



The Dream Act, DACA, and Other Policies Designed to Protect Dreamers

With the attempted rescission of the Deferred Action for Children Arrivals (DACA) initiative in September of 2017, there has been renewed pressure on Congress to pass federal legislation known as the Dream Act to protect young immigrants who are vulnerable to deportation. This fact sheet provides an overview of the Dream Act¹ and other similar legislative proposals, explains changes made to DACA on March 13, 2019, and provides information about policies at the state level that support Dreamers.

History of the Dream Act

The first version of the Development, Relief, and Education for Alien Minors (DREAM) Act was introduced in 2001.² As a result, young undocumented immigrants have since been called “Dreamers.” Over the last 18 years, at least ten versions of the Dream Act have been introduced in Congress. While the various versions of the Dream Act have contained some key differences,³ they all would have provided a pathway to legal status for undocumented youth who came to this country as children. Some versions have garnered as many as 48 co-sponsors in the Senate and 152 in the House.⁴

Despite bipartisan support for each bill, none has become law.⁵ The bill came closest to full passage in 2010 when it passed the House of Representatives but fell just five votes short of the 60 necessary to proceed in the Senate.⁶

In July 2017, versions of the Dream Act were introduced in the Senate by Senators Lindsay Graham (R-SC) and Richard Durbin (D-IL) and in the House by Rep. Lucille Roybal-Allard (D-CA) and Rep. Ileana Ros-Lehtinen (R-FL).⁷ That year, members of the House of Representatives introduced several other legislative proposals to address undocumented youth, most of which were variants of the Dream Act.⁸ Although some of these bills drew significant support, none became law.

Current Federal Legislative Proposals

The most recent version of the Dream Act, H.R. 2820, was introduced in May 2019 in the House by Rep. Roybal-Allard.⁹ H.R. 2820 was passed by the House Judiciary Committee on May 22, 2019, and the bill was subsequently combined with H.R. 2821, the American Promise Act of 2019, to form H.R. 6, the American Dream and Promise Act of 2019.¹⁰ H.R. 6 would provide permanent legal status for Dreamers as well as beneficiaries of two humanitarian programs: Temporary Protected Status (TPS) and Deferred Enforced Departure (DED). H.R. 6 passed the House on June 4, 2019, by a vote of 237 to 187.

What Does the Dream Act do?

The American Dream and Promise Act of 2019 would provide current, former, and future¹¹ undocumented high-school graduates and GED recipients a three-step pathway to U.S. citizenship through college, work, or the armed services.

STEP 1: CONDITIONAL PERMANENT RESIDENCE

An individual is eligible to obtain conditional permanent resident (CPR) status for up to 10 years, which includes work authorization, if the person:¹²

- entered the United States under the age of 18;
- entered four years prior to enactment and has since been continuously present;
- has been admitted to an institution of higher education or technical education school, has graduated high school or obtained a GED, or is currently enrolled in secondary school or a program assisting students to obtain a high school diploma or GED;
- has not been convicted of any "crime involving moral turpitude" or controlled substance offense, any crime punishable by more than one year in prison, or three or more offenses under state or federal law. There is an exception for offenses which are essential to a person's immigration status;
- has not been convicted of a crime of domestic violence unless the individual can prove the crime was related to being the victim of domestic violence, sexual assault, stalking, child abuse, neglect in later life, human trafficking, battery, or extreme cruelty.

Under the terms of the bill, the Secretary of Homeland Security can issue waivers for humanitarian purposes, for family unity, or when the waiver is otherwise in the public interest. In addition, anyone who has DACA would be granted a swift path to CPR status.¹³

STEP 2: LAWFUL PERMANENT RESIDENCE

Anyone who maintains CPR status can obtain lawful permanent residence (LPR status or a "green card") by satisfying one of the following requirements:¹⁴

- Higher education: Has completed at least two years, in good standing, of higher education or of a program leading to a certificate/credential from an area career and technical education school;
- Military service: Has completed at least two years of military service with an honorable discharge, if discharged; or
- Work: Can demonstrate employment over a total period of three years and at least 75 percent of the time that the individual had employment authorization, with exceptions for those enrolled in higher education or technical school.

