated on how to properly use, carry and protect the cards so as to minimize risks to personal privacy.²²

However, these mitigation measures improperly place the burden of privacy protection on the citizen. Moreover, they offer no protection in light of the fact that the EDL and the passport card will be used in many circumstances where driver's licenses or ID cards are now required, including in many commercial contexts, where individuals will be taking their cards out of the protective sleeve, thereby exposing their data to all the risks we have described above. Circumstances include buying alcohol, paying by check, entering many governmental and commercial office buildings, registering at a hotel, renting an automobile, and many others.

Finally, DHS and the State Department (and even EDL-issuing states) often counter privacy criticisms by emphasizing that the passport card and EDL programs are **voluntary**. While vicinity RFID-enabled travel documents are currently voluntary, there is a reasonable concern that people will no longer have a choice as RFID becomes the standard technology in identification documents.

¹⁹ Glenn Kessler, "Rice Apologizes For Breach of Passport Data," *Washington Post* (March 22, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/21/AR2008032100377.html>.

²⁰ The Trusted Traveler programs, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/, use first generation ("Gen 1") vicinity RFID chips. DHS RFID PIA, *supra* note 4, at 4 ("Currently, CBP's trusted traveler programs use Gen 1 tags.")

²¹ Department of Homeland Security, Office of Inspector General, *CBP's Trusted Traveler Systems Using RFID Technology Require Enhanced Security (Redacted)*, OIG-06-36, at 6-7 (May 2006) ("DHS IG Trusted Traveler Report"), http://www.dhs.gov/xoig/assets/mgmtrpts/OIGr-06-36_Mav06.pdf.

²² DHS RFID PIA, *supra* note 4, Section 1.5. See also DHS EDL Fact Sheet, *supra* note 11.

II. DHS AND THE STATE DEPARTMENT ARE MOVING FORWARD WITH THE PASSPORT CARD AND EDL PROGRAMS DESPITE PUBLIC DISAPPROVAL AND IN CONTRAVENTION OF LEGISLATIVE MANDATES AND INTERNAL WARNINGS

- **The passport card and EDL programs' use of vicinity RFID technology is not statutorily mandated.** DHS and the State Department are moving full steam ahead with the development of these vicinity RFID-enabled travel cards as if the technology choice were mandated by Congress. But this is not the case. Congress simply sought to expedite the travel of pre-screened frequent travelers at the land borders. It never mandated the use of vicinity RFID technology in this context.²³ **Other technologies can achieve the same goal (see Section III below).**
- **DHS and the State Department failed to obtain sufficient NIST certification that the passport card (and thus EDL) will protect privacy.** It was not until Congress became aware that DHS and the State Department were in the midst of developing the passport card using insecure vicinity RFID technology that Congress specifically legislated on this issue.²⁴ While Congress mandated NIST certification on October 4, 2006, the State Department announced its proposed choice of vicinity RFID technology for the passport card in a notice published in the Federal Register 13 days later (October 17, 2006), *which made no mention whatsoever of the recently required NIST certification.* What the

²³ Section 7209(b)(1) of the Intelligence Reform & Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458 (Dec. 17, 2004), simply required DHS and the State Department to “develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to **denote identity and citizenship**, for all travel into the United States by United States citizens . . . This plan . . . shall seek to **expedite the travel of frequent travelers**, including those who reside in border communities, and in doing so, shall make readily available a registered traveler program (as described in section 7208(k)).” Similarly, Section 7208(k) does not mention vicinity RFID technology, but instead simply states that “Expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority,” and that “The process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.” Sections 7208(k)(1)(A) and (B).

²⁴ Section 546 of the DHS Appropriations Act for FY2007, Public Law 109-295 (Oct. 4, 2006), amended Section 7209(b)(1) of the IRTPA to require DHS and the State Department to receive certification from the National Institute of Standards and Technology (NIST) that the Departments, for the passport card, “selected a card architecture that meets or exceeds International Organization for Standardization (ISO) security standards and **meets or exceeds best available practices for protection of personal identification documents**: Provided, That the National Institute of Standards and Technology shall also assist the Departments of Homeland Security and State to **incorporate into the architecture of the card the best available practices to prevent the unauthorized use of information on the card**: Provided further, That to facilitate efficient cross-border travel, the Departments of Homeland Security and State shall, to the maximum extent possible, develop an architecture that is **compatible with information technology systems and infrastructure used by United States Customs and Border Protection.**” As discussed below in Section III, the question of **compatibility** is an interesting one: The new electronic passport includes a proximity RFID chip and other security features, which together require a different reader system, as does the “Gen 1” vicinity RFID technology CBP uses for its Trusted Traveler programs.

government calls NIST “certification” did not come until May 2007,²⁵ but NIST simply accepted at face value the vicinity RFID technology choice. This can hardly be said to constitute an objective analysis by NIST of whether the passport card “meets or exceeds best available practices for protection of personal identification documents” or is designed “to prevent the unauthorized use of information on the card” as required by Congress.

Moreover, two sets of “best practices” cited by NIST do not support the use of vicinity RFID technology in the passport card and EDL but actually undercut it: The DHS Data Privacy & Integrity Advisory Committee’s report on “The Use of RFID for Human Identification” cautions against the use of RFID for identifying people,²⁶ while CDT’s “Privacy Best Practices for Deployment of RFID Technology” only relate to the use of RFID in the *commercial* context and expressly do *not* apply to the use of RFID for personal identification.²⁷

- In his “certification” letter dated May 1, 2007, NIST Director William Jeffrey revealed that **DHS and the State Department were already committed to vicinity RFID for the passport card and so NIST did not challenge the wisdom of choosing this insecure technology.**²⁸
- An additional piece of evidence that the State Department was planning on ignoring public comments is that it **issued a Request for Proposals (RFP) in spring 2007, well before it issued its final rule on December 31, 2007 choosing vicinity RFID for the passport card.**²⁹
- **DHS and the State Department remained committed to vicinity RFID despite Congress’ second attempt to get the Departments to choose a secure machine-readable technology (this time for the EDL).** Section 7209(b)(1) of the IRTPA was amended a second time in August 2007 to direct the creation of an “enhanced driver’s license” pilot program with a state, where the choice of machine-readable technology would be “based on individual privacy considerations and the costs and feasibility of incorporating any new technology into existing driver’s licenses.”³⁰ In contravention of the clear Congressional intent, the State Department published its final rule confirming the vicinity RFID

²⁵ http://www.nist.gov/public_affairs/factsheet/whti.html

²⁶ *Supra* note 7.

²⁷ <http://www.cdt.org/privacy/20060501rfid-best-practices.php>

²⁸ Mr. Jeffrey wrote that “the Departments of State and Homeland Security reached agreement on the choice of the technology for the PASS Card which is called ‘Gen 2 RFID’ . . . [and so] NIST focused its efforts on working with the two agencies to assure that Gen 2 RFID met the requirements of Section 546,” http://www.nist.gov/public_affairs/factsheet/baker_itr_attachment.pdf.

²⁹ See Wade-Hahn Chan, “Controversial passport card system put out for bid,” *Federal Computer Week* (June 1, 2007), <http://www.fcw.com/online/news/102856-1.html>. See also the Federal Business Opportunities website: https://www.fbo.gov/index?s=opportunity&mode=form&id=b292d52703e6d5d7f25baedf747e5530&tab=core&_cview=1.

³⁰ Section 723, Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53 (Aug. 3, 2007).

technology choice for the passport card on December 31, 2007, and DHS is currently working with states on their various vicinity-RFID enabled EDL programs.

- **DHS and the State Department have ignored public comments opposing vicinity RFID technology.** On October 17, 2006, the State Department solicited public comments in the Federal Register on its proposed choice of vicinity RFID technology for the passport card,³¹ but it proceeded to ignore the bulk of the public comments, including those of experts.³² By the State Department's own admission, the vast majority of the *over 4000 comments* opposed the vicinity RFID technology choice or the passport card itself. The State Department stated that only approximately "20 comments specifically voiced support for the passport card." **All four Members of Congress who commented, as well as technology, security, and privacy groups, expressed concern with the choice of vicinity RFID technology for the passport card. The State Department deflected this overwhelming public opposition by claiming that the opposition "reflected an improper understanding of the business model that WHTI is designed to meet and how the technology selected would actually be implemented."** The State Department also **failed to promulgate regulations addressing the privacy concerns** relating to how a citizen's unique ID number could be skimmed from the passport card and how databases associated with the card would be protected.
- Similarly, almost as an afterthought, DHS solicited public comments on the EDL in its proposed REAL ID regulations,³³ and confirmed in the *discussion* preceding the final regulations – despite much concern expressed in the public comments – that it was working with states to develop EDLs that are REAL ID-compliant and include vicinity RFID chips.³⁴ **But no regulations directing how the EDL program will be managed have been implemented by DHS.**
- **DHS has ignored the conclusion of its own Inspector General** who noted, in reviewing CBP's Trusted Traveler programs, that "[a]dditional security controls [such as encryption] would be required if CBP . . . migrates to universally readable Generation 2 (Gen2) products."³⁵

³¹ Department of State, *Card Format Passport; Changes to Passport Fee Schedule* (Proposed Rule), 71 Fed. Reg. 60928 (Oct. 17, 2006).

³² Department of State, *Card Format Passport; Changes to Passport Fee Schedule* (Final Rule), 72 Fed. Reg. 74169 (Dec. 31, 2007) ("Passport Card Final Rule").

³³ Department of Homeland Security, *Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (Notice of Proposed Rulemaking), 72 Fed. Reg. 10820, 10841-42 (March 9, 2007).

³⁴ REAL ID Final Rule, *supra* note 16, at 5314 ("The use of RFID is essential to the WHTI program in order to ensure facilitation at crowded U.S. land and sea crossing points.").

³⁵ DHS IG Trusted Traveler Report, *supra* note 21, at 1, 7.

- **Program-specific Privacy Impact Assessments³⁶ have not been published for the passport card and EDL programs' use of vicinity RFID technology.** In January 2008, the DHS Privacy Office wrote a generic Privacy Impact Assessment on the use of vicinity RFID technology for land border crossings. While this PIA contains much valuable information and analysis, it noted that PIAs for the *specific* passport card and EDL programs, among others, "will be published prior to the programs' use of RFID technology to facilitate border crossing."³⁷ This has not happened. Washington State began issuing EDLs in January 2008 even though no EDL-specific PIA has been published by DHS. The State Department still has not issued a passport card-specific PIA³⁸ even though it has begun accepting applications and plans to begin issuing passport cards in June or July of this year.³⁹ CDT submitted a Freedom of Information Act request back in January 2007, and even wrote a letter to Secretary Rice in May 2007, requesting from the State Department a PIA for the passport card.⁴⁰ We never received a response.
- **Program-specific Systems of Record Notices (SORNs)⁴¹ have not been published for the passport card and EDL programs' use of vicinity RFID technology.** In the State Department's latest SORN for "passport records" (Jan. 9, 2008), while the passport card is mentioned by name, there is no mention of the use of vicinity RFID technology and the fact

³⁶ Section 208(b)(1)(A) of the **E-Government Act of 2002**, Public Law 107-347 (Dec. 17, 2002), requires that an agency conduct a Privacy Impact Assessment "before developing or procuring information technology that collects, maintains, or disseminates information that is in an identifiable form." Section 222 of the **Homeland Security Act of 2002**, Public Law 107-296, (Nov. 25, 2002), requires that DHS, specifically, conduct PIAs and that the Department use technologies that "sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information." In addition to these statutes, the DHS Privacy Office directs the Department to conduct a PIA when it is "**developing or procuring any new technologies or systems that handle or collect personal information,**" such as "**systems utilizing radio frequency identification devices (RFID).**" *Privacy Impact Assessments: Official Guidance*, at 11-12 (March 2006), http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_march_v5.pdf. Similarly, the Government Accountability Office stated, in relation to US-VISIT's inclusion of vicinity RFID chips in I-94 forms, that "**a privacy impact statement should be conducted before an agency develops or procures an information technology system, such as the proposed RFID system,** which collects, maintains, or disseminates information about an individual – in this case, numeric information that may be linked to biographic information contained within databases." *Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry*, GAO-07-248, at 81 (Dec. 2006) ("GAO US-VISIT Report"), <http://www.gao.gov/new.items/d07248.pdf>, citing Office of Management and Budget, *Memorandum for Heads of Executive Departments and Agencies: OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002*, OMB M-03-22 (Sept. 26, 2003), <http://www.whitehouse.gov/omb/memoranda/m03-22.html>.

³⁷ DHS RFID PIA, *supra* note 4, at 2.

³⁸ List of State Department PIAs: <http://www.state.gov/m/a/ips/c24223.htm>.

³⁹ "U.S. Passport Card Frequently Asked Questions," http://travel.state.gov/passport/ppt_card/ppt_card_3921.html.

⁴⁰ <http://www.cdt.org/security/identity/20070502rice.pdf>

⁴¹ Privacy Act of 1974, 5 U.S.C. §552a. The Privacy Act defines "system of records" as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual."

that a unique ID number will be associated with each RFID chip and thus each citizen.⁴² DHS apparently has not written a SORN for the EDL program even though CBP will be collecting the unique ID numbers of American travelers and directly accessing their associated personal information held in state databases.⁴³

III. VICINITY RFID TECHNOLOGY IS UNNECESSARY AND THE OPERATIONAL BENEFITS ARE QUESTIONABLE

The first question that should be asked about any proposed ID program and the technology it will use is: *Is it necessary?* If the answer is “no” then the program should be scrapped or the technology should be changed, and the issue of privacy need not be reached. **In the case of the passport card and EDL, the answer to the question “is the use of vicinity RFID technology necessary?” is a resounding “no.”**

It Does Not Appear That Vicinity RFID Will Be Any Faster Than Other Machine-Readable Technologies

DHS and the State Department defend the use of vicinity RFID technology in the passport card and EDL by claiming that it will enable faster processing of individuals at the border. Specifically, the Departments assert that the long read range (20-30 feet) of the vicinity RFID chip enables “pre-positioning” of a traveler’s record, such that his or her personal information can be pulled up on CBP computers and checked against terrorist watchlists and law enforcement databases before the traveler reaches the CBP officer at the inspection booth. Thus, the Departments argue, vicinity RFID technology is necessary to move travelers through primary inspection more quickly.⁴⁴ The truth of this assertion is not apparent.

DHS and the State Department fail to acknowledge that “pre-positioning” can be achieved with other machine-readable technologies. Rather than using vicinity RFID chips that can be read from 20 feet away, card readers can be placed 20 feet from the inspection booth and another more secure machine-readable technology can be used that will *minimize the risk of the citizen’s unique ID number being surreptitiously skimmed by a rogue reader from afar.* Such technologies include a barcode, magnetic stripe, or even “proximity” or short-range RFID that can be read from no more than a few millimeters away. **In fact, the EDLs are already being designed with two “machine-readable zones,” the vicinity RFID chip and a second MRZ, so “that the CBP officer can read [the card] electronically if [an] RFID [reader] isn’t available.”**⁴⁵ (However, as mentioned above, even with other MRZ technologies, there is still the question of whether the citizen’s unique ID number is encrypted or otherwise secured from unauthorized access.)

⁴² <http://www.state.gov/documents/organization/102790.pdf>

⁴³ List of DHS SORNS: http://www.dhs.gov/xinfoshare/publications/gc_1185458955781.shtm.

⁴⁴ DHS RFID PIA, *supra* note 4, at 3.

⁴⁵ Department of Homeland Security, “Enhanced Drivers Licenses: What Are They?”, http://www.dhs.gov/xtrvlsec/crossingborders/gc_1197575704846.shtm.

The Departments also claim that vicinity RFID technology is necessary to read multiple cards at one time, which they assert will also significantly decrease primary inspection times.⁴⁶ This claim seems very dubious. While vicinity RFID does have the capability to read multiple cards at the same time, it will be wasted in the border crossing context. The CBP officer must still compare the traveler, the picture on the card, and the database information *one person at a time*. **Any time gained in scanning a carload of passport cards or EDLs simultaneously will be lost due to the need to process each traveler individually, comparing each card with the holder and the stored record to make sure no one is using a stolen card.** Moreover, past evidence has suggested that read rates of vicinity RFID chips can be poor.⁴⁷

DHS Has Not Disclosed Any Studies Favorably Comparing Vicinity RFID With Other Technologies

DHS has consistently asserted that vicinity RFID is the best technology to enable both pre-positioning and faster processing of individuals at the border. On April 16, 2008, before the House Homeland Security Committee, Subcommittee on Border, Maritime and Global Counterterrorism, DHS representatives testified that “After extensive review of available and even possible technologies, DHS selected vicinity RFID as the best technology for our land border management system.”⁴⁸ However, what is curious about DHS’ April 16 testimony is that while the Department “reviewed” other possible machine-readable technologies, **DHS representatives did not testify that that the Department conducted timing or efficiency studies comparing vicinity RFID to other machine-readable technologies that also allow for pre-positioning of traveler information.** DHS simply testified, “Our research and testing indicates that RFID technology is *able* to accomplish” the Department’s goals, and that “the introduction of *RFID enabled* documents significantly reduced primary processing time.”⁴⁹

Even if vicinity RFID did outperform other technologies in terms of improving traveler processing time, DHS and the State Department should not have chosen vicinity RFID technology without also considering the risks to *privacy*: that is, comparing the risks posed by vicinity RFID against any privacy risks posed by other technologies. In CDT’s January 2007 comments to the State Department on the proposed technology choice for the passport card, we expressly called for in-field testing of machine-readable technologies that objectively weighed privacy and security risks against any identified benefits such as increased efficiency.⁵⁰

Our recommendation was consistent with the recommendation of DHS’s own Data Privacy & Integrity Advisory Committee:

⁴⁶ Passport Card Final Rule, *supra* note 32, at 74170.

⁴⁷ GAO US-VISIT Report, *supra* note 36, at 48, 54 (“the US-VISIT Program Office reported that the exit read rates that occurred during the test generally fell short of the expected target rates for both pedestrians and for travelers in vehicles”).

⁴⁸ <http://homeland.house.gov/SiteDocuments/20080416142622-93835.pdf> (p. 10).

⁴⁹ *Supra* note 48 (p. 11) (emphasis added).

⁵⁰ <http://www.cdt.org/security/20070108passcard.pdf> (p. 20).

Before deploying any technology, the Department should define the program *objective*, determine what technologies may apply, and understand the benefits and concerns related to each deployment. With that as background, there needs to be an analysis of what is the *least intrusive technology* that can be used to accomplish the objectives of the program and what technologies can be used to help address any privacy concerns that exist.⁵¹

DHS and the State Department have failed to conduct such a cost-benefit analysis.

The Compatibility Argument Has No Merit

Finally, DHS and the State Department defend the choice of vicinity RFID technology by arguing that it will “ensure compatibility and interoperability with the DHS border management system.”⁵² **Yet the Departments seem to have forgotten that CBP must be able to read the new electronic passport at the borders, which has a different technical architecture than the passport card and EDL.** Moreover, the Trusted Traveler programs that do use vicinity RFID technology have been using first generation (Gen 1) chips, which also require a different reader system.⁵³ Thus the Departments’ compatibility argument has no merit.

The Differences Between the Electronic Passport and the Passport Card/EDL Are Telling

All of the necessity, efficiency and compatibility arguments cited by the government in support of vicinity RFID are undercut by the fact that the electronic passport has many more privacy and security features than the passport card and EDL, even though all three documents are meant to serve the same function – prove U.S. citizenship so that an individual can re-enter the country. Key differences between the e-passport’s and the passport card/EDL’s security features include:

e-Passport Security Features	Passport Card/Enhanced Driver’s License Security Features
<ul style="list-style-type: none"> • Short-range (“proximity-read”) radio-frequency (RF) wireless chip (approx. 3 inches) • Holds same personal identification information as on main page of passport book, including digital photograph to be used with facial recognition technology at the border (currently visual inspection) 	<ul style="list-style-type: none"> • Long-range (“vicinity-read”) radio-frequency (RF) wireless chip (approx. 20 – 30 feet, and possibly much more) • Stores unique ID number that corresponds to computer file with personal identification information in government database; no personal identification information is on the chip

⁵¹ DHS Privacy Committee RFID Report, *supra* note 7, at 2 (emphasis added).

⁵² Passport Card Final Rule, *supra* note 32, at 74170.

⁵³ DHS IG Trusted Traveler Report, *supra* note 21, at 3 (“Generation 1 tags use proprietary technology, which means that if Company A puts an RFID tag on a product it cannot be read by Company B unless both use the same RFID system supplied from the same vendor.”).

<ul style="list-style-type: none"> only) • Digital signature to verify that personal identification information on chip is authentic • Basic Access Control (BAC) technology locks/unlocks chip; passport must be physically swiped (contact communication) and cryptographic keys stored on passport book are used to unlock the chip and enable it to communicate wirelessly (contact less communication) • Even if BAC cannot be bypassed, a rogue reader attempting to detect a signal will be presented with a different random number on each try, therefore providing no unique ID number to enable tracking • Personal identification information encrypted while stored on the chip (at rest) • Personal identification information encrypted during RF wireless (contactless) communication (during transmission) • RF shielding (metal) incorporated into passport book to block RF signals when book is closed 	<ul style="list-style-type: none"> • Protective sleeve to block RF signals offered to citizens (voluntary)
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**CONCLUSION: CONGRESSIONAL ACTION IS NEEDED TO PROTECT
PRIVACY AND SECURITY**

CDT takes no position on the value of the Western Hemisphere Travel Initiative, specifically, the requirement that American citizens present a passport or equivalent document when seeking to re-enter the United States at the land borders. Nor do we find unreasonable Congress' desire to minimize congestion at the land borders due to this new requirement, in part, by ensuring that frequent cross-border travelers can be processed relatively quickly so that CBP officers can focus the bulk of their efforts on inspecting the rest of the travelers.

However, these two policy objectives do *not* necessitate the use of insecure vicinity RFID technology in human identification documents. As discussed above, such an application of this technology:

- Poses clear and serious risks to personal privacy and security;
- Disregards concerns expressed by both Congress and the public; and
- Affords no clear operational benefits in the border crossing context.

CDT concludes that the use of vicinity RFID technology in human identification documents, such as the passport card and EDL, is inappropriate at this time due to the lack of meaningful security measures. CDT is also concerned with the potential uses of the REAL ID card, the passport card and the EDL to facilitate tracking of the movements and activities of Americans in contexts having nothing to do with highway safety, border control or airline passenger screening. The less secure the ID number and other information is on these documents, the more likely it is that the cards will be used by governmental and commercial entities to compile databases that can be used to track and profile citizens. **To address both the problem of unauthorized skimming or interception, and the risk that the cards will be used to facilitate creation of governmental or commercial databases, we urge Congress to direct DHS and the State Department to use machine-readable technologies in the passport card and EDL that provide privacy protections commensurate with those in the electronic passport.**

Thank you for the opportunity to testify before the Subcommittee. CDT is eager to work with the Subcommittee and the Administration to develop documents for use in border crossings that enhance national security and protect personal privacy and security.

APPENDIX

http://www.cdt.org/security/identity/20080201_REAL_ID_hillbrief.pdf

February 1, 2008

REAL ID: WHAT SHOULD CONGRESS DO NOW?
*CDT Analysis of the REAL ID Act and the
 Department of Homeland Security's Final Regulations*

I. SUMMARY ANALYSIS OF FINAL REAL ID REGULATIONS

The Department of Homeland Security's final regulations have rendered REAL ID virtually useless as a security measure, while still posing serious privacy problems. States balked at reforms that might have actually made driver's license issuance more secure and DHS capitulated. For example, DHS:

- Failed to create specific and detailed minimum security standards for the physical design of the REAL ID cards to thwart tampering and counterfeiting [Preamble pp. 29, 131];¹
- Failed to create specific and detailed minimum security standards for the protection of physical facilities where cards are made and supplies are stored [Preamble pp. 154-156]; and
- Failed to mandate central issuance of driver's licenses and ID cards at the state level, which would have helped combat insider fraud at local DMV offices [Preamble p. 156].

Under the final regulations, the REAL ID program will not do much beyond what states are already doing. DHS deferred to the status quo. For example, DHS:

- Expressed implied deference to AAMVA's² Driver Licensing/Identification Card Design Specification [Preamble p. 131];
- Approved use of AAMVA's training program on fraudulent document recognition, which the majority of states currently use [Preamble p. 169];
- Mandated use of the two-dimensional barcode, which is already being used by 45 jurisdictions [Preamble p. 141]; and
- Mandated that states electronically verify Social Security Numbers, which 47 states already do via AAMVA's network [Preamble p. 19].

¹ Preamble page numbers refer to the version of the REAL ID final regulations published on the Department of Homeland Security's website on January 11, 2008, http://www.dhs.gov/xlibrary/assets/real_id_final_rule_part1_2008-01-11.pdf; http://www.dhs.gov/xlibrary/assets/real_id_final_rule_part2_2008-01-11.pdf.

² American Association of Motor Vehicle Administrators, <http://www.aamva.org/>.

Perhaps the only meaningful REAL ID reform measure is the requirement that states electronically verify source documents presented by individuals to prove identity and lawful presence in the United States. However, while 47 states currently verify SSNs with the Social Security Administration, as DHS explains, “verification of birth certificates is limited to those States whose vital events records are available online.” Other systems to enable states to confirm an individual’s legal status have not been developed (such as the link to the State Department’s passport database) or are not fully operational (such as the database to verify legal immigrants). [Preamble p. 19]

Not only will REAL ID be ineffective at making driver’s license issuance more secure and the card a more reliable assertion of identity, REAL ID also creates new privacy and security risks while exacerbating existing ones. Several states have already indicated that they will not follow the program precisely because of the significant threats to civil liberties.³

CDT has five specific criticisms of the REAL ID program (as defined by the Act and the final regulations), focusing on risks to personal privacy and security:

1. **The REAL ID card will become a *de facto* national ID card.**
2. **REAL ID will likely result in the creation of a central ID database, which will threaten the privacy and security of 240 million Americans.**
3. **DHS is mandating a standardized and unencrypted Machine-Readable Zone (MRZ), which will facilitate intrusive tracking by both government and commercial entities.**
4. **DHS failed to adopt meaningful privacy and security standards for the protection of personal information in the REAL ID system.**
5. **In a related initiative, DHS is creating driver’s licenses with imbedded, insecure RFID chips (Enhanced Driver’s Licenses) that will threaten the personal privacy and security of American citizens, without Congressional oversight or an administrative rulemaking.**

³ See ACLU’s website on REAL ID: <http://www.realnighmare.org/news/105/>.

II. FIVE SIGNIFICANT PRIVACY AND SECURITY RISKS STILL LOOM

I. The REAL ID card will become a *de facto* national ID card.

"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." [REAL ID Act §201(3)]

- **DHS has retained unfettered discretion to expand the definition of "official purpose" and thus the contexts in which the card can be required.** While CDT is pleased that DHS has, for now, limited the definition of "official purpose" to those specifically enumerated in the statute [Final Rule §37.03], CDT is concerned that DHS can require a REAL ID for variety of other purposes, and will do so without prior Congressional approval or public input via an administrative notice and comment procedure.⁴
- While DHS asserts that it does not support the creation of a national ID card [Preamble pp. 80, 92], the Department at the same time states that it *"will continue to consider additional ways in which a REAL ID license can or should be used and will implement any changes to the definition of 'official purpose' or determinations regarding additional uses for REAL ID consistent with applicable laws and regulatory requirements. DHS does not agree that it must seek the approval of Congress . . . as §201(3) of the Act gives discretion to the Secretary of Homeland Security to determine other purposes."* [Preamble p. 69]
- Moreover, there is no limit on the permissible uses of the REAL ID card by governmental or commercial entities and DHS states that it has neither the power nor any interest in limiting such uses.⁵ Merchants and others are free to ask for the card and to collect data from it. There is a very real possibility that **individuals will not be able function in U.S. society without a REAL ID card.**
- **Using a single ID card for multiple purposes is bad for security.** It is ironic that REAL ID moves the nation closer toward a national ID card while Congress and the federal agencies have been striving to reduce the use of the Social Security Number, which has been the *de facto* national identifier and a key facilitator of ID theft.
- **There is a very high risk of "mission creep" with respect to REAL ID.** Just five days after the final regulations were published on the DHS website, a senior Department policy official publicly suggested that REAL ID could help fight the methamphetamine crisis.⁶ This follows Congressional proposals to require a REAL ID card for a myriad of different purposes including employment, federal housing benefits, and voting.

⁴ CDT commends DHS, however, for not mandating that REAL ID card numbers be unique across states. [Preamble p. 30]

⁵ DHS washes its hands of this issue: *"DHS does not intend that a REAL ID document become a de facto national ID based on the actions of others outside of DHS to limit their acceptance of an identity document to a REAL ID-compliant driver's license or identification card."* [Preamble p. 69]

⁶ Anne Broache, "DHS: Real ID could help shut down meth labs," *CNET news.com*, http://www.news.com/8301-10784_3-9851813-7.html?tag=bl.

2. REAL ID will likely result in the creation of a central ID database, which will threaten the privacy and security of 240 million Americans.

Each state shall:

“Provide electronic access to all other States to information contained in the motor vehicle database of the State.” [REAL ID Act §202(d)(12)]

“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.” [REAL ID Act §202(d)(6)]

- In direct contradiction of the claims of DHS Secretary Chertoff that *“We are not going to have a national database,”*⁷ the final regulations reject a decentralized approach and make it clear that **DHS expects that REAL ID implementation will require the creation of a central “hub” for information exchange among the states [Preamble pp. 18-20, 80-84, 90] and/or a central database of identifying information.** No comfort can be taken from the failure of DHS to clearly define the nature of the centralized features of REAL ID implementation; to the contrary, a key aspect of REAL ID implementation may be developed without public notice or input.
- For the central database, DHS prefers expanding the centralized Commercial Driver’s License Information System (CDLIS) to include all driver’s license and ID card holders.⁸ DHS fails to acknowledge **the serious privacy and security risks of creating a central ID database on 240 million Americans** [Preamble p. 15], which is a far cry from the 13 million commercial drivers whose identity information is currently stored in the CDLIS system.
- **There is no robust legal framework that would ensure the security and protect the privacy of the personal information stored in a central ID database.** DHS is planning to rely on a non-governmental organization, the American Association of Motor Vehicle Administrators,⁹ or some other non-governmental entity to create the information exchange hub and the centralized pointer system or other centralized database for REAL ID implementation. DHS admits that the security and privacy rules for the personal data held by AAMVA are solely the creation of that nonprofit organization: *“AAMVAnet is governed by the Board of AAMVA and it subject to the security and privacy requirements established by the association of DMVs.”* [Preamble p. 93]

⁷ Remarks by Homeland Security Secretary Michael Chertoff at a Press Conference on REAL ID (Jan. 11, 2008), http://www.dhs.gov/xnews/speeches/sp_1200320940276.shtm.

⁸ The CDLIS central ID database holds key identifying information on commercial drivers such as name, date of birth, and Social Security Number, and this record links or “points” to the individual’s commercial driving history that is housed in the motor vehicle database of the state that issued the commercial driver’s license. <http://www.aamva.org/TechServices/AppServ/CDLIS/>

⁹ These comments are in no way a criticism of AAMVA. Starting well before REAL ID, and without pressure or support from the federal government, AAMVA and its members have taken major steps to improve the security of the driver’s license issuance process. AAMVA has been one of the most credible voices of reason throughout the REAL ID process.

- Regarding security, **it would be a major error to store the personal information of millions of Americans in a central location.** Security experts agree that centrally storing (or even making centrally accessible via linked databases) highly valuable data would create a treasure trove for identity thieves, terrorists, and unscrupulous government employees.¹⁰ Data stored in the CDLIS central database, as well as data in transit, is not even currently encrypted.¹¹
- DHS asserts that there is a security benefit to AAMVA's network ("AAMVAnet") being a private network. [Preamble pp. 18, 82]. However, even **private networks are vulnerable to attack** by sophisticated hackers and identity thieves who are not daunted by a private network's lack of connection to the public Internet. This is especially true if the network carries information as valuable as the personal details on hundreds of millions of Americans. And the fact that the network may be private has no bearing on the risk for internal abuse, which is a leading source of driver's license fraud and identity theft.¹²
- The **Privacy Act** likely would not apply to a driver's license database managed by a private entity such as AAMVA, which currently runs the CDLIS database. Nor would the **Driver's Privacy Protection Act** provide adequate privacy protections for personal information in such a database.¹³
- The final regulations do not limit **government access** to information held in any kind of central ID system that might be created under REAL ID. To the contrary, DHS asserts that the database would be accessed not only by federal officials involved in highway and motor vehicle safety but also by federal officials involved in law enforcement and **"the verification of personal identity."** [Preamble pp. 83-84]
- To ensure "one driver, one license," CDT has recommended building a **true distributed system that stores ID information locally**, in state motor vehicle databases. Each state could check with other states for possible existing driver's licenses without having to ping a central database, while maintaining control over its residents' data. This is technologically possible, especially if states have adequate funding to scale up their systems to handle the incoming traffic.

¹⁰ Bruce Schneier, "REAL-ID: Costs and Benefits" (Jan. 30, 2007), http://www.schneier.com/blog/archives/2007/01/realid_costs_an.html.

¹¹ Personal data stored in the CDLIS central database is in unencrypted form, as is personal information transmitted via the CDLIS network. AAMVA has begun to encrypt both the static and dynamic CDLIS data. However, the Federal Register notice related to CDLIS modernization only refers to "provid[ing] encryption of the data traveling across the network as it is communicated from State to State in the normal operation of CDLIS," and not also the personal data stored in the central database. Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation, *Commercial Driver's License Information System (CDLIS) Modernization Plan*, 71 Fed. Reg. 25885 (May 2, 2006), <http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/notices/E6-6598-CDLIS-modernization-plan-5-2-06.htm?printer=true>.

