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The DACA and DAPA Deferred Action Initiatives: Frequently Asked Questions

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Summary

The future of the Deferred Action for Childhood Arrivals (DACA) program and the proposed Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, two Obama Administration initiatives, is uncertain under President Donald Trump. As of the date of this report, the Trump Administration has not taken action on these initiatives.

The DACA program was established in June 2012, when the Department of Homeland Security (DHS) announced that certain individuals without a lawful immigration status who were brought to the United States as children and met other criteria would be considered for relief from removal for two years. To request consideration of DACA, an individual must file specified forms with DHS's U.S. Citizenship and Immigration Services (USCIS) and pay associated fees. As of the date of this report, the DACA program is ongoing.

USCIS's decision on a DACA request is discretionary. The agency makes determinations on a case-by-case basis. Individuals granted DACA may receive employment authorization. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status. They are, however, considered to be lawfully present in the United States during the period of deferred action.

The period of deferred action under DACA expires after two years unless it is renewed. DACA recipients may request renewal of their deferral for another two years in accordance with USCIS requirements and procedures. To request a renewal, an individual must file specified forms with USCIS and pay associated fees. USCIS's decision on a DACA renewal request is discretionary, as it is on an initial DACA request.

Cumulatively, through September 30, 2016, USCIS approved more than 750,000 initial DACA requests and more than 580,000 renewal requests. The overall approval rate for DACA requests accepted and decided by September 30, 2016, was about 92% for initial requests and about 99% for renewals.

Congress has considered, but never enacted, legislation on the DACA program. It has also considered, but never enacted, related "DREAM Act" proposals, which generally are aimed at the same population of unauthorized childhood arrivals. A key difference between the DACA initiative and past DREAM Act proposals, however, is that the latter would establish a process for eligible individuals to become U.S. lawful permanent residents (LPRs).

The separate DAPA program was proposed by the Obama Administration in November 2014 to provide temporary relief from removal for certain parents of U.S. citizen or LPR children. Its implementation was blocked in the federal courts. It remains to be seen how this litigation may be affected by the change in administration.

This report provides answers to frequently asked questions about the DACA and DAPA initiatives.

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Introduction

The future of the Obama Administration’s Deferred Action for Childhood Arrivals (DACA) program remains uncertain under President Donald Trump. During the 2016 presidential campaign, candidate Trump stated that he would immediately end President Obama’s “illegal executive amnesties.”¹ A draft executive order that was leaked after President Trump took office includes language to end the DACA program. On the other hand, statements made by Donald Trump since winning the 2016 presidential election suggested that his Administration may not take a hardline stance against beneficiaries of the DACA program. For example, a December 2016 *Time* article noted that “Trump did not back off his pledge to end Obama’s executive orders,” but “he made clear he would like to find some future accommodation for [DACA recipients].”² Congressional leaders have also expressed interest in finding a solution for DACA beneficiaries.³

The DACA program, which began in 2012, provides temporary relief from removal from the United States for individuals without a lawful immigration status who were brought to the United States as children and meet other criteria.⁴ Deferred action under the DACA process is initially granted for a period of two years and may be renewed in two-year increments. In November 2014, the Obama Administration proposed to expand eligibility under the DACA program and establish a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program to provide similar temporary relief from removal for certain parents of U.S. citizen or lawful permanent resident (LPR) children.⁵ Neither the DACA expansion nor the DAPA proposal was implemented. This report addresses frequently asked questions about the DACA and DAPA initiatives. As of the date of this report, the Trump Administration has not taken action on either initiative.

¹ See “Donald J. Trump’s 10 Point Plan to Put America First,” <https://www.donaldjtrump.com/policies/immigration/>.

² It should be noted that DACA was established by executive action, but not by an executive order (see above response to “How was DACA established?”). Regarding DACA recipients, the *Time* article further quotes Donald Trump as saying, “We’re going to work something out that’s going to make people happy and proud.” Michael Scherer, “2016 Person of the Year Donald Trump,” *Time*, <http://time.com/time-person-of-the-year-2016-donald-trump/>.

³ See, for example, Eric Bradner, “Paul Ryan tells undocumented immigrant he doesn’t want to deport her,” *cnn.com*, January 13, 2017, <http://www.cnn.com/2017/01/12/politics/paul-ryan-town-hall-undocumented-immigrant/index.html>.

