



THE ABCs OF IDs FOR U.S. IMMIGRANTS



NATIONAL
CONFERENCE
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STATE
LEGISLATURES

A Primer for State Legislators

By Katherine Gigliotti and Ann Morse

December 2004

Introduction

The federal government controls the terms and conditions for the foreign-born to become permanent or temporary residents of the United States. Under the nation's complex immigration laws, the Department of State issues visas for permanent immigrants, nonimmigrants (i.e., temporary immigrants) and other immigrant categories, from ambassadors to victims of trafficking. There are 79 categories and subcategories for temporary visas alone. The length of stay in the United States, which depends on the type of visa issued, can vary from a few days for visitors; up to 10 years for diplomats, foreign media, or students; and permanent, for those who are joining family or filling specialized jobs. At ports of entry, the Department of Homeland Security (DHS) verifies the identity of visa holders against one or more databases, checking for terrorist or criminal activity. DHS also enforces immigration law by preventing illegal entry at borders and airports, deporting violators, and monitoring compliance with visa terms.

States issue driver's licenses under the constitutional authority of the Tenth Amendment; the first driver's license laws were enacted in Massachusetts and Missouri in 1903. States and the District of Columbia license more than 191 million drivers.

After the September 11 terrorist attacks, both the federal and state governments acted to strengthen the integrity of identity systems (documents, databases, issuance and enforcement). The 19 terrorists identified in these attacks had entered the United States legally with valid passports and on temporary visas, and many subsequently were able to obtain state driver's licenses. In response, the federal government reformed the student visa process, launched an entry-exit system for noncitizens who enter the United States, and began integrating various databases to connect criminal and terrorist lookout capability.

States also responded to the need to improve ID security. States reformed processes related to issuance of driver's licenses and IDs, increased penalties for counterfeiting and use of fraudulent documents, revised acceptable documents for proof of identity and residence, and added new security features to the card. Since 2001, nearly every state has considered legislation regarding driver's license application procedures. In 2003, states enacted 28 laws, and in 2004, states enacted 13 laws dealing with these issues.¹

Following up on the 9/11 Commission report,² Congress enacted reform of the nation's intelligence operations in December 2004. The Intelligence Reform Act of 2004 (S.2845, P.L. 108-458) overturns longstanding state authority by creating new federal standards for content and features of state-issued driver's licenses and identification cards. The law requires a negotiated federal rulemaking for developing the standards, including the U.S. Department of Transportation (DOT), U.S.

Acknowledgments

This research was funded by the Annie E. Casey Foundation. We thank them for their support. The findings and conclusions presented in this report are those of the authors alone and do not necessarily reflect the opinions of the Foundation.

The authors also extend their deep appreciation to Linton Joaquin, Tyler Moran, and Marielena Hincapie of the National Immigration Law Center for reviewing the report, and to Michael Bird, Cheye Calvo, and Sheri Steisel for their helpful comments and suggestions.

Department of Homeland Security (DHS), state officials that issue driver's licenses and identification documents (IDs), and elected state officials and other interested parties. DOT must develop "voluntary" standards within 18 months of the law's enactment. The seven specific minimum standards include: documenting proof of identity; verifying identity documents; processing applications; developing security standards; setting standards for common machine-readable identification information; requiring states to confiscate licenses and IDs that are compromised; and determining information to be included on the document (which must include digital photos and machine-readable technology.) Newly issued documents that fail to meet these standards within two years of the promulgation of federal regulations will not be accepted for federal identification purposes (such as boarding a plane, filing an Employment Eligibility Verification form (Form I-9), or receiving federal benefits (social security, Medicare, etc.). The law also sets federal standards for birth certificates. DOT must report cost of implementation within nine months; however, the law provides no funding for states to comply. A provision that would have eliminated state authority to issue licenses to unauthorized immigrants was dropped from conference.

This report reviews existing federally issued and managed identity documents (IDs) and database systems; state-issued driver's licenses and identification cards and recent reforms; and examples of identity documents issued by foreign governments that are accepted in the United States, notably Mexico's consulate identification card (or matricula). Appendix A provides examples of federal databases that are used to make admissions decisions, to track immigrants in the United States, and are consulted in the identification application process. Appendix B lists documents that are acceptable to prove work eligibility in the United States

IDs Issued by the Federal Government

IDs Issued by the U.S. Government

- Passport
- Social Security Card and Number
- Individual Taxpayer Identification Number
- Permanent Resident Card ("Green Card")
- Employment Authorization Document
- Visa
- Visa Waiver Program
- Border Crossing Card

The federal government issues IDs for citizens (such as passports and Social Security numbers) and noncitizens (social security numbers; individual taxpayer identification numbers (ITINs); permanent resident cards; employment authorization documents; and visas for permanent, temporary and other noncitizen residents such as refugees).

Passport

In the United States, the Department of State is responsible for issuing passports to U.S. citizens. Applicants must submit a passport application with two photos, proof of U.S. citizenship, and proof of identity. U.S. citizenship can be proven by providing any of the following documents: certified birth certificate, consular report of birth abroad, naturalization certificate, or certificate of citizenship. The following documents are accepted as proof of identity: naturalization certificate; certificate of citizenship; or a current and valid drivers' license, government ID or military ID. Passport applicants must also provide their Social Security number. Before the passport is issued, the applicant's name is checked against a central name check system.

Social Security Card and Number

The most widely issued form of federal ID is the Social Security card, issued by the Social Security Administration (SSA). A Social Security card and number are required to obtain employment, collect Social Security benefits, and receive some other government benefits, and

is often required to open a bank account or obtain a credit card. SSA estimates 156 million workers are covered by social security.

