

Rescission of DACA (Deferred Action for Childhood Arrivals)

On September 5, 2017, Acting Secretary of Homeland Security Elaine Duke issued a memorandum (the DACA Rescission Memorandum) rescinding a June 2012 memorandum that established the Obama Administration's Deferred Action for Childhood Arrivals (DACA) policy.¹ The previous week, ACE and 36 other associations had sent a letter to President Trump urging his administration to keep DACA intact until a permanent solution can be reached.² Instead, the DACA Rescission Memorandum directs Department of Homeland Security (DHS) personnel to take "all appropriate actions to execute a wind-down of the program" and effectively leaves it to Congress to find a legislative solution. That directive already has been challenged judicially, including by fifteen states and the District of Columbia, which filed a lawsuit, *New York v. Trump*, on September 6th in federal court in New York.³

DACA has allowed undocumented individuals who are currently between 10 and 36 years old⁴ and satisfy certain other criteria to receive a renewable two-year period of deferred action from deportation and eligibility for a temporary work permit. According to DHS, about 800,000

¹ "Memorandum on Rescission Of Deferred Action For Childhood Arrivals (DACA)," Department of Homeland Security, September 5, 2017; "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," Department of Homeland Security, June 15, 2012.

² Letter from T. Mitchell and M. Corbett Broad to President Trump, Aug. 28, 2017.

³ State of New York et. al v. Donald Trump et al., Civil Action No. 17-cv-5228 (EDNY Sept. 6, 2017).

⁴ U.S. Citizenship and Immigration Services (USCIS) generally requires DACA applicants to be at least 15 years of age at the time of filing. Under certain circumstances (e.g., if the applicant is in deportation proceedings), an applicant may request DACA even if the applicant is under the age of 15 at the time of filing. See Frequently Asked Questions (Archived), USCIS.

This issue brief was prepared by ACE Vice President and General Counsel Peter McDonough and the international law firm Hogan Lovells US LLP (September 2017).

DISCLAIMER

This Issue Brief does not constitute legal advice. It incorporates and reflects high-level observations based on non-exhaustive research, and does not analyze any specific factual scenarios taking into account potentially relevant details. Institutions should examine issues addressed here based on the context and facts of each situation, institutional policies, geographical and political context, and on their own counsel's interpretation of relevant law. This is a fluid environment and topic, including the potential for changes in current law or current enforcement practices.

DACA-eligible individuals have been approved as DACA grantees.⁵ For background information about DACA, and perspective regarding related issues, including “sanctuary campuses,” please refer to ACE’s December 2016 Issue Brief.⁶

Key Elements of the DACA Rescission Memorandum

Current DACA grantees:

Previously issued grants of DACA benefits, including temporary work permits (reflected by Employment Authorization Documents [EADs] issued by DHS), remain in place. The DACA Rescission Memorandum does not terminate or revoke the remainder of their validity periods. Therefore, ***current DACA grantees will retain the benefits of their status⁷ until their existing grant expires (generally, two years from the date of issuance); importantly, they can continue to rely on a valid EAD for employment authorization until the expiration date reflected on that EAD.*** However, as before, DHS retains discretionary authority to terminate an individual’s grant of DACA benefits at any time, if immigration officials determine that termination is appropriate.⁸

DACA grantees whose status and EADs will expire by March 5, 2018, are permitted to file for one additional two-year renewal, no later than October 5, 2017. DHS “will reject all requests to renew DACA and associated applications for EADs filed after October 5, 2017.”⁹

Absent new legislative or executive action, ***grantees whose DACA status and EADs expire on or after March 5, 2018, cannot obtain renewals unless they already have a renewal request pending.***

Initial (new) DACA applications:

DHS will adjudicate on a case-by-case basis initial applications from DACA-eligible individuals that were accepted by DHS as of September 5, 2017. ***DHS will reject all initial requests filed after September 5, 2017.***

⁵ Frequently Asked Questions: Rescission of Deferred Action For Childhood Arrivals (DACA), DHS, Sept. 5, 2017 at Q15/A15.

