

NYIC DACA Backgrounder: Policy Overview and Demographics

On June 15, 2012, President Barack Obama announced that the U.S. Department of Homeland Security (DHS) would not deport certain DREAM Act–eligible undocumented youth. Under a directive from the secretary of DHS, these youth will be given temporary relief called “deferred action.” Deferred action will be valid for two years and may be renewed at the end of the two years. Individuals who apply for deferred action are also eligible to apply for work authorization.

What is Deferred Action?

Deferred action is a kind of administrative relief from deportation that has been around a long time. (“Administrative” relief is relief that may be granted by DHS, without the person necessarily having to go to immigration court.) It allows a non-U.S. citizen to temporarily remain in the U.S. with legal immigration status. The person may also apply for an employment authorization document (a “work permit”) for the period during which he or she has deferred action status. Deferred action will be granted on a case-by-case basis. Even if you meet the requirements outlined below, DHS will still have to decide whether to grant you deferred action. A grant of deferred action is *temporary* and does not provide a path to lawful permanent resident status or U.S. citizenship.

Deferred Action Criteria:

To be eligible for deferred action, you must:

1. Have come to the United States before your sixteenth birthday.
2. Have continuously lived in the U.S. since June 15, 2007, and up to the present time.
3. Be present in the U.S. on June 15, 2012, and at the time of making your request for deferred action.
4. Not have lawful immigration status on June 15, 2012. This means you must have entered the U.S. without papers before June 15, 2012, or, if you entered lawfully, your lawful immigration status must have expired as of June 15, 2012.
5. Be at least 15 years old, if you have never been in deportation proceedings or your proceedings were terminated. If you are currently in deportation proceedings, have a voluntary departure order, or have a deportation order, and are not in immigration detention, you may apply for deferred action even if you are not yet 15 years old.
6. Be 30 years old or younger as of June 15, 2012 (a person who had not yet turned 31 on that date is also eligible).
7. Be “currently in school,” have graduated or obtained a certificate of completion from high school, have obtained a high school equivalency diploma by taking the GED[®] test or through another state-approved pathway, or be an honorably discharged veteran of the Coast Guard or U.S. armed forces. If you are enrolled in school on the date that you submit your deferred action application, that will be considered to “be in school.” The USCIS defines “currently in school” to include various types of programs such as certain education programs that assist students in obtaining a high school diploma or its recognized equivalent under State law or in passing a GED exam or other equivalent state-authorized exam. The USCIS also defines “currently in school” to include certain education, literacy, or career training programs (including vocational training) designed to lead to placement in postsecondary education, job training, or employment where the

applicant is working toward such placement. Note that not all programs will automatically qualify as meeting the “currently in school” requirement. See further details on page 3.

8. Have not been convicted of a felony offense. A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.
9. Have not been convicted of a “*significant misdemeanor*” offense or three or more non-significant misdemeanor offenses.
10. Not pose a threat to national security or public safety (DHS is still defining what these terms mean but has indicated that they could include gang membership, youthful offender or juvenile delinquency or arrests that did not lead to conviction, or participation in activities that threaten the U.S.).
11. Pass a background check.

Note: In New York State, an individual may earn a New York State High School Equivalency Diploma by passing the GED® test or through other New York State Education Department -approved pathways to such a diploma.

Source: National Immigration Law Center FAQ, updated 8/7/12, and NYC updates

New York City and New York State stand to benefit tremendously from guiding workers out of the informal economy and into safer, higher-earning and higher-tax-revenue-generating positions, as well as in giving some of the most vulnerable students a powerful incentive to stay in school.

Populations Potentially Impacted by Deferred Action and Work Authorization

Note: Numbers in this section use figures from high end of spectrum in the chart on page 5.

