

New 2022 DACA Rule

On August 25, 2022, the Biden Administration published a new rule enshrining the DACA program in federal regulations. The new rule is scheduled to take effect on October 31, 2022.

WHAT IS DACA?

Established by President Obama in 2012, DACA (Deferred Action for Childhood Arrivals) allowed hundreds of thousands of young undocumented immigrants to live and work legally in the U.S., subject to renewal every two years. To qualify, you had to be undocumented when the program was announced; have arrived in the U.S. prior to your 16th birthday; have lived continuously in the U.S. since June 15, 2007; be in school or have graduated, obtained a GED, or been honorably discharged from the military; and have no serious criminal record.

There are currently 611,270 active DACA holders throughout the country, including 5,070 in Massachusetts.¹

WHAT DOES THE NEW RULE SAY, AND IS IT DIFFERENT FROM THE DACA PROGRAM THAT HAS BEEN IN PLACE SINCE 2012?

The new rule keeps in place the *same eligibility rules as the DACA program* that has been in place since 2012. In order to be eligible, individuals must still meet the same presence, age, and education requirements. The new rule differs in small ways. For example, once the new rule takes effect, individuals can choose to apply for Deferred Action (protection from deportation) without also applying for a work permit.

I HAVE DACA RIGHT NOW, DOES THIS CHANGE ANYTHING?

No! If you currently have DACA, your DACA grant and work permit continue to be valid until their expiration. When you renew, your renewal will be processed under the new rule, but eligibility criteria remains the same.

I HAVE A PENDING APPLICATION FOR RENEWAL, WHAT WILL HAPPEN?

Applications for renewal (filed before a grant of DACA expires or less than a year after DACA expires) will continue to be processed. The new rule is not scheduled to take effect until October 31, 2022, so renewal applications being considered now are still being processed under the current program. Renewals processed on or after October 31st will be processed under the new rule, but applicants should see little noticeable difference in the way their applications are adjudicated.

¹ <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>

I AM ELIGIBLE FOR DACA BUT HAVE NEVER APPLIED, DOES THIS NEW RULE MEAN I WILL BE ABLE TO APPLY?

Unfortunately, no. According to the immigration agency, even though the new rule recreates the entire DACA program with the same eligibility criteria, a [court order from July 2021](#) prevents the federal government from processing initial applications (applications from someone who has never before applied, or someone who had DACA but it expired more than one year ago).

WHAT HAPPENS TO DACA NOW?

The July 2021 court order has been appealed to the Fifth Circuit by the Biden Administration, and that case remains pending.

While this new rule places DACA on more solid legal footing, it is still likely to face additional court challenges. DACA has long been a target of anti-immigrant politicians and activists who have frequently filed suit in courts with judges sympathetic to their political views, and we could see implementation of this new rule delayed or even blocked.

If immigration is able to start processing initial applications again we will make that information available on our website.

WHAT CAN BE DONE TO TRULY PROTECT DACA HOLDERS AND DREAMERS?

In order for Dreamers to receive permanent protection, Congress must pass legislation providing a pathway to citizenship for Dreamers and other undocumented individuals. Legislation that would provide such a pathway has been introduced in both the House and Senate, and has garnered bipartisan support. Congress must act on permanent protection and a path to citizenship, not only for Dreamers, but for all 11 million living without status.