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The Changing Landscape of Border Crossing Documents

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BORDER POLICY

RESEARCH INSTITUTE
WESTERN WASHINGTON UNIVERSITY

THE CHANGING LANDSCAPE OF BORDER CROSSING DOCUMENTS

INTRODUCTION

The Western Hemisphere Travel Initiative (WHTI) was passed in 2004 and went into effect for land and sea travel in 2009. WHTI required all U.S. and Canadian travelers over 16 years of age to present a document that denotes identity and citizenship to enter the U.S. from Canada. Below are the most frequently used IDs to enter the U.S. at the port of Blaine, WA. Some were either created or modified to meet WHTI standards. Enhanced Driver's Licenses, Passport Cards, and Enhanced Tribal Cards can be used at land and sea crossings, but not for international flights between Canada and the U.S.

DOCUMENT	YEAR	RFID	ISSUED BY	
			US	CA
Standard Passport			✓	✓
NEXUS Card	2002	✓	✓	✓
Enhanced Driver's License	2008	✓	✓	✓
Passport Card	2008	✓	✓	
Enhanced Tribal Card	2009	✓	✓	
Secure Certificate of Indian Status	2009			✓
Permanent Resident Card	2010	✓	✓	

This Border Policy Brief examines the topic of border crossing documents in the context of policy changes at different scales, including provincial, state, and U.S. federal approaches. Specifically, it examines the upcoming implementation of the REAL ID Act in the U.S., the growing elimination of Enhanced Driver's License programs in Canada, and disruptions to the NEXUS program. It provides an overview of the effects these policy shifts may have on the types of documents used to cross the Canada – U.S. border, using Blaine, Washington as an example. The Brief explores the importance of different ID types and their capabilities, as well as a growing divergence between state and federal programs within the U.S., both of which impact the efficiency and security of the Canada – U.S. border.

BACKGROUND

Since the implementation of the Western Hemisphere Travel Initiative (WHTI) in 2009, all persons crossing the Canada – U.S. border (with the exception of U.S. and Canadian citizens under the age of 16) have been required to possess a federally approved form of secure documentation.¹ There are a number of different identification documents that can be used to cross the land border between Canada and the U.S., including passports, passport cards, Enhanced Drivers Licenses, permanent resident cards, tribal identification cards, and NEXUS cards (see sidebar).

In anticipation of the implementation of WHTI, the Enhanced Driver's License (EDL) was created as an alternative to the more costly and lengthy application process associated with obtaining a passport. Washington was the first state to issue EDLs, which began as a joint pilot project with British Columbia and was largely a bilateral strategy to facilitate cross-border travel during the Vancouver Olympics in 2010.² Since the first EDLs were issued by Washington in 2008, similar programs have been adopted by Michigan, Minnesota, New York, Vermont, and Ohio, as well as Ontario, Manitoba, Quebec and B.C. Unlike a standard driver's license, EDLs reflect both identity and legal status, and are not issued to undocumented immigrants.³

On October 1, 2021, the REAL ID Act, which was passed in 2005, will go into effect in the U.S. The Act was passed by Congress based on the recommendation from the 9/11 Commission that the federal government "set standards for the issuance of sources of identification, such as driver's licenses."⁴ It requires that anyone accessing federal facilities or boarding federally regulated commercial aircraft must have documentation that

reflects both their identity and their citizenship. This is significant for an increasing number of states that issue standard driver's licenses that do not require proof of citizenship, meaning that undocumented immigrants can obtain state-issued identification in those places. Once the REAL ID Act goes into effect, identification in these states will be invalid from the perspective of the federal government and residents will no longer be able to board domestic flights using their standard driver's license.

BORDER CROSSING DOCUMENTS & RFID USAGE

The implementation of the REAL ID Act will impact border states in unique ways, and may result in a higher demand for EDLs, particularly in Washington, New York, Michigan, and Vermont. At the same time that the EDL program is expanding in the U.S., it is contracting in Canada. Both Quebec and Ontario have eliminated the program due to low enrollment, and B.C. is currently considering doing the same. As a result, border crossing documents in the U.S. and Canada will diverge, rather than align. This may have potential implications for border wait-times and streamlining technology, largely because the different identification documents used by Canadians and Americans to cross their shared border also have different capabilities.