⁶ “Immigration Post-Election Q&A: DACA Students, ‘Sanctuary Campuses,’ and Institutional or Community Assistance,” ACE, Dec. 2016.

⁷ Although DACA does not confer legal status for immigration law purposes, we use the term “status” to refer to a grant of deferred deportation and work authorization under the DACA program.

⁸ “Consideration of Deferred Action for Childhood Arrivals,” U.S. Citizenship and Immigration Services. (“DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS’s discretion.”)

⁹ Frequently Asked Questions: Rescission of Deferred Action For Childhood Arrivals (DACA), DHS, Sept. 5, 2017 at Q4/A4.

Advance parole/traveling outside the United States:

The DACA Rescission Memorandum indicates that ***DHS will honor the stated validity period for already-approved applications for “advance parole”*** (i.e., permission to travel abroad and re-enter as a parolee, which DACA grantees need since they do not have proper visa or other immigration status in the United States). ***DHS will not approve pending or new applications for advance parole.***¹⁰ Therefore, if a current DACA grantee has not already received advance parole, there is no legally sanctioned process by which the DACA grantee may leave and then re-enter the United States.

Importantly, advance parole has never been a guarantee of re-entry. Thus, ***even with an approved grant of advance parole, there are significant risks for DACA grantees who decide to travel outside the country.*** The DACA Rescission Memorandum makes clear that U.S. Customs and Border Protection (CBP) retains authority to determine admissibility of any person presenting himself or herself at the border, and U.S. Citizenship and Immigration Services (USCIS) retains authority to revoke or terminate advance parole at any time.

Context for the DACA Rescission

The Trump administration says that the decision to rescind DACA was based on court decisions in pending litigation and Attorney General Sessions’ legal determination regarding the policy. The referenced court decisions relate to litigation brought by twenty-six states to challenge a November 2014 DHS memorandum that expanded DACA and created a new policy referred to as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). As a result of that litigation, DAPA and the expanded DACA did not take effect.¹¹

In a June 2017 letter to Attorney General Sessions, several state attorneys general asserted that DACA was unlawful for the same reasons raised in the DAPA litigation, and they threatened to challenge DACA if DHS did not rescind the 2012 memorandum that established DACA.¹² On September 4, 2017, Attorney General Sessions wrote to Acting Secretary Duke to convey his determination that DACA is unconstitutional and to advise that DHS should rescind the June 2012 memorandum through an “orderly and efficient wind-down process” in light of administrative complexities associated with termination.¹³

¹⁰ Effective September 5, 2017, USCIS will administratively close—without approving—all pending applications for advance parole (Form I-131). USCIS will refund all associated application fees.

¹¹ In June 2017, then-Secretary of Homeland Security John Kelly formally rescinded DAPA and the expansion of DACA but left in place the June 2012 memorandum that created the DACA program.

¹² Letter from K. Paxton to J. Sessions, June 29, 2017.

¹³ Letter from J. Sessions to E. Duke, Sept. 4, 2017.

Congressional Action

In remarks announcing the Trump administration's decision, Attorney General Sessions suggested that Congress will have an opportunity in the coming months to pass legislation concerning DACA recipients before March 5, 2018, when the first DACA recipients could lose their DACA benefits.¹⁴

Currently, there are several pieces of legislation that have been introduced. This includes the Dream Act¹⁵ which has been endorsed by the higher education associations and would put pieces of DACA into statute and allow for a path to legal permanent residency and possible citizenship for eligible recipients. There may be other bills which would provide relief to DACA grantees, who are often included within the group referred to as Dreamers, which could receive consideration during the legislative process.

Because of the short six-month window for action, Congress must act quickly. There is concern that legislation to protect Dreamers could be incorporated into partisan legislation, for example by providing funding for a border wall or capping other immigration programs. There have been media reports indicating that some members of Congress would like to address DACA alongside the Reforming American Immigration for Strong Employment (RAISE) Act.¹⁶ The RAISE Act would seek to reduce legal immigration to the United States by 50 percent by decreasing the number of grants of lawful permanent resident status issued and imposing a cap on annual refugee admissions.

