



## **Deferred Action for Childhood Arrivals (DACA) Federal Policy and Examples of State Responses**

Feb. 15, 2013

### **Federal Policy**

A new federal policy allows young unauthorized immigrants who are low enforcement priorities to remain in the country temporarily. The Deferred Action for Childhood Arrivals (DACA) policy allows the U.S. Department of Homeland Security to exercise prosecutorial discretion in granting administrative relief from deportation for young people covered by the policy. A person who receives deferred action is considered to be lawfully present. Deferred action status, however, does not grant the immigrant any substantive rights, legal immigration status or a pathway to citizenship. Deferred action recipients are not eligible for the Children's Health Insurance Program or Medicaid, according to the U.S. Department of Health and Human Services. Deferred action is permitted for a period of two years and can be renewed. Those granted deferred action may apply for work authorization. The U.S. Citizenship and Immigration Service (USCIS) began to accept applications for deferred action as of Aug. 15, 2012. This policy change was made via a policy memorandum issued June 15, 2012, by the secretary of the U.S. Department of Homeland Security.

To be considered for deferred action, the person must:

- Have entered the country before the age of 16 and be under the age of 31 on June 15, 2012.
- Have continuously resided in the United States since June 15, 2007.
- Be at least 15 years of age and be in school, have graduated high school, received a GED or have been honorably discharged from military service.

The individual must not:

- Have been convicted of a felony offense, a significant misdemeanor or multiple misdemeanor offenses. Examples of significant misdemeanor offenses include violence, threats or assaults; burglary; obstruction of justice or bribery; driving under the influence; unlawful possession or use of a firearm; or unlawful possession of drugs.

USCIS received 438,372 applications between Aug. 15, 2012 and Feb. 14, 2013. USCIS has approved 199,460 applications. The top 10 countries of origin are Mexico, El Salvador, Honduras, Guatemala, Peru, South Korea, Brazil, Columbia, Ecuador and the Philippines. The top 10 states of residence are California, Texas, New York, Illinois, Florida, North Carolina, Arizona, Georgia, New Jersey and Colorado.

Further information can be found on the USCIS website or by calling the USCIS' hotline at 1-800-375-5283. The June 15, 2012 policy memorandum from the U.S. Department of Homeland Security is available [here](#).

## State Responses

The federal policy change may create new policy choices for states. Many states are considering whether to provide or deny state benefits such as driver's licenses or in-state tuition to people granted deferred action. Existing state statutes may provide authority to state agencies. Other states are considering legislation.

### *Driver's licenses*

Most states leave the authority to issue driver's licenses to their respective departments of motor vehicles or departments of transportation. In some states, it is under the jurisdiction of the secretary of state or even the state tax commission. Most states regulate what forms of personal identification are acceptable for issuing state driver's license and ID cards, often requiring proof through both primary and secondary documents. Documents accepted as base-identity documentation are sometimes determined through law and administrative code, but more often by agency policy. For that reason, they vary by state. These documents generally include birth certificates, valid immigration documents, military identification or valid passports.

Prior to the DACA policy, a few states provided driver's licenses to those who cannot provide proof of legal immigration status: Washington and New Mexico issue driver's licenses and Utah offers a driving privilege card. Since the new federal policy, some governors or state agencies have stated they will not allow driver's licenses for DACA recipients, including Arizona, Michigan, Nebraska, Iowa, and North Carolina. Michigan, Iowa and North Carolina have reversed their positions and will now issue licenses to DACA recipients. A number of state agencies have announced plans to offer driver's licenses to DACA recipients, including Colorado, Connecticut, Florida, Indiana, Texas, Virginia and Wisconsin.

Two states—California and Illinois—recently enacted legislation to specifically address DACA recipients and driver's licenses. Another dozen states have introduced bills related to DACA and requirements to provide licenses. Bills in Tennessee would deny licenses to DACA recipients.

### *Enacted*

California A2189, enacted Sept. 3, 2012, allows the DMV to issue a driver's license to DACA recipients who might not be eligible for social security numbers.

Illinois S957 was signed Jan. 28, 2013. The bill "allows the issuance of a temporary visitor's driver's license to a driver who has resided in the state for a specified time but is ineligible for a Social Security number and is unable to document proof of lawful presence in this country prohibits a temporary license from being used as proof of identity; provides that such license is invalid if the driver is unable to provide proof of vehicle insurance."

### *Pending*

Arizona HB 2032 would require the Arizona Department of Transportation to accept federally issued work permits as proof of lawful presence in the United States.

California A60 would repeal provisions of existing law that requires the Department of Motor Vehicles to require an applicant for an original driver's license or identification card to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law and to issue a temporary license under certain conditions.

