



Homeland Security

Governor John E. Baldacci
1 State House Station
Augusta, Maine 04333

Dear Governor Baldacci:

I received your March 25, 2008 letter regarding the steps Maine has taken to secure its credentials and your hope that Maine's credentials continue to be acceptable for Federal purposes. As you know, the Secretary of Homeland Security has no legal authority to waive compliance with the REAL ID Act. Under the statute, the Secretary can only grant you an extension of the compliance deadline. I can provide the relief you are seeking if your letter can properly be treated as a request for an extension.

By law, an extension may only be granted to allow a state "to meet the requirements of" REAL ID. Several states have satisfied this statutory provision, despite state legislation preventing implementation of REAL ID, by demonstrating that they intend to meet the requirements of REAL ID for their own reasons and technically not in order to implement federal law. We have accommodated that approach because we have looked to the substance of the state's plan to improve license security, not the motivation behind the security measures. Put another way, if a state whose law rejects REAL ID is nonetheless on track to meet the security measures that REAL ID requires, we have granted an extension.

Maine's request is different. Your recent letter lists some measures that Maine has adopted consistent with REAL ID, including collection and verification of Social Security Numbers. But the letter also candidly acknowledges that Maine may only "partially" meet ten of the eighteen security measures required by the REAL ID regulation and that Maine will simply fail to fulfill several of the remaining provisions. For example, Maine remains one of only six States that condone issuance of licenses to aliens who cannot demonstrate that they are in the country legally. Furthermore, without a residency requirement, the state is offering an open invitation to illegal aliens to seek Maine credentials.

REAL ID requires that any license issued to an illegal alien must plainly state that it is not acceptable for official purposes. I understand that such a label may require a change that has not been approved by the Maine legislature. Similarly, for legal aliens, the REAL ID regulation calls for the state to verify the aliens' lawful status electronically with DHS and to make sure the aliens' drivers' licenses expire when their lawful status expires. Because these steps could cost an estimated \$100 thousand to \$150 thousand, I understand that Maine is not planning to take either step in the next two years. The REAL ID regulations also call for states to take photographs of applicants at the start of the license process, so applicants who are denied licenses can be identified, and to make sure that applicants cannot obtain multiple licenses under multiple names, for example by using facial recognition software.

U.S. is only as secure as its weakest link. REAL ID seeks to establish a minimum standard across that system, strengthening the links and reducing the vulnerability to fraud by terrorists, identity thieves and illegal aliens. Unfortunately, Maine's licenses offer far less security than its neighbors' do.

For these reasons, I cannot conclude that, under the statute, the State of Maine has met the requirements for an extension of the compliance date. With this decision, as of May 11, 2008, Maine licenses will not be acceptable identification for purposes of boarding commercial aircraft. After May 11, 2008, Maine residents who want to avoid delays should bring passports or alternative identification with them to the airport.

That being said, based on your conversation with the Secretary today, if Maine is prepared to commit to significant additional steps to achieve a level of security commensurate with REAL ID, DHS is prepared to grant the necessary extension. In order for DHS to do so, however, Maine must move promptly. In particular, any measures that must be adopted by the Maine legislature should take effect by December 15, 2008, while any measures that can be adopted by executive order should take effect within 60 days.

For purposes of clarity, here are the measures that should be adopted:

- First, Maine should cease giving licenses to those not present lawfully in the United States; alternatively if Maine continues to issue licenses to illegal immigrants, something which DHS does not support, Maine should mark those licenses clearly as "not for official purposes"
- Second, Maine should utilize the DHS System for Alien Verification Electronically (SAVE) to verify DHS documents presented by non-citizens
- Third, Maine should set the term for any license that it issues to lawfully present non-citizens to expire when the alien's legal status ends
- Fourth, Maine should take photographs of applicants at the start of the license process
- Fifth, Maine should use facial recognition or similar technology so that applicants cannot obtain multiple licenses under multiple names

As you know, implementation of the bar on accepting licenses at commercial airports will require substantial planning and effort, which will begin immediately in the absence of agreement. Accordingly, we will be prepared to grant an extension if you let me know by 5 p.m. on Wednesday, April 2, that you agree to the foregoing security and timing commitments. If you agree to these measures, we will grant an extension conditioned upon performance of these commitments.

Sincerely,



Stewart A. Baker
Assistant Secretary for Policy