1. **COLLEGE STUDENTS/GRADUATES:** students in college, or individuals who have obtained degree/s, often referred to as “DREAMers.”
 - a. In NYC, an estimated 10,000 individuals. This figure only includes enrolled individuals up to and including 24 years old.
 - b. Corresponding estimate for New York State is 14,000 people, which also only includes enrolled individuals up to and including 24 years old.
2. **ENROLLED IN SCHOOL:** students in the K-12 school system. This includes those who may not be college bound due to various reasons: can’t afford college, are English Language Learners, are in Special Education, are on the verge of dropping out or are at-risk kids (truants, pregnant teens, teenage parents, working students, etc.). Deferred Action/Work Authorization is a powerful incentive to do well and stay in school.
 - a. In NYC, this group includes an estimated 13,000 students currently 15 and above. An additional 22,000 are currently in school in NYC and under 15 and will age into the system.
 - b. In New York State, this group includes an estimated 18,800 students currently 15 and above. An additional 31,000 are currently in school and under 15 and will age into the system.
 - c. Numbers include college-bound students, often referred to as “DREAMers.”
3. **HIGH SCHOOL GRADUATES/NO COLLEGE:** individuals who graduated from high school or have obtained a New York State High School Equivalency Diploma by passing the GED® test or through another New York State Education Department (NYSED)-approved pathway to a High School

Equivalency Diploma but DID NOT GO TO COLLEGE and are working. They may be single or raising families of their own.

- a. In NYC, an estimated 17,000 individuals.
 - b. In New York State, an estimated 24,000 individuals.
4. **INDIVIDUALS WHO NEED TO ENROLL:** Those who dropped out of school (16yrs-30yrs old – single or raising families) or never enrolled in school but could enroll in an education, literacy, or career training program (including vocational training) that leads to placement in post secondary education, job training or employment; or enroll in an education program assisting students in obtaining a high school diploma or New York State High School Equivalency Diploma (obtainable by passing the GED[®] test or through another NYSED-approved pathway), and then apply for deferred action/work authorization.
- a. In NYC, an estimated 16,000 individuals.
 - b. In New York State, an estimated 22,000 individuals.

New Requirements Regarding Group 4 Above

The USCIS has confirmed that a person need not have met the educational requirements for Deferred Action for Childhood Arrivals on June 15, 2012 as long as s/he meets the educational requirements at the time s/he submits her/his request for Deferred Action. In all circumstances, the person seeking Deferred Action must meet all the other eligibility requirements. USCIS Director Alejandro Mayorkas stated that there is no deadline for submitting a request for Deferred Action for Childhood Arrivals.

On August 14, 2012, the USCIS provided an updated definition of who is considered to be “currently in school” for purposes of DACA. The definition is reproduced below:

To be considered “currently in school” under the guidelines, you must be enrolled in:

- *a public or private elementary school, junior high or middle school, high school, or secondary school;*
- *an education, literacy, or career training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; or*
- *an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a General Educational Development (GED) exam or other equivalent state-authorized exam.*

Such education, literacy, or career training programs include, but are not limited to, programs funded, in whole or in part, by federal or state grants. Programs funded by other sources may qualify if they are administered by providers of demonstrated effectiveness, such as institutions of higher education, including community colleges, and certain community-based organizations.

In assessing whether such an education, literacy or career training program not funded in whole or in part by federal or state grants is of demonstrated effectiveness, USCIS will consider the duration of the program’s existence; the program’s track record in assisting students in obtaining a regular high school diploma or its recognized equivalent, in passing a GED or other state-authorized exam, or in placing students in postsecondary education, job training, or employment; and other indicators of the program’s overall quality. For individuals seeking to demonstrate that they are “currently in school” through

enrollment in such a program, the burden is on the requestor to show the program’s demonstrated effectiveness.

Therefore, it appears that education, literacy, and career training programs that are funded in whole or in part by the Federal or State governments carry more weight with the USCIS than such programs supported in whole through private funding. It appears that a person is in such an education, literacy, or career training program (e.g., enrolled in a program to prepare for the GED® test) that is supported through private funding does not automatically demonstrate to the USCIS that s/he is “currently in school” for purposes of DACA. The current guidance from the USCIS is that the person “may” qualify if providers of the services have a “demonstrated effectiveness” in providing the services. It will be the requestor’s responsibility to prove to the USCIS that the provider has a demonstrated effectiveness.

