

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

February 1, 2010

The Honorable Mike Jorgenson  
Idaho State Senator  
Statehouse Mail  
Boise, ID 83720

Re: Our File No.: 10-30481 – Proposed Legislation—Employment of Unauthorized Aliens Act and Enforcement Through Attrition Act

Dear Senator Jorgenson:

This letter supplements Deputy Attorney General Katherine Tagasuki's analysis forwarded to you on January 12, 2010 concerning the referenced legislation. Several questions concerning that analysis have arisen that the Attorney General believes warrant addressing. As explained in the January 12 letter, the proposed bill raises complex questions. Unfortunately, some of those questions cannot be answered by reference to express federal statutes or settled decisional authority. The principal purpose of this letter is to answer questions prompted by the January 12 analysis concerning the scope of the States' ability to adopt legislation related to regulation of persons who have entered the United States illegally—*i.e.*, without compliance with federal law. They will be referred to as "unauthorized aliens" to maintain consistency with the proposed legislation. We also must emphasize that the complexity of this area of law and the limited time available to conduct review of proposed legislation do not permit a fully comprehensive analysis of every issue raised by the lengthy and multifaceted bill appended to your January 6, 2010 letter.

Again, several questions have been raised concerning the January 12, 2010 analysis. We will summarize my understanding of their substance and answer them individually.

**I. Preemptive Scope of 8 U.S.C. § 1621**

Section 1621, Title 8, of the United States Code precludes States from offering "state or local public benefits" to aliens who do not fall into one of three prescribed categories. The term "state or local public benefits" is defined broadly but contains various exceptions. Subsection (d) additionally permits States to opt out of its prohibitions with

respect to "any" such benefit by affirmatively providing the benefit to an unauthorized alien through legislation adopted after August 22, 1996. The text of § 1621 is appended as Attachment A for your reference. The Enforcement Through Attrition Act ("Attrition Act") contains an "Exclusion of State and Local Benefits" provision (§ 44-508) intended to encompass those "state and local public benefits" subject to mandatory exclusion under § 1621. A question has been posed concerning the basis for possible federal preemption given the intended consistency between § 1621 and the proposed legislation.

In concluding that the Attrition Act's provision likely would be deemed preempted if enacted as proposed and judicially challenged, the January 12 analysis relied on *League of United American Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997) ("*LULAC*"). The federal district court held there that "Congress has expressly exercised its authority to establish the procedure that must be followed in verifying immigrant eligibility for federal, state and local benefits" and that, as a consequence, "[t]he states have no power to effectuate a scheme parallel to that specified in the PRA, even if the parallel scheme does not conflict with the [Personal Responsibility and Work Opportunity Reconciliation Act]." *Id.* at 1255. The Attrition Act similarly prescribes a procedure for an applicant for a state or local public benefit must to provide "affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States." § 44-508(3). Application of *LULAC*'s reasoning here would lead to the same conclusion as reached with respect to the California proposition. It is appreciated, however, that the overall purpose of the Attrition Act's provision is to effectuate the presumptive public benefit-exclusion required under § 1621 and that a plausible argument can be made that Congress did not intend to proscribe States from adopting their own statutes or regulations that facilitate compliance with the federally-mandated exclusions and are otherwise consistent with federal procedures and alien-status determinations. Indeed, the opt-out provision in subsection (d) anticipates according States leeway in determining the extent to which they will adopt the federal exclusions themselves. It is thus not unreasonable to imply some measure of authority to establish procedures for integrating the exclusions into a particular State's public-benefit regulatory scheme and thereby to implement the congressional directive. That said, a significant possibility exists that *LULAC*'s "field preemption" reasoning would be followed if this provision of the Attribution Act were challenged.

## **II. Recognition of Driver's Licenses Issued by Other States**

The Attrition Act provides that "[a] driver's license issued to an illegal alien in another state shall not be honored by the state of Idaho and the department of revenue for any purpose" and further "declares that granting driver's licenses to illegal aliens is repugnant to the public policy of Idaho and therefore Idaho shall not extend full faith and credit to out-of-state driver's licenses issues to illegal aliens." § 44-507(1). A question has been raised, in light of the January 12 analysis' conclusion that this provision likely would be found to violate the Full Faith and Credit Clause of the United States Constitution, over

whether § 1621 actually dictates such non-recognition in a State, like Idaho, that has not opted out with respect to public-benefit ineligibility, at least where driver's licenses are concerned, for persons not lawfully admitted into this country.