One of the important components of the 2011 Beyond the Border Action Plan was to make investments in infrastructure to increase the ability and capacity of all busy border crossings between the U.S. and Canada to read and process vicinity-readable radio frequency

identification (RFID) documents. As a result, both the U.S. and Canada have installed RFID readers at their busiest land ports of entry. The U.S. also created 'Ready Lanes' exclusively for travelers with RFID documents. This infrastructure, however, is only usable for certain types of documents, as explained in the callout box (next page).

While the U.S. and Canada have invested in infrastructure to reap the security and efficiency gains associated with RFID documents, the desired outcomes are only achievable if a sufficient proportion of travelers are actually using RFID-enabled documents.⁵ The actual usage of RFID documents in the cross-border environment remains low for non-NEXUS travelers. For example, at Blaine, only about 6% of non-NEXUS travelers used RFID documents in 2018. Thus, while both countries have invested in the physical infrastructure to streamline passenger processing, equivalent investments in document types have lagged behind, particularly in Canada, where RFID passport cards are not issued nor are Secure Certificates of Indian Status RFID-enabled.

Document usage varies considerably between Canadians and Americans at Blaine (Figures 1 and 2). In 2018, only 2% of Canadians used an EDL, compared to 8% of Americans.⁶ This is in part due to the fact that a much higher percentage of Canadians use the NEXUS program (55% versus 29% for Americans at Blaine). There are over 600,000 NEXUS members residing in the B.C. – Washington region, which accounts for over half of all members.⁷ While NEXUS

FIGURE 1. Canadian Document Type Usage, by year

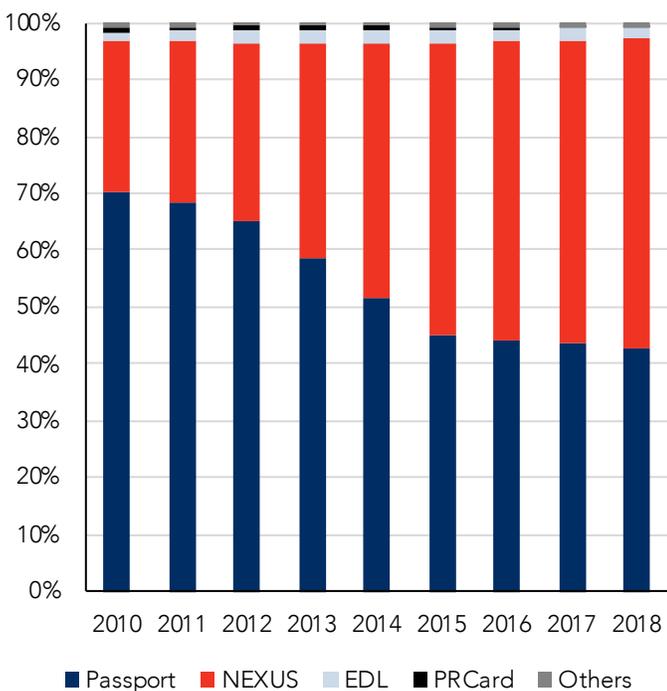
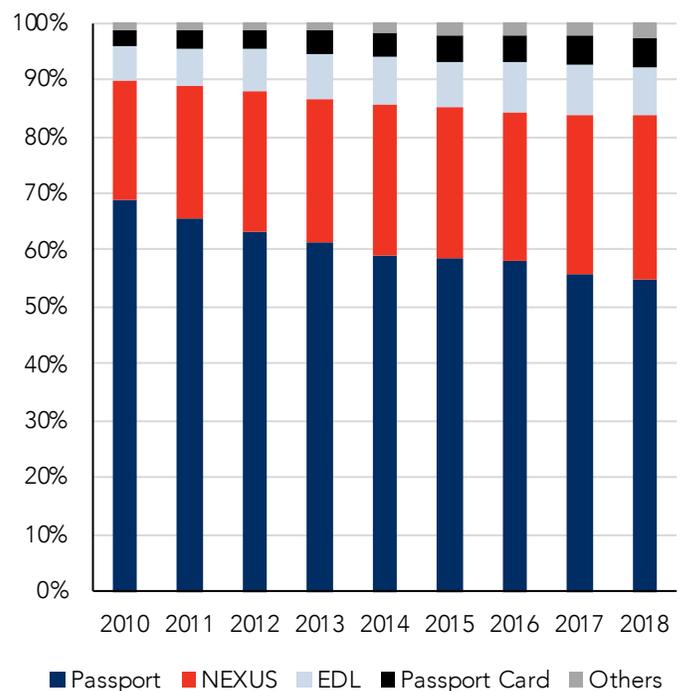


FIGURE 2. U.S. Document Type Usage, by year



(WHAT KIND OF) RFID?