¹² See Ari Schwartz, "Unlicensed Fraud: How Bribery and Lax Security at State Motor Vehicle Offices Nationwide Lead to Identity Theft and Illegal Driver's Licenses" (Feb. 2004), <http://www.cdt.org/privacy/20040200dmv.pdf>. See also Jon Stokes, "Analysis: Metcalfe's Law + Real ID = more crime, less safety," *Ars Technica* (Jan. 19, 2008), <http://arstechnica.com/news.ars/post/20080119-analysis-metcalfes-law-real-id-more-crime-less-safety.html>.

¹³ Driver's Privacy Protection Act of 1994 [H.R. 3355] Pub. L. 103-322, Title XXX, codified at 18 U.S.C. §2721 *et seq.*

- DHS claims that “*State systems would not be able to handle the volume of messages received if all jurisdictions were sending and receiving messages from all jurisdictions at the same time*” in a true distributed system. [Preamble p. 83] Yet DHS has not conducted a detailed analysis proving this point nor determining what would be involved if state systems were scaled up to handle the traffic generated by a true distributed system. DHS has failed to answer key questions:
 - How many **queries** (requests and responses) will each state have to handle? This presumably can be determined if we know how many new DL/ID applications each state receives on average each year.
 - What would be the **bandwidth load or amount of data** each state would have to handle? Presumably this would be the same for all states: the personal information fields needed to uniquely identify an individual.
 - What is the nature of existing state motor vehicle department infrastructures (i.e., baseline conditions)? Specifically, a) what is the **computing power** of their servers, and b) what is their **network capacity** (i.e., bandwidth)?
 - How much **upgrading** will be needed for each state motor vehicle department (based on their existing/baseline systems)? How much will this **cost**?
- **The final regulations do not limit what information will go into the centralized database and do not prohibit the collection and storage of additional information on individuals.** We must not create the technological architecture that will open the door wide open to future abuse, including the tracking of individuals and the creation of national dossiers American citizens.

3. DHS is mandating a standardized and unencrypted Machine-Readable Zone (MRZ), which will facilitate intrusive tracking by both government and commercial entities.

Each REAL ID driver's license or identification card shall include "A common machine-readable technology, with defined minimum data elements." [REAL ID Act §202(b)(9)]

- While DHS has chosen the relatively benign two-dimensional bar code as the standard for the MRZ, a fundamental problem is that the Act requires that the MRZ must be **standardized** across jurisdictions. This will increase the likelihood that the private sector will adopt “skimming” technologies that facilitate capture and storage of information from the card as it is used in ordinary commercial activities.
- The final regulations **do not require encryption or other security measures** to inhibit the scanning of the MRZ and the collection or “skimming” of personal information [Final Rule §37.19], even though three commenting states supported encryption [Preamble p. 142].
- DHS also implies that encryption is for the time being *prohibited*: “*If, in the future, the States collectively determine that it is feasible to introduce encryption, DHS may consider such an effort so long as the encryption program enables law enforcement easy access to the information in the MRZ.*” [Preamble p. 86, 144]
- **The final regulations do not prevent innumerable state and federal agencies, as well as businesses and non-governmental third parties, from scanning the MRZ, collecting personal information and recording individual's activities.** The final regulations do not limit those who may scan the MRZ to only *state motor vehicle officials for legitimate*

administrative purposes and law enforcement officials for legitimate law enforcement purposes.

- The REAL ID Act does not address security of the MRZ, but the Conference Report explicitly contemplates that personal data would be “stored securely and only able to be read by law enforcement officials.”¹⁴
- DHS punts to the states the issue of prohibiting others from using the MRZ: “DHS strongly encourages the States to address concerns about the ability of non-law enforcement third-parties to collect or skim personal information stored on the REAL ID driver’s licenses or identification cards.” [Preamble p. 86]
- DHS also sidesteps the issue of limiting federal use of the MRZ by stating that the Department is “not aware of any current plans by Federal agencies to collect and maintain any of the information stored in the MRZ,” but should they “want to use the MRZ to collect and maintain personally identifiable information in the future, any such information . . . would be subject to the protections of the Privacy Act . . .” [Preamble pp. 87, 138] The Privacy Act, however, gives federal agencies broad latitude to collect, store and exchange information.
- The final regulations **do not limit what personal information may be stored in the MRZ.** [Final Rule §37.19] DHS acknowledges that the final regulations set “the minimum elements to include [in the MRZ], but recognizes the authority of the individual States to add other elements such as biometrics, which some currently include in their cards.” [Preamble p. 140]
- Taken together, the MRZ mandate, the standardization of the MRZ technology, the lack of encryption or other security requirements, and the lack of use and collection limitations mean that the REAL ID card will **facilitate government and commercial surveillance of American citizens.**

4. DHS failed to adopt meaningful privacy and security standards for the protection of personal information in the REAL ID system.

Each state shall “Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.” [REAL ID Act §202(d)(1)]

Each state shall “Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.” [REAL ID Act §202(d)(2)]

Each driver’s license and identification card shall include “Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.” [REAL ID Act §202(b)(8)]

Each state shall “Ensure the physical security of locations where drivers’ [sic] licenses and identification cards are produced and the security of document materials and papers from which drivers’ licenses [sic] and identification cards are produced.” [REAL ID Act §202(d)(7)]

¹⁴ Conference Report on H.R. 1268, House Report 109-72, at 179.

- **The REAL ID Act itself does not require that personal information, including source documents, collected and stored pursuant to the Act be protected by privacy and security safeguards.** CDT is pleased that DHS has interpreted its authority to include the power to require states to develop a privacy policy as well as institute “Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of [] personally identifiable information.” [Final Rule §37.41, §37.43] CDT is also pleased that state privacy laws are not preempted [Preamble p. 51] and that DMVs can record birth certificate information in lieu of copying the document, which aims “to protect medical and other personal information not relevant to REAL ID” [Preamble p. 34].
- However, **the final regulations say nothing about what must be in state privacy policies and the required “Security Plan.” [Final Rule §37.41(b)(2)(ii)]** DHS claims that the **privacy policy** should follow the Fair Information Principles [FIPs], but fails to require this in the final regulations. [Preamble p. 85] **The final regulations fail to include specific privacy and security standards against which DHS will determine states’ “compliance” with the REAL ID Act.**
- DHS provided no meaningful response to comments that the Security Plans should be evaluated against specific minimum standards. In response to the comment that DHS should “create stronger protections for information to limit the danger of aggregating information on 240 million Americans,” DHS stated simply that at some point in the future it will work “to develop best practices for risk and vulnerability assessments as well as for security plans for DMV facilities.” [Preamble pp. 156-159] It is unclear why DHS did not do this in the REAL ID final rule that was just published.
- While the final regulations provide that “Any release or use of personal information collected and maintained by the DMV pursuant to the REAL ID Act must comply with the requirements of the Driver’s Privacy Protections Act” [Final Rule §37.41(b)(2)(iii)] [Preamble p. 35], it is clear that the DPPA would have applied *anyway* to personal information collected and stored by state motor vehicle departments pursuant to the REAL ID Act. So this provision in the final rule adds no privacy protection not already provided by law.
- Moreover, as discussed above, **the DPPA offers incomplete protection of personal privacy (it includes many exceptions that virtually swallow the main non-disclosure rule¹⁵).** DHS admits that “*Although the DPPA provides for a large number of permissible uses, it is the only Federal law that currently applies to State DMV records and will provide a floor that States can build upon to further limit the disclosure of DMV record information.*” [Preamble p. 85]
- As discussed above, the final regulations do not prohibit federal and state government agencies, businesses, and other third-parties from **accessing personal information** that might be stored in a central ID database or in the MRZ.

¹⁵ “DHS cannot rely on the [Driver’s Privacy Protection Act] to protect the privacy of the personal information required under the REAL ID Act.” The DPPA “serves only as a prohibition on the sale of the personal information found in motor vehicle records for marketing purposes,” since it permits disclosure of personal information “to any federal, state or local government agency to carry out that agency’s legitimate functions.” DHS Privacy Office, *Privacy Impact Assessment for the REAL ID Act*, at 12 (March 1, 2007), http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realid.pdf.

- The DHS Privacy Office wrote a helpful set of “**best practices**,” but these are voluntary, not mandatory.¹⁶

5. In a related initiative, DHS is creating driver’s licenses with imbedded, insecure RFID chips (Enhanced Driver’s Licenses) that will threaten the personal privacy and security of American citizens, without Congressional oversight and an administrative rulemaking.

- While not part of the final REAL ID regulations, DHS solicited comments on – and is moving ahead with – creating a REAL ID-compliant driver’s license that U.S. citizens can use for crossing the land borders. [Preamble pp. 22-23, 172-178] The so-called “Enhanced Driver’s License” (EDL) would have a **long-range (or “vicinity-read”) RFID chip, which is an insecure technology and inappropriate for human identification.**¹⁷
- **The RFID chip will threaten personal privacy and security by enabling tracking of individuals.**¹⁸ While no personal information will be stored on the RFID chip, a unique and static identification number will be stored without encryption on the chip, enabling anyone with a compatible and widely available reader to skim the number and use it as the basis for an identification system.
- **Personal privacy will also be at risk because the EDL program will enable the consolidation of personal information: the federal government will have direct access to state DMV records, and state DMVs may be able to record individuals’ travel histories.** Rather than having the unique identification number on the RFID chip correspond with a record in a State Department database that confirms the person’s U.S. citizenship, DHS is proposing that the ID number allow Customs & Border Protection (CBP) to connect directly to the state motor vehicle database.¹⁹
- U.S. citizenship will be denoted on the face of the license [Preamble p. 23], which could lead to **discrimination** against cardholders who do not have a U.S. citizenship mark. [Preamble p. 173]
- The Department of State is moving ahead with a similar “passport card” program despite having received thousands of comments, the **majority of which opposed the RFID technology choice.**²⁰

¹⁶ DHS Privacy Office, *Privacy Impact Assessment for the REAL ID Final Rule*, Attachment A (Jan. 11, 2008), http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf.

¹⁷ See DHS Data Privacy and Integrity Advisory Committee, *The Use of RFID for Human Identity Verification*, Report No. 2006-02 (December 6, 2006), http://www.dhs.gov/xlibrary/assets/privacy/privacy_advcom_12-2006_rpt_RFID.pdf.

¹⁸ Even the State Department recognizes there is a threat of surreptitious scanning of the card and tracking of American citizens. Passport Card FAQs, http://travel.state.gov/passport/ppt_card/ppt_card_3921.html.

¹⁹ See, e.g., Vermont EDL fact sheet, <http://www.dmv.state.vt.us/documents/MiscellaneousDocuments/EnhancedDriverLicenseAndIDCard.pdf>.

²⁰ Card Format Passport; Changes to Passport Fee Schedule, Final Rule, 72 Fed. Reg. 74170 (Jan. 31, 2007).

III. CDT SUPPORTS THREE LEGISLATIVE OPTIONS

In writing weak final regulations to implement REAL ID, DHS followed the lead of Congress, which failed to include privacy and security requirements in the REAL ID Act. The *current* Congress must revisit driver's license reform and pass legislation that will in fact make driver's licenses more reliable IDs without posing serious threats to individual rights.

OPTION 1: Repeal REAL ID & Replace With a Negotiated Rulemaking and Privacy/Security Mandates [S. 717]

CDT has consistently supported the Identification Security Enhancement Act of 2007 [S. 717], introduced by Senators Akaka, Sununu, Leahy and Tester in February of last year.

This bill would repeal Title II of the REAL ID Act and replace it with a **negotiated rulemaking committee** and language specifically addressing **privacy and civil liberties**. The goal is to go back to the process originally called for by §7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which REAL ID repealed in 2005.

A negotiated rulemaking committee could:

- Develop meaningful federal minimum standards that would actually make driver's license issuance more secure and the card a more reliable assertion of identity;
- Write regulations that would have the backing of all relevant stakeholders, including the various states (including, hopefully, the 17 states that have vowed *not* to implement REAL ID) and individual rights advocates;
- Still promote implementation of reforms on a schedule faster than what DHS proposes for REAL ID.

OPTION 2: Amend REAL ID to Address Specific Privacy and Security Risks

If "repeal" is not possible, Congress should, at a minimum, fill the huge privacy and security gaps created by REAL ID. Suggestions include:

- Amend the REAL ID Act to prohibit expanded required uses of the REAL ID card and to include statutory language that specifically prohibits card numbers from being unique across the nation.
- Delete the "electronic access" provision of the REAL ID Act, §202(d)(12), and prohibit the creation of a central ID database, either managed by the government or a private entity.
- Repeal the mandate for a standardized Machine Readable Zone.
- To the extent that states wish to include an MRZ on driver's licenses and ID cards, mandate encryption and/or other security features.
- To the extent that states wish to include an MRZ on driver's licenses and ID cards, mandate that states include no more than a specified maximum number of personal data elements.

- To the extent that states wish to include an MRZ on driver's licenses and ID cards, prohibit state and federal agencies, and businesses and other private organizations, from scanning the card to collect personal information or track individuals' activities.
- Mandate specific privacy and security standards for the protection of personal information stored in computer systems and on the card itself (including deleting the requirement that states retain copies of source documents). This should also include amending the **Driver's Privacy Protection Act (DPPA)**. **Among other things, the Act should be amended to clearly address the issue of personal ID information managed by a private entity such as AAMVA.**
- Prohibit the use of long-range RFID technology (or similarly insecure technology) in driver's licenses/ID cards, or at least create a structure that enables Congressional oversight of such a program.
- Reassess the Enhanced Driver's License program, including the proposed structure enabling CBP to connect to state databases and possibly enabling states to record residents' travel histories.
- Order an administrative rulemaking, with public notice and comment, to determine how state driver's licenses and ID cards can best be designed to enable land border crossings.

OPTION 3: Repeal REAL ID & Replace With a Simplified Law That Focuses on Source Document Verification

REAL ID's attempt at driver's license reform is an unfunded mandate that is a "stick" rather than a "carrot." In new legislation, Congress could:

- Change how it exercises authority over the states, from invoking the right to regulate IDs used for federal purposes to **conditioning federal monies on states taking certain driver's license reform actions**. This would create a financial incentive (a "carrot") for all states to follow the same minimum standards to make driver's license/ID card issuance more secure.
- Specify that **verification of source documents** is the primary minimum requirement to receive federal money. Arguably the most meaningful thing REAL ID does is to require states to verify identity and legal status against federal databases. Congress should provide federal money and a clear directive to the relevant federal agencies to expand source document electronic verification systems. **This singular focus would go a long way at making driver's licenses and ID cards more reliable identification credentials.**
- And, as suggested above, mandate specific privacy and security standards for the protection of personal information, which could be in the form of amendments to the **Driver's Privacy Protection Act (DPPA)**.

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Additional materials on REAL ID can be found at: <http://www.cdt.org/security/identity/>

Question#:	1
Topic:	airlines
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

**Post-Hearing Questions for the Record Submitted to
Stewart Baker, Assistant Secretary for Policy,
Department of Homeland Security**

Question: The REAL ID Act states that individuals who do not possess a REAL ID compliant driver's license or identification card cannot use it to fly or enter federal buildings. Given the number of states that have passed laws against REAL ID compliance, this could lead to major disruptions to the airline industry.

Is the Department of Homeland Security (DHS) working on plans to avoid airline disruptions after December 31, 2009, if states reject REAL ID? If so, what is the status of those plans and when can Members expect to be briefed on those plans?

Although DHS has stated that individuals who present non-REAL ID compliant driver's licenses could face secondary screening, it is unclear if the process differs from the secondary screening in place today. Are there plans to change the secondary screening process for individuals without REAL ID cards?

Please describe what training DHS will provide to airline and Transportation Security Administration employees on acceptable driver's licenses and any changes in secondary screening.

How is DHS working with the airline industry and airports to avoid travel disruptions if states reject REAL ID?

Response: The REAL ID Program Office is working with the States, the Transportation Security Administration (TSA), and other concerned agencies to design distinctive markings that will make it easy for TSA and other impacted agencies to distinguish compliant from non-compliant credentials. As part of this effort, the REAL ID Program Office will assist TSA in developing training materials for Transportation Security Officers. Additionally, the REAL ID Program Office will develop communications mechanisms to disseminate information about the compliance status of states and territories to agencies responsible for screening documents. The REAL ID Program Office will also develop communications mechanisms to inform the public about the compliance status of States and territories and the potential impacts of future changes in status.

The REAL ID Act of 2005 (Public Law 109-13) only affects the acceptance of state-issued driver's licenses and identification cards when presented as identification to board Federally-regulated commercial aircraft and other official purposes as defined in the

Question#:	1
Topic:	airlines
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

REAL ID regulations. The scope of the REAL ID Act and regulations does not extend additional access requirements or altering requirements already in place.

The Department of Homeland Security has granted initial extensions of time to meet the requirements of the REAL ID Act of 2005 to all fifty-six (56) jurisdictions. In addition, States that meet certain benchmarks for the security of their credentials and licensing and identification processes will be able to obtain a second extension until May 10, 2011.

The REAL ID Act does not govern what subsequent actions TSA or any other screening agency may take when it refuses to accept a credential from a non-compliant State. TSA and other screening agencies are solely responsible for developing and implementing procedures for handling such cases. However, if a State-issued credential from a non-compliant State is presented, then that document cannot be accepted for purposes of identification for access to Federal facilities, Federally-regulated commercial aircraft, or nuclear power plants.

Question#:	2
Topic:	federal buildings
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: The REAL ID Act also will affect how Americans are able to participate in their government or obtain benefits. For example, jurors could be denied entrance to federal courthouses; Americans trying to replace a Medicare card or apply in person for government benefits could face problems at Social Security offices that are inside federal buildings; and family members might not be allowed to visit patients in Veterans Affairs (VA) hospitals.

A. What steps is DHS taking to address the disruptions at federal buildings that could take place after December 31, 2009?

B. Does DHS have a list of buildings that will require REAL ID compliant cards for entry? If so, please provide that list to the Committee.

C. What documents or alternative identification will be needed by residents of non-complaint states to enter federal buildings? What procedures will be in place to allow an individual to enter a federal building if he or she does not have identification other than a valid driver's license from a non-complaint State?

D. Please describe what training DHS will provide to building managers and Federal Protective Service employees on acceptable driver's licenses for entry to federal buildings.

E. How is DHS working with military bases, VA hospitals, federal courts, the private sector, and other federal agencies to avoid disruptions and ensure that Americans can participate in their government and receive government benefits if states reject REAL ID?

Answer:

DHS is working closely with States to facilitate their compliance with the requirements of the REAL ID program. This includes monitoring State implementation progress through constant outreach and communication, assisting States in completing required security plans, working with States to incorporate technical requirements, and finalizing the grant roll-out process. Through these efforts, DHS is providing every opportunity for States to comply with REAL ID requirements.

Question#:	2
Topic:	federal buildings
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

A. Should a State choose not to comply, its State-issued driver licenses (DL) and identification documents (IDs) can not be accepted for official purposes. By statute, that means access to federal facilities, boarding federal-regulated commercial aircraft and entering nuclear facilities. However, it should be noted that REAL ID only affects the acceptance of State-issued driver's licenses and identification cards when such presentation of an identification document is required for entry into a federal facility. REAL ID does not require that federal facilities implement new identification requirements – for example, if a courthouse does not currently require presentation of identification prior to entry, then REAL ID will not require that such a policy be implemented.

B. DHS does not have a specific list of federal buildings that will require REAL IDs for entry. After May 11, 2011, Federal facilities that require identification for entry, and currently accept State-issued DL/IDs for such a purpose, may only accept such documents from REAL ID-compliant States. Individuals may present any other document that the facility accepts; the REAL ID Act does not stipulate what other documents may be accepted for identification for an official purpose.

C. As discussed above, the REAL ID Act does not stipulate what documents may be accepted for identification for an official purpose, such as entering federal buildings. The REAL ID Act only governs the acceptance of State-issued DL/IDs. It is important to note that federal buildings and agencies each have their own security and access control policies. Due to the varying security requirements, individual federal agencies make separate determinations as to what credentials are acceptable for entry, if any (many facilities do not require presentation of identification prior to entry). These facilities likely have secondary protocols for an individual seeking access who does not have the required identification.

D. In terms of training, DHS will be providing appropriate materials to TSA screeners and will make those materials available to the Federal Protective Service and other Federal agencies' security personnel as States move towards REAL ID compliance.

E. The Department's strategy for avoiding potential disruptions for accessing federal facilities is to ensure State compliance with the REAL ID Act, as discussed in the answer to question "A," and coordinated outreach to federal facilities, as discussed in the answers to question "C" and "D".

Question#:	3
Topic:	outreach
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: What kind of public outreach and education campaign are you planning for REAL ID if states choose not to comply?

Response: The Department of Homeland Security (DHS) has launched a comprehensive and aggressive communications strategy designed to clearly communicate to the public and relevant public and private industry groups requirements established by the REAL ID Final Rule, previous and future communication with stakeholders and states, and products that help more clearly define next steps for local Department of Motor Vehicle (DMV) offices and the American public according to their states' level of commitment to the program. To do so, DHS has initiated a number of public education and outreach efforts which will continue and be adjusted as the program evolves.

- Engage local radio and television media outlets to communicate the requirements of REAL ID and any key messages specifically relevant for that area or state.
- Send DHS representatives to local events/conferences to communicate to local citizens the status of the program and upcoming milestones for states.
- Post Leadership Journal entries from senior department leaders on the DHS Web site.
- Engage think tanks, opinion leaders and third party stakeholders to deliver messages about the importance of the REAL ID program, state compliance and the status of the program to broader audiences not normally touched by traditional outreach and education efforts. To date, efforts include distribution of electronic newsletters, posting online blogs, posting content on their general websites, hosting public forums, and publishing white papers and other similar reports regarding REAL ID. These efforts are expected to continue.
- Continue to develop targeted toolkits for state and DMV representatives containing factual information about REAL ID and the status of the program to use in their outreach and education efforts on the local level. The first installment of the toolkit included the following materials: fact sheet explaining the benefits and importance of the REAL ID program and major compliance milestones; *Debunking the Myths; What Others Are Saying*; and Frequently Asked Questions. These products will continue to be updated as new information becomes available and new products will be added to the toolkit as we enter new phases of the program. All of these materials have also been posted to the DHS Web site for public viewing.

Question#:	3
Topic:	outreach
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

- Continue to reach out to states, specifically governors, to provide program materials (PowerPoints, fact sheets, Q&A's, etc.) and offer additional meetings involving principal officials and subject matter experts on the REAL ID program.
- Assist state & local stakeholder groups in communicating with their constituencies. Groups that have already taken an active role in these efforts include, but are not limited to, the American Association of Motor Vehicle Administrators (AAMVA) and the Major County Sheriffs' Association. We will continue working with a variety of stakeholder groups to enhance outreach efforts as the program evolves.
- Continue engaging the business community on REAL ID, particularly at the state level. On a local level, the business community has the potential to be highly effective in serving as an information gateway between the federal government and individual businesses' stakeholders. DHS will continue to engage the travel and tourism industry, Chambers of Commerce, business and banking communities, and theft advocacy groups.
- Continue providing program information to Members and their staffs and offer REAL ID briefings on an individual or state-delegation basis.
- Continue providing counterpoint information to the erroneous claims of REAL ID detractors so Members and their staff may effectively debate the issue with a foundation of accurate and balanced information.

Question#:	4
Topic:	WHTI - 1
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: Public outreach and education is necessary for the successful implementation of the Western Hemisphere Travel Initiative (WHTI) and to ensure compliance for the traveling public.

How have your outreach and education efforts worked to date?

How are you working with stakeholders to develop your outreach and education efforts?

You testified that there is 95 percent compliance with WHTI. What was the compliance rate immediately after DHS stopped accepting oral declarations for entry?

Answer:

U.S. Customs and Border Protection (CBP) has demonstrated its ability to generate awareness and solicit compliance from the land border communities regarding new document requirements. By taking a concerted and proactive grassroots approach during a concentrated time period, CBP prepared the traveling public for the document changes of January 31, 2008. This approach enabled a high compliance rate among travelers and a smooth implementation process without notable increases in wait times as a result of the transition.

CBP has moved aggressively to ensure that key audiences are aware of the new policies, and the security-based rationale behind them, and to ensure that commerce is not unnecessarily impeded by these important changes. CBP published the land and sea rule more than a year in advance of its implementation to give the public ample notice and time to obtain the WHTI-compliant documents they will need to enter or re-enter the United States on or after June 1, 2009. CBP is executing an aggressive outreach and communications strategy to raise public awareness and build support among elected officials, key media markets, foreign officials, and industry stakeholders at the national and local level. The outreach educates domestic and international audiences on the new travel requirements, using easy to understand language. Early press releases and traveler "tear sheets" (simple fact sheets provided by officers to travelers during primary inspection) helped to increase the message scope and reach. As demonstrated with the WHTI air rollout in January 2007 as well as the new land and sea document requirements that went into effect January 31, 2008, the traveling public has shown a great willingness to obtain the proper documents.

Question#:	4
Topic:	WHTI - 1
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

To support the June 1, 2009, full WHTI implementation, CBP has hired a public relations firm to increase the scope of communications and outreach efforts. CBP plans to conduct further market research, explore consumer motivators and detractors, and analyze document types and application numbers to create more consumer-focused messaging. We will use a variety of tools in this sustained campaign, including paid advertising, public service announcements, press conferences, grassroots outreach, and consumer-friendly materials. We will also leverage existing stakeholder partnerships.

United States and Canadian traveler compliance rates increased in the first few weeks after January 31, 2008. During February 2008 (the initial monitoring period), U.S. citizen compliance increased from 91 percent to 95 percent. For the same period, Canadian citizen compliance increased from 95 percent to over 98 percent. The current seven day average compliance rates are approximately 93.5 percent for the United States citizens and 96.4 percent for Canadian citizens.

Although the current seven day average compliance rates have decreased to 93.5 percent for the United States citizens and 96.4 percent for Canadian citizens, CBP believes this decline is temporary and due to a seasonal increase in infrequent travelers that begins in early April. Infrequent travelers will not be as knowledgeable about new requirements.

Question#:	5
Topic:	databases
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: A major feature of REAL ID is access to federal systems for verification of source documents, such as the Social Security Administration database. For each of those systems, please list when they will be ready for states' access and whether states will have to pay fees to access those databases. If states have to pay fees to access those databases, approximately how much will these fees cost states?

Answer:

REAL ID requires the verification of source documents presented by individuals applying for REAL ID drivers' licenses or identification cards ("license"). The standards include verifying documentation of an applicant's identity, date of birth, social security number, address of principal residence and lawful status. In addition, States must confirm that an individual does not hold a valid REAL ID document in another State before issuing a REAL ID. However, in response to concerns that a number of the verification systems contained in the proposal would not be operational by the verification deadlines, the final rule gives states more flexibility in verifying documents and identity data. States may use an alternative method approved by the Department of Homeland Security (DHS). Thus, with the exception of the Systematic Alien Verification for Entitlements (SAVE) system to verify lawful status (use of which is required pursuant to section 202(c)(3)(C) of the REAL ID Act), the final rule does not mandate use of any specific data system for verification.

Currently, three systems are operational and available for State use to meet the requirements of REAL ID. The Social Security On Line Verification (SSOLV) system to verify social security numbers is being used by forty-eight states and the District of Columbia at a cost of less than four cents per query. The SAVE system, mentioned earlier, currently has thirty jurisdictions (States and territories) participating to verify lawful status. The cost for an initial transaction is \$0.50, with an additional \$0.50 for queries that must be handled by secondary or manual verification procedures. Note that States are only querying SAVE when presented with documents issued to non-U.S. citizens.

Owned and operated by the National Association of Public Health Statistics and Information Systems (NAPHSIS), the Electronic Verification of Vital Events (EVVE) system is currently used by eleven states to respond to queries seeking verification of birth certificates; three of these States are using it in conjunction with their Departments of Motor Vehicle (DMV). The State of Kentucky has been awarded a \$4 million grant by

Question#:	5
Topic:	databases
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

DHS to help remaining states connect with EVVE. Transaction fees for EVVE vary from \$0.08 to \$1.90 depending upon the monthly transaction volume and the result of the transaction. In addition, NAPHSIS is working with the Department of State to incorporate data to verify birth certificates of U.S. citizens born abroad.

DHS is currently working with the States and source document issuing agencies to deploy new or enhanced systems to support the full electronic verification requirements of the final rule. The verification hub concept is being developed with the States to provide DMVs with a central router to provide timely, accurate, and cost-effective verification to all sources through a single mechanism. The alternative – having each State connect directly to every other State and to Federal sources separately – is comparatively inefficient and cost-prohibitive. The verification hub will receive a single DMV applicant information query and route that query to the relevant databases to verify the information with the issuing agency or state. The verification hub will consolidate the responses and send a message back to the requesting DMV. The DMV employee then will review the consolidated response message to determine whether to issue a REAL ID. The verification of U.S. passports and visas is being built into the requirements as part of this effort. The development of a fee structure and identification of operations, and maintenance into the future are also part of this project.

Question#:	6
Topic:	EDLs
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: I am concerned about the lack of privacy protections for Enhanced Driver's Licenses (EDLs). Simply relying on individuals to use a protective sleeve does not go far enough. Like all other driver's licenses, EDLs will be used when purchasing alcohol, paying by check, entering buildings, obtaining medication, and in many other situations.

Has DHS or the State Department issued a specific Privacy Impact Assessment and a Systems of Record Notice for EDLs and the pass cards?

If citizens lose or fail to use the EDL protective sleeve, can they be tracked by the card identification number with a vicinity radio frequency identification (RFID) reader? If so, why isn't the unique ID number encrypted on the vicinity RFID chip?

Answer:

Privacy protections are included in the EDLs and their use, as outlined below. DHS published a Privacy Impact Assessment (PIA) that is available to the public on www.dhs.gov that covers the use of radio frequency identification (RFID) technology in EDLs and the passport card. A PIA for the passport card is currently under review within the State Department and will be issued shortly. DHS also published a privacy impact assessment for the Western Hemisphere Travel Initiative (WHTI) and is drafting a PIA and System of Records Notices (SORNs) that further address EDL information.

The PIA on RFID discusses in detail the privacy risks that were identified, such as cloning, secondary uses, tracking, and profiling, and how these risks were mitigated.

First, no personally identifiable information will be stored on the card's RFID tag or transmitted by the card. The card uses a unique identification number which will link to information contained in a secure database. This number will not contain or be derived from any personal information.

Second, protective sleeves that shield the card from being read (even by DHS) will be issued with the document. The marketplace is also responding by selling wallets with transparent shields that display the front of the card while supposedly blocking the card from being read without the bearer's authorization.

Third, DHS, DOS – who is issuing the passport card - and the States that issue EDLs are educating travelers about how to carry, store, and protect their RFID-enabled documents.

Question#:	6
Topic:	EDLs
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

This messaging will be aggressively pursued in our public relations campaign as well as directly provided to individuals during the enrollment process.

Fourth, the States are also subject to laws and privacy requirements that govern their issuance of identification documents.

Because the vicinity RFID tag includes only a series of zeros and ones that include no personally identifiable information, there is no benefit to encrypting the tags.

Obtaining a vicinity RFID-enabled travel document is voluntary. Individuals wishing to cross the border always have the option of obtaining a passport that cannot be read except by physically handing the document to an officer.

Question#:	7
Topic:	CDLIS
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS cites the Commercial Drivers License Information System (CDLIS) run by the American Association of Motor Vehicle Administrators (AAMVA) as a model for the REAL ID state network of networks. AAMVA claims that all of the information in CDLIS is owned by the states. The Department of Transportation (DOT) has told me that CDLIS complies with the Driver's Privacy Protection Act of 1994 and that AAMVA has also agreed to comply with the Federal Information Security Management Act of 2002 and DOT's Information Technology and Information Assurance Policy Number 2006-22 (revision 1): Implementation of DOT's Protection of Sensitive Personally Identifiable Information (SPII), dated October 11, 2006. Assuming that the laws governing CDLIS will also apply to the REAL ID state network, please answer the following:

It is my understanding that DOT has access to the information in CDLIS. Would DHS have access to the information in the REAL ID state network of networks, and if so, for what purposes?

According to DOT, all States have privacy laws that meet or exceed the requirements of the Driver's Privacy Protection Act of 1994. Is the data in CDLIS and the REAL ID state network governed by the privacy laws of each individual state, the privacy laws of the state with the highest level of privacy protection, or the state with the lowest level of privacy protection?

Are there any limits as to what information can be collected and stored in CDLIS and the REAL ID network of networks?

What are the limitations on the sharing or use of information stored in CDLIS and the REAL ID network of networks?

Answer:

REAL ID requires the verification of source documents presented by individuals applying for a REAL ID driver's license or identification card ("license"). The standards include verifying documentation of an applicant's identity, date of birth, social security number, address of principal residence and lawful status. In addition, States must confirm that an individual does not already hold a valid REAL ID identification document in another State before issuing a REAL ID. In order to do this, the Department of Homeland Security (DHS) and the States recognized the need for a central router to provide timely, accurate and cost-effective verification to all sources through a single

Question#:	7
Topic:	CDLIS
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Daniel K. Akaka
Committee:	HOMELAND SECURITY (SENATE)

mechanism, a concept we are calling the verification hub. The verification hub will receive a single DMV applicant information query and route that query to the relevant databases to verify the information with the issuing agency or state. The verification hub will consolidate the responses and send a message back to the requesting DMV. The DMV employee then will review the consolidated response message to determine whether to issue the REAL ID.