The United States and Montana Supreme Courts have recognized a "public policy" exception to the duties imposed upon the States under the Full Faith and Credit Clause. *E.g.*, *Athay v. Stacey*, 146 Idaho 407, 420, 196 P.3d 325, 338 (2008) (citing *Nevada v. Hall*, 440 U.S. 410, 422 (1979)). It is thus arguable that the Attribution Act's public-policy declaration addresses full faith and credit challenges, but it does not address independent concerns raised under the Interstate Commerce Clause and Supremacy Clauses to the extent, for example, an unauthorized alien relies upon an otherwise validly issued license from another State to establish the lawfulness of operating a motor vehicle in Idaho. *Cf. Buck v. Kuykendall*, 267 U.S. 307 (1925) (State could not require common carrier to secure certificate of public convenience and necessity). On the latter point, the opt-out provision in § 1621(d) creates the potential for such a license. We nonetheless must add that § 1621 would require Idaho, even without the Attribution Act's adoption, to decline to issue a driver's license to an unauthorized alien even if previously so licensed in an opt-out State. Section 1621, in other words, controls the *issuance* of driver's licenses by a State to individuals not lawfully admitted to the United States. The statute, therefore, addresses the effect of a license's issuance in another State insofar as it arguably compels, through operation of the Supremacy Clause, a non-opt-out State (here, Idaho) to recognize the validity of a driver's license validly issued by an opt-out State.

### **III. Validity of English-Only Requirement**

Section 44-507(2) of the Attribution Act specifies that "[t]he written portion of the test required to obtain an Idaho state driver's license shall only be administered in the English language." The January 12 analysis relied upon Title VI of the 1964 Civil Rights Act and its implementing regulations to conclude that this provision likely would be deemed invalid. Questions have arisen as to Title VI's relevance in view of *Alexander v. Sandoval*, 532 U.S. 275 (2001), and *Coachella Valley Unified School District*, 98 Cal. Rptr. 3d 9 (Ct. App. 2009). It also has been suggested that the REAL ID Act may be germane to the English-only requirement. Neither of these issues implicates issues legally related to alien status, since unauthorized aliens may be fluent in English and authorized aliens may not be.

The *Alexander* decision presented the narrow question whether Title VI creates a private right of action for discrimination claims predicated on disparate impact from a State's administration of driver's license tests only in English. The aggrieved applicants asserted no claim of intentional, or disparate treatment, discrimination. They contended that regulations issued by the United States Departments of Justice and Transportation (28 C.F.R. § 42.104(b)(2); 49 C.F.R. § 21.5(b)(2)), which prohibit licensing requirements resulting in disparate impact on individuals by virtue of, *inter alia*, their national origin,

created a private right of action. A majority of the Supreme Court answered that question negatively. It held that Title VI itself prohibits only intentional discrimination and that, to the extent the Title may authorize federal agencies to issue implementing regulations proscribing disparate impact discrimination, that authorization did not carry with it a private right of action to enforce the regulations. *Alexander*, 532 U.S. at 291 ("Both the Government and respondents argue that the *regulations* contain rights-creating language and so must be privately enforceable, . . . but that argument skips an analytical step. Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not"). The absence of a private right of action, however, does not mean that Idaho may administer driver's license examinations only in English and remain consistent with its obligations as a recipient of, most importantly, federal assistance for transportation purposes. It was the latter point upon which the January 12 analysis rested. Attached to this review as Attachment B, is a short pamphlet published by the Idaho Department of Transportation that addresses its duties under Title VI as a recipient of federal assistance for its operations.

The recent *Coachella Valley* decision is also unhelpful here. It held only that California's use of English-only tests for purposes of accountability compliance with the No Child Left Behind Act ("NCLBA") was permissible without accommodation for limited English proficient students ("LEPs"). The court reasoned in part:

The School Districts denounce this testing decision as being grounded in an improper purpose, namely to measure what LEP students know and can do in the academic content areas *in English*. This purpose, they maintain, is incompatible on its face with the NCLBA and thus "inherently invalid." [¶] We disagree. Reading the statutory scheme as a whole, we cannot conclude that Congress intended to foreclose a state's discretionary decision that testing LEP students in English with accommodations is the most propitious method of satisfying the statutory mandates. The NCLBA specifies that *all* students must be tested for grade level proficiency *on the same state academic content standards*. The purpose of the CST and high school exit exam, within the framework of NCLBA accountability, is to assess *all* California public school students, LEP's and non-LEP's alike, in English, on the same reading/language arts and math grade level academic standards. Thus all California students are called upon to demonstrate their content knowledge in English.