The SSA issues three forms of Social Security cards. The first form is issued to U.S. citizens and to those who are admitted to the United States with permanent work authorization. This card displays the person's name and Social Security number (SSN) and permits the individual to work without restriction. The second form is issued to individuals who are admitted to the United States with a temporary work authorization approved by the Department of Homeland Security (DHS). The card displays the person's name, SSN, and the words "Valid For Work Only With DHS Authorization." The third form of the card is issued to individuals admitted to the United States who do not have work authorization and need a valid SSN in order to obtain a federal or state benefit or service. This card displays the words "Not Valid For Employment."

SSA Accepts These Documents to Prove Age and Identity

- Driver's license
- Passport
- Employer, school or military ID card
- Marriage or divorce record
- Health insurance card
- Adoption record
- Life insurance policy

Social Security cards are often issued to U.S. citizens at the time of birth. A parent can apply for a Social Security card for their child when they apply for the birth certificate. Other applicants must provide original documents that show age, identity, and citizenship or lawful noncitizen status. Documents that the SSA will accept to prove age and identity include driver's licenses; passports; employer, school or military ID cards; marriage or divorce record; health insurance card; adoption record; or life insurance policy. Noncitizen applicants for an SSN must also show unexpired Department of Homeland Security documents to prove their immigration status and their authorization to work (forms such as I-551, I-94, I-688B or I-766). Noncitizen applicants who have legal immigrant status but do not have work authorization can also obtain an SSN if it is for a valid nonwork reason.³ The only valid nonwork reasons are:

- To satisfy a federal statute or regulation that requires an immigrant to have an SSN in order to receive a federally funded benefit (such as Temporary Assistance to Needy Families), for which he or she is eligible; or
- To satisfy a state or local law that requires an immigrant who is legally in the United States to have an SSN in order to receive public assistance benefits (such as state-funded general assistance) for which he or she is eligible.

Citing concern about fraud, the SSA excluded the need to obtain a state driver's license from the term "valid nonwork reason" effective October 23, 2004.⁴

Individual Taxpayer Identification Number

Since 1996, the Internal Revenue Service has issued individual taxpayer identification numbers (ITIN) to individuals who are not eligible for a Social Security number but who need an identification number to file taxes (for example, an individual with earned income or who is listed as a spouse or dependent on the tax return of a U.S. citizen). ITINs are issued regardless of immigration status because both resident and nonresident immigrants may be required to file or to pay taxes in the United States. The IRS states that ITINs are for tax reporting only and are not valid identification for non-tax purposes.⁵ The IRS has issued 7.3 million ITINs since the program's inception.

Applicants for an ITIN must prove identity and foreign status. There are 13 acceptable documents. To prove identity and foreign status, a passport may be used, or any combination of two of the following documents will be accepted: national identification card (with photo, name, current address, date of birth, and expiration date); U.S. driver's license; civil birth certificate; foreign driver's license; U.S. state identification card; foreign voter ID; U.S. military ID; foreign military ID; Visa; U.S. Citizenship and Immigration Services ID; medical records (dependents only); and school records (dependents and/or students only). Since December 2003, the IRS has required several measures—such as issuing the ITIN in a letter rather than on a card and requiring applicants to file a completed tax return with their application—to prevent misuse of the ITIN.

Permanent Resident Card (“Green Card”)

The Permanent Resident Card, popularly known as the “green card,” demonstrates that the lawful permanent resident cardholder has authorization to live and work in the United States. To obtain a green card (Form I-551), applicants must complete several applications (including Form I-485 – Application to Register Permanent Resident or Adjust Status; Form G-325A – Biographical Data Sheet; Form I-693 – Medical Examination Sheet; Form I-864 – Affidavit of Support, and Form I-94 – Arrival/Departure Record). Form I-485 requires applicants to provide the following supporting evidence: copy of foreign birth certificate; copy of passport page with nonimmigrant visa; two photographs; fingerprints; and medical examination report. Green cards are issued to lawful permanent residents upon arrival and to refugees after one year of residence. In 2003, the U.S. Citizenship and Immigration services (USCIS) issued more than 2.5 million Permanent Resident Cards.

Beginning in 1989, green cards were issued with expiration dates, valid for 10 years. On November 15, 2004, the USCIS announced a new format for the card, adding “Department of Homeland Security” on the back and the agency seal on the front, along with new security features. Cards already in circulation are valid until the expiration date on the card. The expiration of the card does not mean that the cardholder’s lawful immigration status has expired.

Employers must verify that all employees, regardless of citizenship, are authorized to work in the United States.

Employment Authorization Document

Employers are required to verify that all employees, regardless of citizenship, are authorized to work in the United States. All employees, including U.S. citizens, must present proof of employment eligibility and identity and complete an Employment Eligibility Verification Form (I-9). The I-9 form lists acceptable documents to prove employment eligibility and identity including a valid driver's license, passport, and Social Security card, among others (a complete list of acceptable work documents can be found in Appendix B). Lawful permanent residents can show a green card or any other document listed on the I-9 form; other noncitizens may need to obtain an Employment Authorization Document (EAD) to prove eligibility to work in the United States. Noncitizens who are required to obtain an EAD include asylees and asylum seekers; refugees; students seeking particular types of employment; applicants to adjust to permanent residence status; people in or applying for temporary protected status; fiancés of American citizens; and dependents of foreign government officials. To obtain an EAD, applicants must submit Form I-765 to the USCIS with a copy of Form I-94 (Arrival/Departure Record), two photographs, and a copy of the person's previous EAD (if he or she had one).⁶ It is important to note that an employer cannot require that a worker present a specific document

such as a “green card.” Requiring more documentation than listed in the I-9 form is prohibited by the antidiscrimination provisions of the Immigration and Nationality Act.

