

Management Alert



Dream Over? Trump Administration Announces Plans to Phase Out DACA

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Seyfarth Synopsis: The Department of Homeland Security (DHS) to terminate the Deferred Action for Childhood Arrivals (DACA) program.

"Congress, get ready to do your job - DACA," tweets President Trump on Tuesday morning.

End to DACA

The President's tweet confirmed Sunday's reports that the Trump administration will move forward with plans to wind down the Deferred Action for Childhood Arrivals (DACA) program following challenges to its legality by the attorneys general of several states.

Attorney General Sessions made a formal announcement this morning outlining an end to the Executive Action taken by President Obama in 2012, after Congress failed to pass the Dream Act in 2010. The Administration confirmed that no action -- meaning no loss of work authorization and/or removal of DACA recipients -- will take place prior to March 2018. This six-month period appears intended to provide Congress with a window within which to take the legislative action alluded to on the President's Twitter account.

It is estimated that DACA provided work authorization to almost 800,000 "Dreamers" who were brought to the United States as children, many of whom know no other country. Acting Department of Homeland Security (DHS) Secretary Elaine Duke released the [Memorandum on Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), and the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) simultaneously issued an [FAQ](#) outlining the particulars in light of the rescission of DACA. The [DHS Fact Sheet](#) confirms that, "effective immediately," DHS:

- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents (EADs) that have been accepted as of September 5, 2017.
- Will reject all DACA initial requests and associated applications for EADs filed after September 5, 2017.
- Will adjudicate—on an individual, case-by-case basis—properly filed pending DACA renewal requests and associated applications for EADs from current beneficiaries that have been accepted as of September 5, 2017.. The government will also accept extension applications from current beneficiaries whose employment authorization benefits will expire between September 5, 2017 and March 5, 2018 -- as long as the application for extension benefits is filed on or before October 5, 2017.

- Will reject all DACA renewal requests and associated applications for EADs filed outside of the parameters specified above.
- Will not terminate the grants of previously issued deferred action or revoke EADs solely based on the directives in the memorandum for the remaining duration of their validity periods.
- Will not approve any new applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, U.S. Customs and Border Protection (CBP) will, of course, retain the authority it has always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, USCIS will retain the authority to revoke or terminate an advance parole document at any time.
- Will administratively close all pending applications for advance parole filed under standards associated with the DACA program, and will refund all associated fees.
- Will continue to exercise its discretionary authority to terminate or deny deferred action for any reason, at any time, with or without notice.

USCIS acknowledged that DACA recipients will retain deferred action and their EADs “until they expire, unless terminated or revoked.” Notably, the FAQ states that “DACA benefits are generally valid for two years from the date of issuance.” Accordingly, as indicated above, it appears that USCIS will continue to issue EADs for current beneficiaries whose benefits will expire between September 5, 2017 and March 5, 2018 that have been accepted as of October 5, 2017 for a two-year time period. However, DHS has not yet directly clarified the period of validity for EAD renewals.

Bi-Partisan Legislation in Support of DACA

Congress will likely refocus the debate related to the “dreamers,” and there are currently two main bipartisan bills in play that could grant status and a “pathway to citizenship” to the DACA population.

1. Introduced by Senators Lindsey Graham (R-SC), Dick Durbin (D-IL), Jeff Flake (R-AZ), and Chuck Schumer (D-NY), the [Dream Act of 2017](#) provides a path to U.S. citizenship for young undocumented immigrants with DACA or temporary protected status (TPS) who meet certain educational requirements, enter the workforce, or enlist in the military. All must successfully pass a background check and remain eligible.
2. [The Recognizing America’s Children \(RAC\) Act](#) would allow “dreamers” who arrived in the U.S. as minors prior to 2010 the ability to adjust their status -- meaning to apply for U.S. permanent residence or a green card -- if they meet certain educational or military requirements, successfully pass a background check, and remain in good legal standing.

The Business Community’s Support of DACA

Last Thursday, [FWD.us](#) published a letter from [Leaders of American Industry on DACA](#), including CEOs/Founders/Executives from Facebook, Apple, Amazon, General Motors, Google, Hyatt, Levi Strauss, Netflix, and PayPal reminding the President and Congress that “Dreamers are vital to the future of our companies and our economy. With them, we grow and create jobs. They are part of why we will continue to have a global competitive advantage.”

Possible Workforce Impact from DACA and TPS Elimination

In light of the termination of DACA, as well as possible suspension of several [TPS programs](#), U.S. companies may wish to conduct an assessment of the number of potentially affected individuals currently in their employ. Seyfarth partner, and former USCIS Director, Leon Rodriguez, estimated “that the combination of the threats to TPS and to DACA mean that as many as 1 million workers could lose U.S. work authorization over approximately a two and one half year period,” in a Seyfarth [client alert](#).

Recent Form I-9 guidance and auto-extension rules now force employers to review employment eligibility basis codes. Reviewing these category codes which are listed on EADs, may provide a starting place to assess the impact of the loss of DACA and TPS recipients. However, this type of undertaking should be carefully considered with the assistance of competent counsel to ensure that there are no anti-discrimination based missteps.

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