98 Cal. Rptr. 3d at 26-27. The opinion's significance thus is restricted to the federal and state statutory context in which the English-only issue arose. That context bears no relationship to the one addressed by the Attrition Act's English-only directive.

Finally, the REAL ID Act, insofar as it may affect driver's license issuance if eventually implemented in Idaho (*see* Idaho Code § 40-322), says nothing pertinent to the English-

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only issue. A note to 49 U.S.C. § 30301 sets out itself various requirements with respect to driver's licenses or other identification cards. It is appended as Attachment C for your reference.

This Office remains available to discuss the proposed legislation and to suggest possible modifications that may not only add clarity but also reduce the likelihood of successful court challenge. The current draft addresses a number of issues that may be more appropriately addressed through a series of more specific bills.

I hope that this letter satisfactorily responds to the concerns raised over the January 12 analysis. This Office remains available to discuss the proposed legislation and to suggest possible modifications that may not only add clarity but also reduce the likelihood of successful court challenge. It is noted in that regard that the current draft addresses a number of issues that might profit by being separated into discrete bills.

Please contact me with any questions.

Sincerely,



BRIAN KANE

Assistant Chief Deputy

BK/tjn

Attachments

A—8 U.S.C. § 1621

B—IDT Title VI Pamphlet

C—49 U.S.C. § 30301 note

## ATTACHMENT A

### 8 U.S.C. § 1621

#### **Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits**

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not--

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

(b) Exceptions

Subsection (a) of this section shall not apply with respect to the following State or local public benefits:

- (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b(v)(3) of Title 42) of the alien involved and are not related to an organ transplant procedure.
- (2) Short-term, non-cash, in-kind emergency disaster relief.
- (3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
- (4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(c) "State or local public benefit" defined

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means--

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply--

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

# ATTACHMENT B

## OUR MISSION AT ITD

The mission of the Idaho Transportation Department (ITD) is to provide high-quality, cost-effective transportation systems that are safe, reliable, and responsive for the economical and efficient movement of people and products. Under Title VI, the transportation programs, services, and activities offered by ITD are intended to assist the people of the state of Idaho without regard to race, color, national origin, gender, age, disability, economic status or limited English proficiency.

The policy of ITD is to ensure that all components of Title VI of the Civil Rights Act of 1964 are complied with.

## WHAT IS TITLE VI?

Title VI was enacted as part of the Civil Rights Act of 1964. It states that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC 2000)*

Other related statutes provide protection against discrimination on the basis of gender, age, or disability by programs receiving federal financial assistance.

Title VI was further defined in 1994. **Executive Order 12898** (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) requires federal agencies and their recipients to identify and address the effects of all programs, policies, and activities on minority and low-income populations.

In 2000, **Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)** was signed into effect requiring federal agencies to assess and address

the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance.

## WHAT DOES THIS MEAN TO ITD?

ITD will strive to ensure that all of the services, programs, and activities of the department are administered *fairly*, without regard to race, color, national origin, gender, age, or disability. The department will also make efforts to prevent discrimination through the impacts of its programs on minority and low-income populations. In addition, the department will take reasonable steps to provide meaningful access to services for persons with limited English proficiency.

ITD will seek to prevent discrimination by any of its employees or sub recipients of its federal funds such as cities, counties, contractors, consultants, suppliers, colleges and universities, and community planning agencies. The department's efforts to prevent discrimination must address, but not be limited to, a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigation of complaints, allocation of funds, and the prioritization of projects.

*ITD prohibits all discriminatory practices which may result in:*

- Denial of services, financial aid, or benefits provided under the program;
- An opportunity afforded to participate that is different from that afforded others;
- Service different or restricted from that provided to others under the program;
- Segregation or separate treatment under the program;

- Differing standards that an individual must meet in order to be provided service under the program;

- Denial of an opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

Any federal financial aid sub recipient, such as the metropolitan planning organization, is required to administer its program and activities without regard to race, color, national origin, gender, age, disability, economic status or limited English proficiency.

## WHO BEARS THE RESPONSIBILITY?

The responsibility for Title VI compliance and monitoring lies with ITD employees and its specialty program areas as outlined in Federal Highway Administration (FHWA) guidelines.