Visas

The United States issues visas for permanent, temporary and other noncitizens prior to their arrival in the United States. Common visas include visas for family-based and employment-based immigration (675,000 per year); H-1B visas for temporary high-tech workers; and border crossing cards issued to Mexican nationals for use close to the U.S.-Mexico border. In FY 2001, 7.6 million nonimmigrant visas were issued by the Department of State in 65 different nonimmigrant categories. Visas may be denied to individuals on the basis of health, criminal behavior, security (such as terrorist activity), or likelihood of becoming a public charge.

Permanent resident visas are issued to immigrants who entered the United States to reunite with families, to accept employment, or to represent countries with relatively few immigrants in the United States (the “diversity” visa program).

- *Family-based immigration:* The cap on family-related immigration is 480,000 visas per year; however, an unlimited number of visas are available to immediate relatives (spouses, minor children, including adopted children, and parents). It would be possible for immediate relatives to use all the available visas, so a minimum of 226,000 visas is reserved for other family members, thereby making the 480,000 figure a pierceable cap. The 226,000 visas are available to adult unmarried children of U.S. citizens (F1); spouses and children of lawful permanent residents (F2); married children of U.S. citizens (F3); and brothers and sisters of U.S. citizens (F4).
- *Employment-based immigration.* A limit of 140,000 visas per year are available in five categories, such as professionals and skilled workers, religious workers, physicians in underserved areas and investors.
- Under the *diversity visa*, 50,000 permanent resident visas are made available annually by lottery to people from countries with low rates of immigration to the United States. The State Department’s National Visa Center holds the lottery and chooses winners randomly from all qualified entries.⁷

Temporary (technically, nonimmigrant) visas are issued in 79 categories and subcategories from A to V. These include ambassadors, business visitors, fiancés of US citizens, students, temporary agricultural workers, temporary protected status, and victims of trafficking, among others. Most visas are issued for 29 days or less; for employees generally up to three years; and for some for an indefinite length of time (to students, who may stay for the duration of their course of study, or to employees of NATO, for their tour of duty, or to foreign information media, for the duration of employment.) The State Department has recently begun to issue visas that have a maximum duration of 10 years.

Other immigration paths not described above include adoption, asylum, country-specific adjustments (for certain Cubans, Haitians, Hmong, Nicaraguans and Central Americans) immigrant religious workers, physicians in underserved areas, refugees, registry for those who have continuously resided in the United States since 1972, and victims of domestic abuse.

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The State Department launched a biometric visa program in 2003 as required by the Enhanced Border Security and Visa Entry Reform Act. A visa applicant's fingerprints are sent to the Consular Consolidated Database and checked against the IDENT lookout database. If there is no match, the applicant's fingerprints are stored in the US-VISIT database to match when the applicant presents the visa at the port of entry. The State Department notes there are approximately 20 million valid nonimmigrant visas that are not biometric visas.

Visa Waiver Program

Many Canadian citizens and many citizens from the 27 Visa Waiver Program countries can come to the United States without a visa if they meet certain requirements (and are staying for less than 90 days). Travelers from the Visa Waiver Program countries will soon be required to present a machine-readable and biometric passport at the U.S. port of entry in order to enter without a visa; otherwise, a U.S. visa will be required. Other foreign citizens will need a nonimmigrant visa.⁸

Border Crossing Card

A Border Crossing Card (BCC) is a type of visa that is issued to Mexican citizens so they can enter the U.S. border zone for business or pleasure. The rules limit travel to within 25 miles of the border in Texas, New Mexico and California and to within 75 miles of the border in Arizona.⁹ Effective August 12, 2004, the permitted entry period has been increased from the previous 72-hour limit to 30 days. BCCs are issued by U.S. embassies and consulates. Applicants must show their Mexican passport to verify their identity and must provide photographs and fingerprints. In 1996, Congress mandated new security requirements, necessitating the reissuance of approximately 5 million cards. All BCCs (also known as laser visa cards) are now laminated cards with biometric and other security features, are machine-readable, and are valid for 10 years.¹⁰

IDs issued by State Governments: Driver's Licenses and ID Cards

States have adopted driving standards appropriate to their residents and have vested the authority to issue driver's licenses in a variety of state agencies.

States issue driver's licenses under the constitutional authority of the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." States have adopted driving standards appropriate to their own residents and have vested the authority to issue driver's licenses in a variety of state agencies. Although most states leave this function to their respective departments of motor vehicles or departments of transportation, this authority in some states is under the jurisdiction of the secretary of state or even the state tax commission.¹¹

States also issue identification cards, usually to minors who have not yet reached driving age. These cards are similar to a driver's license and require the same documentation.

Most states regulate what forms of personal identification are acceptable for issuing state driver's license and ID cards, often requiring proof through both primary and secondary documents. Documents accepted as base-identity documentation are sometimes determined through law and administrative code, but more often by agency policy; thus, they vary by state. These documents generally include birth certificates, valid immigration documents, military identification, or valid passports.

To obtain a driver's license or state ID card in Ohio, for example, applicants must present two forms of documentation to prove date of birth and social security number, if one has been assigned. At least one of the two identity documents must be from the primary list. Primary documents must display the full name and birth date of the applicant and must be verifiable. Examples of primary documents accepted in Ohio include state driver's license or ID card expired no longer than six months, certified birth certificate, valid Immigration and Naturalization Service documentation, certified copies of court orders that include name and date of birth, military identification documents (with photograph), or valid U.S. or Canadian passports. Examples of acceptable secondary documents include credit cards, employer or student identification cards, health insurance cards, valid foreign passports, and vehicle titles.¹²

To improve the integrity of state driver's licenses, states have added to their identification systems such security technologies as holograms; watermarks; and photos, signatures and fingerprints in bar codes and magnetic strips. States have also addressed the types of acceptable identification documents that must be presented to obtain a driver's license, including foreign identification documents and the extent to which an applicant must prove lawful presence in the United States. Most states also require an SSN for a driver's license, for those who have an SSN or are eligible for one. For those who do not have or are ineligible for an SSN, some states allow applicants to submit an affidavit to that effect.