As part of this effort, DHS is working closely with the States, the American Association of Motor Vehicle Administrators (AAMVA) and the Department of Transportation (DOT) to design and implement a cost-effective State-to-State driver's license check that protects the privacy of Personally Identifiable Information (PII). The States will continue to store and control access to their own data in their own databases. States will continue to share information with other States, Federal agencies or other entities for limited purposes as they currently do. DHS will not have any greater access to DMV information through the creation of a verification hub.

The REAL ID final rule requires each State to develop a security plan and lists a number of privacy and security elements that must be included in the plan, including that any release or use of driver information be consistent, at a minimum, with the Driver's Privacy Protection Act (18 U.S.C. 2721 *et seq.*). The DHS Privacy Office also issued Best Practices for the Protection of Personally Identifiable Information Associated with State Implementation of the Real ID Act, to provide guidance to State DMVs on privacy and security protections consistent with DHS Privacy Office's Fair Information Practice Principles (FIPPs) standards and practices equivalent to those required under the Privacy Act of 1974 (5 U.S.C. § 552a), the Federal Information Security Management Act (FISMA) of 2002 (44 U.S.C. § 3542), and the information security standards issued by the National Institute of Standards and Technology (NIST).

As a project under the recently announced REAL ID grants, the States will begin developing formal business and technical requirements for the verification hub with DHS support. This effort will include ensuring the appropriate privacy and security requirements for the system. It will also consider the Commercial Drivers License Information System (CDLIS) and other existing systems as models for implementing the "one driver, one license" requirement of REAL ID. CDLIS provides a model for many of the capabilities and connections DHS would expect of the verification hub, albeit with a much smaller population. However, CDLIS operates in some ways differently than we would expect the verification hub to work; for example, it maintains a central index of CDL holders' data. The verification hub in concept would not retain any PII after a transaction has been completed.

Question#:	8
Topic:	DOS
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Norm Coleman
Committee:	HOMELAND SECURITY (SENATE)

Question: When the Western Hemisphere Travel Initiative (WHTI) was signed into law, one of the first concerns I heard from my northern border constituents was the burden caused by having to purchase and then carry passports for simple trips across the border. One of the recommendations that resulted from hearings I held on WHTI as Chairman of the Foreign Relations Western Hemisphere Subcommittee was the development of an alternative card mainly for border residents that would cost less. As a result, in January 2006, the State Department announced it would create a wallet-sized passport card that would be \$45. This passport card will now be one the accepted documents for the WHTI program's June 1, 2009 deadline and will only be valid at the land and sea border.

How much coordination is currently taking place between DHS and DOS concerning educating the public about the new deadlines and the documents that will be available?

Answer:

The Department of Homeland Security and the Department of State have moved aggressively to ensure that key audiences are aware of the new policies, and the security-based rationale behind them, and to ensure that commerce is not unnecessarily impeded by these important changes. Compliance rates with current document requirements are high at the U.S.'s northern and southern borders so the message is already being heard.

DHS, U.S. Customs and Border Protection (CBP), and the Department of State (DOS) will drive a proactive, unified communication strategy that encourages travelers to get required documents as soon as possible, and outline the different appropriate documents available for cross-border travel. The 14-month transition period between the publication of the Western Hemisphere Travel Initiative (WHTI) final rule for land and sea and its implementation on June 1, 2009, allows travelers to become acclimated to requirements and obtain necessary documents.

In February, CBP awarded a public relations contract to create a comprehensive plan to proactively communicate the new requirements and document options to the traveling public. DOS awarded its public relations contract earlier this year. DOS and CBP have convened a meeting between the two firms to discuss appropriate strategies to ensure that they are complementary, cover the target audiences, and provide consistent messaging. The teams are coordinating to reach the widest number of people in the most efficient way. DHS and DOS continually share data and lessons learned on the applications and

Question#:	8
Topic:	DOS
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Norm Coleman
Committee:	HOMELAND SECURITY (SENATE)

issuance of WHTI-compliant documents. DOS will focus on passports and passport cards while DHS and CBP will cover all other WHTI-compliant documents and related issues, such as border wait times, specific to our agencies. Communications materials, including talking points, public affairs guidance, and plans are shared between DOS and DHS to ensure better coordination.

We will utilize a variety of tools including advertising, public service announcements, and consumer-friendly materials as well as leverage existing stakeholder partnerships to educate travelers. The campaigns will raise traveler awareness across the Nation about secure and standard documents with facilitative technologies and will be designed to ultimately solicit compliance and ensure a smooth transition to WHTI implementation.

Additionally, DHS, CBP and DOS hold a communications working group that meets on a bi-monthly basis. This group includes field communications staff as well as staff from Enhanced Driver's License (EDL)-producing states. Finally, DHS, CBP and DOS meet regularly with communications staff from the Canadian government to coordinate messaging across the borders.

Even before launching a targeted campaign, DOS has already received more than 290,000 applications for its passport card. Washington State has received more than 27,500 applications for its EDL and has had to limit advertising because it proved so successful.

Question#:	9
Topic:	CBP outreach
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Norm Coleman
Committee:	HOMELAND SECURITY (SENATE)

Question: As of June 1, 2009, DHS will no longer accept the combination of a driver's license and birth certificate as proof of identity and citizenship at the border. Instead, U.S. citizens will have to present an approved document that accomplishes both of those purposes. According to Director Passenger Security and Facilitation, Bob Jacksta, "On February 4, 2008, DHS awarded a public relations contract to develop a proactive approach to the WHTI information campaign to the traveling public." CBP has also hosted over 100 meetings in border communities in order to educate the public about the coming deadlines.

Assistant Secretary Baker, can you detail what this public relations campaign is doing to get the word out about the deadlines and what documentation will be required? How long will the public relations campaign last? How will CBP measure if the campaign is having the desired effect?

Given the current staffing at the border, will CBP have enough officers deployed by June 1, 2009 to ensure that confusion concerning the deadline does not result in longer wait times at the border?

Answer:

To alert and educate the traveling public in both the United States and Canada, on February 4, 2008, CBP awarded a Public Relations Contract to Elevation, LTD., to create a comprehensive plan to communicate the new requirements and document options to the traveling public. We will use a variety of tools in this sustained campaign, including paid advertising, public service announcements, press conferences, grassroots outreach, and consumer-friendly materials. We will also leverage existing stakeholder partnerships. This campaign will raise traveler awareness across the Nation about secure and standard documents with facilitative technologies and will be designed to ultimately solicit compliance and ensure a smooth transition to full WHTI requirements.

The immediate goal of the communications plan will be to conduct border events during the summer of 2008. The "Improving to Keep You Moving" summer travel theme includes advertising WHTI-compliant documents as well as advising the affected border communities regarding planned RFID infrastructure deployment and construction efforts. Increased summer travel can generate longer lines and wait times at land border crossings. Our intent through this program (as we have done in past years) is to remind

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people of this and encourage them to take steps that help minimize their personal delays. Additionally, we are able to demonstrate that CBP is moving aggressively to make the process smoother and less time-consuming, while also greatly enhancing border security.

An advertising campaign will be launched later this year to reach the broader national audience that includes infrequent or would-be travelers. In addition, joint press conferences will also be conducted with various States as their enhanced driver's license become available, beginning with New York in August 2008. Communications activities will be planned in coordination with the Department of State, and will be shared with Canadian counterparts to ensure that messages are aligned.

Communication efforts in later stages leading up to June 1, 2009, will be informed and measured by document saturation and compliance at the land borders, and by continual stakeholder feedback as the new document options become available.

In preparation for the implementation of WHTI and to mitigate any potential surge activity surrounding the increase of trusted traveler enrollments, 205 additional CBP officers are being deployed across enrollment centers and in land border field locations. The deployment of CBP officers is focused on current and proposed enrollment centers and land border secondary locations, where increases in secondary referrals are expected once WHTI is fully implemented. As of June 2, 2008, 145 of the 205 CBP officers had been hired for designated pre-clearance enrollment centers and land border locations.

Question#:	10
Topic:	final rule
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Norm Coleman
Committee:	HOMELAND SECURITY (SENATE)

Question: Under U.S. law, a U.S. citizen may not be denied entry into the United States. The WHTI Final Rule, issued on March 27th, states, "Travelers without WHTI-compliant documents who claim U.S. citizenship will undergo additional inspection and processing until the inspecting officer is satisfied that the traveler is a U.S. citizen, which could lead to lengthy delays."

Can you describe what will take place during the secondary screening process? How long will this process take?

Do you anticipate cases in which secondary screening will not provide the information required to gain entry into the United States? What will happen in those situations?

DHS has testified that their compliance rate for the new documentary requirements is over 90%. How is that determination being made? Do CBP officers record each instance in which a U.S. citizen has forgotten a birth certificate, or are only those individuals who are referred to secondary inspection counted as non-compliant?

Answer:

CBP officers record statistics for travelers not in compliance with the January 31, 2008, documentary requirements in electronic law enforcement systems at vehicle primary inspection. These records also include the data of those travelers not referred for secondary inspection. Compliance rates are drawn from these electronic systems.

Upon full implementation on June 1, 2009, travelers lacking WHTI-compliant documents will be referred for secondary inspection so that the officer can determine identity and citizenship. When a CBP officer determines that a traveler is a United States citizen, that traveler cannot be refused admission.

Citizenship can be established in a variety of ways, including questioning and electronic system queries. While oral declarations are no longer accepted as the sole means of establishing citizenship for WHTI purposes, oral questioning remains a valuable tool for CBP officers to establish the admissibility and citizenship of a traveler. Since every inspection is unique, it is impossible to quantify the length of a given secondary inspection, although most are completed expeditiously. If an applicant for admission fails to satisfy the examining officer that he or she is a United States citizen, he or she

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shall thereafter be inspected as an alien, consistent with existing provisions of the Immigration and Nationality Act (INA) and its implementing regulations. U.S. citizens, whether in possession of proper documentation or not, cannot be refused entry to the United States. Prior to January 31, 2008, documentation was not required for U.S. citizens to enter the United States, as long as U.S. citizenship was established to a CBP officer. CBP officers are well trained in determining admissibility, and significant delays are not anticipated upon full WHTI implementation on June 1, 2009.

Question#:	11
Topic:	wait times
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: In your written testimony, you state that DHS expects WHTI to have a “minimal negative impact on current wait times,” but other WHTI implementation challenges, such as port of entry infrastructure, will not be resolved before the implementation date of June 2009. For example, in my home state of Maine, a new, larger, and more efficient port of entry station in Calais – the fifth busiest port on the northern border – will not be completed until December 2009, which is well after the WHTI implementation date. Since not all port infrastructure will be upgraded by June 2009, will DHS consider a phase-in of WHTI at various ports of entry to take into account local circumstances?

Answer:

CBP plans to deploy vicinity RFID facilitative technology and infrastructure to the higher volume land ports in Maine according to the following schedule. This deployment will be completed by April 30, 2009, and in advance of the June 1, 2009, full WHTI implementation.

Houlton, ME	2-Apr-09	18-Apr-09
Calais, ME	15-Apr-09	21-Apr-09
Madawaska, ME	27-Apr-09	29-Apr-09

With respect to the new port of entry for Calais, this is a General Services Administration (GSA) owned facility and the construction is managed by GSA. CBP works in close partnership with GSA to ensure that new port designs and prospectus projects include the WHTI technology and infrastructure systems. The WHTI technical infrastructure footprint is included for the new Calais port of entry as well as future port prospectus projects across the Nation.

At this time, CBP will begin the transition to the WHTI secure document requirement over the next year, with implementation across the nation on June 1, 2009. CBP published the land and sea rule more than one year in advance of the implementation date to give the traveling public ample notice and time to obtain WHTI-compliant documents. CBP is not considering a phased-in implementation for June 1, 2009.

Question#:	12
Topic:	privacy
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: REAL ID requires the electronic exchange of extensive amounts of personally identifiable information between the states and between states and the federal government. DHS has repeatedly said that these systems will be controlled by the states themselves but given the interstate nature of these information exchanges, the Department would appear to be in the best position to either establish or at least facilitate the development of some minimum standards for the protection of this information. What is the Department doing to ensure that there are at least some basic privacy protections governing the exchange of information among these systems?

Answer:

Both the Federal and State governments have a strong interest in maintaining and preserving the security and privacy of personally identifiable information (PII), including in the implementation of REAL ID.

The REAL ID final rule requires each State to develop a security plan and lists a number of privacy and security elements that must be included in the plan, including that any release or use of driver information be consistent, at a minimum, with the Driver's Privacy Protection Act. The DHS Privacy Office also issued Best Practices for the Protection of Personally Identifiable Information Associated with State Implementation of the Real ID Act, to provide guidance to State DMVs on privacy and security protections consistent with DHS Privacy Office's Fair Information Practice Principles (FIPPs) standards and practices equivalent to those required under the Privacy Act of 1974 (5 U.S.C. § 552a), the Federal Information Security Management Act (FISMA) of 2002 (44 U.S.C. § 3542), and the information security standards issued by the National Institute of Standards and Technology (NIST). Additionally, certain Department of Motor Vehicle (DMV) employees involved in the license issuance process will be subject to background checks, a necessary step to protect against insider fraud and one of the many vulnerabilities to a secure licensing system. Taken together, these steps raise the bar for State DMVs beyond what was required by Federal or most State laws prior to the final rule. Specific to the development of the verification hub and its use, DHS will be supporting the States and working with them to ensure privacy protection is included.

Question#:	13
Topic:	RFID
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Susan M. Collins
Committee:	HOMELAND SECURITY (SENATE)

Question: The use of radio-frequency identification (RFID) chips in WHTI-compliant documents has raised concern that the information contained on these chips is vulnerable to interception and theft. Although these chips only contain an identification number, this number could be intercepted without the knowledge or consent of the card-holder using unauthorized readers. One method to protect information on an RFID chip from unauthorized access is through encryption. Mr. Baker, you suggested that encryption of information on RFID chips, however, would make it difficult for local law enforcement to obtain that information. If the purpose of incorporating RFID chips into WHTI-complaint documents is to enable CBP officers at the ports of entry to retrieve information on travelers using the unique identification numbers, why is it necessary for individuals other than CBP officers to have access to this number in an unencrypted format?

Answer:

During the hearing, Assistant Secretary Baker's statements about encryption of data making it difficult for local law enforcement to obtain information pertained to encryption of the information in a machine readable zone on a REAL ID driver's license, rather than radio frequency identification technology chip in WHTI compliant documents.

The machine readable zone on a driver's license, the 2D PDF 417 barcode, contains information already available on the front of the card, such as name, address, and date of birth. That barcode is on the licenses in 47 States today, unencrypted, so that a local law enforcement officer who stops a driver on the highway in any State is able to check a driver's record from any State for public safety. Encrypting the bar code would introduce a complicated system of managing encryption codes for each State such that all law enforcement would still be able to read driver's licenses to access driving records. Recognizing that the barcode is read by swiping the card and the data in the barcode is displayed on the card itself for anyone holding the card to read, any benefit to encrypting the information is certainly outweighed by the need for law enforcement to easily use the barcode.

Radio frequency identification numbers on WHTI-compliant travel documents will not be read by local law enforcement officers.

Question#:	14
Topic:	Michigan
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: Michigan is home to the busiest border crossing in North America, based on the value of freight. Over \$150 Billion annually crosses to and from Michigan, and most of that at the Ambassador Bridge in Detroit. In the passenger lanes, over 15 million cars crossed through Michigan's ports of entry in 2007. In Detroit alone, approximately 4000 Canadian nurses cross the border and come to work every day.

We have suffered from chronic understaffing, delays, and slow implementation of technology at Michigan's border crossings. Each time a new regulation is implemented without corresponding time saving technology and trained staff it costs Michigan residents and businesses money. Our relationship with Canada and the full integration of our manufacturing supply chain mean that blockages at our border make Michigan uncompetitive.

Further, it is imperative that all agents are trained properly and that the technology is installed at all lanes at all of our border crossings and before June 2009, which I expect will take some serious planning in order to allow for testing and contingencies.

Can you tell me the timeline of exactly when the new readers will be installed at ALL of Michigan's crossings?

Can you describe the nature and depth of the agent training you plan to implement?

Answer:

In preparation for full implementation, CBP awarded a contract on January 10, 2008, to begin the process of deploying vicinity RFID facilitative technology and infrastructure to 354 vehicle primary lanes at 39 high-volume ports, which process 95 percent of land border traveler crossings. Site surveys are complete. This summer, we will begin construction at land border locations with the installation of the integrated solution commencing shortly thereafter. Deployment will continue with completion scheduled for spring 2009.

Currently, CBP has optical reader technology in place at air, land, and sea ports. This technology will read any travel document with a machine-readable zone, including passports, border crossings cards, trusted traveler cards, and the new passport card. All CBP officers are currently trained in the use of this technology.

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Detroit, MI			
Ambassador Bridge	20-Oct-08	22-Nov-08	19
Windsor Tunnel	20-Oct-08	13-Nov-08	9
Port Huron, MI	23-Mar-09	10-Apr-09	7
Sault Sainte Marie, MI	6-Apr-09	14-Apr-09	3

On February 12, 2008, CBP deployed the new vehicle primary client software application to the ports of Blaine, Washington, and Nogales, Arizona, in anticipation of implementing the vicinity RFID primary lane solution. This critical software deployment quickly and effectively provides officers with vital information on border crossers. The training and tools necessary for the successful transition from the current antiquated, text-based system, to a modern, graphical user interface was successfully delivered to 254 CBP officers ahead of the critical deployment. On June 2, 2008, CBP deployed the new vehicle primary client software application to the Port of Buffalo and successfully delivered training to 447 CBP officers. We will be deploying this new twenty-first century tool to the ports of Detroit, Michigan and El Paso, Texas, by the end of June 2008. Deployment will continue to most land border locations, with completion scheduled for fall 2008.

WHTI is a significant operational change in a series of changes that are aimed at transforming the land border management system. Committed to supporting this mission, CBP required an organizational training plan that could readily evolve and adapt to change. Training end users on the new tasks, tools, policies, and procedures is critical to the success of WHTI. The CBP training plan addressed the training delivery method and the material to be created. It also defines the requirements for training logistics, such as the technology required, locations and computers. Training has a technical and business process focus. It identifies how processes such as the presentation of an RFID-enabled document and the associated tools, policies and procedures are applied. It addresses the technology changes such as the new vehicle primary screen. To augment training, site and field support is provided before, during and after activation to facilitate transition to the WHTI integrated solution.

Question#:	15
Topic:	reconciled
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: The Michigan State Legislature recently passed legislation to enable the Michigan Secretary of State authority to increase some security provisions on the basic driver's license and asked her to come back to the legislature for further approvals. Further, on March 13, the Michigan Governor signed legislation that authorizes the Secretary of State to develop an enhanced driver's license that once approved by DHS and the State Department will give Michigan residents an alternate document to use for land border crossing.

The requirement for REAL IDs and Enhanced Driver's Licenses (EDL) under WHTI are related, yet very different.

How are they to be reconciled if at all?

Is there any thought to merging the two sets of requirements?

How does DHS ensure that all EDLs will be REAL ID compliant?

Answer:

The Department of Homeland Security (DHS) has coordinated its efforts to ensure that Enhanced Driver's Licenses (EDL), developed to meet the requirements of the Western Hemisphere Travel Initiative (WHTI), are also consistent with REAL ID standards. The EDL business plans developed by EDL States and approved by DHS include such common requirements as: (1) information and security features that must be incorporated into each card; (2) specific application information to establish the identity and U.S. citizenship of an applicant before a card can be issued; (3) ability to verify source documents provided by an applicant with document issuing agencies; (4) physical security standards for locations where licenses and applicable identification cards are issued; and (5) background checks to be conducted on certain individuals involved in the issuance process.

Full implementation of REAL ID will bring capabilities that were not available when EDLs were first introduced. For example, as part of REAL ID, DHS is supporting development of the Electronic Verification of Vital Events (EVVE) system. The EVVE system will enable Departments of Motor Vehicles (DMV) and other government entities to verify birth certificates with issuing agencies around the Nation. Meanwhile, without EVVE and certain other requirements in place, DHS and the EDL States proceeded with

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the EDL to improve border security, recognizing that enhancements such as EVVE verification would come over time. EDLs issued pursuant to their respective State's business plan, which includes requirements that are evolving as capabilities become available, will be REAL ID compliant. As such, they will be accepted for official purposes under the REAL ID Act.

Although the goal of enhancing identification security is shared by both the REAL ID and EDL programs, there are some distinctions. While REAL ID requires proof of lawful status in the United States, the State issued EDL can only be issued to a U.S. citizen. The EDL will also serve as a limited-use international travel document; as such we have two technology requirements – (1) vicinity RFID and (2) an International Civil Aviation Organization compliant Machine Readable Zone that will facilitate border crossing and verification – that are not required on REAL ID documents.

Question#:	16
Topic:	10 + 2
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: New regulations have been proposed for the land and sea environments that could have an impact on Michigan. Specifically, proposed regulations commonly known as “10 + 2” would require notification of Customs and Border Protection of the contents of freight containers 24 hours before it crosses the border. Given the just-in-time supply chain in Michigan, we know that many items are ordered, manufactured and shipped within 24 hours, making this requirement impossible to meet.

In addition, the Administration just announced a new rule that would require fingerprinting of international travelers in the air and sea environments. Again, if this rule is applied to passengers at land ports of entry, the impact on Michigan’s economy could be severe.

What is your plan regarding extending these requirements to the land environment?

Question: Given the just-in-time supply chain in Michigan, we know that many items are ordered, manufactured and shipped within 24 hours, making this requirement impossible to meet.

Answer:

Section 203 of the Security and Accountability for Every Port Act (SAFE Port Act) of 2006 mandates the development of a regulation to require additional data elements for improved high-risk targeting, including appropriate security elements of entry data to be provided as advanced information prior to vessel lading.

This new requirement, known as the “Importer Security Filing and Additional Carrier Requirements,” or simply “10+2,” will significantly increase the scope and accuracy of information gathered on the goods, conveyances, and entities involved in the shipment of cargo to the United States. This requirement applies only to maritime cargo imported into the United States, and the Department of Homeland Security (DHS) is not actively exploring the expansion of this requirement to other modes of transportation (i.e., land or rail).

When fully implemented, the importer will be responsible for supplying DHS Customs and Border Protection (CBP) with 10 trade data elements 24 hours before lading, while the ocean carrier will be required to provide two data sets: vessel stow plans and container status messages.

Question#:	16
Topic:	10 + 2
Hearing:	Oversight of REAL ID and WHTI
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Once the final rule goes into effect, CBP will implement a one-year informed compliance program so that the filing community can have an adequate amount of time to adjust its operating systems and processes. DHS is committed to working closely with the trade industry to ensure that the right data is being provided at the right time.

Question: In addition, the Administration just announced a new rule that would require fingerprinting of international travelers in the air and sea environments. Again, if this rule is applied to passengers at land ports of entry, the impact on Michigan's economy could be severe.

What is your plan regarding extending these requirements to the land environment?

Answer:

The Department of Homeland Security (DHS), Congress, and the 9/11 Commission have all identified biometric exit control as a priority for fully securing our Nation's borders. Several laws have been enacted that focus on, and require, the collection of alien biometric entry and exit data at air, sea, and land ports. These provisions include, among others, Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001; Section 7207 of the Intelligence Reform and Terrorist Prevention Act of 2004; and Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (sec. 711).

Your question references the Notice of Proposed Rulemaking on the collection of biometrics from covered alien travelers departing the United States through air and sea ports, which was published on April 24, 2008. As you note, the proposed rule does not address biometric collection upon exit through land ports. This is because of the unique challenges of deploying effective biometric exit procedures in the land border environment. Land border biometric exit is being addressed separately from airports and seaports. A significant consideration in selecting a land biometric exit solution is its impact on legitimate trade and travel, including impact on travel time and processing, cost, traffic, surrounding environment, communities, and traveler expense.

US-VISIT has conducted significant planning and testing on possible solutions for integrating biometric exit requirements into the international departure process to date and continues to pursue new options and solutions. In May 2008, US-VISIT issued a Request for Information soliciting recommendations from the private sector on possible

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technology and processes to record the departure of international travelers at land borders biometrically.

DHS expects that a multi-phased deployment strategy spanning several years will be required prior to implementing biometric land exit requirements. DHS will conduct outreach to affected communities and industries. DHS will also solicit public comment through the formal rulemaking process as part of its future efforts to implement biometric exit requirements at land ports.

Question#:	17
Topic:	cost benefit
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: I was the author of language in the “Implementing Recommendations of the 9/11 Commission Act of 2007” that required the Secretary of Homeland Security to complete a cost-benefit analysis of the Western Hemisphere Travel Initiative before publishing a final rule.

Can you tell me if the following factors were considered in that analysis?

Cost of dwell time due to increased backups / waits at border crossings. We have seen estimates that represent that 1 minute of dwell time equals \$1 million of lost productivity. If the delay results in a line shut down in an auto plant due to lack of parts, the number could be significantly higher.

Cost of compliance. Staff time to procure proper documentation.

Direct cost of new documents.

Environmental cost of increased pollution from increased dwell time.

Cost of increased staffing and training to comply with new regulations including secondary staff.

Cost of new equipment at border crossings -- RFID readers, computer system upgrades, etc.

Cost of business lost due to confusion over which documentation is needed, lack of proper documentation, and the estimated loss of revenue and estimated loss of jobs in retail and tourism sectors because some Canadians will refuse to get the new documents, cannot afford them, will find the process to get them too time consuming or cumbersome, etc.

Answer:

Potential wait time impacts at land border ports-of-entry were explored in the *WHTI PEA* and the *WHTI CBA*. Based on these analyses, DHS and CBP determined that wait times would not increase upon implementation of WHTI in the land environment and could, in fact, improve based on the level of saturation of RFID-enabled documents, such as

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passport cards, CBP trusted traveler cards, and Enhanced Drivers' Licenses. The benefits to both land-border crossers and CBP officers at the ports-of-entry were quantified and documented in the *WHTI CBA* (see pages ES-3 of the Executive Summary and Chapter 8).

We are unclear as to the meaning of "staff time" in this question.

In the *Regulatory Assessment*, the costs for U.S. citizens to comply with the new requirements, including the costs of obtaining a document (passport book or passport card fee), and the value of an individual's time to procure the document was calculated for the period of analysis considered (2005–2018).

In the *Regulatory Assessment*, we considered the direct costs of obtaining acceptable documentation, which include the Department of State's fee for the passport book or passport card, the cost of passport photos, the cost for postage, the cost for expedited processing, and the value of an individual's time to collect the proper information and complete the application form. These costs are discussed in detail in Chapter 5 of the *Regulatory Assessment*.

The environmental impacts attributable to WHTI implemented in the land environment were considered in the *WHTI PEA*. Based on this environmental assessment, DHS and CBP issued a Finding of No Significant Impact (FONSI) on September 26, 2007.

CBP staffing and training costs attributable to WHTI as it will be implemented in the land environment were quantified and documented in the *Regulatory Assessment* and the *WHTI CBA*. CBP personnel costs associated with WHTI are expected to be \$12 million in the first year of implementation with recurring costs totaling \$32 million over the next 10 years following initial implementation (these costs are both undiscounted).

CBP capital investment costs attributable to WHTI implemented in the land environment were quantified and documented in the *Regulatory Assessment* and the *WHTI CBA*. These costs include RFID/License Plate Reader construction and support, CBP's new Vehicle Primary Client, data center upgrades, equipment to support Enhanced Drivers' Licenses, and secondary processing upgrades. CBP capital equipment costs associated with WHTI are expected to total \$248 million during initial implementation with recurring costs totaling \$679 million over the next 10 years following initial implementation (these costs are both undiscounted).

These "distributional impacts" were explored in the *Regulatory Assessment*. Using various studies on average spending per trip in the United States, Canada, and Mexico,

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CBP estimated the net results of changes in expenditure flows in 2009 (the first year the requirements will be implemented) and subsequent years. Because Mexican crossers already possess acceptable documentation to enter the United States (passport or Border Crossing Card), we do not estimate that Mexican travelers will forgo travel to the United States. The impacts are summarized below.

Net Expenditure Flows in North America, 2009, 2010, and Subsequent Years (in \$millions)

2009	
Spending by U.S. travelers who forgo travel to Mexico	+\$160
Spending by Mexican travelers who forgo travel to the U.S.	0
Spending by U.S. travelers who forgo travel to Canada	+60
Spending by Canadian travelers who forgo travel to the U.S.	-400
Net change	-\$180
2010	
Spending by U.S. travelers who forgo travel to Mexico	+280
Spending by Mexican travelers who forgo travel to the U.S.	0
Spending by U.S. travelers who forgo travel to Canada	+110
Spending by Canadian travelers who forgo travel to the U.S.	-440
Net change	-50
Subsequent years (annual)	
Spending by U.S. travelers who forgo travel to Mexico	+280
Spending by Mexican travelers who forgo travel to the U.S.	0
Spending by U.S. travelers who forgo travel to Canada	+110
Spending by Canadian travelers who forgo travel to the U.S.	-330
Net change	+60

To examine these impacts more locally, CBP conducted eight case studies using a commonly applied input-output model, which examines regional changes in economic activity given an external stimulus affecting those activities. These impacts were included in the *Regulatory Assessment*. CBP estimated the share of the expenditure changes described above attributable to travelers coming from and going to each of the study areas. CBP then added in potential lost local spending due to the need for U.S. travelers to purchase WHTI-compliant documentation. In all but two of our case studies, forgone border crossings attributable to WHTI have a less-than-1-percent impact on the

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regional economy, both in terms of output and employment. The results of CBP's eight case studies are presented below.

Study Area (counties)	State	Change as percent of total...	
		Output	Employment
San Diego	California	+0.02	+0.03
Pima, Santa Cruz	Arizona	+0.02	+0.02
Hidalgo, Cameron	Texas	+0.1	+0.1
Presidio	Texas	+0.4	+0.4
Niagara, Erie	New York	-0.2	-0.3
Washington	Maine	-1.4	-3.2
Macomb, Wayne, Oakland	Michigan	-0.02	-0.04
Whatcom	Washington	-0.5	-1.3

As shown, CBP anticipated very small net-positive changes in the Southern Border case studies because Mexican travelers to the United States use existing documentation, and their travel is not affected. The net change in regional output and employment is negative in the Northern Border case studies because Canadian travelers forgoing trips outnumber U.S. travelers staying in the United States and because Canadian travelers to the United States generally spend more per trip than U.S. travelers to Canada. On both borders, those U.S. travelers that forgo travel do not necessarily spend the money they would have spent outside the United States in the case-study region; they may spend it outside the region, and thus outside the model.

Question#:	18
Topic:	funding
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: The Office of Management and Budget estimates that state compliance with REAL ID regulations will cost states nearly \$4 billion over the next ten years. Much of this cost will come in the first year as states are forced to develop these new systems to comply with the law. To date, Congress has appropriated only \$90 million for REAL ID, and the President's fiscal year 2009 budget provides that states use other scarce homeland security grant funding for implementation.

Does DHS intend to provide dedicated funding to REAL ID implementation in the future?

Aren't there unfunded mandate issues involved here?

Answer:

The REAL ID initiative is not a federal mandate as states are not required to participate; rather, the REAL ID Act and subsequent regulations establish minimum standards for drivers' licenses and identification cards to be accepted for official federal purposes. Congress passed the REAL ID Act to confront security concerns related to drivers' licenses and personal identification cards. Addressing these security concerns is a shared responsibility between the federal government and the respective state governments. As such, the Department consulted extensively with the states to develop the Real ID regulations.

To date, the Department of Homeland Security (DHS) has made available \$361.375 million in grants (FY06-FY08) to assist State driver's license issuance authorities with REAL ID implementation:

REAL ID Pilot Project - The Commonwealth of Kentucky received \$3 million in Fiscal Year (FY) 2006 to fund a REAL ID Pilot Project. The pilot is being implemented to test and validate birth record verification processes and to develop a common set of standards that states can use during the driver's license issuance process.

REAL ID Vital Events Verification State Project Grant -FEMA awarded Kentucky an additional \$4 million to help state Departments of Motor Vehicles (DMVs) connect to state Vital Record Offices (VRO). The Commonwealth of Kentucky will enable state VROs to access to the Electronic Verification of Vital Events hub (a web based portal) to verify birth and death record information of individuals applying for a REAL ID driver's

Question#:	18
Topic:	funding
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

licenses and identification cards. Kentucky will also use these funds to expand the scope of its REAL ID Pilot Project by comparing U.S. foreign born citizens applying for a REAL ID driver's license with the U.S. Department of State's foreign born citizen birth record information.

FY 2008 REAL ID Demonstration Grant Program –FEMA will soon competitively awarded \$79.875 million to assist states and territories with implementing REAL ID. The FY 2008 REAL ID Demonstration Grant Program is designed to standardize the way driver's licenses are issued and will help protect citizens against fraud and identity theft. Grant funds will help states enhance the integrity of driver's licenses (DL) and identification documents (ID), improve state issuance capabilities, as well as system security.

State Homeland Security Grant Program (SHSGP) - \$274.5 million in State Homeland Security Grant Program (SHSGP) funds (20% of the total SHSGP minus M&A funds) were made available to states for REAL ID (FY07-FY08).

The President's FY 2009 budget also requests up to \$110 million for REAL ID grants for States as part of the National Security and Terrorism Prevention Grants, and \$40 million in discretionary funds the States could use for REAL ID implementation as part of the State Homeland Security Grant Program.

If the FY 2009 budget request is approved, this would provide \$511.375 million in grants (FY06-FY09) to assist State driver's license issuance authorities with REAL ID implementation.

Question#:	19
Topic:	extensions
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

Question: Some states, such as Michigan, requested an extension from DHS on the implementation of the REAL ID Act. In other cases, such as in Montana and South Carolina, states appear to have been granted extensions that were never requested.

Why and under what authority was this done?