⁴ DACA is a form of deferred action. Deferred action is “a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.” U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Consideration of Deferred Action for Childhood Arrivals Process, Frequently Asked Questions, answer to Q1, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions> (hereinafter cited as USCIS, DACA FAQs).

⁵ U.S. Department of Homeland Security, Memorandum to Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, from Jeh Charles Johnson, Secretary of Homeland Security, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Whose Parents are U.S. Citizens or Permanent Residents,” November 20, 2014 (hereinafter cited as DHS, November 20, 2014, memo).

DACA Initiative

How was DACA established?

The DACA initiative was announced by former Department of Homeland Security (DHS) Secretary Janet Napolitano in a June 15, 2012, DHS memorandum entitled, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.” The DACA initiative was *not* established by executive order.

What is the status of the DACA program?

The DACA program began in 2012 and, as of this writing, is ongoing.

What are the eligibility requirements for consideration of DACA?

The eligibility criteria are

- under age 16 at the time of entry into the United States;
- under age 31 on June 15, 2012;
- continuous residence in the United States for at least five years before June 15, 2012 (that is, since June 15, 2007);
- physical presence in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action;
- not in lawful immigration status on June 15, 2012;
- not convicted of a felony, a significant misdemeanor,⁶ or three or more misdemeanors, and not otherwise a threat to national security or public safety;
- and
- in school, graduated from high school or obtained general education development certificate, or honorably discharged from the U.S. Armed Forces or the Coast Guard.

In addition, an individual must be at least age 15 to request DACA, unless he or she is in removal proceedings or has a final removal order or voluntary departure order.

What forms and other materials must an individual file to request consideration of DACA?

An individual must file the following three forms with DHS’s U.S. Citizenship and Immigration Services (USCIS):

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The forms are available on the USCIS website, <http://www.uscis.gov>.

⁶ For a definition of “significant misdemeanor,” see USCIS, DACA FAQs, answer to Q62.

The individual should also submit evidence that he or she meets the DACA eligibility requirements (see “What are the eligibility requirements for consideration of DACA?”).

Is there a fee to request consideration of DACA?

Yes. The fees, which total \$495, consist of a Form I-765 filing fee of \$410 and biometric services fee of \$85.

There are limited fee exemptions available. An individual must request and receive a fee exemption before submitting a DACA request without a fee.

Are DACA applicants subject to background checks?

Yes. The biographic and biometric information submitted by applicants is checked against databases maintained by DHS and other federal agencies.

Is the information provided by DACA applicants protected?

The instructions for USCIS Form I-821D, Consideration of Deferred Action for Childhood Arrivals, address the disclosure of information provided in a request for DACA. The “Other Disclosure Information” section of the instructions indicates that provided information is protected from disclosure for immigration enforcement purposes unless certain criteria are met. This same section, however, also includes the following:

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.⁷

If an individual satisfies the eligibility requirements, is DACA automatically granted?

No. USCIS's decision on a DACA request is discretionary. The agency makes determinations on a case-by-case basis. According to USCIS:

Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exercise of prosecutorial discretion is not warranted in your case.⁸

If an individual's request for DACA is denied, can the individual appeal the decision?

No. There is no appeal process under the DACA program. However, an individual who believes that his/her DACA request was denied due to an administrative error may request a review.

⁷ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Instructions for Consideration of Deferred Action for Childhood Arrivals (Form I-821D), p. 13, <http://www.uscis.gov/sites/default/files/files/form/i821dinstr.pdf>.

⁸ *Ibid.*, p. 11.

Can an individual who has never requested consideration of DACA still do so, or has the period for filing initial DACA requests closed?

There is no deadline for making initial requests for consideration of DACA. To be eligible, however, an individual must meet the threshold criteria enumerated above, including continuous residence in the United States since June 15, 2007 (see “What are the eligibility requirements for consideration of DACA?”).

Are DACA recipients legally allowed to work?

Individuals granted deferred action may receive work authorization. According to USCIS: “[I]f your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.”

Are DACA recipients allowed to travel outside the United States?

An individual granted deferred action under DACA who wants to travel outside the United States must apply to USCIS for advance parole.⁹ According to USCIS, if a DACA recipient travels outside the country without first obtaining an advance parole document, the individual’s period of deferred action will be automatically terminated.