A 1996 law mandated that state driver's licensing agencies must request the SSN of all driver's license applicants and place the SSN on the license. Due to overwhelming opposition from a coalition of states, conservative and liberal advocacy organizations, the mandate was repealed in October 1999 (Section 656 (b) of IIRIRA).

Noncitizens

Social security numbers. Federal law requires states to collect social security numbers from driver's license applicants, if they are eligible for one, for child support enforcement.¹³ A federal "Policy Interpretation Question" issued by the Office of Child Support Enforcement clarified that a social security number was not required to receive a driver's license.¹⁴ Although unauthorized immigrants are ineligible for social security numbers, some noncitizens have legal status but are not permitted to work (such as students.) Six states—Illinois, Kentucky, New Mexico, North Carolina, Utah and West Virginia—accept the ITIN in place of the SSN.¹⁵

Lawful presence. State laws vary on whether an applicant for state-issued identification must prove a lawful presence in the United States. According to the National Immigration Law Center, 23 states currently have laws that require applicants to prove lawful presence. Another 17 states have a lawful presence requirement that results from agency policy or the documents that are required of applicants. State definitions of lawful presence vary greatly and, in some states, the definition is quite limited. As proof of lawful presence, some states accept a variety of Immigration and Naturalization Service (INS) or U.S. Citizenship and Immigration Services (USCIS)¹⁶ documents, such as the Arrival/Departure Record (Form I-94), U.S. Certificate of Naturalization (Form N-550), U.S. Certificate of Citizenship (Form N-560, N-561, or N-645), or a resident alien card (Form I-151, I-551, AR-3, AR-3A, or AR-103). Eleven states do not have lawful presence requirements.¹⁷

States specify acceptable identification documents that must be presented to obtain a driver's license, including foreign identification documents, and the extent to which an applicant must prove lawful presence in the United States.

Visa expiration. According to the National Immigration Law Center, 23 states now require driver's licenses to expire when the immigrant's visa expires.¹⁸ Although many visas have expiration dates, several do not, including those for diplomats, students and foreign media.

Consulate IDs. Ten states currently accept consulate IDs as one form of identification for state driver's licenses: Idaho, Indiana, Michigan, Nebraska, New Mexico, Oregon, Texas, Utah, Washington and Wisconsin.¹⁹ Some of these states cite as their goal to encourage unauthorized immigrants to become licensed and insured drivers. Nevada and Tennessee accept the matrícula as a form of identification for state benefits and services, except for driver's licenses. Colorado prohibits public agencies from accepting foreign identity documents that are not recognized by the U.S. government, with exceptions for criminal investigations, services for children born in the United States, and emergency medical services. In 2004, North Carolina and South Dakota ended acceptance of consular IDs. (See the section on IDs Issued by Foreign Governments for more information about consulate identification cards.)

Tennessee's certificate of driving. In 2004, Tennessee implemented a law that creates two-tiered driver's licenses. Citizens and lawful permanent residents will receive a driver's license; all other noncitizens will receive a certificate of driving, which includes on the face of the document in red letters "For driving purposes only – not valid for identification." Noncitizens who are eligible for a certificate of driving include those who have temporary, legal documents from the U.S. government (work visas, etc.) and those who are not eligible for a driver's license but can provide proof of identity and residence in Tennessee. A certificate of driving issued to an individual presenting temporary legal documents will remain valid as long as the individual is authorized to stay in the United States (up to five years). A certificate of driving issued to an individual who cannot provide proof of citizenship or legal permanent residence will remain valid for one year.

IDs Issued by Foreign Governments: Passports and Consular IDs

Passport

A passport is an internationally recognized travel document that verifies an individual's identity and nationality. The requirements for obtaining a passport vary by country. In Mexico, for example, the applicant must apply in person, provide proof of Mexican nationality, and present an official picture ID. Married women must show their original Mexican marriage certificate. Passports are recognized by the U.S. Department of State as proof of identification.

Consular Identification Documents

Some foreign governments issue consular identification documents to their citizens who are living abroad to help identify their citizenship and to help keep track of them for consular and tax purposes and the census. The card does not prove legal immigration status, eligibility for public benefits, or eligibility to work in the United States. According to an August 2004 General Accounting Office (GAO) report,²⁰ Mexico issued 2.2 million cards and Guatemala issued 89,000 cards in 2002-2003. Argentina has begun issuing cards in Los Angeles, and several other governments are considering programs (including Bolivia, Brazil, El Salvador, Honduras, Nicaragua, Peru, the Philippines and Poland.)

Mexico's Certificate of Consular Registration, also known as "Matricula Consular" or simply "Matricula" is an identification document issued by the Mexican consul to Mexican nationals who are living abroad. Applicants must apply for the Matricula in person, provide proof of Mexican nationality, a form of photo identification, and proof of residency. Documents accepted as proof of Mexican nationality include a Mexican passport, Mexican birth certificate, and a Certificate of Mexican Nationality. Acceptable forms of photo ID include a Mexican passport, a driver's license or state identification card, green cards, work permits, or Mexican voter ID cards. Proof of residency can be shown through a lease or utility bills. Cards are issued in the United States at 45 consular offices and occasionally at off-site locations.