- Transportation Planning
- Design
- Environmental ROW
- Construction
- Research
- Public Involvement
- Metropolitan Planning Organizations

The Equal Employment Opportunity (EEO) Office has developed and will oversee ITD's Title VI plan, and program compliance with the plan, which is effective upon review and approval by the Federal Highway Administration.

The EEO Office will provide continuous leadership, guidance, and technical assistance to ensure ongoing compliance with Title VI and the Executive Orders of Environmental Justice and Limited English Proficiency.

## HOW IS A DISCRIMINATION COMPLAINT FILED?

Complaints may be filed by any person who believes that he or she has been excluded from participation in, been denied the benefits of, or otherwise subjected to discrimination under any ITD service, program, or activity receiving federal financial assistance, and believes the discrimination is based upon race, color, national origin, gender, age, disability, economic status or limited English proficiency. Written complaints may be filed with the Idaho Transportation Department's EEO Office in Boise.

A signed written complaint should be submitted within 180 days of the alleged discriminatory act (or latest occurrence). Individuals may also file complaints directly with the U.S. Department of Transportation (USDOT) and/or the Federal Highway Administration (FHWA) within the 180 day timeframe. Your complaint should contain:

- Name, address, telephone number, and signature of the complainant.
- Facts and circumstances surrounding the claimed discrimination, including date of allegations, and basis of complaint (i.e., race, color, national origin, gender, age, disability).
- Any names of persons, if known, that the investigator could contact for additional information to support or clarify the allegations.
- Remedial action being sought by the complainant.

## HOW WILL A COMPLAINT BE RESOLVED?

Within ten days of receiving a written complaint, ITD's EEO Office will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation. If it is determined that ITD has jurisdiction of the complaint, it will investigate and make recommendations for resolving it. Otherwise, the complaint will be forwarded to the Federal Highway Administration for investigation.

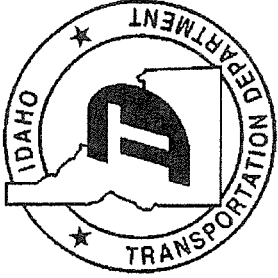
## WHAT IF A RECIPIENT RETALIATES AGAINST THE COMPLAINANT FOR FILING A COMPLAINT?

Federal laws prohibit a recipient of federal funds from retaliating against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Any complaints of retaliation should be directed to ITD's EEO Office immediately at:

*Idaho Transportation Department  
Equal Employment Opportunity Office  
Attention: EEO Manager  
3311 W. State Street  
P.O. Box 7129  
Boise, ID 83707*

*Phone: (208) 334-8852  
TDD: (208) 334-4458*

**For further information, please visit ITD's EEO website at: [www.itd.idaho.gov](http://www.itd.idaho.gov)**



# The Idaho Transportation Department Equal Employment Opportunity Office

# TITLE VI PROGRAM

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."

John F. Kennedy

Idaho Transportation Department

ATTACHMENT C

49 U.S.C. § 30301 note

Pub.L. 110-177, Title V, § 508, Jan. 7, 2007, 121 Stat. 2543, provided that:

**“(a) Minimum document requirements.--**

**“(1) Minimum requirements.--**For purposes of section 202(b)(6) of the REAL ID Act of 2005 (49 U.S.C. 30301 note) [Pub.L. 109-13, Div. B, Title II, § 202(b)(6), May 11, 2005, 119 Stat. 312, set out as a note under this section], a State may, in the case of an individual described in subparagraph (A) or (B) of paragraph (2) [of this note], include in a driver's license or other identification card issued to that individual by the State, the address specified in that subparagraph in lieu of the individual's address of principle residence.

**“(2) Individuals and information.--**The individuals and addresses referred to in paragraph (1) [of this note] are the following:

**“(A)** In the case of a Justice of the United States, the address of the United States Supreme Court.

**“(B)** In the case of a judge of a Federal court, the address of the courthouse.

**“(b) Verification of information.--**For purposes of section 202(c)(1)(D) of the REAL ID Act of 2005 (49 U.S.C. 30301 note) [Pub.L. 109-13, Div. B, Title II, § 202(c)(1)(D), May 11, 2005, 119 Stat. 312, set out as a note under this section], in the case of an individual described in subparagraph (A) or (B) of subsection (a)(2) [of this note], a State need only require documentation of the address appearing on the individual's driver's license or other identification card issued by that State to the individual.”