Moreover, both Montana and South Carolina expressly state in their communications with DHS that they were prohibited by state law from complying with REAL ID; the statute states that extensions can only be granted for the purpose of complying with the Act, thus why were these states — that legally cannot meet that standard — granted extensions?

How likely is DHS to grant additional extensions of compliance and what standards will they use to evaluate state requests?

Given that there are several states that have passed laws prohibiting compliance, and several more with statutes pending at the state level, how does DHS envision the verification and data linking elements working in light of the gaps that these non-compliant states may create?

The REAL ID statute and regulations appear to require the verification of applicants principal place of residence, how are the states to do this given that no verification system exists or is expected to exist?

Answer:

The Department of Homeland Security (DHS) is working with all the States to help them meet the requirements of the REAL ID Act. DHS believes that all States share the goals and objectives of improved security for State-issued licenses and licensing processes. All of the States that have passed legislation opposed to REAL ID are concurrently making systematic security improvements that are consistent with the requirements of the Act. DHS exchanged letters with several States in that position including Montana and South Carolina, who outlined the actions they were taking to secure their licenses, wholly consistent with their State statutes. DHS is working with all States to ensure that this progress continues.

Question#:	19
Topic:	extensions
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Carl Levin
Committee:	HOMELAND SECURITY (SENATE)

DHS has no legal authority to waive compliance with the REAL ID Act. By law, an extension may only be granted to allow a State 'to meet the requirements of' REAL ID. Several States satisfied this statutory provision, despite State legislation preventing implementation of REAL ID, by demonstrating that they intend to meet the requirements of REAL ID for their own reasons and not technically in order to implement federal law. DHS remains focused on outcomes and is recognizing the accomplishments of these States.

Currently, all States have been granted initial extensions for compliance with the REAL ID Act through December 31, 2009. DHS will grant a second extension from January 1, 2010 through May 10, 2011 to those States that meet the interim benchmarks of Material Compliance by January 1, 2010.

With regard to the question on the REAL ID statute that requires States to verify an individuals' address of principal residence, the REAL ID regulation leaves both the documents required and the verification methods up to individual States. DHS believes the States are best situated to verify an individual's address of principal residence, and therefore gave the States flexibility in determining how best to do so.

Similarly, State use of electronic data verification systems is not contingent upon State laws for or against REAL ID. All States may use these systems just as they can use the existing systems.

Question#:	20
Topic:	funding streams
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, the implementation of Real ID is expected to be costly and complicated for states. Among other things, it will require them to issue security clearances to DMV personnel, train DMV personnel to recognize faulty immigration documents, and create digital record-keeping systems for the documents of every license applicant. Even the revised cost estimates to states are upwards of \$4 billion, and yet, the only federal funding available to states is through a homeland security grant program (SHGP) that most states have already dedicated to other homeland security priorities.

Do you agree with states' views that Real ID is an unfunded mandate? What funding streams are available to states to pay for Real ID?

How would you advise states to plan for the logistical challenges of issuing new licenses to their entire state populations in just a few years?

Answer:

REAL ID is not a federal mandate because states are not required to participate.

To date, Department of Homeland Security (DHS) has made available \$361.375 million in grants (FY06-FY08) to assist states driver's license issuance authorities with REAL ID implementation:

REAL ID Pilot Project - The Commonwealth of Kentucky received \$3 million in Fiscal Year (FY) 2006 to fund a REAL ID Pilot Project. The pilot is being implemented to test and validate birth record verification processes and to develop a common set of standards that states can use during the driver's license issuance process.

REAL ID Vital Events Verification State Project Grant -FEMA awarded Kentucky an additional \$4 million to help state Departments of Motor Vehicles (DMVs) connect to state Vital Record Offices (VRO). The Commonwealth of Kentucky will enable state VROs to access to the Electronic Verification of Vital Events hub (a web based portal) to verify birth and death record information of individuals applying for a REAL ID driver's licenses and identification cards. Kentucky will also use these funds to expand the scope of its REAL ID Pilot Project by comparing U.S. foreign born citizens applying for a REAL ID driver's license with the U.S. Department of State's foreign born citizen birth record information.

Question#:	20
Topic:	funding streams
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

FY 2008 REAL ID Demonstration Grant Program –FEMA will soon competitively awarded \$79.875 million to assist states and territories with implementing REAL ID. The FY 2008 REAL ID Demonstration Grant Program is designed to standardize the way drivers' licenses are issued and will help protect citizens against fraud and identity theft. Grant funds will help states enhance the integrity of driver's licenses (DL) and identification documents (ID), improve state issuance capabilities, as well as system security.

State Homeland Security Grant Program (SHSGP) - \$274.5 million in State Homeland Security Grant Program (SHSGP) funds (20% of the total SHSGP minus M&A funds) were made available to states for REAL ID (FY07-FY08).

The President's FY 2009 budget also requests up to \$110 million for REAL ID grants for States as part of the National Security and Terrorism Prevention Grants, and \$40 million in discretionary funds the State could use for REAL ID implementation as part of the State Homeland Security Grant Program.

If the FY 2009 budget request is approved, this provides \$511.375 million in grants (FY06-FY09) to assist states driver's license issuance authorities with REAL ID implementation.

The REAL ID Notice of Proposed Rulemaking garnered 21,000 comments, many focused on the timeframes for states to meet the REAL ID requirements. The final rule, released in January 2008, took these comments very seriously, and offered an age-based enrollment process to reduce pressure on the States. States choosing to issue REAL ID driver's licenses and identification cards will have until May 2011 to begin issuing REAL ID compliant licenses to the population under age 50. All individuals under 50 that choose to obtain a REAL ID will have until May 2014 to do so. All individuals over the age of 50 have until May 2017 to obtain a REAL ID, should they choose to do so.

To have a final rule that is able to be implemented by the 56 jurisdictions, DHS made extensive efforts to get appropriate feedback from key stakeholders. DHS officials have met with representatives from nearly all 56 States and territories, toured more than two dozen DMVs, held a town hall in California, and regularly speak at nationwide forums, such as AAMVA's regional conferences in order to address questions from the States. During these site visits, it was evident that States are working to improve their issuance procedures and identity proofing processes, consistent with REAL ID requirements. DHS has and will continue to work with the States and territories as they plan their individual approaches to implementing the standards in the final regulation.

Question#:	21
Topic:	resources
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Question: One of the many problems with Real ID implementation is that the costs of non-compliance will be borne by people who did not make the decision about whether to comply – only states can make that decision. As of right now, fourteen state legislatures have opposed Real ID and three have outright refused to implement it.

What will happen to residents of state that have chosen not to comply? What kinds of extra screening they will need to go through to enter airports or federal buildings?

How much time will that add to their trips?

What is DHS/ TSA doing to staff up and train its own personnel in anticipation of this issue?

Answer:

The Department of Homeland Security (DHS) is working with all the States to help them meet the requirements of the REAL ID Act. DHS believes that all States share the goals and objectives of improved security for State-issued licenses and licensing processes. All of the States that have passed legislation opposed to REAL ID are concurrently making systematic security improvements that are consistent with the requirements of the Act. DHS exchanged letters with several States in that position who outlined the actions they were taking to secure their licenses, wholly consistent with their State statutes. DHS is working with all States to ensure that this progress continues.

Currently, all States have been granted initial extensions for compliance with the REAL ID Act through December 31, 2009. As a result, individuals choosing to use their State-issued identification for official purposes may continue to do so.

DHS will grant a second extension from January 1, 2010 through May 10, 2011 to those States that meet the interim benchmarks of Material Compliance by January 1, 2010. Starting January 1, 2010, residents of States that are not compliant with REAL ID will not be allowed to use their State-issued driver's licenses and identification cards for official purposes, but may continue to present other forms of acceptable identification. To assist the general public, TSA has posted a list of acceptable documents to board a commercial aircraft on its website at www.TSA.gov.

Question#:	21
Topic:	resources
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Individuals that do not have an acceptable form of Federal or State-issued identification may be subject to additional screening at the TSA checkpoint which may result in delays for those individuals. The exact amount of time that individuals in this circumstance will be delayed is subject to numerous variables such as the passenger load at the checkpoint they are using, whether or not the individual has carry-on baggage, and whether or not prohibited items are found on the individual. DHS personnel are already trained to handle individuals who require additional screening.

With respect to entering federal buildings, federal agencies have their own security and access control policies that are not subject to DHS authority. Some require identification for access, some do not. These facilities likely have secondary protocols an individual seeking access who does not have the required identification. DHS will seek to inform all federal agencies of the law and work with the agency on development of mitigation measures, if requested.

Question#:	22
Topic:	communications
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Question: What kinds of communications and outreach plans are in place to inform the public of upcoming changes to driver's license requirements and travel within the Western Hemisphere?

Answer:

CBP is executing an aggressive outreach and communications strategy to raise public awareness and build support among elected officials, key media markets, foreign officials, and industry stakeholders at the national and local level. The outreach educates domestic and international audiences on the new travel requirements using easy to understand language. Early press releases and traveler "tear sheets" (simple fact sheets provided by officers to travelers during primary inspection) helped to increase the message scope and reach. These "tear sheets" inform travelers that State or Provincial-issued Enhanced Driver's Licenses (EDLs) will be acceptable documents to prove identity and citizenship at land and sea border crossings. As we experienced with the WHTI air rollout in January 2007, as well as with the new land and sea document requirements that went into effect January 31, 2008, the traveling public has shown a great willingness to obtain the proper documents.

To alert and educate the traveling public in both the United States and Canada, on February 4, 2008, CBP awarded a Public Relations Contract to Elevation, LTD., to create a comprehensive plan to proactively communicate the new requirements and document options to the traveling public. CBP will use a variety of tools in this sustained campaign, including paid advertising, public service announcements, press conferences, grassroots outreach, and consumer-friendly materials. In addition, we will leverage existing stakeholder partnerships. This campaign will raise traveler awareness across the Nation about secure and standard documents with facilitative technologies, and will be designed to ultimately solicit compliance to ensure a smooth transition towards full WHTI requirements.

The immediate goal of the communications plan will be to conduct border events in summer 2008. The "Improving to Keep You Moving" summer travel theme includes advertising WHTI-compliant documents as well as advising the affected border communities regarding planned RFID infrastructure deployment and construction efforts. Increased summer travel can generate longer lines and wait times at land border crossings. Our intent through this program (as we have done in past years) is to remind people of this and encourage them to take steps that help minimize their personal delays.

Question#:	22
Topic:	communications
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Additionally, we are able to demonstrate that CBP is moving aggressively to make the process smoother and less time-consuming, while also greatly enhancing border security.

An advertising campaign will be launched later this year to reach the broader national audience that includes infrequent or would-be travelers. In addition, joint press conferences will also be conducted with various states as their enhanced driver's licenses become available, beginning with New York in August, 2008. Communications activities will be planned in coordination with the Department of State, and will be shared with Canadian counterparts to ensure that messages are aligned.

Communication efforts in later stages leading up to June 1, 2009, will be informed by the document saturation and compliance at the borders, and by continual stakeholder feedback as the new options become available.

Question#:	23
Topic:	security
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Mark Pryor
Committee:	HOMELAND SECURITY (SENATE)

Question: Besides security clearances for license issuing personnel, what kinds of precautions can states put in place to ensure the security of the personal information of their citizens?

Answer:

The REAL ID final rule requires each State to develop a security plan and lists a number of privacy and security elements that must be included in the plan, including that any release or use of driver information be consistent, at a minimum, with the Driver's Privacy Protection Act. The DHS Privacy Office also issued Best Practices for the Protection of Personally Identifiable Information Associated with State Implementation of the Real ID Act, to provide guidance to State DMVs on privacy and security protections consistent with DHS Privacy Office's Fair Information Practice Principles (FIPPs) standards and practices equivalent to those required under the Privacy Act of 1974 (5 U.S.C. § 552a), the Federal Information Security Management Act (FISMA) of 2002 (44 U.S.C. § 3542), and the information security standards issued by the National Institute of Standards and Technology (NIST). Additionally, certain Department of Motor Vehicle (DMV) employees involved in the license issuance process will be subject to background checks, a necessary step to protect against insider fraud and one of the many vulnerabilities to a secure licensing system. Taken together, these steps raise the bar for State DMVs beyond what was required by Federal or most State laws prior to the final rule. Specific to the development of the verification hub and its use, DHS will be supporting the States and working with them to ensure privacy protections are included.

Question#:	24
Topic:	education
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Ted Stevens
Committee:	HOMELAND SECURITY (SENATE)

Question: What efforts has the Department of Homeland Security made to educate the public about the REAL ID? Many people believe it is a national I.D. card that will infringe upon their privacy. How do you plan to address this important concern?

Answer:

The Department of Homeland Security (DHS) has launched a comprehensive and aggressive communications strategy designed to clearly communicate to the states, the general public and particular public and private industry groups about REAL ID. To do so, DHS has initiated a number of public education and outreach efforts which will continue and be adjusted as the program evolves. These include:

- DHS hosted a town hall in 2007 in California to get direct feedback from the public and interested groups.
- DHS analyzed the 21,000 comments garnered from the REAL ID Notice of Proposed Rule Making (NPRM) published on March 9, 2007 prior to developing the final rule.
- DHS met with representatives from nearly all State and Territory Department of Motor Vehicles (DMV), and visited more than two dozen states to tour DMV operations.
- DHS maintains stakeholder relationships with State Motor Vehicle Offices, State legislators, governors' offices, and the associations representing these State groups, as well as discussions with groups representing privacy and civil liberties concerns.
- DHS has sent representatives to local events/conferences to communicate to local citizens and other stakeholders the status of the program and upcoming milestones for states.
- DHS has posted Leadership Journal entries from senior department leaders on the DHS Web site.
- DHS continues to update its website for REAL ID information at www.dhs.gov/realid with frequently asked questions, as well as posted related REAL ID materials, as the program progresses into implementation.

Question#:	24
Topic:	education
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Ted Stevens
Committee:	HOMELAND SECURITY (SENATE)

- DHS has engaged think tanks, opinion leaders and third party stakeholders to deliver messages about the importance of the REAL ID program, State compliance and the status of the program to broader audiences not normally touched by traditional outreach and education efforts. To date, efforts include distribution of electronic newsletters, posting online blogs, posting content on their general websites, hosting public forums, and publishing white papers and other similar reports regarding REAL ID. These efforts are expected to continue.
- DHS has developed a targeted toolkit for State and DMV representatives containing factual information about REAL ID and the status of the program to use in their outreach and education efforts on the local level. The first installment of the toolkit included the following materials: fact sheet explaining the benefits and importance of the REAL ID program and major compliance milestones; Debunking the Myths; What Others Are Saying; and Frequently Asked Questions. These products will continue to be updated as new information becomes available and new products will be added to the toolkit as we enter new phases of the program. All of these materials have also been posted to the DHS website for public viewing.
- DHS continues its outreach to States to provide program materials (PowerPoints, fact sheets, Q&A's, etc.) and offer additional meetings involving principal officials and subject matter experts on the REAL ID program.
- DHS will continue to assist State and local stakeholder groups in communicating with their constituencies/customers as well. Groups that have already taken an active role in these efforts include, but are not limited to, the American Association of Motor Vehicle Administrators (AAMVA), the Major County Sheriff's Association, and the American Automobile Association (AAA). We will continue working with a variety of stakeholder groups to enhance outreach efforts as the program evolves.
- DHS will continue to engage the business community on REAL ID, particularly at the State level. On a local level, the business community has the potential to be highly effective in serving as an information gateway between the federal government and individual businesses' stakeholders. DHS will continue to engage the travel and tourism industry, Chambers of Commerce, business and banking communities, and identity-theft advocacy groups.
- DHS will continue providing program information to Members of Congress and their staffs and offer REAL ID briefings on an individual or state-delegation basis.

Question#:	24
Topic:	education
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Ted Stevens
Committee:	HOMELAND SECURITY (SENATE)

- DHS will continue providing counterpoint information to the erroneous claims of REAL ID detractors so Members of Congress and their staff may effectively debate the issue with a foundation of accurate and balanced information.

REAL ID is not a national identification card, as each State will continue to issue its own unique driver's licenses and identification cards. Each State also retains flexibility with regard to design and security features used on the card. Additionally, neither the REAL ID Act nor its implementing rules require that a REAL ID be the sole identification credential accepted by the Federal government or any other entity. The preamble to the final rule specifically notes that other forms of identification can continue to be used for a variety of purposes, including the boarding of an airplane.

Both the Federal and State governments have a strong interest in maintaining and preserving the security and privacy of personally identifiable information (PII), including in the implementation of REAL ID.

The REAL ID final rule requires each State to develop a security plan and lists a number of privacy and security elements that must be included in the plan, including that any release or use of driver information be consistent, at a minimum, with the Driver's Privacy Protection Act. The DHS Privacy Office also issued Best Practices for the Protection of Personally Identifiable Information Associated with State Implementation of the Real ID Act, to provide guidance to State DMVs on privacy and security protections consistent with DHS Privacy Office's Fair Information Practice Principles (FIPPs) standards and practices equivalent to those required under the Privacy Act of 1974 (5 U.S.C. § 552a), the Federal Information Security Management Act (FISMA) of 2002 (44 U.S.C. § 3542), and the information security standards issued by the National Institute of Standards and Technology (NIST). Additionally, certain Department of Motor Vehicle (DMV) employees involved in the license issuance process will be subject to background checks, a necessary step to protect against insider fraud and one of the many vulnerabilities to a secure licensing system. Taken together, these steps raise the bar for State DMVs beyond what was required by Federal or most State laws prior to the final rule. Specific to the development of the verification hub and its use, DHS will be supporting the States and working with them to ensure privacy protection is included.

Question#:	25
Topic:	state concerns
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable Ted Stevens
Committee:	HOMELAND SECURITY (SENATE)

Question: I understand a number of states have passed legislation encouraging the repeal of the REAL ID Act, and refusing funding to meet REAL ID requirements. How does DHS plan to respond to these states and their concerns?

Answer:

The Department of Homeland Security (DHS) is working with all the States to help them meet the requirements of the REAL ID Act. DHS believes that all States share the goals and objectives of improved security for State-issued licenses and licensing processes. All of the States that have passed legislation opposed to REAL ID are concurrently making systematic security improvements that are consistent with the requirements of the Act. DHS exchanged letters with several States in that position who outlined the actions they were taking to secure their licenses, wholly consistent with their State statutes. DHS is working with all States to ensure that this progress continues.

Currently, all States have been granted initial extensions for compliance with the REAL ID Act through December 31, 2009. DHS will grant a second extension from January 1, 2010 through May 10, 2011 to those States that meet the interim benchmarks of Material Compliance by January 1, 2010.

Question#:	26
Topic:	state concerns
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: At least seventeen states have passed laws prohibiting compliance with REAL ID or resolutions in opposition to REAL ID. Given these objections and outright refusals to comply, what is the Department of Homeland Security's (DHS) plan for moving forward with REAL ID and how will individuals who do not have a REAL ID be able to board a plane or enter a Federal facility?

Answer:

The Department of Homeland Security (DHS) is working with all the States to help them meet the requirements of the REAL ID Act. DHS believes that all States share the goals and objectives of improved security for State-issued licenses and licensing processes. All of the States that have passed legislation opposed to REAL ID are concurrently making systematic security improvements that are consistent with the requirements of the Act. DHS exchanged letters with several States in that position who outlined the actions they were taking to secure their licenses, wholly consistent with their State statutes. DHS is working with all States to ensure that this progress continues.

Currently, all States have been granted initial extensions for compliance with the REAL ID Act through December 31, 2009. DHS will grant a second extension from January 1, 2010 through May 10, 2011 to those States that meet the interim benchmarks of Material Compliance by January 1, 2010.

Question#:	27
Topic:	Ohio
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: The State of Ohio has a number of facilities that currently produce drivers' licenses. What guidance and assistance will DHS provide to states regarding the REAL ID requirement that all of these facilities be physically secure and when will that guidance be provided?

Answer: Each State must prepare a security plan as part of its certification package when seeking a determination that it complies with the requirements of the REAL ID final rule. The plan must address the physical security of the facilities where REAL IDs are produced and where the sensitive materials used to produce them are stored. To help States with this requirement, DHS is developing a security handbook that discusses the contents of the security plan as well as best practice for physical security. DHS anticipates that the Security Handbook will be ready to send to States by the Fall of 2008. In the meantime, States should continue to direct any specific questions they have to the REAL ID program office. States should not be waiting for the security handbook as the requirements are outlined in the REAL ID final rule.

Question#:	28
Topic:	grant program
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: For FY2008, Congress appropriated \$50 million for REAL ID grants to help states improve driver's license and identification card issuance capabilities. How has DHS addressed the concerns the National Governors Association raised in February and March regarding DHS' REAL ID grant guidance, how many states have applied for funding under this grant program, and when will DHS award these grants?

Answer:

On June 20, 2008, the Department of Homeland Security (DHS) awarded \$79.875 million in REAL ID Demonstration Grants to assist jurisdictions (50 states, the District of Columbia and 5 territories) in implementing REAL ID. The FY 2008 REAL ID Demonstration Grant Program is designed to assist State progress toward compliance with REAL ID implementation, including the deployment of the required verification systems and each jurisdiction's ability to connect to required verification systems.

The REAL ID Demonstration Grant Program was originally announced on December 11, 2007, and augmented with approximately \$50 million in additional FY 2008 grant funding in January 2008. These funds will serve to enhance state driver's license issuance security and processes necessary to meet the requirements of the REAL ID regulations. The grant application deadline for the FY 2008 REAL ID Demonstration Grant Program closed April 7, 2008. Forty-eight jurisdictions submitted proposals.

NGA supported a minimum allocation for each State with a plus up for the driving population. While the program was outlined as a competitive process, DHS also took into account the number of driver's licenses (DL) and identification documents (ID) the State issues. At the same time, DHS is responsible for ensuring that the funds we have bring us closer to REAL ID implementation. Sprinkling the funds would not give us the same result as projects targeted to stand up a new capability that will benefit all of the States.

DHS convened a peer review panel of State Department of Motor Vehicle experts to assist in evaluating grant proposals and to make recommendations to DHS for grant awards. DHS reviewed the recommendations of the panel and put the award applications through additional scrutiny. DHS then made the awards based on the number of driver's licenses and identification cards issued in the jurisdiction and the overall effectiveness based on the criteria identified in the *FY 2008 REAL ID Demonstration Grant Program: Program Guidance and Application Kit*. Criteria included what security and privacy

Question#:	28
Topic:	grant program
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

enhancements the state plans to implement, whether a state utilized an approach that can be utilized or replicated by another state, and whether the State plans to leverage capabilities to expedite development, deployment, and operation of verification systems as required under the REAL ID Act. The guidance document was posted on grants.gov for the duration of the grant application process, and is now available at www.dhs.gov/realid.

Only the jurisdictions that applied for a grant were eligible to receive an award. No jurisdiction received more than it requested.

Question#:	29
Topic:	cost
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: I understand DHS has estimated that REAL ID will cost only an additional \$8 per license, but Ohio estimates that its first phase of REAL ID compliance could cost \$15 to \$20 million initially with recurring annual maintenance costs of up to \$3 million. How did DHS calculate its \$8 per license figure?

Answer:

The Department of Homeland Security (DHS) conducted a comprehensive Regulatory Evaluation of the benefits and costs of the final minimum standards for State-issued driver's licenses and identification cards pursuant to the REAL ID Act of 2005. DHS estimates that the undiscounted eleven-year cost of the final rule is less than \$10 billion, of which approximately \$3.9 billion are States costs. Based on a total of \$477.1 million issuances over the 11-years of the analysis, the average marginal cost per license issuance for States is \$8.31. A copy of the regulatory evaluation is posted on the DHS website at www.dhs.gov/realid.

Question#:	30
Topic:	NEXUS
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has pointed to the fact that trusted traveler programs like NEXUS involve Western Hemisphere Travel Initiative (WHTI) compliant documents. However, I am told that at many land ports on the northern border, there is no real benefit to participating in NEXUS because wait times for NEXUS lanes are as long as wait times for regular passenger lanes. How is DHS working to address and decrease these wait times in order to facilitate trade and travel in a secure manner?

Answer:

The NEXUS trusted traveler program has experienced tremendous growth during the transition to WHTI secure document requirements. In the past eleven months, NEXUS membership has increased 54 percent to over 200,000 enrollments. In addition, many of the land ports of entry face increased summer travel and are under major or minor construction. As such, some land border locations may experience minimal processing delays. CBP has been proactively managing its construction schedule as it continues to deploy infrastructure upgrades needed to support WHTI.

By April 2009, and in preparation for WHTI implementation on June 1, 2009, every land border crossing which currently offers NEXUS processing will have installed RFID-readers in all in-bound passenger lanes. The in-booth technology, which supports these RFID readers, is designed to allow the operator to toggle to NEXUS processing in any lane, instantly. This capability makes it possible for CBP to establish "flex-lanes" to supplement its existing 19 dedicated-NEXUS lanes during peak usage times. These upgrades will ameliorate any delays resulting for the overwhelming success of the program in attracting new members.

CBP is committed to monitoring wait times, and reducing border wait times wherever possible, without compromising border enforcement. Time and motion studies indicate that primary wait times are significantly and progressively reduced through the use of standardized documents, machine readable zone technology, and Radio Frequency Identification (RFID) technology, respectively. Trusted traveler programs, such as NEXUS, SENTRI, and FAST have successfully utilized these technologies, and studies indicate that inspection times in these dedicated lanes are significantly lower than in standard lanes.

Many factors contribute to wait times, including port and road infrastructure constraints. CBP is taking significant steps to reduce wait times through various facilitative technologies and strategies in conjunction with WHTI implementation.

Question#:	31
Topic:	Canada
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: How is DHS working with the Department of State and Canada regarding the implementation of WHTI and the possible development of acceptable alternatives to a Canadian passport, including specific efforts to work with Canadian provinces to develop Enhanced Drivers' Licenses, and how is DHS working with Canada to address the potential economic impacts associated with WHTI?

Answer:

The Department's approach to successful implementation includes ensuring Western Hemisphere Travel Initiative (WHTI)-compliant documents are available to the U.S. and Canadian public, and an aggressive communications effort is in place that is coordinated with appropriate agencies, including the Department of State, enhanced driver's license (EDL)-producing states and provinces, and the Government of Canada.

The development of EDL programs has been successful in both the U.S. and Canada. Both Washington State and British Columbia are actively producing and issuing EDLs. Washington State began issuing EDLs in January 2008 and has issued over 16,000 cards and scheduled 27,000 EDL interviews. Likewise, British Columbia has issued 520 cards in a limited pilot; the province expects to expand issuance in 2009. Both Washington State and British Columbia EDLs have been used across the span of the Western Hemisphere, as far away as Alaska and the Caribbean.

Additional states and provinces are in discussions with the DHS and the Government of Canada to produce similar EDL programs, especially after witnessing the success of the Washington State and British Columbia programs. Canada has indicated that other provinces, including Manitoba and Quebec, will be issuing EDLs this year. DHS published the WHTI final rule for land and sea more than a year in advance of the June 1, 2009 implementation date to allow ample time for U.S. and Canadian citizens to learn what documents are needed, when they are needed, and how to obtain them. In the U.S., agencies issuing WHTI-compliant documents have the infrastructure in place to ensure that the expected increase of applications can be handled without delays to the public.

In regard to coordination between DHS and Canada, we are committed to a smooth transition and mitigating any negative impact on legitimate trade and travel. DHS is keenly aware of the possible impact these issues may have on local communities and their economies. We have worked with the Department of State to move aggressively to ensure that key audiences are aware of the new policies, and of the rationale behind them.

Question#:	31
Topic:	Canada
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
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as part of our ongoing effort to make America's borders even more secure and to assure that commerce is not unnecessarily impeded by these important changes.

In an effort to minimize any negative impact and to coordinate effectively with Canada, we have worked together in several ways:

- WHTI is always on the agenda at regular meetings held between Secretary Chertoff and Public Safety Minister Day; quarterly meetings are held between DHS's Deputy Secretary Schneider and Deputy Minister Hurtubise. At a minimum, monthly discussions are held between Canada Border Services Agency (CBSA) and DHS's Office of Policy.
- DHS has met with representatives of the Canadian government on the WHTI since the Security and Prosperity Partnership was established several years ago.
- DHS and Canada have a joint communications team that meets regularly to provide updates on each country's efforts and share approaches to ensure meeting the widest possible audience with accurate and consistent messaging.
- Customs and Border Protection meets with CBSA in joint technical working groups that address technical requirements for the exchange of information related to EDLs.

Question#:	32
Topic:	communications
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: How is DHS working with the Department of State to communicate WHTI rules, requirements, and procedures to the public, including what documents are WHTI compliant and the differences between all of those documents, including explaining nuances like the fact that the passport card cannot be used for international air travel?

Answer:

The Department of Homeland Security and the Department of State have moved aggressively to ensure that key audiences are aware of the new policies, and of the rationale behind them as part of our ongoing effort to make America's borders even more secure and to assure that commerce is not unnecessarily impeded by these important changes. Compliance rates with current document requirements are high at the U.S.'s northern and southern borders so the message is already being heard.

DHS, U.S. Customs and Border Protection (CBP), and the Department of State (DOS) will drive a proactive, unified communication strategy that encourages travelers to get required documents as soon as possible, and outline the different appropriate documents available for cross-border travel. The 14- month transition period between the publication of the Western Hemisphere Travel Initiative (WHTI) final rule for land and sea and its implementation on June 1, 2009, allows travelers to become acclimated to requirements and obtain necessary documents.

In February, CBP awarded a public relations contract to create a comprehensive plan to proactively communicate the new requirements and document options to the traveling public. DOS awarded its public relations contract earlier this year. DOS and CBP have convened a meeting between the two firms to discuss appropriate strategies to ensure that they are complementary, cover the target audiences, and provide consistent messaging. The teams are coordinating to reach the widest number of people in the most efficient way. DHS and DOS continually share data and lessons learned on the applications and issuance of WHTI-compliant documents. DOS will focus on passports and passport cards while DHS and CBP will cover all other WHTI-compliant documents and related issues, such as border wait times, specific to our agencies. Communications materials, including talking points, public affairs guidance, and plans are shared between DOS and DHS to ensure better coordination.

Question#:	32
Topic:	communications
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
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We will utilize a variety of tools including advertising, public service announcements, and consumer-friendly materials as well as leverage existing stakeholder partnerships to educate travelers. The campaigns will raise traveler awareness across the Nation about secure and standard documents with facilitative technologies and will be designed to ultimately solicit compliance and ensure a smooth transition to WHTI implementation.

Additionally, staff from both CBP and DOS (along with DHS), serve on a communications working group that meets on a bi-monthly basis. This group includes field communications staff as well as staff from Enhanced Driver's License (EDL)-producing states. Finally, both CBP/DHS and DOS meet regularly with communications staff from the Canadian government to coordinate messaging across the borders.

Even before launching a targeted campaign, DOS has already received more than 290,000 applications for its passport card. Washington State has received more than 27,500 applications for its EDL and has had to limit advertising because it proved so successful.

Question#:	33
Topic:	implementation funding
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: How is DHS using the \$225 million provided by Congress in FY2008 for WHTI implementation, including where DHS is in testing and deploying new technologies like those necessary to read the radio frequency identification technology incorporated in passport cards and training staff in the use of such technologies?

Answer:

The WHTI Program received an FY 2008 appropriation of \$225 million, of which \$75 million was withheld until June 6, 2008, when certain requirements were met. Of the \$150 million received, approximately \$22.2 million has been committed to the acquisition of personnel to fill 205 new CBP officer positions of which 148 have been filled. Currently, funds in the amount of \$57.9 million have been utilized for the following activities: \$40.9 million for the infrastructure costs; \$2.6 million for program management; \$.5 million for outreach; and \$13.9 million for software development and technical project management.

CBP has successfully used vicinity RFID-enabled cards in the Trusted Traveler Programs since 1995. These programs currently support over 462,000 members across the northern and southern land borders. Trusted Traveler Programs use dedicated commuter vehicle lanes, which are equipped with vicinity RFID readers and antennas to pre-position information to the CBP officer in the vehicle primary booth. CBP's extensive technical experience with vicinity RFID provides the foundational knowledge, historic test results, simulated lane testing, and verification and validation through elected pilot site locations to affirm operational success in the Trusted Traveler Programs. Each WHTI-compliant document incorporating vicinity RFID and a machine readable zone such as the enhanced driver's license, the passport card and the border crossing card must be fully tested by CBP to ensure the document is technically acceptable for automated data collection purposes at the land border.

The WHTI infrastructure contractor has established a fully equipped testing facility in Sterling, Virginia, where the selected readers, sensors, antennas, and associated hardware have been installed in two stationary lanes and one "portable" lane configuration. Using a strict testing protocol, all aspects of the system are being tested on a daily basis. This testing will be completed by late June 2008 in preparation for establishing the WHTI integrated solution in the Government Mock Port of Entry in Stafford, Virginia, in early July 2008. This testing will be completed by the end of August and implementation at the initial operational sites of Blaine, Washington, and Nogales, Arizona, will commence.

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Topic:	implementation funding
Hearing:	Oversight of REAL ID and WHTI
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After a 30-day operational assessment period, the WHTI integrated solution will be deployed to the remaining crossings at the 39 ports of entry between November 2008 and April 2009.

On February 12, 2008, CBP deployed the new vehicle primary client software application to the ports of Blaine, Washington, and Nogales, Arizona, in anticipation of implementing the vicinity RFID primary lane solution. This critical software deployment quickly and effectively provides officers with vital information on border crossers. The training and tools necessary for the successful transition from the current antiquated, text-based system, to a modern, graphical user interface was successfully delivered to 254 CBP officers ahead of the critical deployment. On June 2, 2008, CBP deployed the new vehicle primary client software application to the Port of Buffalo and successfully delivered training to 447 CBP officers. We will be deploying this new twenty-first century tool to the ports of Detroit, Michigan, and El Paso, Texas, by the end of June 2008. Deployment will continue to most land border locations, with completion scheduled for fall 2008.