There are two different types of RFID chips embedded in border crossing documents: vicinity-readable and proximity-readable. The RFID on Canada's E-passport is proximity-readable, while the RFID on EDLs, NEXUS, and U.S.-issued passport cards are vicinity-readable. Drivers with vicinity-readable documents can display them while waiting to pull up to a booth and their information will automatically be available to the border officer to review. E-passports, however, must be handed to a border officer for their information to be entered into the system. A vicinity-readable RFID document not only eliminates the time an officer spends handling a document, but also provides advanced knowledge about travelers before they pull up to the inspection booth. In addition, these documents enable a touchless environment, which is especially important given COVID-19 and public health concerns. Thus, there are security, time savings, and public health benefits associated with RFID documents.

has continued to grow for both Americans and Canadians, it has increased at a much faster rate for Canadians, jumping from 26% in 2010 to 55% by 2018, while NEXUS enrollment by Americans grew by only 8% during the same period. For those cross-border travelers at Blaine who are not enrolled in NEXUS, their primary reason is that they do not cross the border enough. This highlights the importance of documents like EDLs that serve a dual purpose, in addition to use at a border crossing.⁸ It is also worth noting that 5% of Americans used an RFID-enabled passport card – an option that does not exist for Canadians.

CHANGING U.S. FEDERAL VS. STATE STANDARDS

The implications of the REAL ID Act on state identification requirements highlight a growing inconsistency between federal and state identification standards. In addition to the REAL ID Act, some states are facing other issues resulting directly from a divergence between federal and state standards. This is particularly true for the NEXUS program, which remains a highly successful program for expediting legitimate cross-border travel. Both U.S. and Canadian security agencies are keen to increase NEXUS usage, which "allows Canadian and U.S. border officers to focus their efforts on unknown and potentially higher-risk travelers and goods."⁹ However, recent decisions by the Trump Administration, combined with ongoing delays in processing NEXUS applications, threaten the program's expansion.

In early 2020, the Department of Homeland Security revoked the eligibility of New York State residents to enroll in any of CBP's Trusted Traveler programs, preventing both new enrollments and renewals of existing memberships. This decision was made in reaction to state legislation that restricts CBP's access to information held by the NY Department of Motor Vehicles (DMV).¹⁰ According to the State of New York, the legislation is intended to prevent the Federal

Government from using the State's DMV records to identify undocumented immigrants.¹¹

Laws similar to New York's are pending in several states, including Washington. Washington State Senate Bill 5497 specifies that no state agency is allowed to disclose information on Washington residents, regardless of their immigration or citizenship status, to any other state or federal agencies for immigration enforcement purposes.¹² There are two main similarities between the policies in Washington and New York that could potentially place Washingtonians at risk of losing access to the NEXUS program. Although many states issue driver's licenses to undocumented persons, Washington and New York are currently the only states with laws restricting record-sharing with immigration enforcement agencies.¹³ Both states' border regions are ranked among the busiest along the Canada – U.S. border, and anything that inhibits cross-border mobility will have economic implications for these states, as well as their neighboring Canadian provinces.

CONCLUSION

Before the REAL ID Act goes into effect, a growing number of travelers in the U.S. will need to obtain new documentation. For many in states that border Canada, an EDL is a likely option. At the same time that EDL usage in the U.S. will increase, fewer Canadians will be using EDLs to cross the border. This divergence of ID types may further complicate efforts to improve border efficiencies, as most cross-border travelers in the land environment are being processed by both CBP and CBSA. While it is highly possible that technologies applied to the border in the future will bypass traditional identification documents altogether, in the short-term, the issue persists.