Protection of Domestic Violence and Crime Victims from Certain Disclosures of Information

Pub.L. 109-162, Title VIII, § 827, Jan. 5, 2006, 119 Stat. 3066, provided that: “In developing regulations or guidance with regard to identification documents, including driver's licenses, the Secretary of Homeland Security, in consultation with the Administrator of Social Security, shall consider and address the needs of victims, including victims of battery, extreme cruelty, domestic violence, dating violence, sexual assault, stalking or trafficking, who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or suppressed by a court order, or who are protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).”

Improved Security for Drivers' Licenses and Personal Identification Cards

Pub.L. 109-13, Div. B, Title II, §§ 201 to 207, May 11, 2005, 119 Stat. 311, provided that:

**“Sec. 201. Definitions.**

“In this title [Pub.L. 109-13, Div. B, Title II, § 201 et seq., May 11, 2005, 119 Stat. 311, enacting this note, amending 18 U.S.C.A. § 1028, and repealing Pub.L. 108-458, § 7212, set out as a note under this section], the following definitions apply:

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

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

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

**“(4) Secretary.--**The term ‘Secretary’ means the Secretary of Homeland Security.

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

**“Sec. 202. Minimum document requirements and issuance standards for Federal recognition.**

**“(a) Minimum standards for Federal use.--**

**“(1) In general.--**Beginning 3 years after the date of the enactment of this division [May 11, 2005], a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section [this note].

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

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

**“(1)** The person's full legal name.

**“(2)** The person's date of birth.

**“(3)** The person's gender.

**“(4)** The person's driver's license or identification card number.

**“(5)** A digital photograph of the person.

**“(6)** The person's address of principle residence.

**“(7)** The person's signature.

**“(8)** Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

**“(9)** A common machine-readable technology, with defined minimum data elements.

**“(c) Minimum issuance standards.--**

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

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

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

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

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

**“(2) Special requirements.--**

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

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

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

**“(ii)** is an alien lawfully admitted for permanent or temporary residence in the United States;

**“(iii)** has conditional permanent resident status in the United States;

**“(iv)** has an approved application for asylum in the United States or has entered into the United States in refugee status;

**“(v)** has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

**“(vi)** has a pending application for asylum in the United States;

**“(vii)** has a pending or approved application for temporary protected status in the United States;

**“(viii)** has approved deferred action status; or

**“(ix)** has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

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

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

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

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

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

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

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

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

**“(C)** Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664) [Pub.L. 104-208, Div. C, Title IV, Subtitle A, § 404, Sept. 30, 1996, 110 Stat. 3009-664, as amended, set out in a note under 8 U.S.C.A. § 1324a], to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Sec. 203. Trafficking in authentication features for use in false identification documents.**

“(a) [Omitted. Amended 18 U.S.C.A. § 1028(a)(8).]

“(b) **Use of false driver's license at airports.--**

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

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

**“Sec. 204. Grants to States.**

“(a) **In general.--**The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title [Pub.L. 109-13, Div. B, Title II, § 201 et seq., May 11, 2005, 119 Stat. 311, enacting this note, amending 18 U.S.C.A. § 1028, and repealing Pub.L. 108-458, § 7212, set out as a note under this section].

“(b) **Authorization of appropriations.--**There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title [Pub.L. 109-13, Div. B, Title II, § 201 et seq., May 11, 2005, 119 Stat. 311, enacting this note, amending 18 U.S.C.A. § 1028, and repealing Pub.L. 108-458, § 7212, set out as a note under this section].

**“Sec. 205. Authority.**

“(a) **Participation of Secretary of Transportation and States.--**All authority to issue regulations, set standards, and issue grants under this title [Pub.L. 109-13, Div. B, Title II, § 201 et seq., May 11, 2005, 119 Stat. 311, enacting this note, amending 18 U.S.C.A.

§ 1028, and repealing Pub.L. 108-458, § 7212, set out as a note under this section] shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

**“(b) Extensions of deadlines.**--The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) [of this note] if the State provides adequate justification for noncompliance.

**“Sec. 206. [Omitted. Repealed Pub.L. 108-458, Title VII, § 7212, Dec. 17, 2004, 118 Stat. 3827, set out as a note under this section.]**

**“Sec. 207. Limitation on statutory construction.**

“Nothing in this title [Pub.L. 109-13, Div. B, Title II, § 201 et seq., May 11, 2005, 119 Stat. 311, enacting this note, amending 18 U.S.C.A. § 1028, and repealing Pub.L. 108-458, § 7212, set out as a note under this section] shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code [49 U.S.C.A. § 30301 et seq.]”