Guatemala requires an applicant to appear at the consulate in person and present a valid Guatemalan passport. The passport requires two fingerprints, a photograph and signature. Applications for consulate cards are checked against a central passport database system of 1.3 million records. The card includes eight security features, such as a unique identification number, hologram, machine readable technology, microprinting, and a photograph and signature sealed under laminate.

Banks in the United States began to accept the consulate IDs to help reduce robberies against immigrants who, without acceptable IDs to open accounts, were keeping large amounts of cash in their wallets or in their homes. Proponents argue that this action aids law enforcement through reduced crime and the ability to combat money laundering and terrorism by monitoring accounts. In addition, use of consulate IDs allowed the "unbanked" to gain access to loans, deposits and wire transfers, supporting economic growth. City and county offices began to accept the cards to provide for public safety and health and other basic services. The card includes an address, demonstrating local residence and, as a valid ID, helps encourage unauthorized immigrants, who would otherwise fear deportation, to report crimes to local law enforcement agencies. The Mexican consulate identified 160 banks, 363 cities, 153 counties, and 1,159 police departments in the United States that recognize the card as a valid ID.

Opponents emphasize that the consulate identification cards provide unauthorized immigrants with access to services and institutions to which they should not be eligible and also makes it easier for them to obtain more secure forms of identification. Providing driver's licenses sends the unwanted signal that it is acceptable to circumvent U.S. immigration laws. Opponents also argue that the Matricula itself is not secure, and that it can easily be obtained through fraudulent means, such as fraudulent birth certificates.

In response to criticisms of the card's security, the Mexican government took steps to improve the security of the card and the process used to issue it. Beginning in early 2004, all Matriculas now contain eight security features, including biometric identifiers (photograph and signature) and now are issued under the new process. All applications for a Matricula are checked against a database that contains a list of people who are ineligible to receive a consular identification card and that also contains information on issued Matriculas (to prevent a person from obtaining more than one). Consulates can search a centralized database of 2.6 million people who are registered with Mexican consulates in the United States. The Mexican government is currently engaged in a campaign to educate law enforcement agencies, state governments, and banks in the United States about the new enhanced security Matricula. Matriculas are valid for five years, meaning that the enhanced security version ultimately will replace all Matriculas currently in use.

Banks now accept consular IDs to help reduce robberies against immigrants, who, without acceptable IDs to open accounts, were keeping large amounts of cash in their wallets or in their homes.

DHS immigration enforcement officials note that security features in the IDs do not guarantee authenticity and that knowledgeable inspectors are needed to verify identity documents. DHS officials are also concerned about an increase in the number of counterfeit consulate cards.

The GAO report noted that federal agencies hold different and conflicting views of the usage and acceptance of these cards. Treasury allows banks to accept the cards as a form of ID. An FBI official states the card is not reliable. DHS has identified security concerns. The State Department raised the issue of reciprocity for U.S. citizens abroad. GAO recommends the Homeland Security Council direct its task force to develop policies and consistent federal guidance that would reconcile potential conflicts among federal agencies and enable state and local governments and other institutions to assess the authenticity of foreign-issued consulate ID cards.

Improving the Integrity of IDs: Some Challenges

Ensuring authentic identity documents begins with maintaining the security of base documents.

As policymakers work to improve the integrity of identity documents, they are faced not only with combating increased criminal use of widely available technologies to create false documents and increased instances of fraud and identity theft, but also with preserving the privacy of Americans. Ensuring authentic identity documents begins with maintaining the security of base documents. Falsification of a base document (also known as breeder documents) such as a birth certificate or Social Security Card makes it possible to claim a false identity on more sophisticated documents such as a driver's license or passport. In addition, occasions of fraud and abuse in records agencies make it difficult to combat the falsification of base documents.

Government agencies review an ID applicant's base documents to ensure they are accurate and valid, i.e., that the identity presented on the ID is authentic and refers to the person presenting the ID and that the document is eligible to be used. This can consist of a visual review of the documents and a check against government databases collected by various agencies, including law enforcement, consular offices, immigration offices, and child support agencies.

Biometrics

This term refers to the wide range of technologies that can be used to verify a person's identity by measuring and analyzing his or her physiological or behavioral characteristics. Biometric systems are pattern recognition systems that "... use electronic or optical sensors such as cameras and scanning devices to capture images, recordings, or measurements of a person's characteristics and computer hardware and software to extract, encode, store, and compare these characteristics."²¹ Biometric technologies include facial recognition; fingerprint recognition; hand geometry; and iris, retina, signature and speaker recognition.

Biometric technologies are widely thought to improve the security of identity documents by linking an identity to a particular individual. However, questions have been raised about the accuracy of biometric data. According to a GAO study, false matches have been known to occur when there is a high degree of similarity between two individual's characteristics. Conversely, factors such as weather, environmental conditions and aging can cause a gap in similarity between an individual's enrollment and trial samples, resulting in a false nonmatch.²² In addition, the effectiveness of biometric identifiers depends upon the quality of the database that maintains the information. Just as mismanaged and outdated records make it possible for a name to be mistakenly listed on a "watch" database, it is possible for biometric data to be

incorrectly linked to an individual within a database, making it possible to misidentify an individual. Finally, critics believe biometric technologies are still vulnerable, and that the technologies can be outsmarted using relatively inexpensive tools.

Privacy Issues

According to the National Academies of Science in its 2003 report, *Who Goes There: Authentication through the Lens of Privacy*, reliance on a single identifier such as a Social Security Number makes it possible to link pieces of information and thus track an individual's whereabouts, spending habits, and membership associations. This has the potential to repress the exercise of constitutionally protected freedoms. The NAS report states, "Privacy, including control over the disclosure of one's identity and the ability to remain anonymous, is an essential ingredient of a functioning democracy."²³ Privacy supports freedom of association, freedom of expression, and boundaries between self and community.