Question#:	34
Topic:	border work
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Congress provided \$3 billion in emergency FY2008 funding for DHS border work. Please tell us what funding DHS is allocating out of FY2008 appropriations and what has been requested in FY2009 for border needs on the northern border, including needs related to improving security, fostering trade and tourism, and implementing WHTI.

Answer:

U.S. Customs and Border Protection has allocated FY 2008 emergency funding for border work in the following manner:

Border Patrol Vehicles

Office of Border Patrol was provided \$13M earlier in FY08 vehicles. As such, this funding was to be utilized for replacement vehicles, not enhancement vehicles. Replacement vehicles were funded throughout the Border Patrol, including four NB sectors, based on immediate need at that time. The NB sectors and amounts are listed below. The remainder was utilized to fund replacement vehicles throughout the SW and Coastal sectors.

Detroit Sector	\$161,364.98
Grand Forks Sector	\$398,324.82
Houlton Sector	\$292,348.74
Havre Sector	\$467,287.19
Total	\$1,319,325.73

Border Patrol Construction

Of the \$61 million provided for BP Construction, \$11million is directed to the Northern Border.

Western Hemisphere Travel Initiative

In FY 2008, the Western Hemisphere Travel Initiative (WHTI) program plans to spend \$11.1 million for the positions and \$10.4 million for contract services and equipment for a total of \$21.5 million on the northern border. \$10.4 million is included in the funds originally allocated for the first year of the contract with Unisys for the construction and

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deployment of infrastructure upgrades that are required at the Northern Border ports of entry to implement WHTI.

The estimated amounts to be spent do not include any subsequent modifications that will be made to the contract that affects the Northern Border because it has yet to be determined how the funding will be spent on the modifications or when. In addition, the estimated amounts do not include any of the centralized expenditures that are being made to upgrade CBP's data center, communications links, LANs, software or expenditures that have been made or are planned in the future on public outreach. These centralized expenditures are required to support WHTI and roughly amount to an additional \$124.5 million.

The WHTI Program received a FY 2008 an appropriation of \$225 million of which \$75 million was withheld pending satisfaction of certain requirements. Of the \$150 million received, approximately \$22.2 million has been committed to the acquisition of personnel to fill 205 new CBP officer positions of which 148 have been filled. Currently, funds in the amount of \$57.9 million have been utilized for the following activities: \$40.9 million for the infrastructure costs; \$2.6 million for program management; \$.5 million for outreach; and \$13.9 million for software development and technical project management.

Of the amount received to date, \$57.9 million, CBP can definitely attribute \$11.1 million for positions and \$10.4 million for contract services and Radio Frequency Identification (RFID) and License Plate Reader equipment installations on the Northern Border, totaling \$20.5 million. Of what remains of the \$225 million appropriated in FY 2008, CBP estimates that roughly 30-40% will be spent on the Northern Border, with an average of 35% or approximately \$58.5 million additional going to the northern border for an overall total of \$79 million.

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Air and Marine

Air and Marine utilized \$7.8 million for new Northern Border Marine site stand-up (O&M) and \$8.4M for staffing (S&E). They also purchased the following:

5 Light Enforcement Aircraft	\$26.7 million
2 Multi-role Enforcement Aircraft	\$43.6 million
3 Light Observation Helicopters	\$6.4 million
Total	\$76.7 million

Detection Technology

Consistent with Congressional direction, \$20 million of BSFIT funding will be used to further address border security needs along the northern border. In addition, deployment of interim technology continues across the northern border to include hundreds of new ground sensors to supplement the 1,203 already in existence, 12 sensor-linked camera systems (G-2 Sentinel Systems), and thermal night vision devices.

The northern border sectors have formally expanded their liaison efforts, both domestic and abroad, and increased intelligence sharing with other Federal, State, and local law enforcement agencies, further developing and expanding partnerships with stakeholders that have a shared interest in border security. Some of the key strategic partnerships and initiatives we currently have in place or are expanding include Project North Star; Border Security Evaluation Teams; Airfields Initiative; Operation Noble Mustang; Integrated Border Enforcement Teams.

FY 2009 President's Budget

CBP's President's Budget request for FY 2009 includes the following enhanced resources for CBP to address the Northern Border.

Air and Marine - Procurement:

- Funding towards the purchase of 2 Multi-role Enforcement Aircraft (\$7.0M)
- Funding to upgrade the UAS software integration laboratory (\$6.0M)

Office of Field Operations:

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Topic:	border work
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Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

OFO plans to place an additional 142 CBP Officers at Northern Border locations as a result of the initiatives in the FY 2009 President's Budget.

Border Patrol:

The agent deployment plan for the additional resources received in FY 2009 Border Patrol will relocate up to 375 Border Patrol Agents from the southern border assigned to the northern border.

Construction:

For FY 2009 Construction received \$149.5M for Border Patrol Major Construction and \$10M for Land Ports Of Entry Modernization (LPOE). Of the \$149.5M for Border Patrol Major Construction, \$4M is allocated to the Northern Border for the Swanton Checkpoints. For FY 2009 LPOE Modernization Funds, the majority of CBP-owned LPOEs are located on the Northern Border (39 of the 43 LPOEs) requiring most of the \$10M to be focused on Northern Border LPOE improvements/enhancements.

Question#:	35
Topic:	CBP mission
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: You have referenced the fact that in FY2008, Customs and Border Protection (CBP) was appropriated less than DHS requested for CBP work and needs. What were these specific reductions, and how have those cuts impacted CBP's mission?

Answer:

The original President's FY 2008 Budget Request for the Western Hemisphere Traveler Initiative (WHTI) was \$252.4 million. However, U.S. Customs and Border Protection was appropriated \$225 million. Programmatically, there was not any affect from this reduction, which compensated for an earlier reprogramming of \$26 million in FY 2007 to begin implementing WHTI, prior to the receipt of FY 2008 funds for WHTI.

Question#:	36
Topic:	wait times - 2
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Since DHS announced that it would no longer accept oral declarations of citizenship at the border in January, has DHS noted an increase in wait times to enter the U.S.?

Answer:

As of January 31, 2008, CBP is no longer accepting oral declarations alone from U.S. and Canadian citizens, ages 19 and older, as proof of citizenship and identity. Travelers are asked to present one or more government-issued documents to prove identity and citizenship.

This change has been successful to date, resulting in no discernable impact on wait times. After an initial increase in wait times, CBP data suggest that the January 31, 2008, secure document requirements have had little impact, and perhaps even a slightly positive impact, on border wait time. Compliance rates are high. U.S. and Canadian citizens are presenting the requested documents when crossing the border.

Question#:	37
Topic:	acceptance
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Will a passport card, passport, or enhanced driver's license like those being issued by Washington be accepted by the Federal government for purposes of boarding a commercial plane, entering a Federal building, or entering a nuclear power plant once all REAL ID requirements go into effect?

Answer:

On April 28, DHS and TSA provided greater clarity on the types of identification that will be accepted at checkpoints for boarding commercial planes in the United States. The list of acceptable documents has been posted to the TSA website at www.tsa.gov, and is provided below. Passport cards, passports, and enhanced driver's licenses will all be accepted by TSA to board a commercial aircraft.

As of May 26, 2008, adult passengers (over the age of 18) are required to show a U.S. federal or state-issued photo ID that contains the following: name, date of birth, gender, expiration date and a tamper-resistant feature. These IDs include:

- U.S. passport
- U.S. passport card
- DHS "Trusted Traveler" cards (NEXUS, SENTRI, FAST)
- U.S. Military ID
- Permanent Resident Card
- Border Crossing Card
- DHS-designated enhanced driver's license
- Drivers Licenses or other state photo identity cards issued by Department of Motor Vehicles (or equivalent) that meets REAL ID benchmarks (All states are currently in compliance)
- A Native American Tribal Photo ID
- An airline or airport-issued ID (if issued under a TSA-approved security plan)
- A Registered Traveler Card (that contains the following: Name; Date of Birth; Gender; Expiration date; and a Tamper-resistant feature)
- A foreign government-issued passport
- Canadian provincial driver's license or Indian and Northern Affairs Canada (INAC) card
- Transportation Worker Identification Credential (TWIC)

In terms of using a passport card, passport, or enhanced driver's license for entering a Federal building or entering a nuclear power plant, this is subject to the policies of these facilities. The REAL ID Act does not stipulate what documents are accepted for identification for any official purpose. The REAL ID Act only governs the acceptance of State-issued driver's licenses and identification cards when presented for purposes of identification.

Question#:	38
Topic:	databases
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: As part of REAL ID, states are required to electronically verify documents and applicants' information using databases that are not yet available. What assurances can DHS give states that even if they become compliant with REAL ID, these databases will be reliable and secure, how confident is DHS that these systems will be available by 2011, who is building the portal to allow states to access these systems, and will states be included in the discussions regarding how to build portal access?

Answer:

The REAL ID final rule requires Departments of Motor Vehicles (DMV) to verify source documents presented by individuals applying for a REAL ID driver's license or identification card. This includes verification of an individual's identity document, date of birth, lawful status and social security number. However, in response to concerns that a number of the verification systems contained in the proposal would not be operational by the verification deadlines, the final rule gives States more flexibility in verifying documents and identity data. States may use an alternative method approved by the Department of Homeland Security (DHS). Thus, with the exception of the Systematic Alien Verification for Entitlements (SAVE) system to verify lawful status (which is specifically required under section 202(c)(3)(C) of the REAL ID Act), the final rule does not mandate use of any specific data system for verification.

Currently, three systems are operational and available for State use to meet the requirements of REAL ID. The Social Security On Line Verification (SSOLV) system to verify social security numbers is being used by forty-eight states and the District of Columbia. The SAVE system, mentioned earlier, currently has thirty jurisdictions (states and territories) participating to verify lawful status. The Electronic Verification of Vital Events (EVVE) system is currently used by eleven states to respond to queries seeking verification of birth certificates; three of these states are using it in conjunction with their DMV. DHS has awarded a grant to the Commonwealth of Kentucky to enable the remaining states to connect to EVVE to support verification of birth records. All three of these database systems are proven, reliable, secure and currently available to States via alternative methods. No "new" portal must be built for these systems.

During the Notice of Proposed Rulemaking and in many subsequent conversations, States consistently expressed the concern that they were not capable of developing and deploying an electronic document verification system and urged DHS to assist in establishing this capability. In response, DHS has committed to funding the

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establishment of a State owned and operated verification hub that would act as a central router to provide timely, accurate, and cost-effective verification to all data sources through a single mechanism. The alternative – having each State connect directly to every other State and to Federal sources separately – is comparatively inefficient and cost-prohibitive. The verification hub will receive a single DMV applicant information query and route that query to the relevant databases to verify the information with the issuing agency. This would include verification of Department of State issued documents and driver's licenses issued by other state DMVs, in addition to the documents verified through SSOLV, SAVE, and EVVE.

DHS is working with the States, the American Association of Motor Vehicle Administrators, and the Department of Transportation to implement the additional capabilities needed to support the verification requirements of the REAL ID rule.

Question#:	39
Topic:	identity theft
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Many concerns have been expressed about the possibility that REAL ID could result in an increase in identity theft. DHS' REAL ID regulations appear to gloss over this possibility, stating that "it would be difficult to draw any conclusions such as this since the effort or cost to individuals to obtain and use a passable fraudulent identification card is expected to be much higher than it is at present. Only those people who believe that they will reap substantial benefits would be willing to incur the cost of creating and using a fraudulent identification card." I believe many would-be identity thieves believe they will reap substantial benefits and many do. You referenced an Ohio native who was the victim of identity theft to the total of hundreds of thousands of dollars. What is DHS doing to secure the databases associated with REAL ID and actively prevent the possibility of increased identity theft as a result of REAL ID?

Answer:

Reducing identity theft and fraud is a key goal for the REAL ID program and is central to our approach in implementing the Act. The REAL ID Act directly addresses a major source of identity fraud in the U.S., the use of stolen, borrowed, altered, or counterfeited source documents like social security cards or birth certificates to obtain legitimate identification cards, benefits, or employment. Through the verification of source documents, individuals presenting fictitious social security numbers, birth records, and/or multiple identities will be identified. Once fully implemented, the REAL ID requirement for verifying the validity of such source documents will likely uncover and prevent numerous cases of driver's licenses and identification cards issued based on fraud. Moreover, REAL ID requires States to improve the physical security of their licenses, such as requiring Level 1, 2 and 3 physical security features on the card, thereby making them significantly more difficult and costly to counterfeit. This will decrease the incidence of counterfeit State-issued driver's licenses and identification cards.

With respect to the security of the databases themselves, the REAL ID final rule requires each State to develop a security plan and lists a number of privacy and security elements that must be included in the plan, including that any release or use of driver information be consistent, at a minimum, with the Driver's Privacy Protection Act. The DHS Privacy Office also issued Best Practices for the Protection of Personally Identifiable Information Associated with State Implementation of the Real ID Act, to provide guidance to State DMVs on privacy and security protections consistent with DHS Privacy Office's Fair Information Practice Principles (FIPPs) standards and practices equivalent to those required under the Privacy Act of 1974 (5 U.S.C. § 552a), the Federal Information

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Security Management Act (FISMA) of 2002 (44 U.S.C. § 3542), and the information security standards issued by the National Institute of Standards and Technology (NIST). Additionally, certain Department of Motor Vehicle (DMV) employees involved in the license issuance process will be subject to background checks, a necessary step to protect against insider fraud and one of the many vulnerabilities to a secure licensing system. Taken together, these steps raise the bar for state DMVs beyond what was required by Federal or most state laws prior to the Final Rule.

REAL ID improves, not diminishes, the integrity and reliability of these key identity documents by making them substantially more difficult to fraudulently obtain. Final Rule requirements decrease, not increase, the possibility of identity theft.

Question#:	40
Topic:	air travel
Hearing:	Oversight of REAL ID and WHTI
Primary:	The Honorable George V. Voinovich
Committee:	HOMELAND SECURITY (SENATE)

Question: Why won't passport cards and NEXUS documents be accepted for air travel between the United States and Canada, Mexico, the Caribbean and Bermuda?

Answer:

The Intelligence Reform and Terrorism Prevention Act made it clear that the passport is the premier travel document, though allowed DHS the authority to accept alternative documents for cross border travel. In analyzing the air environment, it was generally determined at the time of the Western Hemisphere Travel Initiative (WHTI) Notice of Proposed Rulemaking and final rule that international air travelers already had passports even if they were not carrying them for travel within the Western Hemisphere.

As such, acceptable documents for use in the air environment under the WHTI include: the passport book, the NEXUS card (in airports with a NEXUS Air kiosk), U.S. military identification with travel orders, and Merchant Mariner Document on official business.

Today, use of the NEXUS card is limited to those airports with NEXUS kiosks because NEXUS relies on iris scans to verify identity. The kiosks are required to conduct verification.

The Passport Card was specifically developed by the Department of State in response to the concerns expressed by land border communities in regard to the requirements of WHTI. The passport card is a low-cost, limited-use international travel document whose card format makes it more convenient to carry for most frequent border crossers than the traditional passport book. The secure card includes facilitative technology and is valid for the same period as the passport book. The passport card is issued to U.S. citizens and is accepted at our land and sea ports of entry. Extending the use of the passport card to the international air environment could create confusion with the traveling public who might attempt to use the passport card for travel to a country other than Mexico, Canada or in the Caribbean. Additionally, a passport card costs less than a regular passport due to the lessened impact of overseas citizen emergency costs; extending the passport card's scope to include international air travel would likely cause the cost of the card to increase.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Norm Coleman (#1)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

The WHTI Final Rule stated the Department of State expects to issue passport cards this spring. Mr. Staeben, in your testimony you indicated the passport cards will begin being issued in June with full production beginning in July. Approximately how long will it take people to get them that have already applied? After full production in June, what will be the turnaround for applicants?

Answer:

We have completed the initial run of exemplars to distribute to border screening agencies. The Department will work 24/7 in three shifts to issue cards for all applications in the queue as quickly as possible once full production commences in July.

Currently, we are processing routine passport applications in less than four weeks from the time of application.

Question:

You indicated that as of April 9th, State has received more than 143,000 applications for the passport card. Does State have any projections for what (sic) the demand will be in future years?

Answer:

Projected demand for the Passport Card is currently 8M in FY 2009, 9.5M in FY 2010, and 10.3M in FY 2011. We will refine these projections further after the conclusion of the next border crossing survey, which we anticipate will be completed on or about October 1.

Question:

How will DOS promote the passport card in order to ensure that Americans are aware of this new document?

Answer:

For several years, the State Department, along with our DHS partners have been disseminating information to the traveling public regarding the final implementation requirements for WHTI at land and sea ports. We will intensify outreach efforts over the next twelve months. We have explained the rollout plan on our website, travel.state.gov, on tear sheets and through press releases.

The State Department has contracted a public relations firm, Global Advertising 1st. Together with DHS and our contractors, we are working to ensure a coordinated campaign that will reach the broadest possible audience. The State Department component of this campaign will explain the land and sea requirements for WHTI, how the passport and/or the

passport card can help Americans meet their international travel needs, and the differences in use between the passport book and card. As of June 5, 2008, we have received over 277,000 applications for passport cards as a result of our initial information campaign through our website, media and outreach by passport acceptance centers and passport agencies. We expect to launch a more active media campaign focused on border communities beginning August 2008 that will run through June 2009.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Norm Coleman (#2)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

On January 31 of this year, the Department changed its long standing policy of accepting oral declarations of citizenship and identity for border crossings. I personally visited Minnesota's northern border the next day, and thankfully the change, which had brought much confusion, did not result in major border delays, thanks to a lenient policy and the time of year. That said, time will tell how disruptive this change is going to be-- I think we'll have to wait until the busier summer months to see what effects this is actually going to have.

At any rate, when the June 2009 changes take effect, requiring a passport, passport card or enhanced driver's license, there will also be the real possibility of back-ups at the border. I think of Minnesota's busiest border crossing at International Falls, where there is one three-lane bridge that folks need to approach from a two-lane road. If secondary inspection sites fill

up, there isn't anywhere else for folks to go but wait in long lines. I'm told that summer crossings at International Falls already can see five-hour delays, and that's before any new documentation requirement.

- What problems have been encountered in the field surrounding the implementation of this deadline?
- The WHTI Final Rule indicated there has been no increase in wait times attributable to the end of accepting oral declaration along at the border. I am concerned this may not be the case when the summer rolls around because of the increase in traffic. What policies are in place to ensure that wait times do not increase this summer due to the new documentary requirements?

Answer:

The Department will defer to the Department of Homeland Security for the answers to this question.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Mark Pyrro (#1)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

What public outreach has the State Department conducted to inform people of the current and future border requirements, and what do you plan to do in the days and week leading up to land and sea implementation to continue educating the public?

Answer:

The State Department, along with our DHS partners have been disseminating information to the traveling public regarding the final implementation requirements for WHTI at land and sea ports for several years. We will intensify outreach efforts over the next twelve months. We have explained the rollout plan on our website, travel.state.gov, on tear sheets and through press releases.

The State Department has contracted a public relations firm, Global Advertising 1st. Together with DHS and our contractors, we are working to ensure a coordinated campaign that will reach the broadest possible audience. The State Department component of this campaign will explain

the land and sea requirements for WHTI, how the passport and/or the passport card can help Americans meet their international travel needs, and the differences in use between the passport book and card. As of June 5, 2008, we have received over 277,000 applications for passport cards as a result of our initial information campaign through our website, media and outreach by passport acceptance centers and passport agencies. We expect to launch a more active media campaign focused on border communities beginning August 2008 and have obligated one million dollars for this campaign that will run through June 2009.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Ted Stevens (#1)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

What efforts has the State Department made to ensure that there will not be another backlog of passport and passcard requests, such as the one we witnessed during air implementation of WHTI?

Answer:

The Department has made tremendous progress since the spring and summer of 2007. Our efforts to staff, expand, and equip the domestic passport agencies and centers have paid off in much improved service to our customers this year. Our processing time is currently less than four weeks for routine service and about two weeks for expedited service.

For FY 2009, with the final implementation of the Western Hemisphere Travel Initiative (WHTI), we anticipate passport demand will be in the range of 27.5 to 30 million. The Department has thoroughly analyzed what resources are required to meet that level of demand on a timely basis, and we continue to implement a number of long-term strategies to assist American travelers, increase our passport production capacity, and maintain our traditional service standards.

The Department has hired and trained hundreds of additional passport specialists and support staff, and continues to recruit to meet future demand. By the end of FY 2008, we will have hired approximately 800 new passport employees. To increase production capacity, the Department is continuing to expand existing passport agencies and establish new production centers and additional agencies to meet the immediate travel needs of Americans.

Along the northern border and in the Midwest, we are expanding our agencies in Seattle and Chicago, and doubling the size and processing capacity of the National Passport Center in Portsmouth, New Hampshire. Along the southern border, we are expanding our agencies in Houston, Miami, and New Orleans. In May 2008, we opened a second printing and mailing facility in Tucson, which will have the capacity to produce over 10 million travel documents per year.

In addition to our 19 passport facilities, the Department is also opening three new Passport Agencies in Detroit, Dallas and Minneapolis to serve border communities readying themselves for the new WHTI land and sea rule requirements that will be implemented on June 1, 2009. These agencies will provide personal, direct passport services to customers with immediate travel needs and will have the capability of issuing passport

books and cards, when available, on-site to qualifying applicants. We expect these new agencies to be fully operational early in FY2009.

The Department has planned contingency responses which allow us to react quickly to demand surges. We have established and trained a reserve corps of passport adjudicators to supplement our full-time Passport Services staff. We have also developed the capability to adjudicate passport applications remotely at select consulates overseas, leveraging the expertise of our consular officers abroad. These long-term strategies will provide the staffing levels and infrastructure to meet the increased passport demand generated by WHTI.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Ted Stevens (#2)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

How many passcard requests have you received so far, and when do you expect the first set to be delivered? What outreach have you done in border communities to inform them of the passcard option?

Answer:

As of June 5, 2008, the Department has received over 277,000 applications for the passport card. We expect to begin issuing passport cards in June, and to be in full production in July. The Department has developed a schedule to work 24/7 in three shifts to issue all the cards currently in the queue as quickly as possible.

The Department has launched an information campaign through our website, *travel.state.gov*, media and outreach by passport acceptance facilities and passport agencies to inform Americans of the availability of the passport card. We have contracted a public relations firm, Global Advertising 1st, to help us educate and inform Americans about new travel document requirements, the new passport card and the differences between the passport card and the traditional passport book, and to encourage them to apply for their documents early — well in advance of their planned trips. We expect to launch a more active media campaign focused on border communities beginning August 2008 that will run through June 2009.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator Ted Stevens (#3)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

What public outreach has the State Department conducted to inform people of the current and future border requirements, and what do you plan to do in the days and week leading up to land and sea implementation to continue educating the public?

Answer:

The State Department, along with our DHS partners have been disseminating information to the traveling public regarding the final implementation requirements for WHTI at land and sea ports for several years. We will intensify outreach efforts over the next twelve months. We have explained the rollout plan on our website, travel.state.gov, on tear sheets and through press releases.

The State Department has contracted a public relations firm, Global Advertising 1st. Together with DHS and our contractors, we are working to ensure a coordinated campaign that will reach the broadest possible audience. The State Department component of this campaign will explain the land and sea requirements for WHTI, how the passport book and/or the passport card can help Americans meet their international travel needs, and the differences in use between the passport book and card. As of June 5,

2008, we have received over 277,000 applications for passport cards as a result of our initial information campaign through our website, media and outreach by passport acceptance facilities and passport agencies. We expect to launch a more active media campaign focused on border communities beginning August 2008 and that will run through June 2009.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#1)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

How is the Department of State (State) working with the Department of Homeland Security (DHS) and Canada regarding the implementation of the Western Hemisphere Travel Initiative (WHTI) and the possible development of acceptable alternatives to a Canadian passport, and how is State working with Canada to address the potential economic impacts associated with WHTI?

Answer:

The Administration is committed to implementing WHTI in a manner that not only enhances our border security but also facilitates legitimate travel. To that end, the Departments of State and Homeland Security coordinate on a daily basis as we move forward toward implementing the final phase of WHTI at all land and sea ports on June 1, 2009, and to ensure that American are aware of the new travel document requirements and have the ability to apply for them in a timely manner.

This collaboration permeates every facet of WHTI implementation, including, but not limited to, the development of the passport card, datasharing at ports of entry, technology choices, standards for enhanced driver's licenses, public information strategy and outreach events.

State and DHS have also coordinated very closely with the Government of Canada, particularly the Canadian Border Services Agency and Passport Canada, to consult with them on the development of the U.S. passport card and on passport production capacity and demands. The Canadian government has greatly expanded their passport production capacity to meet the anticipated demand from the Canadian public as a result of WHTI, as we have also done.

Both Departments also coordinate closely with the Canadian government in their efforts to encourage provincial authorities to develop an enhanced driver's license as an alternative to the Canadian passport. Embassy Ottawa and constituent posts work closely with their host government counterparts and the Canadian media to keep the Canadian public informed of WHTI travel requirements and developments.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#2)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

State was terribly understaffed for passport issuance when WHTI was implemented at airports last year. I would like to know in detail what State's plan is for being ready for the implementation of WHTI at land and sea ports. Please provide a breakdown of the number of passport adjudicators and passport facilities State expects to have in place in 2009 as compared to such numbers in 2007 and details of what steps State is taking to ensure it is prepared for the busy summer travel season of 2009 when DHS implements WHTI at land and sea ports.

Answer:

Passport Services has done extensive planning to manage the anticipated workload from the implementation of the land/sea portion of WHTI. We are in the process of opening new facilities and expanding current facilities to handle the increased workload.

In conjunction with this facility expansion, Passport Services has aggressively hired, and will continue to recruit, passport specialists to meet the increasing public demand for passports. All of these new hires receive intensive citizenship, identity and anti-fraud training via Passport Services' National Training Program, as well as in-depth on-the-job training.

Comparison break-downs on both passport facilities and passport specialists are attached.

In addition, an adjudication task force has been planned and will be initiated in 2009, if needed due to the increased workload. A "ready reserve" of trained Department employees (including Presidential Management Fellows (PMFs) and Career Entry Program (CEP) employees) as well as retirees (WAEs), will staff the task force.

All passport agencies/centers, especially those near land borders, are currently conducting outreach to invite the public to apply for their passports now, instead of waiting until 2009. Additionally, the Bureau of Consular Affairs is working with a marketing firm to construct a media campaign which, beginning in August 2008, will target Border States, communicating the use and convenience of the Passport Card as a WHTI compliant travel document and the need to apply early.

Attachments:

Tab 1: Passport Facilities Comparison Break-Down

Tab 2: Passport Specialist Comparison Break-Down

Tab 1: Passport Facilities Comparison Break-Down

- As of January 2007, the Department had 17 facilities:
 - 2 mega processing centers, the National Passport Center, Portsmouth, NH and the Charleston Passport Center, Charleston, SC.
 - 15 regional passport agencies

Most of these existing facilities have been expanded to accommodate an additional 603 adjudication workstations, for a total of 1392 adjudication workstations overall system-wide.
- In April 2007, the Department opened the Arkansas Passport Center (APC), which is a passport printing and mailing facility. APC does not adjudicate passport applications, and therefore has no passport specialists on staff. In its first year of operations (April 2007 through April 2008), APC issued over 6.5 million passport books.
- In May 2008, Passport Services opened its second printing and mailing facility in Tucson. Similarly to APC, the Tucson Passport Center (TPC) does not adjudicate passport applications, and therefore has no passport specialists on staff. TPC has the capacity to issue over 10 million travel documents annually.
- By second quarter FY 2009, the Department plans to open three new passport agencies in Dallas, Detroit and Minneapolis. These agencies will provide personal, direct passport services to customers with immediate travel needs and have the capability to issue passport books and cards, when available, on site to qualified applicants.
- Later in FY 2009, the Department plans to open the Western Passport Center (WPC), a mega processing center dedicated to passport adjudication. The WPC will have a staff of over 250 passport specialists and the capacity to adjudicate over 5 million applications annually.
- The Department has plans in place to open several additional passport agencies, in as yet unidentified locations, to handle anticipated WHTI workload during FY 2009 and FY 2010.

Tab 2: Passport Specialist Comparison Break-Down

- As of January 1, 2007, there were 688 passport specialists on board.
- By September 30, 2007 (end of FY 2007), there were 1039 passport specialists on board – an increase in staff of approximately 34 percent.
- By September 30, 2008 (end of FY 2008), the Department anticipates having on board another 535 passport specialists.
- By September 30, 2009 (end of FY 2009), the Department anticipates having on board another 400 passport specialists.
- By December 31, 2009 (end of 1st quarter of FY 2010) an additional 153 passport specialists are anticipated to be hired.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#3)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

How is State working with DHS to communicate WHTI rules, requirements, and procedures to the public, including what documents are WHTI compliant and the differences between all of those documents, including explaining nuances like the fact that the passport card cannot be used for international air travel?

Answer:

The State Department, along with our DHS partners have been disseminating information to the traveling public regarding the final implementation requirements for WHTI at land and sea ports for several years. We will intensify outreach efforts over the next twelve months. We have explained the rollout plan on our website, travel.state.gov, on tear sheets and through press releases.

The State Department has contracted a public relations firm, Global Advertising 1st. Together with DHS and our contractors, we are working to ensure a coordinated campaign that will reach the broadest possible audience. The State Department component of this campaign will explain the land and sea requirements for WHTI, how the passport book and/or the passport card can help Americans meet their international travel needs, and

the differences in use between the passport book and card. To ensure that Americans understand that the card is limited in use to land and sea port-of-entry, applicants will receive an informational letter with the passport card stressing the important distinction between the two documents. The card itself also notes on the reverse side that it may be used only for land and sea travel. As of June 5, 2008, we have received over 277,000 applications for passport cards as a result of our initial information campaign through our website, media and outreach by passport acceptance facilities and passport agencies. We expect to launch a more active media campaign focused on border communities beginning August 2008 that will run through June 2009.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#4)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

Why won't passport cards be accepted for air travel between the United States and Canada, Mexico, the Caribbean and Bermuda?

Answer:

In consultation with the Department of Homeland Security and Congress, we developed the passport card as a less expensive alternative to a passport book for residents of border communities for land and sea (ferries) border crossings. We later expanded the use of the card to closed-loop sea cruises within the Western Hemisphere. There are no plans at this point to expand the use of the card to the international air environment.

In developing the passport card, the Department made a commitment to Congress and the American public to offer the card at a lower cost than the traditional passport book. To meet that commitment, the Department decided not to include the cost of emergency citizen services which is factored into the cost of the passport book, on the assumption that individuals using the passport card will not require such services or will do so only rarely and in limited circumstances. Since travelers using the card are likely to be on relatively brief cross-border trips, such emergencies

would be handled by travelers relying on family members and services in the United States.

These overseas citizens emergency costs are recovered by the passport book fees, but they are not part of the passport card fee structure. This policy has enabled the Department to achieve its goal of providing a lower-cost alternative to the passport book for those who now require travel documents under the WHTI. If the role of the passport card were to include air travel, we would likely have to revisit the policy decision not to include these costs in the passport card fee and the cost of the card would likely increase.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#5)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

I would like to call your attention to one specific problem that occurred last year in the midst of the problems with passport issuance backlogs. Two of my constituents who regularly travel overseas for mission work needed additional passport pages, which I understand is a no-fee service. In an effort to avoid delays in getting those pages because of the passport issuance backlog, these individuals sent their passports to State three months before their planned international travel. They were informed the week of their trip that their passports had been lost, so they had to spend hundreds of dollars to drive to Washington, D.C. and pay for brand new passports and expedited service. The day after they returned home, their original passports were returned to them invalidated. While occasionally processing errors occur, responsibility for those errors need to be taken. What process does State have in place to reimburse the cost of the new passports these individuals had to acquire because of a State Department error?

Answer:

The Department regrets the delay your constituents encountered in receiving their passports and apologizes for the inconvenience they experienced.

Under the Department's regulations, a passport issuing office may issue replacement passports without payment of applicable fees in order to correct an error or rectify a mistake of the Department. This includes the expedite

fee, which is not collected if the Department's error, mistake, or delay caused the need for expedited processing.

The Department issues refunds of passport fees erroneously collected. To obtain a refund, the applicants should send a refund request to Passport Services. The request should include a synopsis of what transpired, and should include full names, dates of birth, passport numbers (if available), current mailing address, and telephone number in the event additional information is required. An e-mail request can be sent to Refunds@PassportServices@state.gov. If sent via regular mail, the address is Service Refund, Department of State, 2999 Passport PL, Washington, DC 20522-2999.

**Questions for the Record Submitted to
Senior Advisor Derwood Staeben by
Senator George V. Voinovich (#6)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

The FY 2008 Omnibus Appropriations bill includes \$5 million to develop a demonstration program to expand access to consular services, including through the use of mobile consular units. What is the status of the implementation of this program? In which countries will you develop the program? Does the FY09 budget request seek to expand funding beyond the \$5 million included in FY08? If not, how do you seek to fund the program in future years?

Answer:

At this time the Department is still in consultation with the Senate Committee on Appropriations regarding our development of a demonstration project. We will be able to report more fully on our expectations for this program once those consultations are completed.

