

Rescission of Deferred Action for Childhood Arrivals (DACA)

8 September 2017

On September 5, 2017, the Department of Homeland Security (DHS) issued an official [memorandum](#) rescinding the Obama Administration's Deferred Action for Childhood Arrivals (DACA) program,¹ which allowed certain individuals to receive deferred action from deportation and eligibility for temporary U.S. work permits. The memorandum directs DHS personnel to take "all appropriate actions to execute a wind-down of the program," with some limited exceptions. If Congress enacts legislation that would address those covered by DACA by March 5, 2018, its solution may offer more permanent protections.

Set forth below are the key points of interest to employers and their employees covered by DACA:

1. **New or pending initial requests for DACA:** While new requests for DACA will not be accepted, DHS will continue to process all properly filed initial requests and associated temporary work permits (reflected by Employment Authorization Documents (EADs)) that were accepted and pending as of September 5, 2017.
2. **Current DACA recipients with valid EADs:** A current DACA recipient will remain covered by deferral of deportation and any existing valid EAD for their duration.
 - DACA recipients with EADs expiring before March 5, 2018 will be able to apply for renewal (as explained below).
 - DACA recipients with EADs valid beyond March 5, 2018 will not be able to apply for renewal but can continue to rely on those existing EADs for the remaining period of their validity. As such, those with valid EADs will not be cut off on March 5, 2018.
 - **Implications for I-9 Verification:** Employers can continue to rely on valid DACA-based EADs for I-9 verification purposes. For example, if a new hire presents a valid EAD, it remains valid as a List A document for verification purposes. Employers also must comply with the I-9 re-verification requirements in accordance with applicable regulations (e.g., not seeking to re-verify existing I-9s unless an I-9

¹ ["Memorandum on Rescission Of Deferred Action For Childhood Arrivals \(DACA\),"](#) Department of Homeland Security, September 5, 2017; ["Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"](#) Department of Homeland Security, June 15, 2012.

reflects an expiration date for the person's employment authorization and re-verification of such expiring I-9s has to comply with the existing regulations as to the timing of such re-verification).

3. **Renewal applications:** With the exception of current DACA recipients whose benefits expire between September 5, 2017 and March 5, 2018 (see below), DHS will not accept renewal requests and associated applications for new EADs from DACA recipients who have not yet filed a renewal application.
4. **Renewal applications from DACA recipients whose benefits expire before March 5, 2018:** DHS will consider DACA renewal requests and associated EAD applications from current DACA recipients whose benefits will expire between September 5, 2017 and March 5, 2018 only if those renewal requests are filed on or before October 5, 2017. Accordingly, DACA beneficiaries who fall in this category should consider pursuing to file for renewal as soon as possible to ensure that the filings are accepted for processing well before the October 5, 2017 deadline (in case DHS returns a filing due to a technical issue, the person can re-submit by October 5 but if the person waits until the last moment, there will be no opportunity to correct any deficient filings after October 5).
5. **Travel outside of the United States by DACA recipients (“advance parole”):**
 - **Current advance parole validity:** DACA recipients who have previously been granted advance parole (travel documents) can generally rely on such documents for their duration. However, there are risks associate with travel by DACA recipients even if they valid advance parole documents. CBP retains discretionary authority to determine admissibility of any person during re-entry, and USCIS retains discretionary authority to revoke or terminate advance parole at any time.
 - **New and pending applications for advance parole:** USCIS will administratively close all pending applications for advance parole and will refund all associated application fees. USCIS will not approve any new applications for advance parole, even if they were pending as of September 5, 2017.

For more detailed information, you are encouraged to review DHS's [September 5 memorandum](#) as well as DHS's related [Fact Sheet](#), [Frequently Asked Questions \(FAQs\)](#), [Press Release](#), and [Secretary Duke's Statement](#).²

² See generally [Frequently Asked Questions: Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), DHS, Sept. 5, 2017; [Fact Sheet: Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), DHS, Sept. 5, 2017; [Press Release: “Rescission Of Deferred Action For Childhood Arrivals.”](#) DHS, Sept. 5, 2017; and [Statement from Acting Secretary Duke on the Rescission Of Deferred Action For Childhood Arrivals \(DACA\)](#), Sept. 5, 2017.

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