

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

*****DO NOT SUBMIT THIS COVER PAGE WITH YOUR COMMENT*****

Higher Education Comment Guide for Proposed Rule to Fortify DACA¹

October 7, 2021

This document is a guide to assist institutions of higher education that wish to comment on the proposed rule by U.S. Citizenship and Immigration Services (USCIS) of the U.S. Department of Homeland Security's (DHS), [Deferred Action for Childhood Arrivals](#) (USCIS-2021-0006). **The deadline for institutions to submit comments is November 29, 2021 at 11:59 PM ET.** We will keep institutions abreast of any developments.

The Presidents' Alliance created this guide to assist individual colleges and universities in drafting comments regarding the proposed rule. Below, you will find a framework that your institution can edit and suggestions on additional institution-specific content that would be especially valuable to include. **Individualized institutional comment letters are incredibly useful to demonstrate the broad impact of the proposed rule on institutions of higher education and build an administrative record for future advocacy. Federal law requires that the Department read, review, and consider all comment letters.**

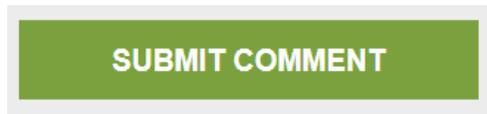
You can read the text of the proposed rule [here](#).

For more on the proposed rule, see our FAQ: [The Proposed DACA Regulation: What You Need to Know](#)

¹ For questions about submitting a comment or this document, please contact miriam@presidentsalliance.org or jose@presidentsalliance.org. For more information on the Presidents' Alliance, please visit presidentsimmigrationalliance.org.

Steps to Submit Your Comment

1. **DRAFT.** Using the template below, work with the appropriate stakeholders at your institution to draft your institution's comment and convert to a text-searchable PDF.
2. **SUBMIT. Comments can only be submitted online.** Visit <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>. Click on "Submit a Formal Comment." The button will look like this:



3. You can also click [here](#) for the direct link to the comment box. Either enter your comment in the text box (must be fewer than 5,000 characters) or upload your comment as a text-searchable PDF (we recommend submitting a PDF).
4. **LET US KNOW.** Email a copy of your comment letter to info@presidentsalliance.org with the subject line "Comment Letter on DACA Rule for [Institution Name]" so we can track higher education comments.

As you draft your comment, here are some important tips to keep in mind:

1. The "talking points" on the following pages are intended to help guide you and give you an example and ideas, **but the comment should be edited with your original input.** DHS may bundle any comments that are too similar to each other. Feel free to choose which bullet points you want to focus on and the arguments that are most relevant to your institution and edit them to better reflect your institution's perspective on the issue. You do not need to cite this document in your comment.
2. While this guide contains a number of bullet points, your own comment letter can highlight one to two key arguments or points you want to raise.
3. Institutional comments should be signed by a representative of the institution and provide the business contact information of the representative for any follow-up questions or concerns. However, keep in mind that this comment will be publicly available, so personal addresses or cell phone numbers are not recommended. Who signs the letter is at the discretion of the institution and does not impact the review of the letter.

Guidance on Creating your Comment Letter

1. Sample introduction

Submitted via www.regulations.gov

Andria Strano
Acting Chief, Office of Policy and Strategy
Division of Humanitarian Affairs
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2021-0006, Comments in Response to Deferred Action for Childhood Arrivals

On behalf of [Institution], I submit this comment letter in response to the U.S. Department of Homeland Security's (Department) proposed rule, Deferred Action for Childhood Arrivals (DHS Docket No. USCIS-2021-0006), published September 28, 2021. I write in support of the proposed rule and offer further methods to strengthen and fortify the DACA program.

2. Institution- and State-specific information

- Name of institution
- Location
- Number of DACA and DACA-eligible students [in your state](#) [select your state from the map]
- Number of DACA and DACA-eligible students/staff/alumni from your institution and the importance and contributions of DACA for these campus members

3. Comment-specific information

While the notice of proposed rulemaking asks for comment on the entire proposed rule, institutions should consider including the following points most-related to higher education:

- **Support of the rule** (codifying the DACA program into regulation)
 - **Supporting campus stories:**
 - Number of DACA alumni, and, if possible, numbers or individual narratives regarding what careers they have entered.
 - Examples of specific individuals with DACA (students, staff, alumni, etc.) who would lose their jobs if DACA is not cemented into regulation.
- **Support for splitting DACA status from employment authorization**
 - 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.
- **Supporting campus stories:** Examples of students who would benefit from a less expensive DACA application (who do not need work permits as students but would benefit from protection from deportation and eligibility for DACA-specific aid, for example).
- **Remove prior unlawful immigration status requirement**
 - The proposed rule requires unlawful immigration status on June 15, 2012 and at the time of request when applying for DACA. This excludes dependents of long-term nonimmigrant visa holders (sometimes called “documented Dreamers”) who age out of the system when they turn 21 and are forced to either “self-deport” or become undocumented. Under the current wording of the proposed rule, any person who aged out after June 15, 2012 would not qualify for DACA status, despite being undocumented at the time of application.
 - The [Migration Policy Institute](#) estimates that 190,000 minors and young adults currently have no path to legal status once they turn 21.
 - **Supporting campus stories:**
 - Examples of students who will lose or who have already lost immigration status due to ineligibility for DACA or other legal paths once they turn or turned 21 and the impact to their education or lives (interruptions to education, loss of access to programs requiring a legal immigration status, etc.)