Connecticut S69 would allow any person accepted into the federal deferred action for childhood arrivals program to obtain a motor vehicle operator's license.

Florida H235: “approval of an application for Deferred Action for Childhood Arrivals status issued by United States Citizenship and Immigration Services as valid proof of identity for purposes of applying for a driver license”

Georgia H227. Issuance, expiration, and renewal of drivers' licenses, authorizes the issuance of a temporary driving permit to a non-citizen applicant whose Georgia driver's license has expired, or will expire, who has filed a request for an extension to remain lawfully within the United States, provides for related matters, provides an effective date, repeals conflicting laws.

Georgia S122. Issuance, expiration, and renewal of drivers' licenses, authorizes the issuance of a temporary driving permit to a noncitizen applicant whose Georgia driver's license has expired, or will expire, who has filed a request for an extension to remain lawfully within the United States, provides for related matters, provides an effective date, repeals conflicting laws.

Indiana S550: Relates to driving authority permit; provides for the issuance of driving authority permits, probationary driving authority permits, and driving authority learner's permits to residents of Indiana who cannot provide proof of identity and lawful status in the United States; provides that permits may not be used for federal identification or for any federal purposes. Passed the Senate on Feb. 11, 2013.

Kansas H2194: the Kansas business workers and community partnership act. Sec. 4. (a) (1) The secretary shall develop and administer a program to support aliens who seek deferred action, work authorization or other discretionary relief from the federal government that will allow the alien to remain in the United States and encourage the alien to work in the state of Kansas. Sec. 5. (a) Any alien may seek the support of the secretary by providing the secretary with documentation of such alien's application to the federal government for deferred action, work authorization or other discretionary relief. (b) An alien who is granted deferred action, work authorization or other discretionary relief may apply, if otherwise eligible, for a Kansas driver's license or Kansas identification card. (c) (1) Aliens granted deferred action, work authorization or other discretionary relief shall be granted or denied Kansas unemployment benefits consistent with federal law governing unemployment benefit eligibility for aliens.

New Jersey A3286 requires the Motor Vehicle Commission to issue one-year driving privilege cards to applicants who meet the criteria to be eligible for deferred deportation and work permits under this policy, but are not United States citizens.

New Mexico S521 would create a two-tiered system of driving privileges, one accepted by federal agencies for federal purposes and one that is not. Driver's licenses may be issued to individuals who show proof of granted deferred action for childhood arrival. It would create a restricted temporary driver's license for foreign nationals that don't provide proof of authorized period of admission into the United States. The department may issue driver's licenses limited to the duration of the foreign national's authorized admission.

New Mexico H606 would create a two-tiered system of driving privileges, one accepted by federal agencies for federal purposes and one that is not. Driver's licenses may be issued to individuals who show proof of granted deferred action for childhood arrival and expire when the deferred action ends. It would create a restricted temporary driver's license for foreign nationals

that don't provide proof of authorized period of admission into the United States. The department may issue driver's licenses limited to the duration of the foreign national's authorized admission.

New York S1320. Notwithstanding any contrary provision of law, the commissioner may, subject to the limitations of subdivision two of this section, issue a driving privilege card to a person who satisfies the requirements for issuance of a driver's license pursuant to section five hundred two of this title but who cannot provide: (a) proof of lawful presence in the United States; or (b) sufficient identifying documentation.

Tennessee H125/S209 Persons whose presence in the United States has been authorized by the federal government pursuant to the deferred action for childhood arrivals guidance of the federal department of homeland security, or any successor guidance or program thereto, shall not be eligible for any license or permit authorized by this subsection (g).

Washington S5012 would require new or renewing applicants for driver's licenses to show proof of citizenship or lawful presence and stipulates documents to prove lawful presence, including deferred action status.

### *Instate Tuition Bills*

In 1996, the illegal immigration reform law instituted a restriction on states' residency requirements and in-state tuition benefits for higher education, affecting an estimated 50,000-65,000 unauthorized immigrant students annually. Thirteen states subsequently enacted legislation to allow long-term unauthorized immigrant students to become eligible for in-state tuition if they meet certain requirements: California, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington and Wisconsin. In 2008, Oklahoma ended its support for in-state tuition for students without lawful presence.

Since the DACA policy was announced, several states are considering in-state tuition benefits for DACA recipients.

### *Pending*

Massachusetts H57. Section 32. The joint committee on higher education shall investigate and report on the impact to the public institutions of higher education in the commonwealth in accepting new students who are now eligible for work permits under the federal Deferred Action Executive Order. The committee shall include in its report an explanation of the Deferred Action Executive Order on the status of non-citizens who reside in the commonwealth; the Board of Higher Education's regulatory authority to admit any new students who have been impacted by such an executive order; the fiscal impact of admitting such students; and any benefits or detriments associated with new admissions to the public institutions of higher education. The committee will submit its report to the House and Senate Committees on Ways and Means on or before July 1, 2013. To Governor Feb. 14, 2013.