The higher education community is advocating that Congress pass bipartisan legislation, as soon as possible, that permanently protects Dreamers, without tying it to other legislation that may act as a political poison pill. Communicating to congressional delegations the importance of passing bipartisan legislation to permanently protect Dreamers is critical.

Additional Information

Use of information for immigration enforcement:

The DHS FAQs indicate that USCIS will not proactively provide to Immigration and Customs Enforcement (ICE), CBP, or other law enforcement entities information that DACA applicants provided in DACA applications, unless the DACA applicant poses a risk to national security or public safety or meets criteria for initiation of a deportation proceeding under existing guidelines.¹⁷ Similarly, the FAQs indicate that USCIS will not proactively refer DACA grantees

¹⁴ [Transcript of Jeff Sessions' Remarks on Ending the DACA Program](#), Time, September 5, 2017.

¹⁵ Dream Act of 2017 (115th Congress, [S. 1615](#) and [H.R. 3440](#)).

¹⁶ [S. 1720](#) (115th Congress).

¹⁷ [Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), DHS, Sept. 5, 2017 at Q8/A8.

whose DACA benefits expire to ICE for immigration enforcement purposes, unless the DACA grantee meets criteria for initiation of a deportation proceeding under existing guidelines.¹⁸ This policy on how to prioritize deportation cases, which is not law, is subject to change, and DHS has not committed to withholding information if requested.

More DHS details regarding the DACA Rescission:

For more detailed information from DHS accompanying its [DACA Rescission Memorandum](#), see DHS's [Fact Sheet](#), [Frequently Asked Questions \(FAQs\)](#), [Press Release](#), and [Secretary Duke's Statement](#).¹⁹

Conclusion

Colleges and universities can assist their impacted community members by providing information and resources, including by ensuring that DACA grantees whose benefits will expire between September 5 and March 5, 2018, are aware that they may apply to renew those benefits for a two-year period if they submit a **renewal request on or before October 5, 2017**. To request a renewal, eligible DACA grantees will be required to provide updated information, including their mailing address.²⁰

It is imperative that Congress be encouraged to act. If congressional or other administrative action does not alter the policy set forth in the DACA Rescission Memorandum, colleges and universities should be prepared to counsel DACA grantees whose benefits, including work authorization, will expire on a rolling basis over the two-year period beginning March 5, 2018.

¹⁸ *Id.* at Q7/A7 (citing [Revised Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Removable Aliens](#), USCIS, Nov. 7, 2011).

¹⁹ See generally [Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), DHS, Sept. 5, 2017; [Fact Sheet: Rescission Of Deferred Action For Childhood Arrival \(DACA\)](#), DHS, Sept. 5, 2017; [Press Release: "Rescission Of Deferred Action For Childhood Arrivals,"](#) DHS, Sept. 5, 2017; and [Statement from Acting Secretary Duke on the Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), Sept. 5, 2017.

²⁰ See generally [I-821D, Consideration of Deferred Action for Childhood Arrivals](#).

Protect Dreamers Higher Education Coalition

#ProtectDreamers

DACA

Deferred Action for Childhood Arrivals

- Established in 2012 by executive action taken by the Obama administration, the policy was rescinded by President Trump on September 5, 2017, and will end on March 5, 2018. Current DACA recipients whose permit expires between September 5, 2017, and March 5, 2018, can apply for a two-year renewal if they submitted paperwork by October 5, 2017.
- An estimated 790,000 current DACA permits will begin to expire on a rolling basis after March 5, 2018, with approximately 33,000 individuals losing protection, on average, each month until the last one expires in 2020.
- Congress is currently working on drafting legislation to address the expiration of the program.

WHAT IS DACA?