**Questions for the Record Submitted to
Senior Advisor Derwood K. Staeben by
Senator Carl Levin (#1)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Western Hemisphere Travel Initiative:

Michigan is home to the busiest border crossing in North America, based on the value of freight. Over \$150 Billion annually crosses to and from Michigan, and most of that at the Ambassador Bridge in Detroit. In the passenger lanes, over 15 million cars crossed through Michigan's ports of entry in 2007. In Detroit alone, approximately 4000 Canadian nurses cross the border and come to work every day.

We have suffered from chronic understaffing, delays, and slow implementation of technology at Michigan's border crossings. Each time a new regulation is implemented without corresponding time saving technology and trained staff it costs Michigan residents and businesses money. Our relationship with Canada and the full integration of our manufacturing supply chain mean that blockages at our border make Michigan uncompetitive.

Further, it is imperative that all agents are trained properly and that the technology is installed at all lanes at all of our border crossings and before June 2009, which I expect will take some serious planning in order to allow for testing and contingencies.

Questions:

- a. Can you tell me the timeline of exactly when the new readers will be installed at ALL of Michigan's crossings?
- b. Can you describe the nature and depth of the agent training you plan to implement?

Answer:

We defer to the Department of Homeland Security to answer these questions. Part 2. The Michigan State Legislature recently passed legislation to enable the Michigan Secretary of State authority to increase some security provisions on the basic driver's license and asked her to come back to the legislature for further approvals. Further, on March 13, the Governor signed legislation that authorizes the Secretary of State to develop an enhanced driver's license that once approved by DHS and the State Department will give Michigan residents an alternate document to use for land border crossing.

**Questions for the Record Submitted to
Senior Advisor Derwood K. Staeben by
Senator Carl Levin (#2)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

- a. The requirement for REAL IDs and Enhanced Driver's Licenses (EDL) under WHTI are related, yet very different.
- i. How are they to be reconciled if at all?
 - ii. Is there any thought to merging the two sets of requirements?
 - iii. How does DHS ensure that all EDLs will be REAL ID compliant?

Answer:

We defer to the Department of Homeland Security to answer these questions.

**Questions for the Record Submitted to
Senior Advisor Derwood K. Staeben by
Senator Carl Levin (#3)
Senate Committee on Homeland Security and Governmental Affairs
April 29, 2008**

Question:

New regulations have been proposed for the land and sea environments that could have an impact on Michigan. Specifically, proposed regulations commonly known as "10 + 2" would require notification of Customs and Border Protection of the contents of freight containers 24 hours before it crosses the border. Given the just-in-time supply chain in Michigan, we know that many items are ordered, manufactured and shipped within 24 hours, making this requirement impossible to meet.

In addition, the Administration just announced a new rule that would require fingerprinting of international travelers in the air and sea environments. Again, if this rule is applied to passengers at land ports of entry, the impact on Michigan's economy could be severe.

Question:

a. What is your plan regarding extending these requirements to the land environment?

Answer:

We defer to the Department of Homeland Security to answer this question.

**Post-Hearing Questions for the Record Submitted to Mr. David Quam
From Senator George V. Voinovich**

**“The Impact of Implementation: A Review of the REAL ID Act and the
Western Hemisphere Travel Initiative”
April 29, 2008**

- 1. Has the Department of Homeland Security (DHS) addressed the National Governors Association’s concern that the REAL ID grant program established by Congress may be used to help DHS build a system to facilitate electronic verification of applicants’ information?**

Response:

DHS and governors worked to craft a compromise on the use of existing REAL ID grant funds, but the confusion surrounding the grant program suggests that Congress should clarify that any future REAL ID grant funds are to be used by the states to fund state priorities, rather than directed by DHS to fund federal priorities.

DHS’s guidance for the REAL ID grant program was structured to strongly favor a proposal to use all available state grant funds to develop a “hub” system to facilitate electronic verification of applicants’ information. Governors’ opposed this structure because states have other REAL ID priorities that require funding if states are to meet DHS’s 18 benchmarks for compliance by December 31, 2009. By setting grant guidelines that favor the development of a hub system over all other priorities, DHS was effectively setting spending priorities for governors.

Governors asked DHS to restructure the grant program to allow all jurisdictions to receive funds and to spend them in a manner consistent with improving the security of driver’s licenses and identification cards. This past summer DHS awarded nearly \$22 million of the \$79.8 million available for states to five pilot states for purposes of developing the hub system. The remaining funds were awarded to the other jurisdictions that applied for REAL ID grant funds.

As of August 2008, no state has received funding under the REAL ID grant program. This means with the exception of an early grant award to Kentucky, no state has received any federal funds to assist with the implementation of REAL ID.

Ironically, while DHS argued that REAL ID grant funds could be used for development of the hub, it also requested \$50 million as part of the President’s fiscal year 2009 budget to build the hub. DHS’s request suggests the funding model that should be followed for future grant funding: REAL ID grant funds should go to states to fund state priorities; federal priorities that affect all jurisdictions, like the hub, should be federally funded outside the REAL ID grant process.

Post-Hearing Questions for the Record Submitted to
Roger J. Dow, President and CEO,
Travel Industry Association



June 19, 2008

Travel Industry Association (TIA) response to follow up questions from Senator George V. Voinovich (R-OH) following the April 29, 2008 hearing held by the Senate Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on "The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative."

1) What specific issues and impacts on tourism have you seen thus far due to the end of oral declarations of citizenship for entry into the U.S. at land ports?

The full impact of the end of oral declarations on travel and tourism from Canada to the U.S. is difficult to gauge at this time because the Department of Homeland Security has continued to allow travelers who come to a port-of-entry without the proper documents to enter the U.S. It is our understanding that Canadian travelers are receiving warnings and information about the new rule at ports-of-entry but are not being denied entry. We applaud this flexibility because it has allowed Canadians who are unaware of the entry changes to continue to visit the U.S.

We are concerned that as the heavy summer travel season begins and the Department of Homeland Security fully enforces the end of oral declarations, Canadian travelers could face problems entering the country. For this reason, we have continued to urge the Department of Homeland Security to maintain its flexibility and immediately implement a widespread and aggressive public outreach campaign to inform Canadian travelers of the end of oral declarations and of the impending passport requirements of the Western Hemisphere Travel Initiative, or WHTI. This type of public outreach campaign will require extensive resources and can best be executed within the framework of the public-private partnership envisioned in the Travel Promotion Act of 2007, or S. 1661. This legislation creates a structure for a national-level campaign to better explain new U.S. travel rules to international travelers and would provide an already built framework for carrying out such strategic communications efforts on a wide variety of new U.S. travel rules, including those resulting from the Western Hemisphere Travel Initiative.

2) What are your thoughts on the State Department's planned passport card, including specific suggestions regarding how the public can and should be educated about the card?

The Travel Industry Association has consistently supported the passport card as one important option available to travelers to facilitate cross-border travel between the U.S. and our critical travel and trade partners, Canada and Mexico. In order to encourage U.S. citizens to apply for the passport card, the card's fee must be affordable and enrollment sites should be easily accessible to large border communities. Furthermore, a broad and aggressive public outreach campaign to explain both the costs and rules associated with securing a passport card and the travel limitations (e.g. that passport cards cannot be used for international air travel) of the card must be laid out in a clear and concise fashion for travelers.

BACKGROUND
THE IMPACT OF IMPLEMENTATION: A REVIEW OF THE REAL ID ACT AND
THE WESTERN HEMISPHERE TRAVEL INITIATIVE
April 29, 2008

BACKGROUND

Following the terrorist attacks of September 11, 2001, Congress established a commission to investigate the attacks, identify lessons learned, and provide recommendations to safeguard against future acts of terrorism.¹ In 2004 the 9-11 Commission issued its findings and recommendations. The Commission found that all but one of the 9-11 hijackers acquired some form of U.S. identification document, some by fraud, which would have assisted them in boarding commercial flights, renting cars, and other activities.² The Commission asserted that Americans should not be exempt from carrying biometric passports or otherwise enabling their identities to be securely verified when they enter the U.S.³ In addition, it recommended the federal government set standards for the issuance of birth certificates and sources of identification, such as drivers' licenses.⁴

Following the Commission's advice, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), which, among other things, (1) required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to require a passport or other document to denote identity and citizenship for all travelers entering the United States and (2) required the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to issue regulations with respect to minimum standards for federal acceptance of driver's licenses and personal identification cards.⁵ Then in 2005, Congress passed the REAL ID Act, introduced by Representative James Sensenbrenner (R-WI), as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief of 2005, which replaced the provisions in the IRTPA to secure drivers' licenses and imposed additional requirements on driver's licenses.⁶

The Western Hemisphere Travel Initiative (WHTI)

To implement the first recommendation, the Department of Homeland Security (DHS), working with the Department of State (State), initiated the Western Hemisphere Travel Initiative (WHTI), requiring all travelers to present a passport or other document that denotes identity and citizenship when entering the U.S. The program is being implemented in two phases: first for air travel and second for land and sea travel.

¹ Public Law 107-306 sec. 601

² The 9/11 Commission Report: The Final Report of the National Commission on Terrorist Attacks Upon the United States, pg 390.

³ Id. at 388.

⁴ Id. at 390.

⁵ Pub. L. 108-458 sec. 7209 and 7212.

⁶ Pub. L. 109-13.

On November 24, 2006, DHS issued final regulations for the documents required for travelers departing from or arriving in the U.S. at air ports of entry in the Western Hemisphere. Under this program, all persons (including U.S. citizens) traveling by air to the U.S. from all foreign countries are required to present a valid passport, Air NEXUS card,⁷ or U.S. Coast Guard Merchant Mariner Document beginning January 23, 2007.⁸ After the January 2007 implementation of the new passport regulations, State was deluged with passport applications. The time necessary to get a passport expanded from the typical four to six weeks to several months. Thousands of American families were forced to cancel their long-anticipated trips because State failed to anticipate the number of passport requests spurred by WHTI.⁹ In response, on June 8, 2007, DHS and State announced that U.S. citizens traveling to Canada, Mexico, the Caribbean and Bermuda who had applied for but not yet received passports could nevertheless temporarily enter and depart from the U.S. by air with a government-issued photo identification and State official proof of application for a passport through September 30, 2007.

Generally, U.S. citizens must possess a valid U.S. passport to depart from or enter the United States.¹⁰ However, U.S. citizens who depart from or enter the United States by land or sea from within the Western Hemisphere other than from Cuba historically have been exempt from this passport requirement.¹¹ Travelers claiming U.S. citizenship long have been permitted to enter on an oral declaration or to present a variety of documents (including a driver's license) to establish their identity and citizenship and right to enter the U.S. On June 26, 2007, in the Land and Sea proposed regulations, the Departments announced that, separate from WHTI implementation, beginning January 31, 2008, Customs and Border Protection (CBP) would begin requesting documents that help establish identity and citizenship from all U.S. and Canadian citizens entering the United States.¹² Therefore, currently U.S. citizens ages 19 and older are asked to present documents proving citizenship, such as a birth certificate, and government-issued documents proving identity, such as a driver's license, when entering the U.S. through land and sea ports of entry. Children under the age of 19 are asked only to present proof of citizenship, such as a birth certificate. However, officers have discretionary power to waive the requirement for 180 days.

Earlier this year Congress passed the Department of Homeland Security Appropriations Act of 2008 which amended IRTPA by requiring DHS and State to implement the WHTI requirements no earlier than the date that is the later of three months after the Secretary of State and the Secretary of Homeland Security certify that certain criteria laid out in the FY07 Homeland

⁷ NEXUS is part of the Trusted Traveler Program and provides expedited travel via land, air or sea to approved members between the U.S. and Canada border.

⁸ 71 Fed. Reg. 68412 (Nov. 24, 2006).

⁹ Elizabeth Fernandez, "The Nightmare of Getting There: Surge in applications has created a bureaucratic bottleneck," *The San Francisco Chronicle*, June 3, 2007, <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2007/06/03/MNGDEQ6SFU1.DTL&type=printable>

¹⁰ Section 215(b) of the Immigration and Nationality Act (INA), 8 USC 1185(b).

¹¹ See 22 CFR 53.2(b), which waived the passport requirement pursuant to section 215(b) of the INA, 8 USC 1185(b).

¹² 72 Fed. Reg. 35088 (June 26, 2007). See also 72 Fed. Reg. 72744 (Dec. 21, 2007)

Security Appropriations Act have been met or June 1, 2009." ¹³ These criteria and the Departments' response as to how they have been met are:

1. *Acquire National Institute of Standards and Technology (NIST) certification for the passport card concerning security standards and best practices for protection of personal identification documents.* On May 1, 2007, NIST certified that the proposed card architecture of the passport card meets or exceeds the relevant standard and best practices, as specified in the statute.

2. *Certify that passport card technology has been shared with Canada and Mexico.* DHS and State continue to share information and meet regularly with both Mexican and Canadian officials regarding the radio frequency identification (RFID) technology for the passport card.

3. *Certify that an agreement has been reached and reported to Congress on the fee collected by the U.S. Postal Service for acceptance agent services.* State and the Postal Service have memorialized their agreement on the fees for the passport card set by State, including the execution fee which the Postal Service retains.

4. *Certify that an alternative procedure has been developed for border crossings by groups of children.* The final rule contains an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent as proposed in the land and sea proposed regulations.

5. *Certify that the necessary passport card infrastructure has been installed and employees have been trained.* WHTI is a significant operational change in a series of changes that are aimed at transforming the land border management system. DHS will utilize the technology currently in place at all ports-of-entry to read any travel document with a machine readable zone, including passports and the new passport card. CBP Officers have been trained in use of this infrastructure. In addition, CBP will deploy an integrated RFID technical infrastructure to support advanced identity verification in incremental deployment phases. CBP Officers receive ongoing training on WHTI policies and procedures and that will continue as we approach full WHTI implementation, including technology deployment, technology capability, and documentary requirements. CBP will develop training requirements and plans, perform the required training, provide on-site training support and monitor its effectiveness through assessment and ongoing support. Initial training was completed in January 2008.

6. *Certify that the passport card is available to U.S. citizens.* State has developed an ambitious and aggressive schedule to develop the passport card and is making progress toward that goal. State issued the final rule on December 31, 2007. State has accepted applications for the passport card since February 1, 2008, and expects to issue cards in spring 2008.

7. *Certify to one implementation date.* The final rule provides for one implementation date for land and sea travel.

8. *Certify to agreement for at least one voluntary program with a state to test a state-issued enhanced driver's license and identification document.* On March 23, 2007, the Secretary of

¹³ Pub. L. 110-161 sec. 545

Homeland Security and the Governor of Washington signed a Memorandum of Agreement to develop, issue, test, and evaluate an enhanced driver's license (EDL) and identification card with facilitative technology to be used for border crossing purposes. On September 26, 2007, the Secretary of Homeland Security and the Governor of Vermont signed a similar Memorandum of Agreement for an EDL and identification card to be used for border crossing purposes; on October 27, 2007, the Secretary and the Governor of New York also signed a Memorandum of Agreement. On December 6, 2007, the Secretary of Homeland Security and the Governor of Arizona also signed a similar Memorandum of Agreement to develop, issue, test, and evaluate an EDL and identification card. The Departments have worked very closely to update the appropriate congressional committees on the status of these certifications and will continue to do so until final certifications are made. State and DHS believe that these certifications will be made well in advance of the June 1, 2009, deadline for implementation. In the unlikely event that the Departments are unable to complete all the necessary certifications by June 1, 2009, the Departments will provide notice to the public and amend the date(s) for compliance with the document requirements for land and sea border crossings as necessary.

Several stakeholder groups have expressed concern over the WHTI requirements. The chief concerns are the impact the new requirements will have on travel, trade, and the economy of border areas. According to the Business for Economic Security, Tourism, and Trade (BESTT), land border crossings across the 49th parallel, as well as the ferry systems on both coasts, and in some inland waterways combined account for \$1.2 billion dollars a day in trade, which supports 5.2 million jobs.¹⁴ In addition, there have been numerous groups that have called for a more robust public information and outreach campaign in order to alert travelers of the WHTI requirements in a timely fashion. Moreover, there is concern about the impact WHTI will have on individual travelers since the vast majority of Americans do not have passports. This has generated calls for lowering the cost for and faster processing of passport applications. However, it is unclear what impact reducing the cost of passports would have on State's ability to meet passport demand.

The current costs for a passport and passport card are:

	Application Fee	Execution Fee	Total
Passport Book (Age 16 & Older)	\$75	\$25	\$100
Passport Book (Under Age 16)	\$60	\$25	\$85
Passport Card (Age 16 & Older)	\$20	\$25	\$45
Passport Card (Under Age 16)	\$10	\$25	\$35

A passport card is a wallet-size card that can only be used for land and sea travel between the U.S. and Canada, Mexico, the Caribbean, and Bermuda. The card will provide a less expensive, smaller, and more convenient alternative to the passport book for those who travel frequently to these destinations by land or by sea. Applications for the U.S. passport card are now being accepted. Based on current projections, State expects to begin production of the passport card in June 2008 and be in full production in July. To facilitate the frequent travel of Americans living

¹⁴ <http://www.bestcoalition.com/Position.html>

in border communities, and to meet DHS's operational needs along the land borders, the passport card will have a vicinity-read radio frequency identification (RFID) chip. With this technology, CBP inspectors will be able to access photographs and other biographical information stored in secure government databases before the traveler reaches the inspection station. There will be no personal information written on the electronic chip itself. The chip will have only a unique number pointing to a stored record contained in secure government databases. Privacy advocates have raised concerns that the use of a RFID chip in the passport card poses substantial privacy and security threats.¹⁵

The REAL ID Act

Until 2004 standards with respect to drivers' licenses and personal identification cards were determined on a state-by-state basis with no national standards in place. However, based on the recommendations of the 9/11 Commission, Congress passed IRTPA, which required the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to issue regulations with respect to minimum standards for federal acceptance of drivers' licenses and personal identification cards. IRTPA required the use of negotiated rulemaking to bring together agency representatives and concerned interest groups to negotiate the text of a proposed rule, which was to include minimum standards for the documentation required by the applicant to get a drivers license, the procedures utilized for verifying the documents used, requirements for what was to be included on the card, and the standards for processing the applications.

However, if a state granted a certain category of individuals (i.e., aliens, legal or illegal) permission to obtain a license, nothing in the implementing regulations was to infringe on that state's decision or its ability to enforce that decision. In addition, the regulations were not to require a single uniform design and were required to include procedures designed to protect the privacy rights of individual applicants. However, before the negotiated working group could meet for a second time, Congress passed the REAL ID Act as part of the 2005 Emergency Supplemental, which replaced the provisions in the IRTPA and added additional requirements for secure drivers' licenses.¹⁶

The REAL ID Act requires that individuals seeking to board an airplane or enter a federal facility or a nuclear power plant with a driver's license must use one that is REAL ID compliant. Prior to issuing a REAL ID card, a state will have to verify the issuance, validity, and completeness of: (1) a photo identification document or a non-photo document containing both the individual's full legal name and date of birth; (2) the individual's date of birth; (3) the individual's social security number (SSN) or verification of the individual's ineligibility for a SSN; and (4) name and address of the individual's principal residence. In addition, the Act requires the states to provide electronic access to their databases to all other states.

The Act also requires states to verify an applicant's legal status in the United States before issuing a driver's license or personal identification card and adopt procedures and practices to:

¹⁵ http://epic.org/privacy/rfid/whiti_080107.pdf

¹⁶ Pub. L. 109-13

(1) employ technology to capture digital images of identity source documents; (2) retain paper copies of source documents for a minimum of seven years or images of source documents presented for a minimum of ten years; (3) take a picture of each applicant; (4) establish an effective procedure to confirm or verify a renewing applicant's information; (5) confirm with the Social Security Administration a SSN presented by a person using the full Social Security account number; (6) refuse issuance of 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 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 length of time a drivers' license or personal identification card is valid to eight years.

On January 29, 2008, DHS issued final regulations for REAL ID.¹⁷

Verification

The final regulation calls on states to use the following verification systems as they become available or to use alternative methods approved by DHS, but it appears that states still can expect to pay transactional access costs. The Act contemplates that states will need to have access to six national databases (see chart below) for the purposes of verifying the validity of the required identification documents.

Verification System	Status
Social Security On-Line Verification (SSOLV)	Almost all states currently use this system
Department of State	DHS is working with the Department of State to develop a system to permit DMVs to check electronically that a passport is valid
Electronic Verification and Vital Events (EVVE)	System is currently in a pilot phase to check birth certificates
Systematic Alien Verification for Entitlements (SAVE)	All 50 states have Memorandums of Understanding (MOUs) for access to SAVE; however, only 20 are currently using it to verify lawful status
Student and Exchange Visitor Information System (SEVIS)	DHS intends to update SAVE with SEVIS information and has targeted May 2008 for having that information in place
All-State DL/ID Records System	DHS is reviewing grant proposals for states access each other's information

¹⁷ 73 Fed. Reg. 5271 (Jan. 29, 2008).

The regulations require a state to maintain a motor vehicle database that contains at a minimum:

- all data fields printed on the driver's license and identification cards, individual serial numbers of the card, and social security numbers;
- a record of the full legal name and recorded name, without truncation;
- all data fields included on the machine-readable zone that are not printed on the front of the card; and
- motor vehicle driver histories, including motor vehicle violations, suspensions and points.

Prior to issuing a REAL ID compliant license, states must check with all other states to determine if any state already has issued a REAL ID driver's license or card to the applicant. If a state receives confirmation that the applicant holds another REAL ID, the regulations require the state to confirm that the applicant has terminated or is terminating the extant REAL ID pursuant to state law before issuing a new REAL ID. DHS is exploring use of AAMVAnet¹⁸ or expansion of Commercial Driver's License Information System (CDLIS) or some other service as the platform for the state-to-state exchange.

Security of DMVs and Personal Information

The final regulations also require that a state's comprehensive security plan address:

- the physical security of the facilities used to produce and store materials used in REAL ID card production;
- the security of personally identifiable information maintained at Department of Motor Vehicles (DMV) locations;
- documents and physical security features of REAL ID cards;
- access controls for DMV employees and contractors, including:
 - employee identification and credentialing,
 - employee background checks, and
 - controlled access systems;
- periodic training requirements for employees, including fraudulent document recognition programs and security awareness training;
- emergency/ incident response plans;
- internal audit controls; and
- an affirmation that the state has the authority and means to protect the confidentiality of persons issued REAL ID compliant driver's licenses and identification cards in support of federal, state and local criminal justice agencies, or special licensing or identification programs to safeguard ID holders in their official capacity.

States must take measures to ensure the physical security of facilities used in the manufacture and issuance of REAL ID-compliant driver's licenses and identification cards, however, DHS does not stipulate the manner in which a state secures its facilities. The regulations stipulate that

¹⁸ AAMVAnet is the transport for information exchange between motor vehicle departments, CDLIS, the Social Security Administration, etc. AAMVAnet is maintained by the American Association of Motor Vehicle Administrators.

states must take reasonable efforts to protect the personal information used to comply with the requirements of the REAL ID, including protections to prevent unauthorized access, use or dissemination of such information. State security plans must detail policies and procedures for document retention and destruction; states must also institute a privacy policy for information collected and maintained by the DMV under the requirements of the REAL ID. In addition, states must maintain minimum protections regarding the release and use of personal identifiable information under existing federal law. The regulations set the Driver's Privacy Protection Act as the floor for use of personal information collected by DMVs.

Design of REAL ID Cards

The REAL ID Act prescribes that a certain set of information and features appear on REAL ID compliant, state-issued driver's licenses and identification cards. The law stipulates the following nine as minimums:

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; and
9. A common machine-readable technology, with defined minimum data elements.

The regulations discuss the nine elements that must be included on the face of the REAL ID set by statute and add the following:

10. Issue date;
11. Expiration date;
12. State or territory of issuance; and
13. DHS approved security marking.

The REAL ID Act requires states to utilize multiple layers of physical security features on driver's licenses and identification cards that are not reproducible using commonly used or available technologies in order to deter forgery and counterfeiting and to promote an adequate level of confidence in the authenticity of the document. The final regulations require states to employ three levels of card security features for REAL ID compliant driver's licenses and identification cards:

- Level 1 must provide for easily identifiable visual or tactile features to allow a cursory examination for rapid inspection;
- Level 2 provides for an examination by trained inspectors with simple equipment; and
- Level 3 provides for inspection by forensic specialists.

For example, a state would choose several features, such as tamper-proof printed information, an optically variable feature or an ultraviolet (UV) responsive feature, and satisfy each level of security required under the final regulations. However, the regulations do not mandate specific security features or card stock for driver's licenses and identification cards. States must conduct a review of its driver's license and identification card design and submit a report to DHS that indicates the ability that the card design is resistant to compromise and document fraud. DHS may request an independent laboratory conduct analysis regarding the card's security features. States must also notify DHS whenever a security feature is modified, added, or deleted.

Deadlines for Compliance

The regulations do not require the machine readable zone (MRZ) on the card to be encrypted. States are required to use a PDF417 2D bar code, with the following defined minimum data elements—expiration date, full legal name, transaction date, date of birth, gender, address as listed on card, unique identification number, revision date, inventory control number of the physical document, and state or territory of issuance.

In order for a state's driver's license to be accepted for federal purposes (board a commercial flight or enter a federal building), a state must certify to DHS that the state is compliant with the requirements of the REAL ID on or before May 11, 2008. In addition, a state could request an initial extension by March 31, 2008. The initial extension would expire on December 31, 2009. An extension does not indicate whether a state will comply with REAL ID. Individuals in states that have not been granted an extension and that do not have other acceptable forms of identification (e.g., government-issued photo identification, such as a U.S. passport, military ID, or other government identification badge) may suffer delays at the airport due to the requirement for additional security screening. DHS has granted an extension to every state, despite the fact that several states have indicated that they will not comply with REAL ID or did not specifically "ask" for an extension.

States may request an additional extension until May 10, 2011, by submitting a Material Compliance Checklist, which requires states to indicate their level of compliance with REAL ID. States must file for the additional extension by October 11, 2009. However, a state-issued driver's license must meet the requirements of the REAL ID by December 1, 2014, for individuals born after December 1, 1964, and by December 1, 2017, for individuals born before December 1, 1964.

The Material Compliance Checklist is a list of the following 18 requirements:

1. Mandatory facial image capture and retention
2. Declaration of true and correct information
3. Require an individual to present at least one of the source documents for identity
4. Require documentation of date of birth; Social Security Number; address of principal residence; evidence of lawful status
5. Have a documented exceptions process
6. Reasonable efforts to make sure the individual does not have more than one license

7. Verify lawful status through SAVE or another DHS approved method
8. Verify Social Security numbers with the Social Security Administration or other DHS approved method
9. Issue drivers licenses that contain Level 1, 2, and 3 integrated security features
10. Surface of cards include full legal name, date of birth, gender, unique license number, full facial digital photograph, address of principal residence, signature, date of transaction, expiration date, and state or territory of issuance
11. Commit to mark materially compliant licenses with a DHS approved security marking
12. Issue temporary or limited-term licenses to all individuals with temporary lawful status
13. Have a documented security plan for DMV operations
14. Have protections in place to ensure security of personally identifiable information
15. Require all employees handling source documents or issuing licenses to attend security awareness and fraudulent document recognition program
16. Conduct name based and fingerprint based criminal history check of DMV employees
17. Commit to be in material compliance with subparts A-D of the final regulations by January 1, 2010 or within 90 days of submitting this document
18. Clearly state on the face of non-compliant licenses that the card is not acceptable for official purposes.

Costs and Privacy Concerns

Since enactment of REAL ID, several organizations have come forward with concerns about the law, including the National Governors Association, the National Conference of State Legislatures, and the American Civil Liberties Union. Seventeen states have also passed laws prohibiting compliance with REAL ID or resolutions expressing opposition to REAL ID. In general terms, the concerns focus on the following themes: REAL ID would create an unfunded mandate for the states, REAL ID would be a national ID card, REAL ID could make it easier to steal personal information, and REAL ID could violate civil liberties.

Initially, DHS estimated the cost of implementing REAL ID to be \$23.1 billion over 10 years, of which \$10 billion to \$14 billion would be born by the states.¹⁹ In the final regulations, the overall cost decreased to \$9.9 billion, of which \$3.99 billion would be to the states. To date, Congress has appropriated only \$90 million to assist states with implementation of the REAL ID, of which only \$9 million has been obligated. The President's FY 2006, FY 2007 and FY 2008 budget proposals did not include any funds to assist states with the implementation of the REAL ID. The FY09 budget proposal included \$100 million for a competitive grant program to fund both REAL ID and buffer zone protection for critical infrastructure. DHS again will enable states to use up to 20 percent of their State Homeland Security Grant Program (SHSGP) Funds for implementation of the Real ID. Under current law, states are required to pass 80 percent of these funds to local governments, leaving only 20 percent for the states. This program received \$890 million in federal funds in FY 2008, which represented an increase over FY 2007 through the consolidation of the Law Enforcement Terrorism Prevention Program. Most states already have dedicated SHSGP funds for other homeland security projects.

¹⁹ 72 Fed. Reg. 10819 (March 9, 2007).

Several groups expressed concern that REAL ID infringes on Americans privacy rights and civil liberties. With regards to privacy, concerns have been raised over the actual data on the card, the ability of third parties to capture and share the data on the card, and the possibility of identity theft based on the sharing of personal information by electronic means and the electronic storage of personal information by the DMV and on the card. Although individual states' driver's licenses may continue to exhibit cosmetic differences, under REAL ID they would contain a standardized set of information collected by all 50 states, in standard format, encoded on a standardized MRZ. And although individual states would still maintain their own databases, some believe that by requiring them to be interlinked, REAL ID would bring into being what is, for all practical purposes, a single distributed database.

Concerns have also been raised that the REAL ID Act violates the Constitution by placing burdens on the right of individuals to travel, assemble, petition the government, and practice their religion.

Enhanced Drivers Licenses

On August 4, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007.²⁰ Section 723 of the Act called on the Secretary of Homeland Security to begin to develop pilot programs with states to develop state-issued secure documents that would denote identity and citizenship. These new documents are being developed by many states to comply with travel rules under the Western Hemisphere Travel Initiative (WHTI). Enhanced drivers licenses (EDLs) can be used by U.S. citizens instead of a passport to cross the border with Canada and Mexico.

DHS has worked to align REAL ID and EDL requirements. DHS is coordinating efforts to ensure that an EDL, developed to meet the requirements of WHTI, will meet standards that REAL ID requires. However, while REAL ID requires proof of legal status in the U.S., the state issued EDL will require that the card holder be a U.S. citizen. In addition, a REAL ID will not necessarily include RFID technology, whereas an EDL will in order to facilitate border crossing and verification by CBP at a port of entry. No personally identifiable information will be stored on the card's RFID chip or be transmitted by the card. Instead the card will use a unique identification number which will link to information contained in a secure database. An EDL will also include a Machine Readable Zone (MRZ) to allow CBP officers to read the card electronically if RFID is not available. A REAL ID will include MRZ technology, though not the international travel document standard MRZ. REAL ID includes a 2D barcode primarily to allow State and local law enforcement to verify that the document is valid.

In January Washington State began issuing EDLs that could be used under the WHTI document requirements at land and sea borders. Vermont and New York have signed Memoranda of Agreement with DHS to issue EDLs.

²⁰ Pub. L. 110-53.

LEGISLATION

S. 35, *The Western Hemisphere Traveler Improvement Act of 2007*, introduced by Senators Norm Coleman (R-MN), Susan Collins (R-ME), John Sununu (R-NH), George Voinovich (R-OH), and Amy Klobuchar (D-MN), and referred to the Committee on Homeland Security and Governmental Affairs.

S. 563, *A bill to extend the deadline by which State identification documents shall comply with certain minimum standards*, introduced by Senators Susan Collins (R-ME), Olympia Snowe (R-ME), Lamar Alexander (R-TN), Thomas Carper (D-DE), and Chuck Hagel (R-NE), and referred to the Committee on Homeland Security and Governmental Affairs.

S. 717, *The Identification Security Enhancement Act of 2007*, introduced by Senators Daniel Akaka (D-HI), John Sununu (R-NH), Patrick Leahy (D-VT), Jon Tester (D-MT), Max Baucus (D-MT), and Lamar Alexander (R-TN), and referred to the Committee on the Judiciary.

S. 2474, *The Emergency Port of Entry Personnel and Infrastructure Funding Act of 2007*, introduced by Senator John Cornyn (R-TX), and referred to the Homeland Security and Governmental Affairs Committee.

H.R. 1061, *The Protecting American Commerce and Travel Act of 2007*, introduced by Representative Louise Slaughter (D-NY) and 46 cosponsors, and referred to the Committee on Homeland Security and the Committees on Foreign Affairs and Judiciary.

H.R. 1117, *The REAL ID Repeal and Identification Security Enhancement Act of 2007*, introduced by Representative Tom Allen (D-ME) and 35 cosponsors, and referred to the House Committee on Oversight and Government Reform and the Committee on the Judiciary.

H.R. 2745, *The Passport and Travel Cost Reimbursement Act of 2007*, introduced by Representative Jim Cooper (D-TN) and 5 cosponsors, and referred to the House Committee on Foreign Affairs and the Committee on Homeland Security.

H.R. 4186, *A bill to repeal the Western Hemisphere Travel Initiative*, introduced by Representative Bart Stupak (D-MI), and referred to the House Committee on Homeland Security.

ADDITIONAL INFORMATION

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Final Rule: Documents Required for Travelers Departing From or Arriving in the United States at Air Ports-of-Entry From Within the Western Hemisphere, November 24, 2006,
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Final Rule: Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere, March 27, 2008,
http://www.dhs.gov/xlibrary/assets/whti_landseafinalrule.pdf

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U.S. Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal Workforce, and the
District of Columbia

The Impact of Implementation: A Review of the REAL ID Act and the Western
Hemisphere Travel Initiative

April 29, 2008

The Association of Corporate Travel Executives (ACTE) at www.acte.org represents the global business travel industry through its international advocacy efforts, executive level educational programs, and independent industry research. ACTE's membership consists of senior travel industry executives from 82 countries representing a €200 billion business travel industry.

