



INFORMATION BULLETIN:

PURCHASING A FIREARM IN CALIFORNIA USING A REAL ID, NON-REAL ID, OR AB 60 TYPE LICENSE

October 26, 2018

In 2005, the United States Congress enacted the REAL ID Act which, among other provisions, will require federally compliant identification (i.e., REAL ID) to board any airplane, enter any military base, or enter any federal facility as of October 1, 2020.¹ But it was unclear if this new law would also apply to the purchase of a firearm. To clarify the ambiguity, ATF in 2012 issued a newsletter clarifying that non-REAL IDs may continue to be used to purchase firearms so long as the provided ID satisfied the requirements under the Gun Control Act.²

Then in 2013, California enacted Assembly Bill No. 60 (“AB 60”). This new law required the DMV to begin issuing licenses and IDs to individuals who could not provide proof of their lawful residence in the United States. Licenses and IDs issued pursuant to AB 60 had the words “FEDERAL LIMITS APPLY” printed on the front of the license or ID. Because federal law generally prohibits individuals who are not lawful residents of the United States from purchasing firearms,³ ATF issued an open letter in June 2016 clarifying its position regarding its previously issued 2012 newsletter.⁴ In this open letter, ATF stated that AB 60 licenses cannot be used to purchase a firearm.

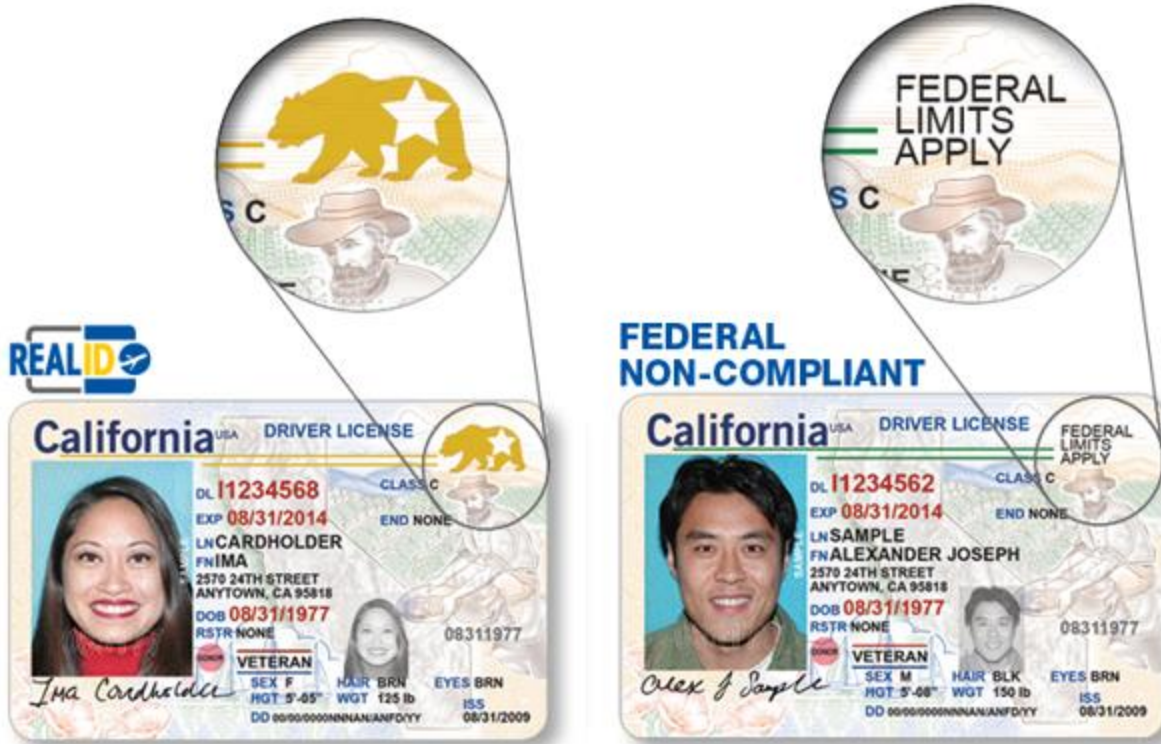
¹ REAL ID Act of 2005, H.R. 418, 109th Cong.

² *FFL Newsletter: Federal Firearms Licensee Information Service*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, <https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licensees-newsletter-may-2012/download> (May 2012).

³ As stated on the required 4473, the FFL “must establish the identity, place of residence, and age of the transferee/buyer. The transferee/buyer must provide a valid government-issued photo identification document to the transferor/seller that contains the transferee’s/buyer’s name, residence address, and date of birth.” See *ATF E-Form 4473 (5300.9)*, <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download> (Oct. 2016).

⁴ This letter has since been de-published from ATF’s website and is no longer available. But a copy of this letter is available online at <http://michellawyers.com/wp-content/uploads/2018/09/Open-Ltr-to-All-CA-FFLs-re-AB60.pdf>.

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Examples of a REAL ID (left) versus a non-REAL ID (right)⁵

At first, this clarification from ATF had no effect on a lawful resident’s ability to purchase a firearm.⁶ But then in January 2018, DMV began issuing non-REAL IDs to U.S. citizens. These IDs contained the same “FEDERAL LIMITS APPLY” language as those issued pursuant to AB 60 and were otherwise indistinguishable. As a result, lawful U.S. residents issued such a license were seemingly prohibited from purchasing a firearm according to ATF’s open letter.