Eligibility Qualifications

- Under age 31 as of June 15, 2012
- Entered U.S. prior to age 16
- At least 15 years old at time of request
- Resided continuously in U.S. since June 15, 2007
- Have not committed a felony or significant misdemeanor
- Currently enrolled in high school, have graduated high school, earned a GED, or have been honorably discharged from the U.S. Armed Forces

What protection does DACA grant?

- Renewable two-year period of deferred action from deportation
- Eligibility for a work permit
- A Social Security card
- A driver's license

WHO IS DACA?

- 1.9 million DACA eligible
- 800,000 DACA status
- Average age of DACA recipients = 25

Origins and Residences

TOP COUNTRIES OF ORIGIN

Mexico	618,342
El Salvador	28,371
Guatemala	19,792
Honduras	18,262
Peru	9,056
Brazil	7,361
South Korea	7,250
Ecuador	6,696
Colombia	6,591
Argentina	4,774

TOP RESIDENCES

California	222,795
Texas	124,300
Illinois	42,376
New York	41,970
Florida	32,795
Arizona	27,865
North Carolina	27,385
Georgia	24,135
New Jersey	22,024

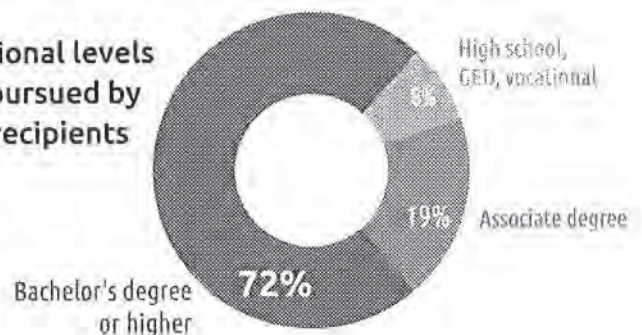
DACA AND HIGHER EDUCATION

45% of DACA recipients are currently enrolled in school or college

Each year:

- 80,000 DACA recipients become 18 years of age
- 65,000 graduate from high school
- 5-10% enroll in college

Educational levels being pursued by DACA recipients



ECONOMIC IMPACT

EMPLOYMENT AND EARNINGS AFTER RECEIVING DACA STATUS

- 91% of all DACA recipients are currently employed (93% for recipients >25 years old)
- 5% of DACA recipients started their own business (U.S. average is 3.1%)
- 69% of recipients transitioned to a job with better pay
- DACA recipients report 69% increase in wages (\$10.29/hr to \$17.46/hr)
- Average earnings for DACA recipients is \$36,232 (\$41,621 for recipients >25 years old)
- 72% of the top 25 Fortune 500 companies employ DACA recipients

DACA TERMINATION - IMPACT ON GDP

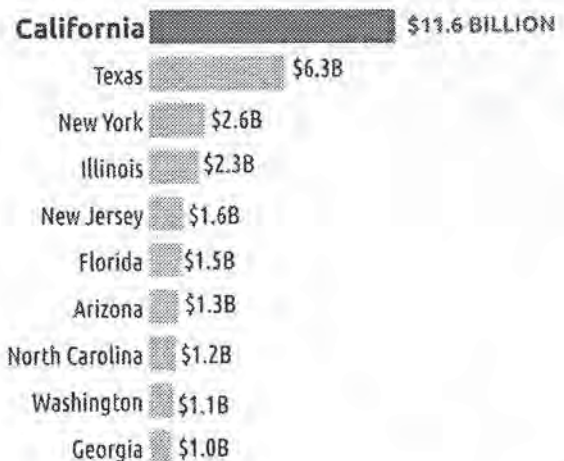
- According to the Cato Institute, deporting those with DACA status would cost over \$60 billion in lost tax revenue and result in a \$280 billion reduction in economic growth over the next decade

AFTER RECEIVING DACA STATUS

- 16% of recipients purchased their first home
- 65% of recipients purchased their first vehicle

TOP 10 STATES BY GDP LOSS FROM DACA TERMINATION

Economic effects of ending DACA/estimated loss in GDP from removing DACA workers



SUPPORT FOR DACA

According to a September 24–26 *Fox News* poll:

- **62%** of voters say it is extremely or very important for Congress to pass immigration law that will address Dreamers
- **86%** of voters support work permits and **79%** support a path to citizenship for undocumented immigrants, under the age of 30 brought here as children, provided they pass a background check

Business and industry leaders support a legislative fix for DACA:

- **Over 800** business and industry leaders sent a letter to congressional leadership on September 20, 2017, asking Congress to provide a permanent legislative solution
- The U.S. Chamber of Commerce has called on the administration and Congress to work together to quickly find a legislative solution before the program expires on March 5, 2018

Protect Dreamers Higher Education Coalition

#ProtectDreamers

Deferred Action for Childhood Arrivals (DACA) Talking Points to Congress to Protect Dreamers

Ask:

We urge Congress to pass bipartisan legislation as soon as possible that will include all the protections currently provided under DACA and allow the individuals, often referred to as Dreamers, covered by this policy to continue contributing to our society and economy by working, serving in the military or attending college.

Background:

On September 5, President Trump announced that his administration would terminate the DACA program as of March 5, 2018, unless Congress passed legislation before that time to provide a statutory basis for the initiative. The days since have been filled with daily stories about the fate of DACA, the extraordinary accomplishments of some of the individuals who are registered in the program, and promises and commitments by members of both parties to address the issue before the president's deadline.

Just how this will be accomplished is unclear and, since many college and university leaders feel strongly about this issue, we want to ask your help in convincing Congress to take prompt action.

Issue:

Initiated in June 2012, DACA addresses the uncertain status of thousands of young people brought to this country as infants or children by granting eligible recipients temporary permission to stay in the United States and obtain work permits.

To qualify for DACA, applicants must pass a multifaceted and rigorous test, including the requirement to have arrived in the United States before reaching age 16, resided here continuously since 2012, be enrolled in or completed high school, not been convicted of a crime, and not present a threat to national security or public safety. Today, about 800,000 young people have DACA status, and roughly 350,000 of them are enrolled in college.

These young people grew up in the United States. They consider themselves American, just like their classmates, friends and neighbors, and in most ways they are.

Unfortunately, before DACA they were unable to work legally and lived a life in the shadows.

Now, these bright and talented young people are working, studying at colleges and universities, or enlisting in the armed services. Because they now have work permits, many are already making contributions to our society and our economy. They are paying taxes and buying cars, homes and consumer goods, all of which generates economic activity and increases tax revenue for federal, state and local governments. They are ineligible for federal means-tested welfare benefits, Pell Grants and federal student loans, as well as Obamacare tax subsidies.

Public polling and policy analysis support a legislative fix. A Sept. 24-26 Fox News poll found that 83 percent of Americans support some pathway to citizenship for these individuals. A Sept. 18-21 Washington Post- ABC News poll found that more than two-thirds of adults – 69 percent – support allowing these individuals to stay in the United States if they had arrived as a child, had completed high school or served in the military and had not committed a serious crime.

According to a recent study by the conservative CATO Institute, a repeal or rollback of DACA would harm the economy and reduce tax revenue. CATO also estimates that deporting those with DACA status would cost over \$60 billion in lost tax revenue and result in a \$280 billion reduction in economic growth over the next decade.

Unfortunately, many of these young people live in fear and uncertainty now that the administration has announced plans to rescind DACA. Guidance from the Department of Homeland Security does not clarify if students can travel outside the United States for study abroad programs, international conferences or for family emergencies. Uncertainty regarding work permits after March 5 means many of our DACA students are struggling to plan for college costs past the spring 2018 semester.

In the 16 years since the Dream Act was first introduced, a number of bills have been introduced in Congress to address the uncertain status of these individuals, including various versions of the Dream Act, which the higher education community has long supported. Again, we urge Congress to promptly pass bipartisan legislation that includes all the protections currently provided under DACA.



