

August 30, 2022

Statement & FAQ Regarding the new DACA Rule, published August 30, 2022

The Department of Homeland Security (DHS) published on August 30, 2022, a [final rule](#) codifying as a federal regulation the Deferred Action for Childhood Arrivals (DACA) policy that began in 2012. The final rule will take effect on Monday, October 31, 2022. In general, DACA under this new federal regulation will maintain the same application and renewal process. The eligibility criteria and documentary requirements are the same as those outlined in the memorandum that created DACA in 2012. The benefits of receiving DACA also remain the same.

While this new federal regulation reinforces and formalizes the existing DACA policy by adding it to what's called the Code of Federal Regulations, it did not go far enough. Unfortunately, DHS did not adopt recommendations that would have expanded who qualifies for DACA. The UC Immigrant Legal Services Center remains committed to protecting DACA, and to ensuring that all undocumented individuals can live, work, and contribute to their communities without fear and without being limited by their immigration status.

- **What stays the same?**

If you already have an existing DACA grant, it will remain valid. You will not need to file a new, separate application for DACA under the new rule.

There are *no significant changes* for first-time DACA applicants. At this time, USCIS still will not process initial DACA requests pursuant to the federal court injunction in the pending case *Texas v. United States*.

The application forms and required evidence will stay the same as the current DACA application process for both initial and renewal applications. All applications will continue to require both Form I-821D and Form I-765 together. The total combined filing fee of \$495 will stay the same.

- **Will *anything* change for DACA recipients or applicants?**

Although the application and renewal process, total cost, and eligibility criteria remain the same, the new rule lists a few important safeguards and clarifications for DACA applicants and recipients.

- Before USCIS terminates an individual's DACA grant, the new rule will require USCIS in most cases to issue a Notice of Intent to Terminate and provide an opportunity to respond.
- If USCIS denies a request for DACA, the new rule provides that USCIS will not issue a Notice to Appear (the document that initiates a case before an Immigration Judge for removal/deportation proceedings), unless USCIS determines that the case involves denial for fraud, a threat to national security, or public safety concerns.

- The new rule clarifies that expunged criminal convictions, juvenile delinquency adjudications, and certain immigration-related offenses are not automatic disqualifications for DACA.
- The new rule provides that DACA recipients who depart the U.S. without advance parole, but who are nonetheless paroled back into the U.S., will continue to have DACA after their parole period expires.

Although the total combined filing fee of \$495 will stay the same, the new rule changes the distribution of this fee:

- The cost for submitting Form I-765 (work permit application) will be \$410, the same as before.
- The cost for submitting Form I-821D (Application for Deferred Action) will now be \$85. Previously, there was no cost to submitting Form I-821D, but applicants were required to pay an \$85 biometrics fee for fingerprinting and background checks. In developing the new rule, DHS considered allowing applicants to file Form I-821D by itself, but ultimately kept the requirement of filing both Forms I-821D and I-765 in every application.
- Under the new regulation, the biometrics fee is eliminated and the \$85 cost shifts to Form I-821D. Note that biometrics will continue to be part of the DACA application or renewal process, but at no additional cost.

- **What does this mean for current DACA recipients?**

Those who are eligible to renew DACA, can continue to renew. This includes:

- Individuals that currently have DACA; and
- Individuals whose DACA expired less than one year ago and otherwise remain eligible.

If you have already filed a DACA renewal request, your application will be processed. Otherwise, please still remember to timely renew DACA before your current validity period expires. USCIS recommends renewing 120-150 days prior to expiration, while trusted organizations such as the Immigrant Legal Resource Center (ILRC) [recommend that individuals consider renewing early](#), within six months to one year of their current DACA expiration date.

- **What does this mean for first-time DACA applicants who already submitted their DACA initial applications?**

As of August 30, 2022, a federal court continues to block U.S. Citizenship and Immigration Services (USCIS) from making decisions on first time (“initial”) DACA applications. USCIS will not be able to approve or deny initial DACA applications until the court issues a different decision.

- **What does this mean for individuals who wish to apply for DACA for the first time but have not yet submitted their applications?**

Initial DACA requests will still be accepted by USCIS but will be placed on hold – these DACA initial applications will not be approved nor denied as of August 30, 2022. Please speak with a qualified attorney about whether you should or should not request DACA.

- **What does this mean for current DACA recipients who want to travel abroad on Advance Parole?**

Advance Parole (AP) remains an available option for DACA recipients who wish to travel abroad temporarily for valid educational, humanitarian, or employment purposes. If you are

considering applying for Advance Parole, you should speak with a qualified attorney to discuss your situation, especially if you have ever been in removal (deportation) proceedings or had other immigration or criminal issues.

- **What's next?**

A lot can change before the Federal Regulation goes into effect on October 31, 2022, and after. For example, the federal court case addressing whether DACA is lawful, *Texas v. United States* in the Fifth Circuit Court of Appeals, remains pending, and the court's decision that prevents USCIS from approving or denying initial DACA requests also remains in place. We expect the Fifth Circuit will issue a decision in the near future, so please continue monitoring the news and follow us on social media for DACA updates.

In addition, we recommend monitoring news releases and social media posts from trusted immigrants' rights organizations such as [United We Dream \(UWD\)](#), the [Immigrant Legal Resource Center \(ILRC\)](#), and the [National Immigration Law Center \(NILC\)](#). We have provided links to their announcements about the DACA final rule below.

Our center will be watching closely as things evolve and will continue to provide updates. Please contact your [campus attorney](#) if you have questions or concerns.

Sincerely,

UC Immigrant Legal Services Center

Other Resources:

- [**United We Dream \(UWD\):** Webpage on the DACA Rule](#)
- [**Immigrant Legal Resource Center \(ILRC\):** What is the DACA Rule and How Does It Impact Me?](#)
- [**National Immigration Law Center \(NILC\):** DACA Information and FAQ](#)
- [**USCIS Website:** DACA Page](#)