An additional challenge is that linking information through a single identifier increases the consequences if hackers or criminals gain access. As information about an individual becomes collected and compiled in one identifier or one database, the consequences of a stolen and misused identity become more detrimental.

Federal Databases

A number of databases exist within the Department of Homeland Security, the Department of State, the FBI and other intelligence agencies for a variety of purposes, such as to verify identity of citizens and noncitizens, to check for terrorist activity, to determine whether to issue a visa to a foreign visitor, and to check identity when a foreign visitor presents the visa upon arrival at a port of entry. Information included in these databases ranges from immigration status and child support payments to criminal history. (Examples of existing databases and their functions are included in appendix A.)

In response to national security concerns, efforts have been made to improve capabilities of tracking immigrants and visitors while they are present in the United States and upon departure. The Department of Homeland Security is working to improve existing databases and implement several new systems, such as US-VISIT. The US-VISIT initiative seeks to link a visa to a particular individual by using biometrics and then use the system to track the person's entry and exit from the country.

Database problems. The data and records systems of the INS, now USCIS, have been found to have significant data accuracy problems. A 2003 Department of Justice report found continued problems with name, nationality and case file number discrepancies, due to data entry errors, incompatibilities between systems, and the lack of a system to correct data.²⁴ The information contained within US-VISIT was compiled from existing databases that previously were maintained by the Immigration and Naturalization Service (INS). The inadequacy of INS data and records systems and the inaccuracy of INS data were well documented in several Government Accountability Office and Office of the Inspector General studies.²⁵ Using inaccurate and poorly maintained data in the development of new data systems perpetuates many of the problems of the previous INS systems. Mismanaged and outdated records make it possible for an individual to be inaccurately included in a watch database.

Policy Options

States have no control over federally issued documents for the foreign-born or federally managed databases on the foreign-born. Nonetheless, states are seeking ways to improve their lists of acceptable identification documents and to verify that information with federal databases without violating the federal privacy act or laws prohibiting discrimination against the foreign born. States need direct links to verifiable, timely and accurate data regarding status, duration of stay, application for change in status and related information. The expanding number of visas, backlogs on applications for status changes, and inability to either access or navigate federal immigration data systems are among the problems that require resolution so that states can administer noncitizen applications for driver's licenses and identification cards. Without these changes, states cannot be expected to provide—nor can they be held accountable for providing—enhanced security in their driver's license application and issuance processes. The National Conference of State Legislatures (NCSL) believes and maintains strongly that the authority to issue and produce driver's licenses should continue to remain within the domain of state authority.

NCSL, the National Governors Association and the Council of State Governments, in their joint paper on driver's license integrity, suggested the following approaches to help states improve their driver's license issuance and verification processes.

- Establish a state clearinghouse for best practices to promote effective regulatory and legislative changes;
- Draft model legislation related to the issuance and verification processes;
- Develop uniform minimum standards that could be adopted by states for issuance and verification of driver's licenses; and,
- Develop a new interstate compact on driver's license integrity that would provide a mutually agreeable and enforceable framework for cooperative state action.

Appendix A - Examples of Federal Databases

Department of Homeland Security Databases

National Automated Immigration Lookout System II (NAILS): This system has 3.8 million files, about 58,000 of which concern suspected or known terrorists and their supporters. The Congressional Research Service report is online at <http://fpc.state.gov/documents/organization/32821.pdf>.

U. S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT): The US-VISIT program is operated primarily by the Department of Homeland Security, in partnership with the consular offices of the Department of State. Visa applicants submit two biometric identifiers, a digital photograph and prints of two index fingers, all which are checked against the CLASS database (explained below). Upon arrival in the United States, the same biometrics are used to verify that the person at the port of entry is the same person who received the visa. US-VISIT currently is being updated to also collect exit information. A visitor would provide biometric information upon exiting the country to ensure compliance with the terms of the visa. More information can be found at http://www.dhs.gov/dhspublic/interapp/content_multi_image/content_multi_image_0006.xml.

Interagency Border Inspection System (IBIS): This multiagency database contains information that is used to alert border and customs inspectors to travelers who may be denied admission to the United States. The database also contains information about warrants for U.S. citizens who may be wanted by United States law enforcement agencies. The database is populated by information from law enforcement and other agencies that have inspection responsibilities at points of entry.

Portable Automated Lookout System (PALS): This database is similar to IBIS but contains fewer records and is not updated as frequently. The information it contains is used to conduct name checks on ships.

Customs and Border Enforcement

IDENT: The IDENT database, formerly operated by the Department of Justice, is used to identify repeat illegal entries by aliens and to conduct criminal history checks against a limited immigration database. This database employs a two fingerprint scanning and automated search system to check identities. Efforts currently are underway to integrate this system with the FBI's Integrated Automated Fingerprint Identification System.²⁶

Immigration and Customs Enforcement (ICE)

Student and Exchange Visitor Information System (SEVIS): The SEVIS database tracks international students and exchange visitors in the United States (those with F-1, M-1 or J-1 visa categories). Nonimmigrant student and exchange visitors must register on SEVIS upon entering the country. A \$100 fee is charged for registration. SEVIS allows students to use an automated system to make required updates to ICE and the Department of State regarding changes in visa status, entry and exit from the United States, change of address, change of program of study, and other information. More information about SEVIS can be found at <http://www.ice.gov/graphics/sevis/index.htm>.