Individuals who cannot meet one of these requirements can apply for a “hardship waiver” if the applicant is a person with disabilities, a full-time caregiver of a minor child, or for whom removal would cause extreme hardship to a spouse, parent, or child who is a national or lawful permanent resident of the United States.

STEP 3: NATURALIZATION

After maintaining LPR status for five years, an individual can generally apply to become a U.S. citizen through the normal process.

According to the Migration Policy Institute, as many as 2.31 million individuals would qualify for conditional permanent resident status under the 2019 version of the Dream Act, putting them on a path to citizenship. The bill would also provide a path to citizenship for an estimated 429,000 people who are current or former beneficiaries of TPS or DED.¹⁵

Deferred Action for Childhood Arrivals

On June 15, 2012, then-Secretary of Homeland Security Janet Napolitano created Deferred Action for Childhood Arrivals (DACA). DACA is an exercise of prosecutorial discretion, providing temporary relief from deportation (deferred action) and work authorization to certain young undocumented immigrants brought to the United States as children.¹⁶ DACA has enabled almost 800,000 eligible young adults to work lawfully, attend school, and plan their lives without the constant threat of deportation, usually to an unfamiliar country.¹⁷ Unlike federal legislation, however, DACA does not provide permanent legal status to individuals and must be renewed every two years.

On September 5, 2017, Acting Secretary of Homeland Security Elaine Duke rescinded the 2012 DACA memorandum and announced a “wind down” of DACA.¹⁸ Effective immediately, no new applications for DACA would be accepted. DACA beneficiaries whose status was due to expire before March 5, 2018, were permitted to renew their status for an additional two years if they applied by October 5, 2017.¹⁹ Any person for whom DACA would have expired as of March 6, 2018, would no longer have deferred action or employment authorization.²⁰

On January 9, 2018, a federal judge in California blocked the Trump administration’s termination of DACA and continued to allow renewal requests.²¹ Similarly, on February 13, 2018, a federal judge in New York issued a preliminary injunction preventing the administration from abruptly ending the DACA program.²² As of August 2019, individuals with DACA or those who have had DACA in the past can continue to renew their benefits on a two-year basis. However, first-time applications are no longer being accepted.²³

State Policies that Protect Dreamers

States cannot legalize the status of undocumented immigrants, but they may address collateral issues that stem from being undocumented. Most notably, numerous states have enacted legislation that helps overcome barriers to higher education faced by many undocumented youth. Pursuant to some state laws and policies, undocumented students may be able to attend state universities and qualify for in-state tuition.

Colleges and universities each have their own policies about admitting undocumented students; some deny them admission, while others allow them to attend. Even when undocumented students are allowed to attend college, however, the tuition is often prohibitively expensive. If students cannot prove legal residency in a state, they must pay the much higher out-of-state or international-student tuition rates. Further, undocumented students do not qualify for federal student loans, work study, or other financial assistance. As a result, it is extremely difficult for undocumented students to afford to attend public universities.²⁴

To help undocumented students afford college, at least 19 states have passed laws that provide them with the opportunity to receive in-state tuition. California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, Virginia, and Washington permit undocumented students who have attended and graduated from the state's primary and secondary schools to pay the same college tuition as other state residents.²⁵ The laws generally require undocumented students to attend a school in the state for a certain number of years and graduate from high school in the state.²⁶