- **Remove arbitrary barriers to DACA**

The following are bold requests to update the DACA program so that it continues to serve its original purpose, and to “preserve and fortify” the program for the future, in line with the government’s intent in codifying DACA today. While DHS is relatively unlikely to make changes to the original eligibility outlined in the 2012 memo that created DACA, we do believe that DACA cannot be “preserved or fortified” if the door is closed to all future participants who otherwise meet its requirements.

- Move up continuous residency date from June 15, 2007
- Move up physical presence date from June 15, 2012
- Remove age cap
- **Supporting campus stories:**
 - Narratives of increasing numbers of undocumented students arriving at campus who are not eligible for DACA (decreasing numbers of DACA-eligible students).
 - Examples of students (anonymous) who cannot work during school or after graduation because they are ineligible for DACA under the current dates, through individual stories and/or the [estimated number of non-DACA eligible undocumented students](#) in higher education in your state [select your state] (not all are ineligible due to the date or age, but you can emphasize that a portion could become eligible through this fix).
- **Expand advance parole for all grounds**

- Currently, DACA recipients must request advance parole only on employment, educational, or humanitarian grounds, despite there being no such statutory or regulatory restriction of advance parole for other grounds.
- **Supporting campus stories:**
 - Examples of students or alumni who could not travel because approval for parole was too slow or denied due to the narrow restrictions, emphasizing the impact to their education or life (unable to study or take a learning opportunity abroad, unable to visit an ailing relative, etc.)
- **Establishing domicile**
 - In the [DACA FAQs](#), USCIS states: “Individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.” This language was added to ensure that states did not interpret DACA as in any way undermining the ability to obtain in-state tuition. Consider including in your comment the request that this language similarly be incorporated into the final regulation.
 - **Supporting campus stories:**
 - Highlight if your institution is in a state that precludes DACA recipients from in-state tuition on the basis of state “residency” (i.e. treats DACA recipients as international students rather than state residents).
 - To find the tuition and financial aid policies of your states, check out the state policies on the [Higher Ed Immigration Portal](#)
- **Adjudication and processing**
 - The Presidents’ Alliance wrote to DHS Secretary Mayorkas last year with detailed [recommendations to improve DACA](#). Please feel free to take items from the “Adjudications and Processing” section and combine the recommendation with the experiences of your own campus. A few highlights:
 - **Consecutive renewals:** With sequential grants, DACA recipients receive full two-year periods of deferred action rather than one grant “eating” into the next as they overlap, creating grants of one year and 8-11 months, for example. The Obama administration piloted a program (which the Trump administration ended) making this change, which should be resumed and expanded.
 - **Automatic renewal for pending DACA and work permit applications:** Automatic renewal will prevent lapse of status or permission to work for DACA applicants while USCIS adjudicates the request. USCIS has been forced to cut services and staff to remain open during the concurrent pandemic and USCIS budget crisis, increasing the case backlog and wait times tremendously. Applicants also face a variety of COVID-19 barriers, including difficulty in paying filing fees, limited to no access to legal service providers, and the virus itself. Work permits could receive a 180-day auto-extension upon receipt of application, similar to Temporary Protected Status (TPS) work permits, and DACA status itself could receive a six-month auto-extension upon receipt.
 - **Financial assistance:** Reallocate funds from DHS to provide application financial assistance to DACA recipients who need it and fund

the use of the existing fee waivers for DACA applicants. Unlike many other USCIS application forms, DACA recipients cannot apply for the usual I-912 fee waiver to assist with the cost of applying. DACA recipients must meet narrower criteria than the usual fee waiver and receive the exemption before they submit their application, adding time to an already delayed process.

- **Supporting campus stories:**
 - Examples of students, staff, or alumni who were out of work or status for a period because of renewal delays and the impact on their education or life (had to take time off from school, were unable to take/continue an educational work position in a clinic/lab/department, etc.)
 - Examples of DACA-eligible students, staff, or alumni who either struggled to or were unable to afford to apply for or renew DACA status and the impact to their education and life (filed late or not at all, had to take time off school to save money, lost or could not access financial aid opportunities tied to DACA status, etc.)