National Security Entry/Exit Registration System (NSEERS): The NSEERS database is a registry of temporary foreign visitors (nonimmigrant aliens) from certain countries or those

who meet a combination of intelligence-based criteria and are identified as a national security concern. The determination of whether an individual must register with NSEERS is made at the discretion of the Department of Homeland Security. Many of those registered with NSEERS are students, those in the United States on extended business travel, or individuals visiting family members for extended periods. Registration with NSEERS is not required of U.S. citizens, legal permanent residents, refugees, asylum applicants, asylum grantees, diplomats, and others admitted under “A” or “G” visas. The NSEERS database includes biometric information; registrants must provide fingerprints. More information can be found at <http://www.ice.gov/graphics/specialregistration/index.htm>.

U.S. Citizenship and Immigration Services

Systematic Alien Verification for Entitlements (SAVE): The SAVE system allows federal, state, and local government employees to verify immigration status to determine eligibility for public benefits. The SAVE system was created in 1986 for six federal benefit programs: Aid to Families with Dependent Children (now Temporary Assistance for Needy Families), Medicaid, food stamps, unemployment insurance, education loans and grants, and housing. The system also has the capability to verify employment status eligibility for private employers. The SAVE database contains 60 million records. Two state motor vehicle departments – California and Wyoming – use the database to verify immigrant status. More about SAVE can be found at <http://uscis.gov/graphics/services/SAVE.htm>.

State Department Databases

Consular Lookout and Support System (CLASS): CLASS contains approximately 3.2 million records of people who are ineligible to receive a passport or visa. The records in this database are collected from a variety of sources, including intelligence, immigration and child support. Consular officials check names against this database before issuing a passport or visa. The database also contains information about visas and passports that have been reported lost or stolen.

Consular Consolidated Database (CCD): This database stores information about visa applications, issuances and refusals. Updated every five to ten minutes from each consular post, it contains approximately 58 million visa records.

Federal Bureau of Investigation Databases

Integrated Automated Fingerprint Identification System (IAFIS): IAFIS is a national fingerprint and criminal history system that provides automated fingerprint search capabilities. The largest biometric database in the world, it contains fingerprints and corresponding criminal history for more than 47 million subjects. Law enforcement agencies receive information by electronically submitting 10-fingerprint criminal data. Federal, state and local law enforcement agencies voluntarily submit fingerprint and criminal history information to the database. More information can be found at <http://www.fbi.gov/hq/cjisd/iafis.htm>.

National Crime Information Center (NCIC): NCIC, a computerized index of criminal justice information, available to federal, state and local law enforcement agencies. The system recently was upgraded to improve name search capability and to include biometric information (the fingerprint of the right index finger) for each entry. Information is provided by the FBI, other federal agencies, state, local, and foreign criminal justice agencies and the courts. More information can be found at <http://www.fbi.gov/hq/cjisd/ncic.htm>.

Appendix B – List of Acceptable Work Documents for Employment in the United States

<p>Workers can choose:</p>	<p><i>One</i> Paper – <i>or</i> <i>Two</i> Papers –</p>	<p>One from List A – to establish both identity and eligibility to work One from List B – to establish identity <i>and</i> One from List C – to establish eligibility</p>
<p>List “A” Documents – Establish Identity <i>And</i> Employment Eligibility</p>	<p>List “B” Documents – Establish Identity</p>	<p>List “C” Documents – Establish Employment Eligibility</p>
<ol style="list-style-type: none"> 1. U.S. passport (unexpired or expired) 2. Unexpired foreign passports, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization 3. Alien Registration Receipt Card with photograph (INS Form I-551) 4. Unexpired Temporary Resident Card (INS Form I-688) 5. Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688A, I-688B, I-766³) 6. Certificate of U.S. Citizenship (INS Form N-560 or N-561)* 7. Certificate of Naturalization (INS Form N-550 or N-570)* 8. Unexpired Reentry Permit (INS Form I-327)* 9. Unexpired Refugee Travel Document (INS Form I-571)* 	<ol style="list-style-type: none"> 1. Driver’s license or ID card issued by a state or outlying possession of the U.S., provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address 2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address 3. School ID card with a photograph 4. Voter’s registration card 5. Military card or draft record 6. Military dependent’s ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver’s license issued by a Canadian government authority <p style="text-align: center;"><i>For those under age 18 who are unable to present a document listed above:</i></p> <ol style="list-style-type: none"> 10. School record or report card 11. Clinic, doctor, or hospital record 12. Daycare or nursery school record 	<ol style="list-style-type: none"> 1. U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment) 2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350) 3. Original or certified copy of a birth certificate issued by a state, county, or municipal authority or outlying possession of the U.S. bearing an official seal 4. Native American tribal document 5. U.S. Citizen ID Card (INS Form I-197) 6. Card for use of Resident Citizen in the U.S. (INS Form I-179) 7. Unexpired Employment Authorization Document issued by the INS (other than those listed under List A)

Resources

NCSL Publications

Ann Morse, *Consulate Identification Cards*, (NCSL, April 28, 2004), <http://www.ncsl.org/programs/immig/consularids.htm>.

Blake Harrison and Pam Greenberg, "Identity Security" (*LegisBrief*) (Denver: NCSL, November/December 2003).

Heather Morton, "Social Security Numbers" (*LegisBrief*) (Denver: NCSL, February 2004).

National Conference of State Legislatures, *Driver's License Integrity*, <http://www.ncsl.org/statefed/DLRCSG.htm>.