Endnotes

1. Although the first “DREAM” act was known by its acronym in all capital letters, subsequent proposals have adopted the title “Dream.”
2. S. 1291, 107th Cong. (2001).
3. For example, prior versions of the Dream Act have varied in their treatment of potential beneficiaries who are abroad, the treatment of close family members of potential beneficiaries, and in the duration of the conditional status to be conferred.
4. S. 1545, 108th Cong. (2003); H.R. 1648, 108th Cong. (2003).
5. S. 1291, 107th Cong. (2001); S. 1545, 108th Cong. (2003); H.R. 1648, 108th Cong. (2003); S. 2075, 109th Cong. (2005); H.R. 5131, 109th Cong. (2005); S. 2205, 110th Cong. (2007); H.R. 1275, 110th Cong. (2007); H.R. 5241, 111th Cong. (2010); S. 729, 111th Cong. (2010); S. 3992, 111th Cong. (2010); H.R. 1842, 112th Cong. (2011); S. 952, 112th Cong. (2011); H.R. 1468, 115th Cong. (2017); H.R. 3591, 115th Cong. (2017). The comprehensive immigration reform bill S. 744, which passed the Senate in 2013 with bipartisan support from 68 Senators, included special legalization provisions for Dreamers.
6. H.R. 5241, 111th Cong. (2010); 12/18/2010 Cloture on the motion to agree to House amendment to Senate amendment not invoked in Senate by Yea-Nay Vote. 55 – 41.
7. S. 1615, 115th Cong. (2017); H.R. 3440, 115th Cong. (2017).
8. For example, Rep. Carlos Curbelo (R-FL) proposed the Recognizing America’s Children (RAC) Act, which contained a more restrictive path to legalization than the Dream Act bill currently pending in the Senate and House. H.R. 1468, 115th Cong. (2017). Rep. Luis Gutierrez (D-IL) introduced the American Hope Act, which had a more generous path to legalization than any of the Dream Act bills. H.R. 3591, 115th Cong. (2017). In addition, Rep. Mike Coffman (R-CO) introduced the Bar Removal of Individuals who Dream and Grow our Economy Act (BRIDGE Act), that would not create a permanent legal status for Dreamers, but instead would provide deferred action from deportation to Dreamers for only three years. H.R. 496, 115th Cong. (2017).
9. H.R. 2820, 116th Cong. (2019).
10. H.R. 6, 116th Cong. (2019).
11. *Ibid.* at Section 102(b)(1)(D).
12. *Ibid.* at Section 102(b)(1).
13. *Ibid.* at Section 102(b)(2).
14. *Ibid.* at Section 105(a).
15. Julia Gelatt, “More than a DREAM (Act), Less than a Promise” (Washington, DC: Migration Policy Institute, March 2019), <https://www.migrationpolicy.org/news/more-dream-act-less-promise>.
16. To be eligible, DACA applicants have had to meet the following requirements:
 - Arrived in the United States before turning 16, and were under the age of 31 on June 15, 2012;
 - Continuously resided in the United States from June 15, 2007, to the present;
 - Were physically present in the United States on June 15, 2012, as well as at the time of requesting deferred action;
 - Entered without inspection before June 15, 2012, or any previous lawful immigration status expired on or before June 15, 2012;
 - Are either in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are honorably discharged veterans of the U.S. Coast Guard or the U.S. Armed Forces; and
 - Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors occurring on different dates and arising out of different acts, omissions, or schemes of misconduct, and do not otherwise pose a threat to national security or public safety.

17. “Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017,” U.S. Citizenship and Immigration Services, last updated March 31, 2017, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr2.pdf.
18. Memorandum from Elaine Duke, Acting Sec., Department of Homeland Security, to James McCament, Acting Director, U.S. Citizenship and Immigration Services, Thomas Homan, Acting Director, U.S. Immigration and Customs Enforcement, Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Joseph Maher, Acting General Counsel, Ambassador James Nealon, Assistant Secretary International Engagement, Subj: Memorandum on Recession of Deferred Action for Childhood Arrivals (DACA) (September 5, 2017) <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.
19. Ibid.
20. Ibid.
21. See *Regents of U. of California v. U.S. Dept. of Homeland Sec.*, 279 F. Supp. 3d 1011, 1020 (N.D. Cal. 2018), *aff’d sub nom. Regents of the U. of California v. U.S. Dept. of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018); Michael D. Shear, “Trump Must Keep DACA Protections for Now,” *New York Times*, January 9, 2018, <https://www.nytimes.com/2018/01/09/us/trump-daca-improper.html>.
22. *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 407 (E.D.N.Y. 2018).
23. Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction,” U.S. Citizenship and Immigration Services, last updated February 22, 2018, <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.
24. Roberto G. Gonzales, *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students* (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, October 2007), p. 2, <https://www.americanimmigrationcouncil.org/research/wasted-talent-and-broken-dreams-lost-potential-undocumented-students>.
25. “Undocumented Student Tuition: Overview,” National Conference of State Legislatures, last updated October 29, 2015, <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>; “US States that Offer In-State Tuition Rates to Undocumented Students (and What to Do if Your State Isn’t One of Them),” University of the People, <https://www.uopeople.edu/blog/us-states-that-offer-in-state-tuition-rates-to-undocumented-students-and-what-to-do-if-your-state-isnt-one-of-them/>.
26. Ibid.