Are DACA recipients eligible for federal public benefits?

DACA recipients, like other foreign nationals without lawful immigration status, are barred from receiving federal public benefits with the exception of certain forms of short-term, emergency assistance.¹⁰

Are DACA recipients granted lawful immigration status?

No. DACA recipients are not granted a lawful immigration status and are not put on a pathway to a lawful immigration status. During the period of deferred action, however, the DACA recipient is in a period of stay authorized by DHS.

How long does a grant of DACA last?

Deferred action under the DACA process is initially granted for a period of two years and may be renewed for additional two-year periods.

⁹ Advance parole is permission for a foreign national to re-enter the United States after temporarily traveling abroad. However, advance parole does not guarantee re-entry into the United States; foreign nationals are subject to inspection at U.S. ports of entry and may be denied entry.

¹⁰ See CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.

Can an individual's deferred action under DACA be terminated before the end of the two-year DACA grant period?

Presumably yes. According to DHS, “deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS’s discretion.”¹¹

What requirements must a DACA recipient meet in order to be considered for renewal of DACA?

The DACA recipient must satisfy the following criteria:

- the individual did not depart from the United States on or after August 15, 2012, without first obtaining advance parole (see “Are DACA recipients allowed to travel outside the United States?”);
- the individual has continuously resided in the United States since submitting his or her latest approved DACA request; and
- the individual has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and is not a threat to national security or public safety.

What forms and other materials does an applicant for DACA renewal have to file?

To request a renewal of deferred action under DACA, an individual must file the following three forms with DHS/USCIS (the same forms as required for an initial DACA request):

- Form I-821D, Consideration of Deferred Action for Childhood Arrivals
- Form I-765, Application for Employment Authorization
- Form I-765WS, Worksheet

The forms are available on the USCIS website, <http://www.uscis.gov>.

An individual requesting a DACA renewal does not have to submit any documents that he or she previously provided to USCIS in connection with an approved DACA request. The individual does have to submit any new documents related to removal proceedings or criminal history. USCIS will request additional documentation from the individual, if needed.

Is there a fee for DACA renewal requests?

There is a total fee of \$495, consisting of a Form I-765 filing fee of \$410 and biometric services fee of \$85 (the same as for initial DACA requests).

When should a DACA recipient submit a renewal request?

USCIS advises DACA recipients to request a renewal between 150 days and 120 days before the expiration date of their current period of deferred action.

¹¹ USCIS, DACA FAQs, answer to Q27.

Is DACA renewal automatic?

No. The decision on a request to renew DACA is discretionary, as it is on an initial DACA request. USCIS makes determinations about renewals on a case-by-case basis.

If a DACA recipient's request for renewal is approved, is the individual granted legal immigration status?

No. An individual granted deferred action (an initial grant or a renewal) is not given a lawful immigration status and is not put on a pathway to a lawful immigration status (see “Are DACA recipients granted lawful immigration status?”).

Would a person who loses DACA be forced to leave the United States?

An individual who loses DACA would no longer have the protection from removal that DACA provides. Whether or not the U.S. government would take steps to remove that individual from the country is a separate issue.

How many DACA requests have been approved to date?

As of September 30, 2016, a total of 752,154 initial DACA requests and 588,151 renewal requests have been approved.¹²

What are the DACA approval and denial rates?

Of all the initial DACA requests accepted by USCIS for consideration and decided by September 30, 2016, about 92% were approved and about 8% were denied, terminated, or withdrawn. For renewal requests accepted and decided by September 30, 2016, the approval rate was about 99% and the denial/termination/withdrawal rate was about 1%.¹³

What is the DACA expansion?

The November 2014 DHS memorandum that outlined the DAPA initiative also directed USCIS to expand eligibility for, and make other changes to, the DACA program.¹⁴ These changes included eliminating the “under age 31” DACA eligibility requirement and extending the initial grant and renewal periods for DACA and accompanying employment authorization from two to three years. The DACA expansion never went into effect. Its implementation, along with the implementation of the DAPA initiative, was blocked in the federal courts.¹⁵ It remains to be seen how this litigation may be affected by the change in administration.

¹² USCIS DACA statistics are available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals>.

¹³ Ibid.