On behalf of our members, we respectfully request the repeal of the REAL ID Act, or its suspension until alternative legislation can be drafted.

Business travel is the pulse of this nation's economy. The primary objective of any government security or identity program that impacts travel is to safeguard the lives and the livelihoods of travelers -- while fostering confidence in the transportation network and the people entrusted with its protection.

The U.S. Department of Homeland Security's (DHS) REAL ID program falls short of these objectives. During the first quarter of 2008, citizens from as many as 17 states were presented with the possibility of needing a passport to travel domestically. The initial result of the REAL ID program was to confront the US traveling public with a dual, confusing, and inconsistent standard in domestic travel identification.

State Legislators have raised serious questions regarding the effectiveness of the REAL ID Act, with regard to security, privacy, and substantial cost. A growing number of states are contesting the program in their legislatures. Many are uncommitted. Four have laws prohibiting participation. Yet all are listed in compliance. The time has now come to eliminate the confusion between the federal government and the states, and the business traveler and the DHS. To the business travel industry, REAL ID offers far more potential liabilities than benefits.

Nothing is more important than the safety and security of the United States, its residents, and the 600 million travelers who will fly through US skies yearly. Federal, state, and local governments share an obligation to provide the best security available to everyone, covering every possible eventuality. This is a difficult task considering the sophistication of terrorists and criminals who may target the US. Yet it is thoroughly possible to tighten security in one area while possibly exposing another to greater risk.

This is the one of the great shortcomings of the REAL ID program. While attempting to provide the states with a federal blueprint for tighter drivers' license security, the program exposes millions of individuals to identity theft by storing sensitive information in a data base that could be breached.

Once illegal access is gained to the REAL ID data base, fraudulent identification documents would allow potential terrorists access to a vast travel network -- without ever having to produce a secondary form of identification. This alone could put tens of thousands of domestic flights at risk.

Within the past two years, data bases in banks, credit card systems, and even the Pentagon have been breached. There have been numerous stories of government laptops - full of sensitive information -- stolen or lost. Yet in its REAL ID program, the DHS will store millions names, and sensitive information on each of these individuals, in one data base -- accessible to various levels of government and other undesignated third parties. The overwhelming number of security experts in agreement on this point provides a huge area of doubt too large to ignore.

Our organization is about travel. We speak for millions of business travelers, both foreign and domestic, who fly within the U.S. It is on their behalf we must ask for a safer alternative to REAL ID.

Considering the divisive nature of the REAL ID Act, the countrywide confusion over compliance, the fact that this legislation was initially passed as a rider -- without the widespread review it requires, and its vulnerable repository for data, the Association of Corporate Travel Executives recommends that Congress either repeal the REAL ID Act, or suspend it for two years until alternative legislation and or safeguards can be drafted.

Thank you.



State of Delaware
Office of the Governor

Ruth Ann Minner
Governor

April 28, 2008

The Honorable Daniel K. Akaka
United States Senate
Washington, D.C. 20510

The Honorable George V. Voinovich
United States Senate
Washington, D.C. 20510

Dear Chairman Akaka and Ranking Member Voinovich:

Thank you for holding a hearing on the impacts of implementing the REAL ID Act of 2005 and your ongoing support for finding a workable solution to enhancing the security of documents. You are keenly aware of the concerns that have been raised about a spectrum of impacts, ranging from lack of funding to privacy protections. Hearings are long overdue on this subject and I am hopeful that Congressional leadership will follow your lead and schedule more.

While hearings during the implementation of a law is not the best way to govern, this implementation period gives us all time to more closely examine the recently-released federal regulations, state implementation costs and federal funding streams, and develop governance structures for the necessary programs and security measures. I am hopeful that the information I provide in this letter is helpful to you and your colleagues in understanding the impacts on my state and therefore help to guide you in future oversight and appropriations decisions about REAL ID.

Since becoming Governor in 2001, the security and well-being of the citizens of Delaware have been of paramount importance to me. Even before Congress considered the REAL ID Act, we deemed enhancing the security of our drivers licenses and identification cards an important expenditure of funds. \$5 million in state and federal funds were spent to upgrade systems and equipment, verify certain documents, conduct commercial driver background checks and fingerprinting, and enhance document security. Luckily, many of these upgrades are compliant with the initial REAL ID benchmarks. However, it's critical to stress that we implemented measures that we believed to be the best for Delaware, over the course of a few years, and when funds were available.

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The mandates and timelines dictated by the REAL ID regulations, coupled with lack of a robust and dedicated federal funding stream, cause me great concern about our ability to comply. Specifically, I reiterate the governors' request for the federal government to provide \$1 billion this year to states; stress my concerns about the lack of governance structures for the electronic verification hub and the protection of personal data; and request that Congress require the Department of Homeland Security (DHS) to finally release the security plan requirements so states know what additional construction needs to be planned for and funded.

Imposition of new federal mandates requires an infusion of federal funding to states through a new grant program. If federal funding is not provided to implement this federal regulation, I am greatly concerned with the length of time it will take to obtain state funding to fill the gap and comply with the law. States should not be required to allocate from other homeland security grant programs critical to our first responders and costs should not solely be paid for through increasing fees. In order to make the most optimal use of the funding, eligible costs should include construction necessary to comply with federal security requirements and personnel required to process and issue our documents that comply with this federal mandate.

The many unknowns of this program also give me pause and further support the need for additional oversight hearings. Despite taking over two years to release, the over 200 pages of DHS regulations fail to detail building security requirements, the ongoing costs to access the federal electronic verification hub, and critical protections of personal data. States are being asked to implement a program that even the federal government doesn't know what it looks like or how much it will really cost. Not only is that unfair to the states, it is a poor example of public policy and use of taxpayer money.

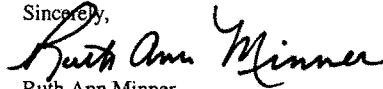
In speaking to DHS officials, we've been able to deduce that we will have to build a new DMV in order to comply with the security requirements. This was not a cost included in our original cost estimate and the \$15 million price tag is much more than the State can bear, considering our current fiscal condition. In the choice between constructing a new DMV and providing health services, preserving Medicaid benefits and keeping our schools on the cutting edge, the health and well-being of Delawareans win in every case. Flexibility in this area is much needed and my experts are available to detail some helpful examples if you are interested in assisting us to find this flexibility.

DHS officials have not been able to give us a definitive answer about how much the federal government will charge the states for the development of the electronic verification hub, the ongoing costs associated with accessing the hub, or the measures that will be put in place to ensure the security of the data. Before any state is required to fully comply with REAL ID, these governance structures must be developed in consultation with the states and codified.

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We will do our part to ensure the integrity of Delaware's drivers' licenses and identification cards, but I fear we will stop short of complying with the REAL ID Act if the federal government doesn't do its part as well. We will increase the number of DMV employees, build a new \$15 million DMV to comply with robust federal security requirements, consider changes to the necessary State laws, and explain to our citizens the federal mandate placed on all of us. But the federal government needs to hold additional hearings, provide federal funding, detail the additional requirements, and provide states with flexibility. Only then will Delaware have the capacity to comply with this federal mandate and lessen the drastic impacts on our citizens. If you require additional information about my concerns, please do not hesitate to contact me directly or my Washington DC Director, Kate Finnerty, at 202-624-7724.

Sincerely,



Ruth Ann Minner
Governor

CC: Representative Nancy Pelosi
Senator Harry Reid
Representative John Boehner
Senator Mitch McConnell
Senator Joseph Biden, Jr.
Senator Thomas Carper
Representative Michael Castle

U.S. Senate Committee on Homeland Security and
Governmental Affairs

Subcommittee on Oversight of Government
Management, the Federal Workforce, and the District of
Columbia

*The Impact of Implementation: A Review of the REAL ID
Act and the Western Hemisphere Travel Initiative*

9:30 AM, APRIL 29, 2008

TESTIMONY FOR THE RECORD OF

JANICE L. KEPHART

FORMER COUNSEL, 9/11 COMMISSION

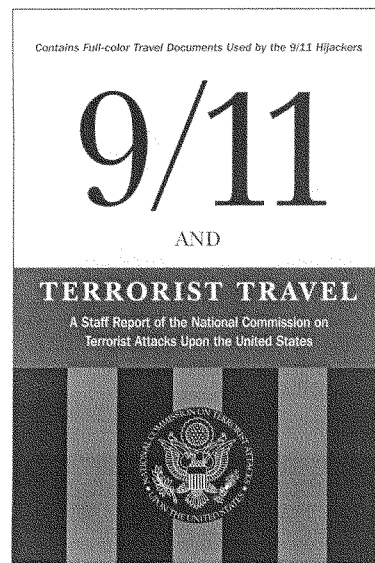
PRESIDENT, 9/11 SECURITY SOLUTIONS, LLC

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Introduction

I appreciate very much this committee's continued interest and effort in the 9/11 Commission recommendations, including the issue of identity document security that the Western Hemisphere Travel Initiative, REAL ID and Enhanced Driver Licenses addresses head-on. Without assuring that people are who they say they are, and that the documents they present are legitimate at our borders and within our borders, we have done little to nothing to contain what me and my team mates on the 9/11 Commission termed 'terrorist travel'.

I am here in my own capacity today, but you should know that when the 9/11 Commission issued its final report card in December 2005, one of the highest marks it gave was to Congress for passing *REAL ID* legislation that set minimum standards for the issuance of state-issued driver licenses (DL) and IDs.¹ I am also happy to be one who speaks with the 70 percent of Americans who, in a Zogby/UPI poll from late last year, are in favor of secure driver licenses. Like REAL ID, the *Western Hemisphere Travel Initiative* (WHTI) fulfills a 9/11 recommendation that called for the presentation of a passport or equivalent for all persons seeking entry into the United States.



The *Enhanced Driver License* and State Department issued *PASS Cards* will assure citizenship while providing a cost-effective way to facilitate travel for those living and working on our land borders. These alternative forms of ID for the border satisfy the Commission's recommendation that other, 'equivalent' documents, might be sufficient for border inspection. As long as these documents are able to be checked for fraud, citizenship, and against derogatory information to the extent passports are today, I can say with confidence that the Commission would consider them acceptable for entry today. *Trusted traveler programs* such as NEXUS, SENTRI and the Global Entry programs are essential to such systems, to help assure high (not low) risks are the focus for border inspectors.

One crucial caveat remains: *national standards for birth certificates*- made a legal requirement in 2005- and *digitization of birth (and death) records* are pivotal to verifying identity for other government issued IDs, including REAL IDs and e-passports. While states are making progress in digitizing birth and death records, continual building of the Electronic Verification of Vital Events system needs to remain a priority. Where states are partnering with the federal government to digitize records, huge dividends are being found in the fraud fight in health care, but hooking this information in for DMVs and other legitimate uses will

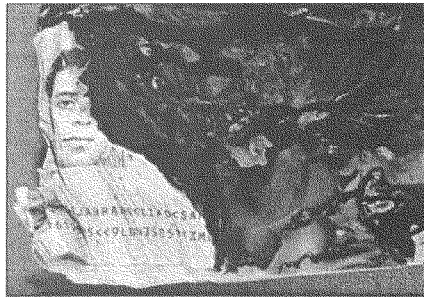
provide the essential foundation to the secure ID framework upon which all these programs ultimately rely.

¹ In addition, I have written three papers on the subject. The most recent was published in February 2008. *REAL ID: Final Rule Summary* takes the 280 page Final Rule and summarizes it in nine pages. The second paper from April 2007, *Identity and Security: REAL ID in the States*, answers policy concerns being echoed in some states regarding REAL ID implementation. This paper remains salient, as criticisms of REAL ID implementation are answered, and some of these criticisms are still heard today. The third I published in February 2007 and sets out the policy backdrop for the REAL ID Act, explains its content, and discusses what is at risk if it fails. *Identity and Security: Moving Beyond the 9/11 Staff Report on Identity Document Security* emphasizes the need for security at the base of the nation's identity document issuance processes.

Terrorist Travel and Passports

Terrorists need to travel in a manner that shields them from detection or suspicion. In the Al Qaeda Afghan training camps, we know that terrorists were well trained in travel and travel document forgery. Terrorists were instructed in how to move into Afghanistan through Iran or Pakistan, and what travel facilitators to use for acquiring travel documents and travel.

Digital copies of travel documents were kept in e-files in safehouses (we obtained a couple of 9/11 hijacker passports from such files), and Adobe Photoshop was a favorite tool for manipulating multiple forms of identifications, including passports. Upon leaving training camps, Khalid Sheikh Mohammed (mastermind of the 9/11 plot) would instruct new recruits on how to behave to pass into the West unsuspected.



A nearly-burned copy of Ziad Jarrah's U.S. visa recovered from the Flight 93 crash site in

We know 9/11 operational ringleader Mohammad Atta used his training as well to manipulate passports to hide travel and substitute information that would leave a fraudulent trail of less suspicious travel. We also know that the recently assassinated Mugniyah of Hezbollah supplied his members with travel documentation as needed.

For the terrorist, the underlying purpose of the travel will often determine how he decides to travel. For example, the nineteen 9/11 hijackers had a mission which required a relatively short time for legal admission into the United States, but also required that none of them be compromised for failure to obey immigration law. (Violations of law did exist; it was the federal government that failed to exercise its authority under the law.) Therefore, they needed to appear "clean" to immigration authorities.

They thus worked hard to appear to follow the rules. They all had passports. (Thirteen acquired new passports within three weeks prior to seeking U.S. visas. A number had indicators of extremism that remain classified today and still other passports contained fraudulent manipulations.) They all had visas (22 or 23 applications were approved). They all sought entry through immigration inspection kiosks at U.S. international airports (a total of 34 times over 21 months). In the five times 9/11 hijackers were pulled into secondary, only once did a hijacker resist questioning, and then quickly became cooperative once a new inspector was assigned to conduct the questioning. In two cases terror alerts or visa revocations were placed in the immigration system; but it was too late-- in August 2001, subsequent to the last successful 9/11 hijacker entry in July 2001.

In other words, the 9/11 hijackers had been taught what to do to attain successful entry into the United States. The frustrating irony is that at least some of the hijackers could have been denied admission into the United States if critical information had been provided to border officers via lookouts or regarding the passports themselves. Today, we have the ability to provide that information to our border security personnel *as long as a passport or verifiable biometric equivalent is required for admission*. Our air ports of entry using U.S. Visit have helped upgrade this process. However, where there is no passport or equivalent biometric travel document

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required for admission, our border personnel have little to no baseline upon which to make an initial judgment about whether a particular individual may pose a terrorist or public safety threat to the United States.

Until WHTI comes into full implementation at all U.S. border crossings, terrorists with Canadian, Caribbean or Mexican citizenship—or those that pose as such—can move in and out of the United States right virtually unconcerned about detection. There are legitimate concerns about both the northern, southern and sea borders. The Western Hemisphere Travel Initiative thus becomes an important first step in at least chilling terrorist travel between the U.S. and Canada/Mexico and the Caribbean. This includes any variety of terrorist, whether a Mexican Islamic convert (as sought out by Al Qaeda) or Canadian.² Terrorists do not like to be detected or detectable, nor do they want their identity “frozen”. (We know, for example, from detainee reporting after 9/11, that the tightening of immigration admission standards for persons traveling from countries of interest resulted in Al Qaeda leaders seeking out young recruits and others with easy access to the West—U.S. citizens, Canadians, Mexicans and those with access to Visa Waiver passports that would not be subject to biometric entry requirements.)

Even if terrorists choose to acquire a passport with a false identity and with false underlying support documents (as Millenium wannabe bomber Ahmed Ressam did) that identity is at least frozen and aliases to cross the border (as Ressam did use) are not possible. What would have caught Ressam was a biometric in that passport that then linked up to the watchlist Ressam was indeed listed on in Canada. Today, a hit on a terrorist such as Ressam would most likely occur through either a DHS TECS Lookout provided by U.S. or foreign law enforcement, a U.S. terror watchlist hit, an IDENT or FBI IAFIS hit, or through a biometric wanted notice now available to our border inspectors through Interpol.

The staff report I co-authored with my 9/11 Commission border teammates, *9/11 and Terrorist Travel*, details in even greater depth how the 9/11 hijackers exploited our vulnerabilities using our legal border system. Part of the everyday business of terrorist travel is the bustling black market in doctored and false passports. In addition, an estimated 10 million lost or stolen passports or national identification cards worldwide afford terrorists easier access to world travel.³ This permits easy travel based on aliases, fake or stolen identities that, at a land border, may or may not be subject to a database check. Requiring U.S. citizens to carry a passport or biometric equivalent also means U.S. border inspectors no longer need to play a guessing game as to who is and who is not a U.S. citizen. On the Canadian and Mexican sides of the border, having a combination of the standard passport or equivalent and registered traveler programs that limit what a border officer must review gives border officers a better chance of snuffing out Canadian, Mexican or other Western Hemisphere passports or ‘equivalents’ that might be fake or stolen.

Terrorist Travel between the U.S. and Canada

Until WHTI is fully implemented, terrorists with Canadian citizenship can move in and out of the United States virtually unconcerned about detection. It has long been known—and I testified extensively to this fact in 2005 and 2006 before both Houses of Congress—that Al Qaeda recruiters targeted youths with U.S., Canadian or Western European passports, solid English language skills and an understanding of these cultures. A couple of years ago FBI reported these efforts were resurging. Plenty of examples of terrorists seeking or accessing the United States based on Canadian residency or citizenship, or illegally:

² For more information about the threat of Canadian terrorist entry over the northern border, see my testimony of November 17, 2005 before the House Small Business Committee, “Building a Wall Between Friends: Passports to and from Canada?”

³ Levine, Samantha. “Terror’s Best Friend.” *US News & World Report*. December 6, 2004.

- Jabarah brothers who were recruited to blow up the Singapore harbor but were caught by authorities after swearing allegiance to bin Laden;
- 9/11 mastermind KSM's affiliate Abderraouf Jdey who was initially slated to take part in a second wave of attacks after 9/11;
- Ahmad Said Al-Khadr was bin Laden's highest ranking associate in Canada and raised a family sworn to allegiance to Al Qaeda; a high-ranking Al Qaeda operative who had emigrated to Canada from Egypt in 1975;
- Mohammed Warsame attained U.S. residency after becoming a naturalized Canadian citizen and moved to Minneapolis in 2002. He was arrested in December 2003 as a material witness in the Zacarias Moussaoui case.
- Hizballah cigarette smuggling scam operated for over the U.S.-Canadian border for over a decade with single truckloads sometimes yielding \$2 million. Profits were used to buy dual use military equipment and sent back to Hizballah high command in Lebanon. Credit card and banking scams in Canada provided funding, and the Canadian section reported directly to Hizballah's military procurement officer in Lebanon.
- Nabil Al-Marabh tried to illegally enter the United States near Niagara Falls by hiding in the back of a tractor-trailer in June 2001. He had a forged Canadian passport and fake social insurance card.⁴ He later told authorities he had regularly traveled illegally between Canada and the United States.⁵ Moreover, Michigan state records showed Al-Marabh receiving five driver's licenses there in thirteen months; he had licenses for Massachusetts, Illinois, Ontario, and Florida,⁶ and a commercial driver's license and a permit to haul hazardous materials,⁷ including explosives and caustic chemicals.⁸ In 2002, he pled guilty to conspiracy to smuggle an alien into the United States⁹ and was ordered deported.¹⁰ Prosecutors said the government had no evidence linking him to terrorism.¹¹ The judge questioned the government's previous documentation of Al-Marabh's ties to terror and also noted he was found with \$22,000 in cash and \$25,000 worth of amber jewels in his possession when he was arrested.¹² He was deported to Syria in January 2004 for his strong ties to the Jordanian Millennium plot.

Seventeen Canadian citizens and residents were arrested in Toronto on June 3, 2006 for terrorist conspiracies across southern Ontario, including subway systems and the Parliament Building in Ottawa. Found in their possession were three tons of ammonium nitrate, 1-½ times that used in the 1995 Oklahoma City bombing responsible for 168 deaths. The arrests were only the second time Canada has used the Anti-Terror law passed after 9/11.

The LA Times reported that the FBI has been working closely with the Canadians on the case, and that the Canadian cell received visits from two terror suspects arrested in April 2006 from Georgia, Syed Haris Ahmed, a 21 year old Georgia Tech student and naturalized U.S. citizen, and Ehsanul Islam Sadequee, a 19 year old Fairfax, VA native. They had met at an Atlanta mosque. The men, according to U.S. court documents, had been in email

⁴ Dimmock, Gary and Aaron Sands. "Toronto Shop Clerk Tied to World Terror." *The Ottawa Citizen*. Oct. 29, 2001.

⁵ Ibid.

⁶ Schiller, Bill. "Terrorism Suspect had Florida Link." *Toronto Star*. Oct. 26, 2001.

⁷ Philip Shenon and Don Van Natta Jr., "U.S. Says 3 Detainees May Be Tied to Hijackings," *The New York Times*, November 1, 2001.

⁸ Wilgoren, Jody and Judith Miller. "Trail of Man Sought in 2 Plots Leads to Chicago and Arrest." *New York Times*, Sept. 21, 2001.

⁹ USA v. Al-Marabh. WDNY 01-CR-244-A. Plea Agreement. July 8, 2002.

¹⁰ Fainaru, Steve. "Sept. 11 Detainee is Ordered Deported." *The Washington Post*. Sept. 4, 2002.

¹¹ Ibid.

¹² Owens, Anne Marie. "Judge Gets No Answers on Syrian: Former Toronto Suspect Jailed in U.S. for Border Breach." *The National Post*. Sept. 4, 2002.

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communication with the Canadian cell and physically went to Canada to meet in early March via Greyhound bus from Atlanta to discuss U.S. attacks and receiving military training in Pakistan. (The two men had already conducted surveillance, including in Washington D.C.)¹³ Both the Canadian cell and the U.S. suspects were in internet communication with each other and suspected terrorists abroad, including a London cell arrested shortly thereafter. Over the internet, a variety of plots focusing on the U.S. Capitol, the World Bank, fuel storage facilities and aviation towers were discussed.¹⁴

The reporting on the Canadian plot does not mention whether there are any immigration records for the two Georgia men on their entry into Canada or their return into the United States.

Ahmed Ressam of the LAX Millenium Plot¹⁵ used a false French passport to travel to Montreal where he lived for the next four years. In Canada he "became interested in going to bin Laden's camps for training" after "friends returned to Montreal with stories about Osama bin Laden's 'Jihad University' in Afghanistan."¹⁶

In April 1998, after meeting with Abu Zubaydah in Pakistan, Ressam was sent to the Khaldan camp in Afghanistan where he spent the next five to six months. Khaldan had earned a reputation for its instruction in how to acquire, forge, and manufacture travel documents and credit cards, and Ressam learned well.¹⁷ At Khaldan Ressam also learned the other tradecrafts of a terrorist, the use of weapons, bombmaking, and urban warfare.

Zubaydah himself was sufficiently impressed with Ressam's passport manipulation abilities to have apparently asked him to acquire additional Canadian passports for distribution to al Qaeda fighters.¹⁸ And it was Ressam's deft handling of fake travel documents that brought him to the attention of Khalid Sheikh Mohammed during his final visit to Pakistan. He would soon return to Canada (in January 1999) to pursue the plot to blow up Los Angeles International Airport.

On December 14, 1999, a sweaty, nervous Ahmed Ressam was given a secondary inspection when he became reluctant to answer a basic question about his destination. He had just pulled off from a late-arriving ferry at Port Angeles, Washington. In answer to questions, Ressam pulled out fake documents—including a Canadian passport- in the name of Beni Antoine Noris. This was not the first time Ressam was asked questions. Ressam had already undergone a cursory examination by a U.S. immigration officer in Vancouver, who had been suspicious of Ressam as he was the last to board an already late ferry. The examination included a cursory look in the trunk (but not the tire well where the explosives materials were hidden) as well as a run of the name on the passport (Noris) against the INS terrorist database without getting a hit. Although a subject by the name of Ressam was wanted in Canada, neither that name nor the alias Noris was in the INS database. Ressam was admitted for boarding.

¹³ Jason Chow and Ricardo Alonso-Zaldivar, "Canada Arrest 17 in Alleged Terror Plot." *Los Angeles Times*, June 4, 2006.

¹⁴ *Ibid.*

¹⁵ Most of this section was attained while I was counsel on the 9/11 Commission, with supplemental research provided by Vinay Tripathi while I was a senior consultant for the Investigative Project on Terrorism on a to date unpublished report entitled "An In-Depth Analysis of the Structure of Al Qaeda and Militant Islamic Terrorist Groups in the United States: The Enterprise of Terror in the United States" (March 2005).

¹⁶ "Trail of a Terrorist: Introduction." *PBS FRONTLINE*. Oct. 25, 2001

<http://www.pbs.org/wgbh/pages/frontline/shows/trail/inside/cron.html>

¹⁷ USA v. Ressam, et al. WDWA 99-CR-666. "Indictment." April 3, 2001. See also Zill, Oriana. "Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity." *Documents*. *Frontline*. October 2001.

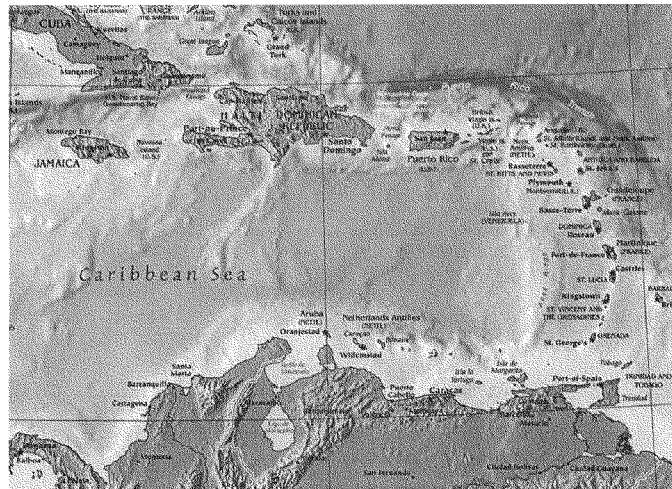
<http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>; and USA v. MOKHTAR HAOUARI, et al. SDNY S4 00 Cr. 15. Cross-examination of Ahmed Ressam, July 3, 2001 (transcript p. 549-551).

¹⁸ Zill, Oriana. "Trail of a Terrorist: Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity Documents." *PBS FRONTLINE*. Oct. 25, 2001 <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>

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Ressam's trial testimony provides valuable insight into one terrorist's ability to circumvent border security around the world. He described how al Qaeda supplemented its global terrorist network with operatives trained in Afghanistan and thereafter embedded in satellite locations. In France, Canada and elsewhere, Ressam operated in conjunction with fellow terrorists stationed in Europe. He traveled extensively using doctored travel documents that allowed him to take on a variety of identities, including the one he used in Canada—that of a refugee seeking asylum and a new home. In actuality, Ressam was a member of the Armed Islamic Group¹⁹ (GIA, or Groupes Islamiques Armés).

Ressam testified that manufacturing and trafficking fraudulent travel documents served several functions, providing entrée to the target country, a means to make money, and a way to stay embedded in a given location. From 1994 to 1998, Ressam lived in Montreal, actively robbing tourists—some thirty to forty times, by his count—of money and travel documents. Ressam described his livelihood: "I used to take the money, keep the money, and if there [were] passports, I would sell them, and if there [were] Visa credit cards, I would use them up, and if there were any traveler's checks, I would use them or sell them."²⁰ Though Ressam was arrested four times for his thievery, he was convicted just once; and he was punished with a fine, not jail time.²¹



Trinidad and Tobago is on lower right. Below is Venezuela. Antigua and Barbuda is mid-right.

Terrorist Travel between the U.S. and the Caribbean

Trinidad and Tobago, a rich tourist island located off the northeast coast of Venezuela, had a failed attempted Islamic extremist coup in July 1990. Fifteen percent of the island is Muslim. The island is also to the immediate

¹⁹ Zill, Oriana. "Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity Documents." *Frontline*. October, 2001. <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>

²⁰ USA v. Ressam, et al. WDMA 99-CR-666. "Indictment." April 3, 2001.

²¹ *Ibid.*

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northeast of Venezuela, which has long flaunted its contempt of the United States and support for terrorist activity, including reported travel facilitation to terrorists.

In June 2007, four men, three from Guyana (sharing a southeast border with Venezuela) and one from Trinidad were arrested for their plot to destroy fuel lines that support JFK International Airport. One of the suspects reportedly said the airport was picked due to the esteem held in the U.S. for John F. Kennedy. The FBI was involved with the case since January 2006, when one of the four alleged plotters, Russell Defreitas, unknowingly attempted to recruit an FBI informant in an attack within the United States. Its goal was to be more spectacular than September 11. Defreitas had previously been a baggage handler at JFK airport and assured his co-conspirators that he knew the airport intimately.

"This was a very determined group that engaged in precise and extensive surveillance, surveillance that included physical surveillance, photograph surveillance, video surveillance, and even the use of the Internet to obtain satellite photographs of the JFK facility," according to FBI agent Mershon who had investigated the case.

Abu Bakr is a former policeman who founded the violent Jama'at al Muslimeen (commonly referred to simply as the Jamaat). A Trinidad native, he formed the group after studying in Canada where he converted to Islam while a student there. His group attempted a coup against the Trinidad government in 1990. The group, especially with Abu Bakr as leader, had a close relationship to Libyan leader Muammar al Qaddafi. Most recently, after threatening violence and extortion against fellow Muslims, he was convicted in March 2006 for attempted murder of former organization members. A search of his headquarters found a cache of weapons and equipment. He was long considered to be a crime kingpin in Trinidad, and his rivalries spun off a number of other radical Islamic groups.

Other groups active on the island are Waajihatul Islaamiyyah (The Islamic Front) and the Jamaat al Murabiteen. The Waajihatul Islaamiyyah group has links to al Qaeda, Hamas, Egyptian Islamic Jihad and Jemmah Islamiyyah, the organization behind the Bali beachfront bombing that killed close to 200 people. In December 2002, the FBI, CIA and British SAS agents were in Trinidad investigating separate reports about specific plans to attack local U.S. and British interests by the head of The Islamic Front, Umar Abdullah, who had reportedly been threatening U.S. and British interests on the island.

Abdullah publishes a monthly newsletter that pontificates on behalf of Osama Bin Laden, Al Qaeda, the Taliban, a "Jihad" (Holy War) against the US and Britain and the setting up of an Islamic State here.

There were also reports prior and subsequent to 9/11 U.S.-sought Adnan El-Shukrijumah was living in Trinidad near schools that share his last name. (I had evidence while on the Commission that El-Shukrijumah may have tried to help 9/11 pilots Atta and Jarrah with an immigration matter at the Immigration offices in Miami in May 2001. See *9/11 and Terrorist Travel*, p. 30-31) In addition, two men with ties to Trinidad have been arrested in the United States. Keith Andre Gaude, a Jammah linked to bin Ladin, pled guilty on September 19, 2001 to unlawful possession of a machine gun. BATF officials stated he had come to Florida to "buy as many as 60 AK-47 assault rifles and 10 MAC-10 submachine guns with silencers."

In 2002, Trinidad native and U.S. naturalized citizen Shueyb Mossa Jokhan was sentenced to 58 months in federal prison for a "jihad" mission that included bombing an electrical power station and a National Guard Armory. According to the FBI, "these attacks were then to be followed by a list of demands to be placed on the United States government and other governments around the world. The defendants also sought to acquire AK-47 type assault weapons for their jihad training and operations, and sought to obtain the release from custody of an individual described as a "mujahedin" fighter committed to jihad."

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Since 9/11, there have been reports of Al Qaeda members setting up shop in Trinidad, smuggling weapons and organizing cells.

Antigua and Barbuda were the home of John Lee Mohammed prior to his ten fatal shootings and three other near fatal shootings during a terrorist-style spree in the autumn of 2002. As a U.S. citizen, he had financially survived prior to coming to the United States by selling forged U.S.-accepted travel documents—driver's licenses and birth certificates.²²

Muhammed brought Lee Boyd Malvo and his three children into the United States under false names, and in at least 20 incidents forged or stole identities for clients, secured air travel, and provided documents in order to secure their travel to the United States. In some cases, he charged as much as \$3,000. Muhammed forged documents for Lee Boyd Malvo's mother when she deserted her son, but when he was not paid, Malvo essentially was kept as collateral.

With simply a birth certificate or baptismal record and a driver's license, Mohammed's clients, covered by the Western Hemisphere Exception for travelers from North, South or Central America or the Caribbean (but for Cuba), could easily pose as American citizens or citizens of one of the covered nations, and enter the United States.

After the Task Force created by the Attorney General of Antigua and Barbuda released its Final Report in December 2002, the GAO released two 2003 studies about the ease of being admitted into the United States with counterfeit birth certificates and driver's licenses from Canada, Mexico, Jamaica and the Bahamas. According to the GAO, the ease of fraudulent entry using something other than U.S. passports for those claiming U.S. citizenship was not limited to Muhammed and his clients.

Terrorist Travel and State-Issued Driver Licenses and IDs

The 9/11 hijackers assimilated into the United States by attaining 17 DLs from Arizona, California and Florida (four of which were duplicates) and 13 state-issued IDs from Florida, Maryland and Virginia. The hijackers then used those IDs for the purpose of renting cars, obtaining living quarters, opening bank accounts, and boarding aircraft on the morning of 9/11. We know that at least six hijackers total presented state-issued IDs on the morning of 9/11. The pilot who flew into the Pentagon, Hani Hanjour, had ID cards from four states: Florida, Maryland and Virginia, and an Arizona driver's license. The Pennsylvania pilot, Ziad Jarrah, had three IDs and an unverifiable ID when stopped for speeding two days prior to 9/11. Both pilots had obtained a Virginia ID by fraud.

