



One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

January 11, 2008

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, D. C. 20528

Dear Secretary Chertoff:

Today, you announced the release of the Final Rule to implement the REAL ID Act of 2005. While fulfilling this 9/11 Recommendation is vital to our national security, I believe that the Final Rule still requires a great deal of work by the Department of Homeland Security. It is imperative that the Department produce a fiscally responsible and effective rule that does not impinge upon the privacy of Americans.

Though the Committee was given only a very short time to review the 285-page rule before your announcement, it has become apparent that the Administration has once again failed to adequately consider the effects of its security priorities. Indeed, after only a cursory examination of the substantial document, more questions than answers have been raised. As the Committee continues to comprehensively review the Final Rule, it is my hope that we will receive substantive answers to the myriad questions raised by this Final Rule.

I am sure you will agree that the Department's authorizing Committee should be provided much more time in the future to thoroughly consider such important rules. It is simply unacceptable to read news accounts of other legislative staff being briefed on the rule before your authorizing Committee.¹

With a total cost of almost \$10 billion dollars, the Final Rule still presents a monumental expense to states and individuals over the next several years. The Administration did not request any funds to implement REAL ID in FY2008. Congress, however, provided \$50 million for REAL ID implementation. However, there is a gulf between the anticipated costs of this program and the funding provided. Clearly, the Administration must take a realistic approach in requesting funding for this new program in its upcoming budget submission. Failure to do so would not only create an unfunded mandate for every state, but ultimately pass along the true costs of this program to the American people. From the figures currently available, it appears that the states and the American people will be required to directly incur 40% and 58% of the implementation costs. This is simply unfair.

¹ Devlin Barrett, The Post-9/11 Driver's License, TIME, (Jan. 10, 2008) available at: <http://www.time.com/time/nation/article/0,8599,1702559,00.html?cnn=yes>].

I am also concerned by the verification requirements imposed on the States. A number of the federal databases that the States must use to authenticate source documents are incomplete, unreliable, and in dire need of significant enhancements. It is unreasonable to ask the States to move at such a feverish pace if the Department has failed to provide the basic tools necessary to get the job done. By failing to address the known inadequacies of these databases, the Department has ensured operational chaos. Moreover, failing to rectify these deficiencies will compromise the program's mission from its onset. Given the hefty price tag, the American people are entitled to an expectation of accuracy.

I would urge you to move aggressively toward improving these databases and ensuring that reliable and secure connectivity is made a priority. Compliance with the Final Rule's implementation schedule should be postponed until there is some assurance that all required systems are accessible and accurate.

Moreover, there are myriad privacy concerns raised by the implementation of REAL ID that have not been fully addressed in the new rule. The rule indicates that DHS *intends* to issue a set of Privacy and Security Best Practices to the States. After the myriad problems the Department has faced in assuring privacy protections in other programs, the failure to once again build these practices into the Final Rule itself indicates a disturbing pattern. Without adequate institutional safeguards to protect the data contained on the card itself; in the database that houses the information; and the facility that houses the database, the personal identifiable information of the more than 245 million license and cardholders nationwide is at risk. Not only will such unprotected information be a windfall to identity thieves and other unscrupulous individuals, it may well become the treasure trove of information for those who seek to do enter this country outside of the legal process.

The Department has spent close to \$300 million on programs that have been discontinued because of the failure to adhere to privacy rules and regulations. It is crucial that the Department take the necessary safeguards to ensure REAL ID does not become the next cancelled program.

In sum, this measure may not serve to make our nation safer.

If you have any questions, please do not hesitate to contact Cherri Branson, Chief Oversight Counsel, at 202-226-2616. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style.

Bennie G. Thompson
Chairman

cc: Peter T. King, Ranking Member