

---

## FREQUENTLY ASKED QUESTIONS

# Obama Administration's Relief Process for Eligible Undocumented Youth

JUNE 19, 2012

**O**n 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 receive deferred action may apply for and may obtain employment authorization.

**IMPORTANT:** While this directive took effect on June 15, 2012, the federal government has 60 days to create a process to accept deferred action requests and is unable to accept requests at this time. ***If you apply now, your application will be rejected.***

### 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.

### Who is eligible for deferred action under the Obama administration's policy announced on June 15, 2012?

To be eligible for deferred action, you must:

- Have come to the U.S. under the age of sixteen.

- Have continuously lived in the U.S. for at least five years before June 15, 2012, and be present in the U.S. on June 15, 2012.
- Currently be in school, have graduated from high school, have obtained a general education development (GED) certificate, or be an honorably discharged veteran of the Coast Guard or U.S. armed forces.
- Have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety. (DHS is still defining which misdemeanors will be considered “significant.”)
- Be 30 years old or younger (a person who has not yet turned 31 is also eligible). (At this point, it is not clear whether the person will have to have been under age 31 on the date of the announcement, June 15, 2012, or on the date he or she applies for deferred action. This is an issue that DHS officials will be clarifying at some future time.)
- Pass a background check.

### **What are the fees associated with the deferred action process announced on June 15?**

At this point, we don't know how much it will cost to apply for deferred action under the policy announced on June 15. At the least, the cost will include a \$380 fee for the employment authorization application. Additional fees may be applied. Applicants will be able to apply for a fee waiver depending on their economic means or situation.

### **If I am granted deferred action, how long will the status last?**

Deferred action status will be granted for two years. When the two-year period expires, the grant of deferred action can be renewed, pending a review of the individual case.

### **If I am granted deferred action, will I be eligible for employment authorization?**

You will be eligible for employment authorization, but you will have to apply for it separately. If you're granted deferred action, you may apply for and get employment authorization from U.S. Citizenship and Immigration Services (USCIS). Information about employment authorization requests is available on USCIS's website at [www.uscis.gov/i-765](http://www.uscis.gov/i-765).

### **If my period of deferred action is extended, will I need to reapply for my work permit?**

Yes. If you apply for and receive an extension of the period for which you are granted deferred action, you must also request an extension of your employment authorization.

### **Will I be able to get a driver's license?**

State driver's license requirements for immigrants, and the documents accepted as proof of status, vary by state. It may take advocacy to ensure that your state recognizes persons with deferred action

status as eligible for a license. Since deferred action status is listed in the federal Real ID Act as a status that, if you have it, makes you eligible for a license that's recognized for certain federal purposes, there are strong arguments for states to grant driver's licenses to people with deferred action status.

### **Will I be able to get in-state tuition?**

The rules on in-state tuition for immigrants vary by state and sometimes by college system. Thirteen states already allow certain students to pay in-state tuition, regardless of their immigration status.<sup>1</sup> You will need to check your state's laws and policies to determine whether residents who have deferred action status are eligible to pay in-state tuition. In some states, students must have resided in the state in a lawful status for at least a year in order to qualify for in-state tuition.

Although there are strong arguments for letting resident students with deferred action pay in-state tuition, it may take advocacy to ensure that your state recognizes deferred action as an eligible category and accepts your documents as proof of status for in-state tuition purposes.

### **If I am currently in deportation proceedings, how do I get deferred action?**

Right now Immigration and Customs Enforcement (ICE) is reviewing the cases of people in deportation proceedings. If ICE identifies a case as meeting the eligibility requirements outlined above, ICE should offer the person deferred action for a period of two years. In the next few weeks, ICE will announce the process through which people in deportation proceedings can request a review of their case.

### **If I am not in deportation proceedings, how do I get deferred action?**

There is no application process yet. USCIS will be developing a process within the 60-day period immediately following the June 15 announcement. Once a process is in place, people who are not in deportation proceedings or who have a final order of removal will be able to submit a deferred action request to USCIS. If you submit such a request, it should include evidence that you are eligible for deferred action under the criteria outlined above.

### **If I am denied deferred action, will I be placed in deportation proceedings?**

If you are denied deferred action under this process, USCIS will refer your case to ICE only if you have a criminal conviction or if there is a finding of fraud in your request. It is against USCIS policy to refer cases to ICE where there is no evidence of fraud or a criminal conviction. *Before you apply*, however, it is *really important* that you first consult with a DREAM advocate or a reputable attorney—especially if you have ever been convicted of any kind of crime.

---

<sup>1</sup> See [www.nilc.org/basic-facts-instate.html](http://www.nilc.org/basic-facts-instate.html).

## How is the new deferred action policy different from DREAM legislation that has been proposed in the past?

The announcement came from DHS, which is one of the agencies within the federal government's executive branch. DHS has the power to make certain decisions about the enforcement of immigration laws. ***The executive branch does not have the power to create a path to permanent lawful status and citizenship.*** Only Congress, through its legislative authority, can grant that.

The DREAM Act is legislation that must be passed by Congress to become law. Past DREAM Act proposals have included a path to citizenship. A grant of deferred action is only temporary and does not provide a path to lawful permanent residency or citizenship.

Deferred action is only a temporary fix. We still need to fight for the DREAM Act to be enacted so undocumented youth can have a permanent solution.

## Did the president issue an executive order?

No, the president did not issue an executive order. Executive orders have the full force of law. The announcement the president made on June 15 was about a policy change. The policy change is described in a [memo](#) from DHS secretary Janet Napolitano<sup>2</sup> and a [memo](#) from ICE director John Morton.<sup>3</sup> These memos are not a change in law—they only give guidance on how DHS should apply this change in policy. The decision to grant certain young people deferred action can be changed or reversed in the future.

## Where can I get more information?

If you are in deportation proceedings, you can visit the ICE website at [www.ice.gov](http://www.ice.gov) or call the ICE hotline at 1-888-351-4024 (9 a.m. - 5 p.m., English & Spanish). Everyone else can visit USCIS's website ([www.uscis.gov](http://www.uscis.gov)) or call the USCIS hotline at 1-800-375-5283 (8 a.m. - 8 p.m., English & Spanish). Additional information is available from the website of the ICE Office of the Public Advocate, [www.ice.gov/about/offices/enforcement-removal-operations/publicadvocate/](http://www.ice.gov/about/offices/enforcement-removal-operations/publicadvocate/).

To get up-to-date information regarding continuing advocacy on this issue, visit United We Dream's website, [www.unitedwedream.org](http://www.unitedwedream.org).

**This document is a work in progress and will be updated as DHS and USCIS release more details about the deferred action process.**

**For more information, contact David Hernandez at [hernandez@nilc.org](mailto:hernandez@nilc.org) or 202-216-0261.**

---

<sup>2</sup> [www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people.pdf](http://www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people.pdf).

<sup>3</sup> [www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people-morton.pdf](http://www.ice.gov/doclib/about/offices/ero/pdf/s1-certain-young-people-morton.pdf).