At the foundation of the 9/11 Commission 'terrorist travel' recommendations on secure IDs was the basic understanding that terrorists will continue to easily assimilate within the United States as long as identity and identity document issuance processes are easily manipulated. The Commission stated:

All but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud. Acquisition of these forms of identifications would have assisted them in boarding commercial flights, renting cars, and other necessary activities.

Recommendation: Secure identification should begin in the United States. The federal government should set standards for ... sources of identifications, such as DLs.

Recommendation: The President should direct the Department of Homeland Security to lead the effort to design a comprehensive screening system, addressing common problems and setting common standards with system wide goals in mind. (p. 390, 387)

²² *Antigua and Barbuda Final Report of Task Force Investigation of John Allen Williams, a.k.a John Allen Mohammad.* (Dec. 2003).

Identification Documents of the 9/11 Hijackers

Mohamed Atta FL DL, 05/02/01	Marwan al Shehhi FL DL, 04/12/01 FL DL duplicate, 6/19/01
Khalid al Mihdhar CA DL, 04/05/00 USA ID card, 07/10/01 VA ID card, 08/01/01	Nawaf al Hazmi CA DL, 04/05/00 FL DL, 06/25/01 USA ID card, 07/10/01 VA ID card, 08/02/01

Hani Hanjour AZ DL, 11/29/91 FL ID card, 04/15/96 VA ID card, 08/01/01 Failed VA DL test, 08/02/01 MD ID card, 09/05/01	Ziad Jarrah FL DL, 05/02/01 FL DL duplicate 5/24/01 VA ID card, 08/29/01
Satam al Suqami No DL or ID card	Waleed al Shehri FL DL, 05/04/01 (duplicate issued with different address, 05/05/01)
Ahmed al Ghamdi USA ID card, 07/2001 VA ID card, 08/02/2001	Majed Moqed USA ID card, 07/2001 VA ID card, 08/02/2001
Hamza al Ghamdi FL ID card, 06/26/01 FL DL, 07/02/01 (duplicate issued 08/27/01)	Mohand al Shehri FL ID card, 07/02/01
Ahmed al Nami FL DL, 06/29/01	Wail al Shehri FL DL, 07/03/01
Ahmed al Haznawi FL DL, 07/10/00 (duplicate issued 09/07/01)	Fayez Banihammad FL ID, 07/10/01
Saeed al Ghamdi FL ID card, 07/10/01	Salem al Hazmi USA ID card, 07/01/01 ¹⁹⁷ VA ID card, 08/02/01
Abdul Aziz al Omari USA ID card, 07/10/2001 VA ID card, 08/02/2001	

State-issued IDs acquired by 9/11 hijackers, "9/11 and Terrorist Travel", p. 44

As the 9/11 Commission noted, there was only one 9/11 hijacker who did not obtain some form of U.S. identification, whether a state-issued DL, personal ID or both. Three of the five hijackers who crashed a plane into the Pentagon used fraudulently obtained licenses to board. The pilot of that plane had four IDs, all from different states, with at least one obtained by fraud. If REAL ID had been in effect in 2001, the 9/11 operational ringleader and pilot that conducted the first World Trade Center suicide, Mohamed Atta, would only have been four days from having had an expired license when he was pulled over for speeding violation on July 5, 2001.

The 9/11 hijackers could have done the same today. It is still possible to obtain multiple licenses and IDs because identities are not verified. It's not only possible to game the system; it's likely, because states still don't exchange information with each other regarding those holding legitimate IDs. Police officers' hands are tied when they can't cross check the ID they've been handed against any other information.

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The 9/11 hijackers are not the only terrorists we know of who have taken advantage of blind spots and weaknesses in ID issuance standards. One terrorist caught in 2001 on the northern border, Nabil al Marabh, had five DLs and a hazardous materials permit. He told authorities he frequently crossed the U.S.-Canadian border illegally. Mir Aimal Kansi, who killed two people outside CIA headquarters in 1993, got a Virginia DL despite being in the U.S. illegally. These same problems exist in many states today. As long as they do, terrorists will continue to take advantage of them.

In addition to terrorists, criminals of all ilks – identity thieves, counterfeiters, deadbeat-- and even underage teens seeking IDs to drive and drive, also use multiple IDs to hide their true identity from the law. In 2005 identity theft costs were at a staggering \$64 billion, with \$18.1 billion of that cost involving theft of a DL or ID. Individual consumers spend an average of 330 hours trying to undo identity theft and suffer \$15,000 on average in losses. With REAL ID, identity theft will be much more difficult due to more robust, secure ID verification systems will protect consumers from identity thieves both during the application process and once the DL or ID is issued.

The cards themselves will also be less susceptible to alteration, with three levels of security making the cards more tamper-resistant and easier for law enforcement to determine fakes. Counterfeiting remains alive and well. The accompanying photo is from a November 2007 New York press conference whereby state and federal authorities from seven different law enforcement agencies shut down six ID document mills in New York and made at least 128 arrests. The bust covered two criminal enterprises that together took in more than \$1.5 million annually. Typical street price was \$40 - \$60. The ring supplied fraudulent government identity document such as DLs, Social Security cards and resident alien cards. Suppliers were located in California and New York and forged documents from many states, Central America and Mexico.

Nov. 2007: New York State investigators alongside federal authorities make arrests pending a two year investigation of two criminal counterfeiting enterprises spanning California to New York.

Annual income was more than \$1.5



Of particular note was the 2006 bust of the Castorena Family organization, which beginning in the 1980s operated a Mexico-based counterfeiting operation with cells in every major U.S. city. Annual sales in Chicago alone were \$2.5 million. According to informants, they could make IDs "as good as any we carry in our pockets."

The major source for the case, the stepdaughter of the organization's leader, asked her grandfather whether the organization sold to terrorists. She was told: "We do this for business, for money. So it doesn't really count

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whether you're a Mohammed or a Julio or somebody else, as long as you have the money to pay for it. Terrorism is not our problem."

Western Hemisphere Travel Initiative

The tenets of WHTI were recommended by the 9/11 Commission to both tighten border security and streamline the inspection process, especially at our land ports of entry. We cannot afford our borders be bifurcated from the discussion of national security. Our economic strength as a nation is only as strong as our national security. We must continue to work alongside our friends in the trade and tourism industries to achieve both security and facilitation.

Assuring our border inspection process is fast, fair and complete is essential. It is also doable. We can do so if we prioritize how personnel, budgets and technologies are allotted and deployed with precision. The focus must be on how to properly train and equip our border inspectors so that procedures assure security of our borders are the most effective and least intrusive manner possible. I applaud DHS for not waiting despite continual efforts by special interests to delay implementation indefinitely, even if border inspection has waited for over seven years for the significant upgrades in procedures and processes that should have been in place before 9/11 and forthcoming after 9/11. The new rules set in place for WHTI implements policy that shores up significant, large and sweeping holes in our border security so that all persons seeking entry into the United States show standardized travel documents or equivalents that can be vetted in a manner that assures identity and maximizes facilitation simultaneously.

Remember where we are without WHTI: terrorists, drug dealers and those who abuse our lax security will continue to easily move through our border system with fake documents or no documents at all. The policy which has been in effect for years at our ports of entry, the Western Hemisphere Travel Exception, actually encouraging fraudulent entry by permitting any traveler claiming to be a U.S. citizen to talk their way into the United States or show any variety of identity document and claim to be from the Western Hemisphere. At least on the Canadian border, surveys from even a couple of years ago showed that 40% of Canadians state they have not been asked to show any identification when seeking entry into the United States. In a 2006 GAO report, GAO proved the point when in 42 of 45 instances between 2003 and 2006 GAO agents with counterfeit documents were able to flash false papers, or in a few instances, no papers at all, and enter the United States. Consider that number transferred over to attempted terrorist entries, and we have much to be concerned about until WHTI is fully rolled out.

The only way to secure our borders is to make the terrorists choose between using a passport, and enhanced DL (where available), applying to a trusted traveler program, or enter illegally. As long as a terrorist can pose as a U.S. citizen or traveler from the Western Hemisphere by producing a birth certificate, fake DL that can't be verified, or other forms of identification that can be neither verified for identity, checked against a watchlist, or authenticated as a legitimate document, the Western Hemisphere Travel Exception is an open invitation to enter and embed in the United States with little disincentive not to try.

We can argue all we want about how to achieve the balance between actual secure borders and facilitation of trade and commerce, but we cannot ever afford to say it is not important or there is a segment of our border apparatus to which security does not apply. Nor can we afford to unravel well-based recommendations of the 9/11 Commission and passed into law by this body. Let us not forget that September 11 has taught us that secure borders are a matter of national security, and to secure them we must remember that terrorists will use any means to enter and embed into the United States.

We must treat our borders as they truly are: as a marker of U.S. sovereign rights to assure that people who seek to come here are who they say they are, and will not cause a public safety or terrorist threat to American

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citizens. At the border, the passport or equivalent is the manner in which we as a nation can better assure that the people who seek to come here do so for legitimate reasons. A top priority in all we do in border security must then be to assure practical, on the ground, security measures at our ports of entry and physical borders.

However, let me be clear: we need not give up privacy nor hinder commerce to attain border security. In fact, with efficient and streamlined security, privacy and commerce are both enhanced. People and goods that should make it through the system in an efficient manner are more likely to be when the acceptable forms of travel documents go from dozens to a few known and easily authenticated, and trusted or registered traveler/commercial programs augment the system as an alternate to a federally issued travel document.

REAL ID

REAL ID is one of the only 9/11 Commission recommendations that relies heavily on the states for implementation. REAL ID might have curtailed 9/11. REAL ID can make a difference to our national security, our economic security and our public safety – but only if fully implemented and adequately funded. To make REAL ID a reality, however, requires more than either the federal government or the states can do on their own. It requires a partnership. It also requires an acknowledgement that securing our nation's physical and economic integrity is not just a federal responsibility; it is everyone's responsibility. It requires a further acknowledgement that the ability to verify an individual's true identity is one of the cornerstones of national and economic security.

The REAL ID Act stipulates that in order for a DL or state-issued ID to serve as an identity document for entering a federal facility – including boarding a plane – the document must meet, at a minimum, the security standards spelled out in the Act. Thus states are not required to issue licenses and IDs in accordance with REAL ID, but they could be subjecting their residents to considerable inconvenience if they do not. There is no intent under REAL ID for the federal government to assume responsibility for issuing DLs. That process should and will remain with each state. REAL ID seeks only to ensure that every state's process for issuing DLs and IDs – including the documents themselves – meets specified minimum security standards.

Today, the controversy around REAL ID has shifted significantly from one of the value of the law to its funding, and for good reason. With only \$79 million available for 50 states and 6 jurisdictions to meet initial compliance deadlines in a year and a half, this Congress needs to take the funding of REAL ID seriously. If ever there was a domestic funding emergency, REAL ID represents one of significance.

Debunking Myths about REAL ID

Myth: *REAL ID is a federal imposition, with little to no connection to state efforts to improve ID issuance.*

Fact: REAL ID was passed into law based on the states' own Secure Document Framework developed by AAMVA after the states acknowledged post 9/11 that the current state DL issuance system is deeply flawed in its ability to generate IDs both secure in their content and production. Such deep weaknesses threaten national and economic security, public safety, and privacy.

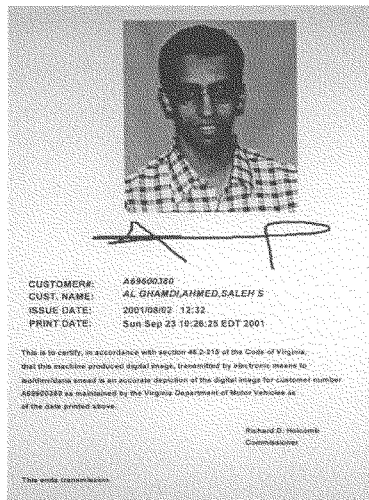
On October 24, 2001 the American Association of Motor Vehicles Administrators (AAMVA) – an organization promoting information exchange, uniform practices and reciprocity, with representatives from every US and Canadian jurisdiction – passed a resolution to form a special task force to enhance the security and integrity of the DL and ID issuance processes. AAMVAnet already supported the Commercial Driver License Information System and provides connectivity for such things as SSN checks by DMVs, and AAMVA's leadership in setting standards for bad drivers made them the logical choice for taking on issues related to 9/11.

Prior to 9/11, AAMVA had a significant leadership role that included petitioning Congress in 1996 to mandate minimum standards for DLs. From 1999 to 2001, AAMVA worked with the National Highway Transportation

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Administration (NHTSA) and Congress towards creation of the Driver Record Information Verification System (DRIVERs). So when AAMVA went to work on creating a special task force to deal with the panoply of issues involved in creating a more secure ID issuance framework, the organization had the ability and credibility to make a difference. And they did. Their work became the foundation for the technical requirements of the REAL ID Act.

The REAL ID Final Rule, issued on January 11, 2008, has responded to 1000s of comments by states and other stakeholders and provided a new set of compliance deadlines which the National Governor Association acknowledges as reflective of their concerns and suggestions. All states are now set up to comply, with all states having been issued an extension to comply with the initial benchmarks set out by the Rule of January 1, 2009 instead of the law's deadline of May 11, 2008. The relaxation of the timeline to comply has resulted in a reduction of estimated costs by DHS from about \$11 billion burden on the states to a \$3.965 billion requirement spread over 11 years, or about \$360 million per year to implement.



9/11 hijacker Ahmed al Ghamdi, shown above, checked in at Logan Airport in Boston on the morning of 9/11, using his fraudulently obtained VA ID card.

The Driver License/ID Security Framework that emerged from the AAMVA Special Task Force was detailed and comprehensive; that Framework became the backbone for REAL ID. The outline of the task force responsibilities is worth repeating as it shows how AAMVA – and thus the state DMVs – were well aware and desirous of fixing the multiple vulnerabilities in state ID issuances systems. In some ways, then, REAL ID was simply a federal bow to the states' own work in this area. AAMVA's 'Uniform Identification Subcommittee' divided the issues into sub-categories. What is interesting is that despite the permutation of the mission statements from these subcommittees to the AAMVA Security Document Framework, to REAL ID, to the Proposed and Final Rule, much of the language and policy statements have remained relatively unchanged.

Another interesting aspect of AAMVA's tasking was a group established just to deal with enforcement issues, including those treating/ID fraud, and determine increased penalties for dealing with such fraud. A significant justification for REAL ID is that by setting minimum standards as a foundation in both the verification of identity

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and card production processes, security is built into all state systems. This will make law enforcement activity more effective while at the same time discouraging fraud. As Chuck Canterbury, National President of the Fraternal Order of Police stated in a Feb. 21, 2007 letter to Senate Majority Leader Harry Reid:

[REAL ID] is very much of an officer safety issue. Law enforcement officers need to have confidence that the documents presented to them to establish the identity of a given individual are accurate. Officers rely on these documents during traffic stops and other law enforcement actions to access information related to that individual's criminal history. No police officer wants to be in the dark about the fact that he may have detained a wanted or violent criminal who has simply obtained false identification. This places both the officer and the public he is sworn to protect in greater danger. For this reason, the FOP will strongly oppose any bill or amendment that would repeal the REAL ID Act.

Below is a chart that shows that the policies advocated by the states via AAMVA's 2001 working groups remains a strong influence on REAL ID policies advocated today by DHS and also influenced by the National Governors' Association and National Conference of State Legislators. This chart reflects where AAMVA started in 2001 as closely tied to REAL ID Final Rule.²³

Secure ID feature tasked by AAMVA	2001 AAMVA Secure ID Issuance Task Force assignments	2008 DHS REAL ID Final Rule for Secure ID Issuance
<i>Model Legislation</i>	'develop model legislation to assist states in implementing the overall package of Uniform Identification Standards'	REAL ID is that legislation.
<i>Process and Procedures</i>	'gather and incorporate all deliverables of the Uniform ID Subcommittee (Task Groups) into one Model Program. This model program will include minimum requirements, best practices and model legislation to support a uniform and secure DL and identification card system for motor vehicle agencies in the U.S. and Canada.'	Section 37.01: REAL ID is applicable to States and U.S. territories that choose to issue DLs in compliance with REAL ID, and IDs not in compliance of REAL ID.
<i>Driver License Agreement</i>	'The DLC/NRVC (Driver License Compact/Non-Resident Violator Compact) Joint Compact Executive Board has been asked to explore enhancing the newly created Driver License Agreement (DLA), a voluntary DL compact between States, to include requirements established for a more secure DL/ID issuance system.'	The Rule sets out minimum requirements to support a uniform and secure DL and identification card system for Motor Vehicle Agencies.
<i>DRIVERs Infrastructure</i>	'The Driver Record Information Verification System (DRIVERs) task group will be charged with creating an all driver pointer system, to keep bad drivers off the road. Simply put, DRIVERs will direct a state where to find and accurately verify someone's driving history in another state.'	
<i>Acceptable Documents</i>	'validate and update the existing acceptable ID document list for the	Sections 37.11 (Identity Verification) and 37.13 (Document Authentication) require

²³ Janice Kephart, *REAL ID Final Rules: a Summary* (Feb. 21, 2008) was used for column three. Found at http://911securitysolutions.com/index.php?option=com_content&task=view&id=154&Itemid=38

<p><i>Residency</i></p>	<p>proof/authentication of specific personal information, such as, name, date of birth (DOB), legal presence, etc. and evaluate the utilization of foreign documents for the same purpose. Phase two will result in a recommendation for document (DL/ID) validity periods in relation to legal status/validity’ ‘to develop a definition of residency/domicile with and without a legal presence requirement for the purpose of driver licensing (establishment of the driver control record) and identification.’</p>	<p>that an applicant provide sufficient documentation for a state to verify identity and authenticate documents presented for the purpose of establishing identity and includes specific personal information such as name, DOB, legal presence and use of documents, including foreign documents, for that purpose. An ID document list is provided. Lawful Presence is defined in 37.03, and the procedure for determining lawful status for the purpose of driver licensing is found in 37.13. Lawful status must be checked in SAVE, Section 37.13(b)(1). The issuance with or without legal presence is covered by Section 37.21, Temporary or Limited Term IDs and in Section 37.71, Non REAL ID DL or ID.</p>
<p><i>Fraudulent Document Recognition</i></p>	<p>‘identify and establish methods for verifying documents used to establish identity of an individual applying for a DL or identification card. Verification of identity may include, but is not limited to, full legal name, date of birth, Social Security Number (when applicable), and residency and/or legal presence’ ‘to assist jurisdictions with the formal training of motor vehicle employees and law enforcement in the recognition/detection of fraudulent identification documents.’</p>	<p>Again, methods for verifying (authenticating) documents are covered by Sections 37.11 and 37.13. Section 37.31 provides requirements for source document retention. Section 37.33 sets out minimum requirements for information held by DMV databases. Sections 37.41(b)(2) set out security requirements for personally identifiable information. Section 37.41(b)(5) requires employee fraudulent document training and security awareness training.</p>
<p><i>Card Design Specifications</i></p>	<p>‘deals with physical and encoded features of the DL / ID document. Features include security elements, card layout, printed and encoded data, and machine-readable technologies. It is our hope that this effort produces a standard for the DL document that specifies minimum data and minimum technologies to be used on the DL / ID document’</p>	<p>Section 37.15 sets out minimum security requirements to harden the DL or ID but assures flexibility, based on comments received during rulemaking. Section 37.17 lists card surface requirements and 37.19 the machine readable zone requirement.</p>
<p><i>Internal Controls</i></p>	<p>‘to identify best practices for internal fraud control and prevention measures’</p>	<p>Sections 37.41 to 37.45 set out controls for physical security of production facilities; employee background checks and access control; requires a state to submit a plan on preventing access to personally identifiable information; and a separate report on safeguarding IDs in coordination with law enforcement.</p>
<p><i>Oversight</i></p>	<p>‘to review current procedures for the</p>	<p>Sections 37.51 to 37.65 set out in detail</p>

<i>Compliance System</i>	oversight and compliance of Federal and State programs and to develop a process for compliance to AAMVA standards regarding DL/ID Processes/Procedures'	procedures for determining state compliance.
<i>Unique Identifier</i>	' developing a way to uniquely identify an individual such that: <ul style="list-style-type: none"> • A holder will have no more than one (1) DL/ID card and record • authorized users can verify that the holder of a DL/ID card is the individual to whom the card was issued; and • an individual's driver record contains only information that pertains to that individual. 	<ul style="list-style-type: none"> • Section 37.29 sets out the 'one driver one license' rule designed in part to verify driver licensing in another state. This helps get out the underlying principle of "keep bad drivers off the road" as referred to in DRIVERs infrastructure above. • Supported by document security requirements in Section 37.41(b)(2) and source document retention Section 37.31

Myth: REAL ID creates a national ID and is a federal mandate.

Fact: The driver's license is the most common form of ID used in the U.S. today, accepted for everything from opening a bank account to boarding a plane to picking up movie tickets with a credit card. Securing an already widely used credential makes good sense. Each state will still issue many varieties of REAL ID compliant – and if they choose – non-compliant IDs. REAL ID does not affect states' right to decide who is eligible for a DL or ID; that decision remains with each state. There is thus nothing "national" about such issuance. If anything, REAL ID can be said to obviate the need for a national ID.

One example of how REAL ID does not create a national ID is that the benchmarks do not mandate anti-counterfeiting features of the card. Instead, under Section 37.15 of the Final Rule, anti-counterfeiting is described as follows:

37.15(c) Three levels of security are required to detect false cards:

- Level 1 requires an "easily identifiable visual or tactile feature" for cursory examination without any aids.
- Level 2 is a feature detected by "trained inspectors with simple equipment."
- Level 3 is a feature only detectable by forensic inspectors.

To meet these security levels states have numerous choices from a large variety of vendors. The Rule simply states that the card technologies must not be commonly available to the general public, must be multilayered, and must be able to be integrated into the cards. There is nothing about these requirements that creates one type of card issued by one government entity; in fact, these rules are designed to give states the choices they need to make to achieve fiscal responsibility and security in equal doses.

Myth: REAL ID will create a hackable, national database.

Fact: There is no aggregation of personal data into "one huge, hackable database operated by the federal government," as some claim. REAL ID calls for the states to operate secure databases that are searchable by other authorized parties such as motor vehicle agencies and law enforcement. The Act also calls for crosschecking applicants' information with federal and state databases to better authenticate credentials. No actual information is shared between these databases, just simply 'yes' or 'no' answers, and there is no access to the actual information that stands behind queries.

Jurisdiction	CDLIS & NDR license checks	SSOLV (SSN)	SAVE (lawful presence)	EVVE (Birth certificate)	DOS (Passport)
Alabama	✓	✓	✓	✓*	
Alaska	✓	✓			
Arizona	✓	✓			
Arkansas	✓	✓	✓	✓*	
California	✓	✓	✓		
Colorado	✓	✓	✓		
Connecticut	✓	✓			
Delaware	✓	✓	✓		
District of Columbia	✓	✓			
Florida	✓	✓	✓		
Georgia	✓	✓	✓		
Hawaii	✓	✓			
Idaho	✓	✓	✓		
Illinois	✓	✓	✓		
Indiana	✓	✓	✓		
Iowa	✓	✓	✓	✓**	
Kansas	✓	✓			
Kentucky	✓	✓		✓*	
Louisiana	✓	✓			
Maine	✓	✓			
Maryland	✓	✓	✓		
Massachusetts	✓	✓			
Michigan	✓		✓		
Minnesota	✓			✓*	
Mississippi	✓	✓		✓*	
Missouri	✓	✓	✓	✓*	
Montana	✓	✓	✓	✓*	
Nebraska	✓	✓			
Nevada	✓	✓	✓		
New Hampshire	✓	✓			
New Jersey	✓	✓	✓		
New Mexico	✓	✓			
New York	✓	✓	✓		
North Carolina	✓	✓	✓		
North Dakota	✓	✓	✓	✓**	
Ohio	✓	✓			
Oklahoma	✓		✓		
Oregon	✓	✓			
Pennsylvania	✓	✓	✓		
Rhode Island	✓	✓			
South Carolina	✓	✓	✓		
South Dakota	✓	✓	✓	✓**	
Tennessee	✓	✓			
Texas	✓	✓			
Utah	✓	✓			
Vermont	✓	✓	✓		
Virginia	✓	✓	✓		
Washington	✓	✓			
West Virginia	✓	✓	✓		
Wisconsin	✓	✓	✓		
Wyoming	✓	✓	✓		

CDLIS-Commercial Driver's License Information System
 SSOLV-Social Security On-Line Verification
 SAVE-Systematic Alien Verification for Entitlements
 EVVE-Electronic Verification of Vital Events

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SAVE-Systematic Alien Verification for Entitlements EVVE-Electronic Verification of Vital Events DOS-Department of State

✓= *new since March 2007 VRA* VRA and DMV***

Further, the federal government does not hold applicants' information; in fact, the REAL ID Final Rule requires that applicant information be protected by each state. Nor does the federal government network the databases together. The databases are likely to be networked to the states by an AAMVA secured network, for which DHS has requested FY09 funding of \$50 million for further upgrades. Most of these databases are currently used by states already to verify identity in a variety of ways – with no privacy complaints. The federal government does not and will not hold individual applicants' information, nor has access to applicants' information. As the connectivity chart above shows, the notion that REAL ID would create a single federal database is completely erroneous.

What is clear is that nine more states-- despite lack of funding and REAL ID controversies-- are now checking for legal status than a year ago, bringing the total to 29 states now checking the SAVE database. In addition, three states are now checking electronic vital events information against DMV records/applications, and four more have completed the digitization of vital events in preparation for achieving connectivity to their DMVs and other state institutions.

Myth: REAL ID invades privacy.

Fact: REAL ID protects privacy by ensuring that people are who they say they are. The information contained on a REAL ID license will be the same as what is required by most states today. That information, such as a digital photo, name, permanent address, age, height and weight, is widely available and does not implicate privacy concerns. REAL ID licenses are not required to contain RFID technology, biometric fingerprint information, or Social Security numbers.

The Final Rule supports privacy of personal information in a number of areas, including protection of personally identifiable information; access to information by employees; and securing production facilities.

Best practices on securing privacy have existed in the DL arena for years and build on the Commercial Driver License Information System (CDLIS) and National Driver Register (NDR) database created in 1986. These databases together have been servicing 45 states for 20 years, and REAL ID does not even go so far as creating a new database. Even so, there have been no complaints about intrusions on privacy or identity theft with either of these databases. One reason why is because federal law already protects the use of such data under the Driver's Privacy Protection Act of 1994. This law restricts how DL information can be used by states, barring states and their employees from selling or releasing personal information such as SSNs, images, addresses, phone numbers and birthdates. Until that law was passed, 35 states had such information public and many made money off the sale of such information to all varieties of private enterprise. Congress set a higher bar to protect privacy in the area of state-issued DLs then, and REAL ID 20 years later is a natural follow-up: not only securing data, but identities and the documents that support those identities as well.

Also worthy of mention is that the Information Technology Association of America, who represents the largest producers of computer security systems—IBM, Microsoft, Hewlett Packard, Oracle and others—has concluded that REAL ID, if implemented, will further protect privacy. In a May 7, 2007 report, the ITAA stated that REAL ID will actually “raise the bar on privacy for driver licenses” because it sets higher benchmarks for data security; requires tougher identity adjudication; and builds on existing practice.

REAL ID also provides greater protection of privacy, requiring background checks of DMV employees, secure production sites of cards, alongside due respect to civil liberties. Just to be clear, there are no plans for an embedded RFID chip in REAL ID DLs. Enhanced DLs are a different species, designed for border crossers who

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also regularly use a DL, and who voluntarily choose to acquire an Enhanced DL with a chip readable for border crossing purposes.

Myth: The opportunities for identify theft will multiply exponentially.

Fact: A collateral positive side effect of REAL ID is that it will help curtail identity theft, not enable it. For legal residents, REAL ID requires stronger security features with the intention of driving up the cost of creating counterfeit ID documents and enabling law enforcement both working with DMVs and in the field to make a quicker, more reliable determination of whether an ID is legitimate or not.

For criminals, terrorists and others who want to live in the U.S. for nefarious purposes or under false guise, obtaining a license or ID has been their ticket to acquiring legitimate cover for their illegitimate activities. Once our identity issuance systems and the IDs themselves are tightly secured, it will be much more difficult to obtain these "tickets" fraudulently.

FUNDING REAL ID

A review of the Final Rule shows that the administration request does not adequately reflect the costs in the Final Rule as they pertain to state investment in order to become REAL ID compliant. That is the crux of the current debate. Six years after 9/11, we can no longer afford delays simply due to funding when acceptable rules are in place.

After collecting thousands of comments from states and other interested parties, the Department of Homeland Security (DHS) issued final rules for the REAL ID Act in January 2008. All 56 U.S. jurisdictions meet initial REAL ID requirements and as of April 2, 2009, have been granted an extension until December 31, 2009 by the DHS. That means that every jurisdiction will continue to have their DLs acceptable for official purposes after the May 11, 2008 deadline as mandated by Congress in the REAL ID Act of 2005.

Funding for REAL ID under these circumstances is wholly inadequate. While Congress provided additional funding to implement REAL ID in FY08 at \$50 million, current REAL ID funding is at approximately \$79 million in a separate fund created under the REAL ID Act for all U.S. jurisdictions.

The DHS Final Rule places the cost to the states at \$3.965 billion. With an 11 year implementation cycle, states need on average \$360 million per year to fund full REAL ID under their own estimates.

In FY09, the administration made a request to fund REAL ID at a total of \$160 million, with \$50 million going to USCIS for the identification verification 'hub' that is likely to be expanded by AAMVA (as of now). The administration has made a separate request for a combined grant program for critical infrastructure/bomb prevention and REAL ID of \$110 million. This proposed fund is neither dedicated to REAL ID nor does it reflect the costs to the states as set out by the Final Rule. Here is the relevant language as set forth by the administration:

OMB FY09 proposed budget numbers, p. 480

CITIZENSHIP AND IMMIGRATION SERVICES, Federal Funds, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

For necessary expenses for citizenship and immigration services, \$80,973,000; \$154,540,000; of which \$100,000,000 is for the E-Verify program to assist U.S. employers with maintaining a legal workforce; and of which \$50,000,000 is to support implementation of the REAL ID Act to develop an information sharing and verification capability with States.

p. 516 National Security and Terrorism Prevention Grants (\$110 million).— This program provides competitive grants to specific State and local agencies to support proposals which address national vulnerabilities identified by the Secretary as priorities. In 2009, the Secretary will invite States to submit project proposals to support REAL ID implementation and buffer zone protection for critical infrastructure. Final grant allocations will be determined competitively by the Secretary on the basis of how well proposals address identified national vulnerabilities.

In a March letter to the White House, the National Governors' Association (NGA) requested \$1 billion on 2008 spring supplemental, citing compliance deadlines beginning in 2009. In addition, a group of seven governors has told Secretary Chertoff that they want complete funding for REAL ID in the supplemental this spring of \$1 billion: REAL ID is an emergency, as all states seeking compliance or approved for an extension (all but one so far) need to reach 18 benchmarks by January 2009. Most are well on their way, but many lack sufficient funding to reach all 18 benchmarks by this date.

ESTIMATED COST OF REAL ID FINAL RULE OVER AN 11-YEAR PERIOD²⁴

Estimated Costs (11 years)	\$ million	\$ million	\$ million	% Total
	7% discounted	3% discounted	(2006 dollars) undiscounted	Undiscounted
Costs to States	2,879	3,413	3,965	39.9%
Customer Services	636	804	970	9.8%
Card production	690	822	953	9.6%
Data Systems & IT	1,171	1,352	1,529	15.4%
Security & Information Awareness	365	415	490	4.9%
Data Verification	5	7	8	0.1%
Certification process	11	13	16	0.2%
Costs to Individuals	3,808	4,814	5,792	58.3%
Opportunity Costs	3,429	4,327	5,215	52.5%
<i>Application Preparation</i> (125.8 million hours)	2,186	2,759	3,327	33.5%
<i>Obtain Birth Certificate</i> (20.1 million hours)	348	440	530	5.3%
<i>Obtain Social Security Card</i> (1.6 million hours)	31	37	44	0.4%
<i>DMV visits</i> (49.8 million hours)	864	1,091	1,315	13.2%
Expenditures: Obtain Birth Certificate	379	479	577	5.8%

²⁴ Source: DHS Final Rule, p. 221. http://www.dhs.gov/xprevprot/laws/gc_1172765386179.shtml

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Cost to Private Sector	8	9	9	0.1%
Costs to Federal Government	128	150	171	1.7%
Social Security card issuance	36	43	50	0.5%
Data Verification - SAVE	9	11	14	0.1%
Data Systems & IT	65	74	82	0.8%
Certification & training	17	21	25	0.3%
Total Costs	6,853	8,406	9,939	100.0%

The total, undiscounted eleven-year cost of the final rule is \$9.9 billion. Based on a total of 477.1 million issuances over the 11-years of the analysis, the average marginal cost per issuance for States is \$8.30. Individuals will incur the largest share of the costs. More than 58 percent of the costs (discounted or undiscounted) are associated with preparing applications, obtaining necessary documents, or visiting motor vehicle offices.

The final cost to states and the federal government at \$4.4 billion for complete implementation of REAL ID. States have to be compliant by 2011, leaving only three fiscal years for reaching benchmarks set out for DHS, although the final implementation date is 2017.

According to the federal government, their burden is priced at \$171 million. These costs cover Social Security Card issuance (\$50 million); Data Verification via SAVE (\$14 million); Data Systems & IT (\$82 million); and certification and training (\$25 million).