¹⁴ DHS, November 20, 2014, memo.

¹⁵ For background information on court action, see CRS Legal Sidebar WSLG1607, *Frequently Asked Questions Regarding the Supreme Court’s 4-4 Split on Immigration*.

Has Congress enacted any legislation on DACA?

No legislation on DACA has been enacted. During the 113th Congress, however, the House of Representatives passed a bill (H.R. 5272) to prohibit using federal funds to process DACA applications. That bill read, in part:

No agency or instrumentality of the Federal Government may use Federal funding or resources after July 30, 2014—

(1) to consider or adjudicate any new or previously denied application of any alien requesting consideration of deferred action for childhood arrivals, as authorized by Executive memorandum dated June 15, 2012 and effective on August 15, 2012 (or by any other succeeding Executive memorandum or policy authorizing a similar program)....¹⁶

What is the relationship between DACA and the DREAM Act?

Both DACA and legislation known as the Development, Relief, and Education for Alien Minors (DREAM) Act are targeted at the same general population—unauthorized individuals who entered the United States as children. The DACA eligibility requirements are similar to the eligibility requirements in some DREAM Act bills introduced in past Congresses.

However, the DACA initiative and the DREAM Act are different instruments and offer eligible individuals different forms of immigration relief. The DACA initiative is an exercise of prosecutorial discretion by the executive branch. Individuals granted DACA receive temporary protection from removal. They are not given a lawful immigration status. By contrast, DREAM Act bills are pieces of legislation and would establish a process for eligible individuals to obtain LPR status.

What is the status of the DREAM Act? Has Congress taken action on it?

DREAM Act provisions have been introduced in past Congresses, both as stand-alone bills and as parts of larger immigration reform bills. Although DREAM Act legislation has never been enacted, some DREAM Act bills have seen legislative action. For example, in the 111th Congress, the House approved DREAM Act language as part of an unrelated bill, the Removal Clarification Act of 2010 (H.R. 5281).¹⁷ In the 113th Congress, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (H.R. 744), which incorporated DREAM Act language in its legalization provisions.¹⁸

¹⁶ See archived CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*.

¹⁷ The Senate, however, failed to invoke cloture on a motion to agree to the House-passed DREAM Act amendment, and the bill died at the end of the Congress. See archived CRS Report R40848, *Immigration Legislation and Issues in the 111th Congress*.

¹⁸ S. 744, as passed by the Senate in the 113th Congress, would have established a general legalization program for unauthorized aliens in the United States, with a special “DREAM Act” pathway to LPR status for certain aliens who entered the country as children. The House did not consider S. 744. See archived CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*.

DAPA Initiative

What is the status of the DAPA program?

The DAPA program, proposed by the Obama Administration in November 2014 for planned implementation in February 2015, never went into effect. Its implementation, along with the implementation of the DACA expansion proposal, was blocked in the federal courts.¹⁹ It remains to be seen how this litigation may be affected by the change in administration.

What were the proposed DAPA eligibility requirements?

The DAPA eligibility criteria, as proposed in 2014, were

- continuous residence in the United States since January 1, 2010;
- physical presence in the United States on November 20, 2014, and at the time of making the request for consideration of deferred action;
- not in lawful immigration status on November 20, 2014;
- on November 20, 2014, had a U.S. citizen or LPR son or daughter; and
- not convicted of a felony, a significant misdemeanor, or three or more misdemeanors; not a threat to national security; and not an enforcement priority for removal.

How many people might have benefitted if DAPA had been implemented as planned?

The Migration Policy Institute has estimated that up to 3.6 million unauthorized parents may have been eligible for the DAPA program.²⁰

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¹⁹ For background information on court action, see CRS Legal Sidebar WSLG1607, *Frequently Asked Questions Regarding the Supreme Court's 4-4 Split on Immigration*.

²⁰ Randy Capps, Heather Koball, James D. Bachmeier, Ariel G. Ruiz Soto, Jie Zong, and Julia Gelatt, *Deferred Action for Unauthorized Immigrant Parents: Analysis of DAPA's Potential Effects on Families and Children*, Migration Policy Institute, February 2016, <http://www.migrationpolicy.org/research/deferred-action-unauthorized-immigrant-parents-analysis-dapas-potential-effects-families>.

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