Partial Profile of New York City Populations: (Source – New York City Department of City Planning)

- 40,00-60,000 are now enrolled in school (does not include those enrolled in GED® test prep, education, literacy or career training programs, etc.) or are high school graduates that may qualify given the USCIS/DHS requirements
- In addition, there are 16,000 without a high school diploma or New York State High School Equivalency Diploma and currently not enrolled in school that would need to re-enroll to qualify (Group 4, mentioned on page 3)
 - 9% of these are under 18yrs old
 - 39% have below a 9th grade education
 - 2/3 are male
 - 43% are Mexican
 - Top occupations for this group are:
 - Cook
 - Driver and truck driver
 - Janitor and building cleaner
 - Construction laborer
 - Waiter
 - Stock clerk and order filer

Age Profile of National and New York State Populations: (Source – Migration Policy Institute)

	National Estimate	Share	New York State Estimate
Total	1,760,000	100%	110,000
Immediate Eligibility (Ages 15-30)	1,260,000	72%	79,200
15 to 17	250,000	14%	15,400
18 to 21	390,000	22%	24,200
22 to 24	260,000	15%	16,500
25 to 30	360,000	20%	22,000
Future Eligibility (Ages 5-14)	500,000	28%	30,800
5 to 8	110,000	6%	6,600
9 to 11	170,000	10%	11,000
12 to 14	220,000	12%	13,200

Note:

- All MPI numbers do not take into account the restrictions on which education, literacy or career training programs grant eligibility to enrollees.
- Estimates include those in Group 4, mentioned on page 3.

How the Estimates Were Obtained:

- The following breakdown of potential beneficiaries by age group includes MPI national estimates and New York State estimates obtained by applying a percentage distribution to the MPI data and using the MPI estimate of 110,000 total beneficiaries in New York State.

Source:

- http://www.migrationpolicy.org/pubs/FS24_deferredaction.pdf

Breakdown of Potential Beneficiaries Nationally, in New York State and in New York City

Source: Migration Policy Institute/NYC Department of City Planning

Educational Status/Attainment	MPI National Estimates	New York State Estimate	New York City Estimate
Currently in school	800,000	50,000	36,000
Of those in school, under 15	500,000	31,000	22,000
Of those in school, 15 and above	300,000	18,800	13,000
High school grad/GED (terminal degree)	390,000	24,000	17,000
College enrollee or college graduate (2-year degree or higher)	220,000	14,000	10,000
Has a college degree	80,000	5,000	4,000
Enrolled in college (16-24)	140,000	9,000	6,000
No high school degree, not enrolled	350,000	22,000	16,000
Totals	1,760,00	110,000	79,000

Notes:

- Numbers above include youth who may not be immediately eligible because they are under 15.
- *CPS data do not provide information on enrollment status of adults older than 24 or younger than 16. Therefore, adults ages 25-30 who are enrolled in college are shown in the “high school graduate/GED (terminal degree)” group. Similarly, even though a small number of youth under 16 could be out of school, they appear in the “Currently enrolled in K-12” group.

How the Estimates Were Obtained:

The chart above integrates data from the New York City Department of City Planning and Migration Policy Institute to outline national, statewide and New York City estimates. These numbers are only estimates. The New York State estimates were obtained by applying a percentage distribution from MPI's national estimates (see MPI National Estimates column above) to their estimate of 110,000 total potential beneficiaries in New York State. An additional percentage distribution was developed from MPI's national estimates that *excluded* the 350,000 that would need to re-enroll, and this distribution was applied to the 40,000-60,000 range of potential beneficiaries in New York City who *would not* need to re-enroll in school. The additional estimate of 16,000 potential beneficiaries in New York City who *would* need to re-enroll obtained from the New York City Department of City Planning was then added.

Sources:

- http://www.migrationpolicy.org/pubs/FS24_deferredaction.pdf
- http://www.migrationpolicy.org/news/2012_06_15.php

Additional National Data from Migration Policy Institute

The Migration Policy Institute estimates as many as 1.76 million people nationally could be eligible to apply for deferred action as long as they have re-enrolled by the date of their application. 350,000 are youth who lack a high school degree or GED.

- Current and Future Eligibility: Of the 1.76 million potential beneficiaries, 72% (1.26 million) meet the age criteria now, while 28% could be eligible in the future as they meet age, educational, residency and other requirements.
- Region and Country of Birth:
 - 74% (1.3 million) prospective beneficiaries were born in Mexico or Central America
 - 11% (more than 180,000) came from the rest of Latin America
 - 9% (about 170,000) are from Asia
 - 6% (about 110,000) are from other parts of the world

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