Both the U.S. and Canada have recognized the value of RFID usage as an important step in improving the security and efficiency of the Canada – U.S. border. With

the COVID-19 pandemic, there are now public health concerns that can also be addressed with increased RFID usage at the border. The most desirable option for increasing RFID usage is expanding the NEXUS program. However, an increasing number of barriers are inhibiting participation.¹⁴ Furthermore, there will always be a portion of cross-border travelers who do not participate in

NEXUS, leaving a large number of people facing lengthy wait-times. Wait-times at many ports of entry along the Canada – U.S. border remain a critical issue that continue to inhibit both travel and trade between the U.S. and Canada.

ENDNOTES

1. For more information, see BPRI, "The Economic Impact of WHTI in Washington State (Revisited)" (2008) Border Policy Brief. Available at: https://cedar.wvu.edu/bpri_publications/35.
2. Office of the Governor. "Governor Gregoire Signs Legislation to Keep Washington/B.C. Border Crossing Moving" (2007) (<https://www.digitalarchives.wa.gov/GovernorGregoire/news/news-view.asp?pressRelease=524&newsType=1>) and Michels, P. "Enhanced Drivers' License Eases Border Crossing for Washington State Residents." (2008) Government Technology (<https://www.govtech.com/security/Enhanced-Drivers-License-Eases-Border-Crossing.html>).
3. Identity requirements for standard driver's licenses vary by state. There are currently 15 states, plus D.C., that allow undocumented immigrants to obtain driver's licenses. The remaining states issue driver's licenses that are considered REAL ID compliant (i.e., they require proof of lawful status). See NCSL "States Offering Driver's Licenses to Immigrants" (<https://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>).
4. The Real ID Act (<https://www.dhs.gov/real-id>) was originally scheduled to go into effect in October 2020. In April 2020, the Department of Homeland Security announced that the enforcement deadline would be extended to October 2021 due to COVID-19 circumstances (<https://www.dhs.gov/news/2020/03/26/acting-secretary-chad-wolf-statement-real-id-enforcement-deadline>).
5. See IMTC, "RFID Business Case" (2015), (<https://theimtc.com/dbm/>) and BPRI, "Pilot Project: Using RFID to Reduce Border Queues" (Spring, 2014). Border Policy Brief (https://cedar.wvu.edu/bpri_publications/11).
6. Based on data provided by U.S. Customs and Border Protections.
7. See BPRI, the University of Buffalo, and the Cross-Border Institute, "Border Barometer" (2019) (https://cedar.wvu.edu/bpri_publications/112/).
8. See the ITMC's Passenger Vehicle Intercept Survey results (2019) (<https://theimtc.com/data/>).
9. Canada Border Services Agency, "FAQs about the NEXUS Program" (<https://www.cbsa-asfc.gc.ca/prog/nexus/faq-eng.html>).
10. U.S. Customs and Border Protection. "New York Residents No Longer Eligible to Apply for or Renew Trusted Traveler Programs" (2020, February 6) (<https://www.cbp.gov/newsroom/national-media-release/new-york-residents-no-longer-eligible-apply-or-renew-trusted>).
11. Fox, B. "DHS cuts New Yorkers off from 'trusted traveler' programs" (2020, February 2), Seattle Times (<https://www.seattletimes.com/nation-world/nation/homeland-security-suspends-travel-programs-for-new-yorkers/>).
12. Unless it is required by state or federal law, a court order, or is necessary to the performance of agency duties or other business that is not related to immigration enforcement. An agency may disclose information if the data is de-identified or aggregated. Washington's Department of Licensing will become compliant with SB 5497 by December 1st, 2021. See the most current version of SB 5497 at: <http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Passed%20Legislature/5497-S2.PL.pdf#page=1>.
13. A similar bill was introduced in Vermont in 2019. House Bill 476 prohibits the Department of Motor Vehicles from sharing information regarding an individual's immigration status with government agencies for purposes of enforcing immigration laws. The proposed bill is available here: <https://legislature.vermont.gov/Documents/2020/Docs/BILLS/H-0476/H-0476%20As%20Introduced.pdf>.
14. While not explored in this Brief, legal cannabis use by Canadians has been used as grounds for ineligibility for NEXUS membership. For more information see, Cain, P. "Canadians can lose NEXUS passes over legal cannabis use in Canada: U.S document" (2020, February 20), Global News (<https://globalnews.ca/news/6536982/nexus-pass-cannabis-canada/amp/>).

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