The issuance of non-REAL IDs identical to that of AB 60 type licenses by DMV resulted in mass confusion among law enforcement, California gun owners, and licensed firearm dealers. Our office immediately contacted ATF for clarification. At first, ATF responded that it received confirmation from DMV that IDs

⁵ For more information regarding the REAL ID Act and how to obtain a REAL ID from DMV, visit <https://www.dmv.ca.gov/portal/dmv/detail/realid>.

⁶ Nevertheless, AB 60 licenses presented a unique problem for California licensed firearm dealers, requiring dealers to physically inspect a subtle detail on the license. Outside of the “FEDERAL LIMITS APPLY” language on the front, such licenses and IDs constitute “clear evidence of the person’s identity and age” as required for the purchase of a firearm because “clear evidence” is defined as a valid California Driver’s License or ID and such IDs are in fact “valid” California licenses/IDs. See P.C. § 16400. This meant that unless a dealer physically inspected the license for such language, it is unlikely any part of the background check process would result in a denial for the attempted firearm purchase unless the person admitted to their unlawful presence in the United States on the required 4473 form.

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issued pursuant to AB 60 will have additional language on the back distinguishing them from non-REAL IDs.⁷ But this was later proven to be incorrect, as both types still had the same language printed on the back.⁸ The exact reason for this remains uncertain, but we believe one root cause to be California’s recent efforts to prevent the identification of individuals who cannot provide proof of their lawful presence in the U.S.—the same efforts that are currently being challenged in a lawsuit by the United States Department of Justice against California.⁹

After bringing this issue to ATF’s attention, ATF de-published its 2016 open letter. In its place, ATF authored a new letter that stated California licensed firearms dealers:

*[M]ay accept post-January 22, 2018 licenses/identification documents that meet the definition in 18 U.S.C. 1028(d) in fulfilling their requirements under 18 U.S.C. 922(t)(1)(C) and 27 CFR 478.124(c)(3)(i). However, licensees may consider asking for additional documentation (e.g., passport) so that the transfer is not further delayed.*¹⁰

In other words, California residents who are issued non-REAL IDs after January 22, 2018, by DMV may use their IDs to purchase a firearm, even if the ID contains the language “FEDERAL LIMITS APPLY” on the front of the license. Despite this clarification from ATF, DOJ still maintained a position that any “FEDERAL LIMITS APPLY” licenses could not be used for purposes of purchasing a firearm. We don’t know exactly what reason DOJ had for taking this position, but we do know it had no basis in law. My office requested clarification from DOJ, and after several weeks, we received a letter in response which stated:

*Going forward, [CA DOJ] will inform interested parties that any valid California driver’s license or identification card may be used as “clear evidence of the person’s identity and age,” including REAL ID and “FEDERAL LIMITS APPLY” versions.*¹¹

⁷ See *Firearms Purchases and Identifications Issued by CA DMV*, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, <https://www.crpa.org/crpa-news/firearms-purchases-identification-issued-ca-dmv/> (last visited Sept. 18, 2018).

⁸ See *Firearm Purchases and Identification Issued by CA DMV: Part 2*, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, <https://www.crpa.org/crpa-news/firearm-purchases-identification-issued-ca-dmv-part-2/> (last visited Sept. 18, 2018).

⁹ See *Justice Department Files Preemption Lawsuit Against the State of California to Stop Interference with Federal Immigration Authorities*, UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/opa/pr/justice-department-files-preemption-lawsuit-against-state-california-stop-interference> (March 7, 2018).

¹⁰ See *REAL ID Update: Part 3*, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, <https://www.crpa.org/crpa-news/real-id-update-part-3/> (last visited Sept. 18, 2018).

¹¹ See *REAL ID Update: Part 3*, CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED, <https://www.crpa.org/crpa-news/real-id-update-part-3/> (last visited Sept. 18, 2018) (emphasis in original). But DOJ cautioned that they “will continue to advise interested parties that: (1) a “FEDERAL LIMITS APPLY” driver’s license or identification card issued **before** January 22, 2018 indicates that the applicant was unable to submit satisfactory proof that his or her presence in the United States is authorized under federal law; (2) it is unclear whether a person with a “FEDERAL LIMITS APPLY” driver’s license or identification card issued **on or after** January 22, 2018 was able to submit satisfactory proof that his or her presence in the United States is authorized under federal law; and (3) a person whose presence in the United States is not authorized under federal law is prohibited from receiving or possessing a firearm or ammunition, under federal law.”

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THE BOTTOM LINE

Lawful California residents are *not* prohibited from purchasing a firearm simply because they have been issued a non-REAL ID from DMV. That said, CRPA has been informed that some DOJ field representatives are still instructing California licensed firearm dealers to not accept “FEDERAL LIMITS APPLY” licenses or IDs regardless of this letter from DOJ, leaving those dealers with a sense of confusion and hesitancy. CRPA is currently working to educate California licensed firearm dealers on this issue and update them with any information as it becomes available.

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