Minnesota H437 would allow financial aid to U.S. citizens, eligible noncitizens, and deferred action recipients.

New Jersey S2479/A3509. This bill allows a student, including a student without lawful immigration status, to pay in-State tuition at the State's public institutions of higher education if the student meets the following requirements: (1) attended high school in this State for three or

more years; (2) graduated from a high school in this State or attained the equivalent of a high school diploma in the State; (3) registers as an entering student or is currently enrolled in a public institution of higher education not earlier than the fall semester of the 2013-2014 academic year; (4) in the case of a person without lawful immigration status, files an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status or will file an application as soon as he is eligible to do so; and (5) in the case of a person without lawful immigration status, meets the eligibility criteria, and has submitted a request to the United States Citizenship and Immigration Services, for consideration of the United States Department of Homeland Security's deferred action for childhood arrivals process.

New York S1567 Grants eligibility for student financial aid to persons granted deferred action for childhood arrival status and to certain non-residents of the state.

Virginia S1090 provides eligibility for in-state tuition for Deferred Action for Childhood Arrivals recipients. Notwithstanding any other provision of law, a student shall be eligible for in-state tuition if (i) he has attended a public or private high school in the Commonwealth for at least three years; (ii) he has graduated from a public or private high school in the Commonwealth or has received a General Education Development (GED) certificate in the Commonwealth; (iii) he has registered as an entering student or is enrolled in a public institution of higher education in the Commonwealth; (iv) he has provided an I-797 Approval Notice stating that he has been approved for Deferred Action for Childhood Arrivals by the U. S. Department of Homeland Security; and (v) he has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least three years prior to the date of enrollment. Such student shall remain eligible for in-state tuition for as long as he maintains continuous enrollment in the public institution of higher education and retains status under Deferred Action for Childhood Arrivals.

Virginia S1233 provides eligibility for in-state tuition for Deferred Action for Childhood Arrivals recipients. In addition to any other lawful status under federal and state law, a student shall be eligible for in-state tuition if (i) he has provided an affidavit to the public institution of higher education for which he has registered stating that he has been approved for Deferred Action for Childhood Arrivals by the U. S. Department of Homeland Security, (ii) he has graduated from a public or private high school in the Commonwealth or has received a General Education Development (GED) certificate in the Commonwealth, (iii) he has resided in the Commonwealth for at least three years immediately preceding his registration as an entering student in a public institution of higher education in the Commonwealth, and (iv) he has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis, has filed, unless exempted by state law, Virginia income tax returns for at least three years prior to the date of enrollment.

*Failed*

Virginia H1490 would allow in-state tuition for Deferred Action for Childhood Arrivals.

Virginia H2159 would allow in-state tuition for Deferred Action for Childhood Arrivals.

Virginia HB1525. A student shall be eligible for in-state tuition if (i) he has attended a public or private high school in the Commonwealth for at least three years; (ii) he has graduated from a

public or private high school in the Commonwealth or has received a General Education Development (GED) certificate in the Commonwealth; (iii) he has registered as an entering student or is enrolled in a public institution of higher education in the Commonwealth; (iv) he has provided an I-797 Approval Notice stating that he has been approved for Deferred Action for Childhood Arrivals by the U. S. Department of Homeland Security; and (v) he has submitted evidence that he or, in the case of a dependent student, at least one parent, guardian, or person standing in loco parentis has filed, unless exempted by state law, Virginia income tax returns for at least three years prior to the date of enrollment. Such student shall remain eligible for in-state tuition for as long as he maintains continuous enrollment in the public institution of higher education and retains status under Deferred Action for Childhood Arrivals.

### *Legal Service Protections Bill*

California A35. Provides that immigration consultants, attorneys, and notaries public shall be the only individuals authorized to charge clients or prospective clients a fee for providing services associated with filing an application under the deferred action program. Prohibits immigration consultants, attorneys, and notaries public from participating in practices that amount to price gouging. Provides the conditions under which a person may receive medical assistance and unemployment compensation benefits.

### Additional Resources:

U.S. Citizenship and Immigration Services [FAQ on Deferred Action](#)

DACA [application statistics](#)

U.S. Department of Homeland Security [memo](#)

NCSL's [database on state immigration laws](#)

NCSL's brief on [Instate Tuition and Unauthorized Immigrant Students](#)

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*State bill summaries researched on Statenet.*