September 12, 2017

Representative Paul Ryan
Speaker of the House
United States House of Representatives
Room H-305, The Capitol
Washington, DC 20515

Representative Nancy Pelosi
Minority Leader
United States House of Representatives
Room H-204, The Capitol
Washington, DC 20515

Senator Mitch McConnell
Majority Leader
United States Senate
Room S-230, The Capitol
Washington, DC 20510

Senator Chuck Schumer
Minority Leader
United States Senate
Room S-221, The Capitol
Washington, DC 20510

Dear Speaker Ryan, Leader Pelosi, Leader McConnell and Leader Schumer:

Last week, the Trump administration rescinded the Deferred Action for Childhood Arrivals (DACA) policy that provided temporary protection for the “Dreamers,” outstanding young people brought to our country as children. On behalf of the undersigned higher education associations, I write to urge Congress to pass legislation as soon as possible to permanently protect these individuals.

At present, nearly 800,000 individuals are registered under DACA. To qualify, applicants must have passed a rigorous, multi-faceted test. They must have arrived in the United States before age 16, resided here continuously since 2012, be enrolled in or have completed high school, have not been convicted of a crime, and not present a threat to national security or public safety. The United States is the only country they know: They are Americans, just like their classmates and friends, in every way but immigration status.

Preserving their status is the humane way to respond to the situation these innocent young people are facing. Children brought to the United States at a young age did not have a choice in the matter. It remains in America’s best interest to enable them to use their knowledge, skills and energy to make the strongest possible contribution to our country.

These bright and talented young people are working, serving in the armed services, or studying at colleges and universities. Because they now have work permits, they are making contributions to our society and our economy. They are paying taxes and buying cars, homes and consumer goods, which generates economic activity and increases tax revenue for federal, state and local governments. While they contribute significantly to our economy, they are ineligible for federal means-tested welfare benefits, Pell Grants and federal student loans, and health care tax subsidies. According to a recent study by the CATO Institute, deporting those currently in DACA would cost over \$60 billion in lost tax revenue and result in a \$280 billion reduction in economic growth over the next decade.

In the 16 years since the Dream Act was first introduced, a number of bills have been introduced in Congress to address the uncertain status of these individuals, including various versions of the Dream Act, which the higher education community has long supported. We urge Congress to

Association of Catholic Colleges and Universities
Association of College and University Housing Officers- International
Association of College Unions International
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Independent Colleges of Art & Design
Association of International Education Administrators
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Association of Teacher Educators
Career Education Colleges and Universities
College and University Professional Association for Human Resources
Commission on Independent Colleges and Universities in New York
Commission on Institutions of Higher Education, New England Association of Schools and Colleges
Conference for Mercy Higher Education
Consortium on Financing Higher Education
Council for Adult and Experiential Learning
Council for Advancement and Support of Education
Council for Christian Colleges and Universities
Council for Higher Education Accreditation
Council for Opportunity in Education
Council of Graduate Schools
Council of Independent Colleges
Council on Social Work Education
Educational Testing Service
EDUCAUSE
Graduate Management Admission Council
Great Lakes Colleges Association
Hispanic Association of Colleges and Universities
Institute for Higher Education Policy
Joint National Committee for Languages–National Council for Language and International Studies
Law School Admission Council
Learning Disabilities Association of America
Mennonite Education Agency
Middle States Commission on Higher Education
Modern Language Association
NAFSA-Association of International Educators
NASPA-Student Affairs Administrators in Higher Education
National Adult Learner Coalition
National Association for Campus Activities
National Association for College Admission Counseling
National Association of Colleges and Employers
National Association of College and University Business Officers
National Association of College Stores
National Association of Independent Colleges and Universities

National Association of Student Financial Aid Administrators
National Association of System Heads
National Collegiate Athletic Association
National Council for Community and Education Partnerships
National Council of University Research Administrators
Network of ELCA Colleges and Universities
NODA-Association for Orientation, Transition and Retention in Higher Education
Online Learning Consortium
Society for College and University Planning
Southern Association of Colleges and Schools Commission on Colleges
The College Board
University Professional and Continuing Education Association
WASC Senior College and University Commission
Yes We Must Coalition