

Access to Higher Education for DACA, TPS, and DED Students in the Build Back Better Act of 2021

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I. Background

The Fiscal Year (FY) 2022 Budget Reconciliation, also called the Build Back Better Act of 2021, expands federal student aid eligibility to include students who hold deferred action or temporary status, which includes recipients of Deferred Action on Childhood Arrivals (DACA), Temporary Protected Status (TPS), and Deferred Enforced Departure (DED).¹ Specifically, Section 20022 of the bill states:

Section 484(a)(5) of the Higher Education Act of 1965 is amended by inserting “, or, with respect to any grant, loan, or work assistance received under this title for award years 2022–2023 through 2029–2030, be subject to a grant of deferred enforced departure or have deferred action pursuant to the Deferred Action for Childhood Arrivals policy of the Secretary of Homeland Security or temporary protected status” after “becoming a citizen or permanent resident.”

Access to federal financial aid will represent a key driver to dramatically expand higher education access to these immigrant students who have little financial support to pursue a degree. Under current law, all undocumented students are ineligible to receive federal financial aid, including Pell Grants and federal loans, even if they graduate from a U.S. high school, which is a significant barrier to higher education.² Less than half of states allow DACA recipients to pay in-state tuition or access state financial aid, while an estimated 181,624 DACA-eligible students currently attend an institution of higher education.³ Research indicates that removing financial barriers to higher education for undocumented students increases college enrollment and improves academic achievement, credits attempted, and first-semester retention.⁴ In addition, 65 percent of all jobs require at least some postsecondary education or training beyond a high school degree.⁵

¹ U.S. Congress, House, *Rules Committee Print 117–18 Text OF H.R. 5376, Build Back Better Act*, HR 5376, 117th Cong., 1st sess, Introduced in House November 3, 2021, Section 20022 Expanding Federal Student Aid Eligibility, <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf>.

² “Eligibility for Non-U.S. Citizens,” Federal Student Aid, U.S. Department of Education, accessed December 13, 2021, <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens>.

³ “Undocumented Tuition Map: Tuition & Financial Aid State Policies for Undocumented Students,” Higher Ed Immigration Portal, accessed December 13, 2021, <https://www.higheredimmigrationportal.org/data-tools/>; “National Data: Immigrant and International Students in Higher Education,” Higher Ed Immigration Portal, accessed December 13, 2021, <https://www.higheredimmigrationportal.org/national/national-data/>.

⁴ See Rajeev Darolia and Stephanie Potochnick, “Educational ‘When,’ ‘Where,’ and ‘How’ Implications of In-State Resident Tuition Policies for Latino Undocumented Immigrants,” *The Review of Higher Education*, 38(4) (June 2015): 507-535;

Michel Grosz and Annie Hines, *Granting In-State Tuition to Undocumented Students Increases Their Rates of College Attendance*, Center for Poverty & Inequality Research, University of California-Davis, February 2021, https://poverty.ucdavis.edu/sites/main/files/file-attachments/hines_grosz_undocumented_students_brief.pdf?1611781753.

⁵ Anthony P. Carnevale & Stephen J. Rose, *The Economy Goes to College: The Hidden Promise of Higher Education in the Post-Industrial Service Economy*, Georgetown University Center on Education and the Workforce, 2015, <https://cew.georgetown.edu/wp-content/uploads/EconomyGoesToCollege.pdf>.

Investment in undocumented immigrant students also represents an investment in the nation's workforce and economy. A New American Economy report found that 94 percent of the DACA-eligible population in the U.S. labor force are employed.⁶ Increasing access to postsecondary degrees and credentials allows higher earnings for individuals and their families, raising state, local, and federal tax revenues. Currently, the DACA population alone pays \$15 billion a year in state and local taxes with an annual spending power of \$66.4 billion.⁷ DACA and TPS holders have also worked on the frontlines of the COVID-19 pandemic, with nearly half of the 1.2 million DACA-eligible immigrants in the United States as essential workers, including 62,000 essential healthcare workers.⁸ An estimated 130,000 TPS holders work in essential industries helping to weather and rebuild from the pandemic.⁹ Ensuring undocumented students have access to federal financial aid will help expand access to higher education and allow the American workforce to fill critical workforce shortages in key industries. The provisions will fortify the U.S. economy by allowing more people to receive an education and training.

II. Policy Rationale to Retain Section 20022

While the parole provisions in the Build Back Better Act would make a large portion of the covered population in Section 20022 eligible for federal financial assistance by virtue of the legal status it imparts, it is still important to retain the financial aid provisions in the bill:

- A. Parole will take time to implement.** Any parole program included in the bill is likely to be litigated, which could result in a year or more delay before U.S. Citizenship and Immigration Services (USCIS) can start the implementation process. Once USCIS is cleared to begin, it would likely be another six months of implementation, followed by six months to receive approvals. Even if parole passes via reconciliation, this leaves a minimum of two years, or two financial aid cycles, where eligible DACA, TPS, and DED recipients will need access to federal financial aid while they wait for parole.
- B. Not all will receive parole.** Not all deferred action and temporary status holders will automatically transition into parole. There will be a subgroup of DACA, TPS, and DED recipients that do not receive parole for a variety of reasons, including lack of funds, lack of legal representation or expertise, or ineligibility for a different reason under the terms of the bill. Additionally, if it is determined that eligibility for parole only includes those who entered the United States without inspection, otherwise eligible DACA, TPS, and DED recipients, that entered with permission on a visa and subsequently stayed past that visa's expiration date (often called "visa overstays"), would be ineligible for parole.
- C. Parole may be struck from the bill.** If the parole provisions are struck from the bill due to the parliamentarian's opinion, not having the financial aid provisions in the bill's initial version makes it much more difficult to insert them later in the process. Should parole be struck, those with DACA, TPS, and DED would only have access to federal financial aid via Section 20022.

⁶ "Spotlight on the DACA-Eligible Population," New American Economy, September 1, 2017, updated on May 14, 2020, <https://research.newamericaneconomy.org/report/spotlight-on-the-daca-eligible-population/>.

⁷ J Geiman, "Promoting Equity for Undocumented Students in Postsecondary Education," Center for Law and Social Policy, updated October 2021, <https://www.clasp.org/publications/fact-sheet/promoting-equity-undocumented-students-postsecondary-education>.

⁸ "Spotlight on the DACA-Eligible Population," New American Economy.

⁹ "Fact Sheet: Temporary Protected Status (TPS)," National Immigration Forum, March 2021, <https://immigrationforum.org/article/fact-sheet-temporary-protected-status/>.

D. The population under these provisions is targeted and narrow. Ultimately, Section 20022 covers a very specific population (undocumented immigrants who both have DACA, TPS, or DED and want to pursue a postsecondary degree) for a limited amount of time. The provisions in the Build Back Better Act expire after ten years, and DACA itself may not survive the results of litigation for more than a few years to come. Even programs like DED may be subject to future litigation or enjoinder. The current administration has been reluctant to use TPS broadly, meaning that it is unlikely that the TPS population will grow with a mass of additional designations in the future.