



## **DACA Final Rule: What You Need to Know**

Last Updated: August 25, 2022

- 1. What is DACA?** DACA (Deferred Action for Childhood Arrivals) is a policy implemented by the U.S. Department of Homeland Security (DHS) through a memorandum in 2012 that allows certain noncitizens who entered the United States before the age of sixteen, and who meet educational, residential, and other requirements, to request a form of prosecutorial discretion called “deferred action.” DACA recipients receive a two-year period of protection and can apply for work authorization. More than 825,000 people have received deferred action under DACA.
- 2. What is the DACA Final Rule?** On August 24, 2022, the DHS’s U.S. Citizenship and Immigration Services (USCIS) released an advance copy of a [final rule](#) that would codify the DACA 2012 policy into regulation. The language of the final rule is similar to last year’s proposed rule and the DACA 2012 memo and retains the following threshold requirements:
  - came to the United States under the age of 16;
  - continuously resided in the United States from June 15, 2007 to the time of filing
  - physically present in the United States on both June 15, 2012 and at the time of filing the DACA request;
  - unlawful immigration status on June 15, 2012, as well as at the time of request;
  - currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
  - not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

The Final Rule continues the process that DACA applicants must follow in requesting work authorization and affirms the policy that though DACA is not a lawful status, recipients are considered “lawfully present” in the United States for immigration purposes and will not accrue “unlawful presence” as a DACA recipient. This rule maintains the policy that DACA recipients are not a priority for immigration enforcement.

### **3. What are the changes between the Proposed Rule and the Final Rule?**

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- **Filing Requirements:** The Proposed Rule would have modified the existing filing process and fees for DACA by making it optional to submit a request for employment authorization. The Final Rule retains the requirement that DACA requestors will file for DACA concurrently with work authorization. DHS will adopt the fee structure proposed of an \$85 filing fee for DACA as well as a filing fee of \$410 for the work authorization.
  - **Criminal History:** In the Final Rule, DHS clarifies that consistent with longstanding DACA policy, expunged convictions, juvenile delinquency adjudications, and immigration-related offenses characterized as felonies or misdemeanors under State laws are not considered automatically disqualifying convictions.
  - **Termination of DACA:** The Proposed Rule stated that USCIS could terminate DACA at any time in its discretion with or without notice and that DACA would terminate automatically upon departure from the United States without advance parole or upon the filing of a Notice To Appear (NTA). The Final Rule maintains that USCIS may terminate DACA at any time at its discretion, but that USCIS will provide DACA recipients with notice, but that such notice is not required if the individual is convicted of certain national security-related offenses involving conduct. DHS may also terminate DACA following notice for recipients who depart from the United States without first obtaining an advance parole document and subsequently enter the United States without inspection.
  - **Employment Authorization:** The Proposed Rule would have terminated employment authorizations upon the termination of DACA. The Final Rule clarifies that employment authorization terminates when DACA is terminated and not separately when removal proceedings are instituted.
4. **When will the Final Rule take effect?** The Final Rule will take effect on October 31, 2022. However, because of an injunction issued by a Texas court on July 16, 2021, USCIS may not grant those seeking DACA for the first time.

### **WHAT YOU NEED TO KNOW ABOUT THE STATUS OF DACA**

Below is some information about what you need to know about the status of DACA while this litigation is pending. Please consult with an immigration attorney if you need legal advice.

1. **Will USCIS grant DACA to first-time recipients?** No. Because of litigation, USCIS will not grant DACA to those seeking DACA for the first time.
2. **I have DACA. Does my status change?** No, current DACA recipients keep their deferred action status and work permits until they expire. DACA recipients need not request DACA anew under the new rule to retain their DACA.

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- 3. I have DACA. Can I renew my DACA?** Yes. If you have been granted DACA before, you may submit an application to renew DACA as long as you meet the requirements in the Final Rule.
- 4. My DACA has expired. Can I renew my DACA?** It depends. Based on the current court order, former DACA recipients whose DACA has lapsed for more than one year cannot receive a renewed grant of DACA.
- 5. I have DACA. Can I still apply for advance parole?** Yes. The Final Rule allows current DACA recipients to apply for advance parole.
- 6. If USCIS denies my request for DACA under the new rule, will I be placed in removal proceedings?** Generally, no. If USCIS denies a request for DACA, USCIS will not issue a Notice to Appear or refer the case to ICE based on the denial, unless it is a case involving denial for fraud, threat to national security, or public safety concerns.
- 7. Will information provided in a DACA request be used for immigration enforcement purposes?** Generally, no. Information provided by the requestor about themselves will not be used for immigration enforcement purposes unless DHS is initiating enforcement proceedings due to a criminal offense, fraud, a threat to national security, or public safety concerns. Information related to a requestor's family members will not be used for immigration enforcement purposes against the family members.

## RESOURCES

1. Final Rule (unpublished until August 30, 2022): <https://public-inspection.federalregister.gov/2022-18401.pdf>
2. USCIS DACA Final Rule News Release: <https://www.uscis.gov/newsroom/news-releases/dhs-issues-regulation-to-preserve-and-fortify-daca>
3. Penn State Law's Center for Immigrants' Rights Clinic DACA Proposed Rule Fact Sheet: <https://www.presidentsalliance.org/wp-content/uploads/2021/09/2021-09-28-The-Proposed-DACA-Regulation-What-You-Need-to-Know.pdf>

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