Web Resources

NCSL – Immigrant Policy Project:

<http://www.ncsl.org/programs/immig/>

NCSL – ID Security Partnership Project: <http://www.ncsl.org/programs/lis/privacy/idsystems.htm>

NCSL – Transportation Committee:

<http://www.ncsl.org/standcomm/sctran/sctran.htm>

National Immigration Law Center:

www.nilc.org

U.S. Citizenship and Immigration Services

Immigrant Visas (family and employment based): http://uscis.gov/graphics/services/imm_visas.htm#imm

Nonimmigrant Visas (temporary workers and students): <http://uscis.gov/graphics/services/visas.htm>.

"Other" Immigrant Channels (adoption, refugees, etc.): http://uscis.gov/graphics/services/oth_visas.htm

Notes

1. National Highway Traffic Safety Administration and National Conference of State Legislatures, *Legislative Tracking Database*, <http://www.nhtsa.dot.gov/ncsl/>.

2. National Commission on Terrorist Attacks Upon the United States. *The 9/11 Commission Report* (Washington, D.C.: GPO, 2004), 389 – 390 (recommendation to adopt biometric entry-exit screening system that would include American citizens and emphasis on the need for federal standards for the issuance of identification documents such as birth certificates and drivers licenses).

3. Social Security Administration, *Social Security Numbers for Noncitizens* (SSA Publication No. 05-10096) (Washington, D.C.: SSA January 2004), <http://www.ssa.gov/pubs/10096.pdf>.

4. *Federal Register* 68, No. 168 (September 25, 2003): 55304 – 55308, http://www.ssa.gov/regulations/articles/rin0960_af05f.htm.

5. Internal Revenue Service, “Individual Taxpayer Identification Number (ITIN),” <http://www.irs.gov/individuals/article/0,,id=26287,00.html#apply>.

6. U.S. Citizenship and Immigration Services, “How Do I Get A Work Permit (Employment Authorization Document)?” <http://uscis.gov/graphics/howdoi/ead.htm>, October 31, 2003.

7. U.S. Citizenship and Immigration Services, “How Do I Participate in the Diversity Visa Lottery Program?” <http://uscis.gov/graphics/howdoi/divlott.htm>, September 3, 2004.

8. U.S. Department of State, Bureau of Consular Affairs, “Temporary Visitors to the U.S.,” http://travel.state.gov/visa/temp/temp_1305.html.

9. U.S. Department of State, Bureau of International Information Programs, “U.S.-Mexico Border Crossing Cards to Allow 30-Day Visits,” <http://usinfo.state.gov/gi/Archive/2004/Aug/11-597083.html>, August 11, 2004.

10. U.S. Department of State, Bureau of Consular Affairs, Border Crossing Card (BCC) Page, “Border Crossing Card (BCC) and Border Biometrics Program,” http://travel.state.gov/visa/temp/types/types_1266.html, November 2002.

11. NCSL and The Council of State Governments, *Driver’s License Integrity*, <http://www.ncsl.org/statefed/DLRCSSG.htm>.

12. Catherine Chan and Reed Morris, *Driver’s License and Identification Cards*, (Denver: NCSL, October 2003), <http://www.ncsl.org/programs/transportation/2003driverID.htm>.

13. Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Illegal Immigration Reform and Immigrant Responsibility Act also included a provision (Section 656(b)) mandating SSNs on state driver’s license; this provision was repealed in 1999 in response to unfunded mandate and privacy concerns.

14. U.S. Department of Health and Human Services, Administration on Children and Families, “Inclusion of Social Security Numbers on License Applications and Other Documents” (PIQ-99-05), (Washington, D.C.: DHHS, July 14, 1999).

15. National Immigration Law Center (NILC), *Overview of States’ Drivers License Requirements*, http://www.nilc.org/immspbs/DLs/state_dl_rqmts_ovrvw_111604.pdf November 2004.

16. The former Immigration and Naturalization Service (INS) is now three separate components within the new U.S. Department of Homeland Security: Customs and Border Protection Division, Citizenship and Immigration Services (USCIS), and Immigration and Customs Enforcement (ICE).

17. NILC, *Overview*. The states are Hawaii, Maryland, Michigan, Montana, New Mexico, North Carolina, Oregon, Tennessee, Utah, Washington and Wisconsin.

18. *Ibid.* The states with ties to visa expiration are Alabama, Arizona, California, Colorado, Florida, Iowa, Kentucky, Louisiana, Minnesota, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia and Wyoming.

19. *Ibid.*

20. U.S. General Accounting Office. *Border Security: Consular Identification Cards Accepted Within United States, but Consistent Federal Guidance Needed* (Washington, D.C.: GAO, August 2004).

21. U.S. General Accounting Office, *Technology Assessment: Using Biometrics for Border Security* (Washington, D.C.: GAO, November 2002), 13; <http://www.gao.gov/new.items/d03174.pdf>.

22. U.S. General Accounting Office, *Information Security: Challenges in Using Biometrics* (Washington, D.C.: GAO, September 2003), 12; <http://www.gao.gov/new.items/d031137t.pdf>.

23. The National Academies, Computer Science and Telecommunications Board, *Who Goes There: Authentication Through the Lens of Privacy*, (Washington, D.C.: National Academies Press, 2003), 28; <http://books.nap.edu/books/0309088968/html/28.html>.

About the Authors

Ann Morse is the director of NCSL's Immigrant Policy Project, created in 1992 to examine the effects of immigrants on state and local government and policies that assist with their resettlement and integration. Ann, a graduate of The George Washington University, holds an M.A in Science, Technology and Public Policy.

Katherine Gigliotti is a policy associate with the Immigrant Policy Project, where she researches and writes on a range of policy issues including hunger, nutrition, and issues affecting immigrants in the United States. She received her B.A. in political science from Boston College.

Prepared by
NCSL's Immigrant Policy Project
(202) 624-5400
www.ncsl.org/programs/immig