UMass FAQ on DACA Rescission

This FAQ is in response to the announcement of Attorney General Jeff Sessions to rescind the Deferred Action for Childhood Arrivals (DACA) program and supplemental Memorandum, FAQ, and Fact Sheet issued by Department of Homeland Security (DHS) on 09/05/2017.


See also USCIS website information about DACA processing

https://www.uscis.gov/daca2017

The responses to the FAQs listed below are informational and do not constitute legal advice. They are intended to help affected students understand federal action to rescind DACA, including critical timelines and longer term impact.

Every case is different and legal advice will vary depending on the individual circumstances of each student. Affected students are encouraged to reach out to your DREAMER point person as a first level contact to assist in navigating individual student questions and identifying campus and community resources for DREAMERS.

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Some DACA beneficiaries, and DREAMERS in general, may have other immigration options under the law. These should be carefully explored with an immigration attorney. UMass Dartmouth legal and community resources can be found at http://www.umassd.edu/eeo/undocumented-daca/Additional information regarding impact of federal immigration action at UMass can be found at: http://www.umassd.edu/publicaffairs/immigrationupdates/.

The University continues to keep abreast of immigration developments that may affect UMass and its students, faculty, and staff. Another UMass FAQ addressing broader DREAMER issues will be released soon.
This guidance is valid as of September 6, 2017 at 5 p.m. Please note that the situation with respect to immigration is fluid and this FAQ will be updated as DHS issues new information.

Definitions:

- **DACA beneficiary**: a recipient of USCIS documents showing classification as an individual with “deferred action”, i.e. protection from deportation, on approved Form I-821D valid for 2 years. DACA beneficiaries also may have an approved employment authorization document (EAD) valid for a 2 years. DACA beneficiaries have protection from deportation and work authorization for the duration of their validity period. **DACA beneficiaries do not have legal immigration status in the U.S.**
- **DREAMER**: an individual brought to the U.S. without legal documents at a young age. DREAMERS is the umbrella term for undocumented individuals who came to the US “illegally” as children. Not all DREAMERS applied for DACA; as such they remain unreported to federal government. Depending on if/how Congress acts, legislation may be passed to codify DACA in the law (limited relief to DACA recipients only) or to normalize all DREAMERS.
- **Individuals in legal immigration status**: Those who entered the U.S. with legal permission and inspection. Examples include legal permanent residents, refugees and asylees, and those in temporary immigration status such as F-1, J-1, H-1B, TN, etc.

Background: Attorney General Jeff Sessions announced on that the Trump Administration will terminate the DACA program on March 5, 2018. The six-month delay is intended to give Congress time to pursue a legislative solution for DACA beneficiaries.

According to DHS accompanying Memorandum, FAQ, and Fact Sheet, the agency will phase the program out over the next 6 months and will cease accepting new initial DACA applications after 09/05/2017, but will continue to process pending cases and will accept some renewal applications for a limited period.

Summary: The Department of Homeland Security will stop accepting new applications for initial DACA benefits but will continue to process pending applications. DACA beneficiaries with an expiring employment authorization document have until October 5, 2017 to file a renewal application.

Q: **What does DACA termination mean for current beneficiaries?**

A: DACA beneficiaries with approved DACA benefits and valid employment authorization document (EAD) will be able to work and receive relief from deportation (known as “deferred action”) until their EAD expires, **even if that occurs after March 5, 2018**. However DHS retains the authority to terminate deferred action on a case-by-case basis at any time that it is deemed appropriate.

DACA beneficiaries with a valid advance parole document may continue to travel internationally using this document, though they should do so with extreme caution as re-entry into the U.S. is not guaranteed.
UMass continues to recommend that DACA beneficiaries do not engage in international travel, including study abroad, during this volatile time.

Q: What will happen to DACA beneficiaries whose request for an extension is pending at U.S. Citizenship and Immigration Services (USCIS)?

A: USCIS will continue to adjudicate – on an individual, case-by-case basis – pending DACA renewal requests and associated EAD applications. According to the latest official statistics, 71,854 renewal applications were pending at USCIS at second quarter of FY 2017.

Pending applications for Advance Parole (travel) documents will not be adjudicated. DHS will close these applications and return their filing fees.

Q: Can DACA beneficiaries with expiring EADs still file for renewal?

A: A DACA beneficiary whose EAD will expire between September 5, 2017 and March 5, 2018 can file an application to renew benefits. Renewal applications must be “accepted by” USCIS on Thursday, October 5, 2017. There is some vagueness around the term “accepted by” – for instance, does it mean USCIS has physically received the renewal at a processing center or does it mean USCIS has issued a receipt notice? Given this ambiguity, UMass recommends DACA beneficiaries who qualify for renewal send their completed renewal paperwork with filing fee via courier and overnight delivery no later than Monday, October 2, 2017.

No other renewals will be accepted. DACA beneficiaries with an EAD expiring after March 5, 2018 or who have failed to file by the October 5 deadline will not be able to renew.

Q: What will happen to initial DACA applications currently pending at USCIS?

A: USCIS has indicated that it will continue to adjudicate – on an individual, case-by-case basis – initial DACA requests and related applications for EAD received by the agency as of September 5, 2017. DACA EADs have typically been issued for two (2) years.

Q: What is the likelihood that Congress will pass legislation to aid DACA beneficiaries?

A: Several bills benefitting DACA beneficiaries and other persons brought to the U.S. as children are already pending in Congress, including the bipartisan DREAM Act (S. 1615 and H.R. 3440). Some would provide a path to lawful residence others would offer temporary protections, i.e. codify DACA into law. More bills are expected to be introduced in Congress in the next six months.

Several Republicans have expressed support for a permanent legislative solution for DACA beneficiaries, but while support within the party has grown, there remains vocal opposition. Debate within the Republican Party as well as a busy legislative session and the threat of a government shut down over passing the budget means that the prospect for DREAMER/DACA legislation remains uncertain.
Q: What will happen after March 5, 2018 if Congress does not pass legislation to benefit DACA recipients?

A: Without a legislative solution, beneficiaries will lose their authorization to work in the U.S. and relief from deportation after their EADs expire. DHS has said that it does not plan to provide information about expired DACA beneficiaries to U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) unless enforcement actions against an individual are already underway, but it reserves the authority to reverse that policy.

Q: Is ICE taking enforcement action against DACA beneficiaries during the 6 months “phase out” period?

A: Following the announcement to rescind DACA, DHS Office of Academic Engagement scheduled a call with members of the Association of Public Land Grant Universities (APLU) yesterday afternoon. During the call, the DHS stated that ICE enforcement practice regarding DACA “remains unchanged” and further clarified that ICE will not detain or deport an individual for the duration that he or she has valid DACA documents based solely on lack of legal status.

DHS also stated that the 2011 ICE Sensitive Locations policy remains in effect. This ICE policy designates school (including universities) and hospitals as “sensitive locations” that should not be the focus of enforcement actions, including surveillance as well as interviews, searches and arrests absent extraordinary or exigent circumstances.

Residential spaces such as on-campus dorm rooms are considered private and federal enforcement officials are not permitted in such spaces absent a valid criminal warrant or consent from the resident. An administrative warrant alone does not permit ICE officials to enter private, residential spaces absent consent.

UMass Campus police do not cooperate with voluntary ICE detainer requests. This practice was upheld by the recent Massachusetts Supreme Judicial Court decision in Lunn v. Commonwealth.

Source: Q&A content is taken from https://www.fragomen.com/knowledge-center/immigration-alerts/trump-administration-announces-phase-out-daca-program, with additional information particular to universities incorporated by UMass.