



The Proposed DACA Regulation: What You Need to Know

By Shoba Sivaprasad Wadhia and Stephen Yale-Loehr

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- 1. What is DACA?** DACA (Deferred Action for Childhood Arrivals) is a policy implemented by the U.S. Department of Homeland Security (DHS) through a memorandum in 2012 that allows certain noncitizens who entered the United States before the age of sixteen, and who meet educational, residential and other requirements, to request a form of prosecutorial discretion called “deferred action.” DACA recipients receive a two-year period of protection and can apply for work authorization. More than 800,000 people have received deferred action under DACA.
- 2. What is the proposed DACA regulation?** On September 28, 2021, the DHS’s U.S. Citizenship and Immigration Services (USCIS) published a [proposed rule](#) that would codify the DACA 2012 policy. The language of the proposed regulation is similar to DACA 2012 and proposes the following requirements:
 - came to the United States under the age of 16;
 - continuously resided in the United States from June 15, 2007, to the time of filing;
 - physically present in the United States on both June 15, 2012, and at the time of filing the DACA request;
 - unlawful immigration status on June 15, 2012, as well as at the time of request;
 - graduated or obtained a certificate of completion from high school, obtained a GED certificate, currently be enrolled in school, or be an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
 - have not been convicted of a felony, a misdemeanor described in the rule, or three or more other misdemeanors, or otherwise pose a threat to national security or public safety; and
 - born on or after June 16, 1981, and at least 15 years of age at the time of filing, with some exceptions.
- 3. How do the DACA 2012 policy and the proposed DACA regulation differ?** In general, the proposed regulation is very similar to the terms of DACA 2012. The proposed rule would differ on procedure by allowing a person to request deferred action *without* applying for work authorization (and by extension lowering the filing fee); by creating a new work authorization regulation specifically for DACA recipients; and by terminating work authorization automatically when a person’s DACA has been terminated (assuming they also applied for and received work authorization).
- 4. Why is DHS proposing a rule for DACA?** DHS has indicated that the rule responds to President Biden’s commitment to “[preserving and fortifying](#)” DACA, to preserving the reliance

interests of DACA recipients, and is informed by the Department's experience with DACA as well as the ongoing litigation concerning the legality of DACA. Importantly, DHS clarifies that the proposed rule "should not be interpreted as suggesting that DHS itself doubts the legality of 2012 DACA policy or any other past, present, or future deferred action policy."

5. **Why is DHS proposing making the application for work authorization optional?** DHS is concerned that part or all of DACA may be struck down by ongoing or future litigation. Making work authorization optional creates the possibility of striking down part of DACA (e.g. the work permit) but maintaining the provisions of DACA that provide deferred action and protection from deportation. Optional work authorization may also reduce the fiscal burden on DACA recipients who may not necessarily need or want employment authorization.
6. **What happens next?** The public has 60 days to comment on the proposed rule. DHS has identified specific questions it would like to hear from the public.
7. **When will the proposed rule take effect?** After the 60-day comment period, DHS will consider all the comments and draft a final rule. The Office of Management and Budget must approve the final rule. The final rule will take effect 30 or 60 days after it is published in the Federal Register. Thus, the process will take months.
8. **Who is excluded from relief under the proposed rule?** The rule maintains the existing eligibility for DACA, so individuals who are eligible for DACA will be eligible for relief under the rule. However, certain populations will continue to be excluded, including undocumented youth who arrived to the United States after June 15, 2007 and individuals who would otherwise qualify but who had some sort of immigration status on June 15, 2012.
9. **When will the proposed rule take effect?** After the 60-day comment period, DHS will consider all the comments and draft a final rule. The Office of Management and Budget must approve the final rule. The final rule will take effect 30 or 60 days after it is published in the Federal Register. Thus, the process will take months.

RESOURCES

1. *Proposed rule:*
<https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>
2. *USCIS DACA information:* <https://www.uscis.gov/DACA>
3. *USCIS DACA FAQs:*
<https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>
4. *Penn State Center for Immigrants' Rights DACA page:*
<https://pennstatelaw.psu.edu/immigration-biden-administration#DACA/DED/TPS>

The goal of this document is to provide general information and is not meant to act as a substitute for legal advice from an attorney.