

Motor Vehicle Division Informational Memo # 20-26 – revised 7.21.21

Modification of DACA Program and Impact on Driver's Licenses and Identification Cards

DATE: July 21, 2021

FROM: MVD Policy & Compliance Team

TO: All Motor Vehicle Division staff, Iowa County Treasurers and County Treasurers' staff that issue driver's licenses and non-operator's identification cards.

SUBJECT

This informational memo explains a recent decision by a Texas U.S District Court issuing an injunction preventing the federal Department of Homeland Security (DHS) from approving new applications for the Deferred Action for Childhood Arrivals (DACA) program. The injunction prevents new applications into the DACA program but does not prevent current DACA recipients from maintaining their current status, nor does it prevent current DACA recipients from applying for renewal of their DACA status. This directive is most applicable to staff performing driver's license (DL) and identification card (ID) transactions and will have a minor impact on our work in issuing a DL or ID to individuals affected by the DACA program.

SUMMARY

The essence of the DACA program is to defer enforcement of immigration laws against certain young people who were brought to the United States as children. The program became effective in 2012, and beginning January 24, 2013, individuals approved through the DACA program were allowed to be issued an Iowa DL or ID. The program has been subject to numerous legal challenges, and a brief history of these actions includes:

- On September 5, 2017, DHS announced that it would be ending the DACA program, with a delayed effective date of March 5, 2018.
- On February 14, 2018, in response to a preliminary injunction issued by federal courts, the U.S. Citizenship and Immigration Services (USCIS) office in DHS once again began accepting requests for DACA renewals, but did not begin accepting new requests from individuals who had never before been granted DACA status.
- On February 26, 2018, the U.S. Supreme Court announced that it would not take up the decision to end the DACA program, and instead ruled that the case must follow the usual federal appeals process. The case did follow the usual federal appeals process and once again ended up in front of the U.S. Supreme Court.
- On June 18, 2020, the U.S. Supreme Court ruled that DHS's "decision to rescind the Deferred Action for Childhood Arrivals program, or DACA, was arbitrary and capricious under the Administrative Procedure Act." The ruling upheld the DACA program and stated that the appropriate recourse is for DHS to review the ruling, the DACA program, and reconsider the issue anew.

- On July 28, 2020 Acting DHS Secretary Chad Wolf announced via memorandum that DHS will begin reviewing whether to terminate the DACA program in its entirety, and in the meantime, implemented the following changes:
 - 1) No new DACA applications will be accepted. It appears that it has been DHS policy not to accept any new DACA applications since at least 2017, except for in very limited circumstances. If there is a pending *initial* application for DACA, those requests would be rejected.
 - 2) DACA renewals will continue to be processed, but going forward, they will only be granted an Employment Authorization Document (EAD) for one year instead of two.
- On November 14, 2020, a U.S District Court ruled that the issuer of the July 28, 2020 memo was not lawfully serving as the Acting Secretary of Homeland Security at the time of the memo's issuance. Additionally, the court established two certified "classes" for purposes of continuing litigation, including a "DACA class" for persons eligible for deferred action under the original DACA program, and "Pending Applications Subclass" for persons who had an initial or renewal DACA application pending at USCIS between July 30, 2020 and July 28, 2020 that have not been adjudicated by the terms of the original DACA application.
- On December 4, 2020, a U.S. District Court decision ordered that the July 28, 2020 memorandum that ceased acceptance of new DACA applications and provided that DACA renewals would receive one-year EADs was vacated. In other words, the July 28, 2020 guidance ceased to be valid upon issuance of the court's November 14, 2020 decision. Additionally, that court order provided that EADs issued to DACA recipients with a validity period of one year, were extended to two years, and all EADS issued under the DACA program going forward would be valid for two years (as was the DHS policy prior to the July 28, 2020 memo).

Most recently, on July 16, 2021, a U.S. District Court issued an injunction preventing DHS from approving new applications for the DACA program.

LINKS TO PRESS RELEASES AND OTHER INFORMATION

- <https://www.whitehouse.gov/the-press-office/2017/09/05/statement-president-donald-j-trump>
- <https://www.uscis.gov/daca2017>
- <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>
- <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>
- <https://content.govdelivery.com/accounts/USDHS/bulletins/2917f23>
- <https://www.dhs.gov/news/2020/07/28/departments-homeland-security-will-reject-initial-requests-daca-it-weighs-future>
- https://www.dhs.gov/news/2020/12/07/update-deferred-action-childhood-arrivals?utm_source=hp_slideshow&utm_medium=web&utm_campaign=dhsgov

- **UPDATE:** <https://www.uscis.gov/news/news-releases/statement-from-uscis-acting-director-tracy-renaud-on-deferred-action-for-childhood-arrivals-daca>

CURRENT

Upon application and approval, USCIS issues individuals approved for deferred action a Form I-766, Employment Authorization Document (EAD). Iowa Code sections 321.190 and 321.196 authorize the department to issue a DL or ID to foreign nationals (persons that are not U.S. citizens) for the period of time the person is authorized to be present in Iowa (and thus, the U.S.), not to exceed two years. A person obtaining a DL or ID through presentation of an EAD, as verified through SAVE (Systematic Alien Verification for Entitlements) is issued a DL or ID only for the period the EAD is valid as demonstrated through the SAVE response, not to exceed two years. To renew the DL or ID upon its expiration the DACA recipient must provide new documentation showing the EAD has been extended or other documentation issued by USCIS showing continued authorized presence under another status. All documentation must be verifiable through the SAVE (Systematic Alien Verification for Entitlements) program.

From September 5, 2017 through December 6, 2020, USCIS stopped accepting new DACA applications except in very limited circumstances. Existing DACA recipients continued to be able to renew their DACA status and EAD for two years, except that from July 28, 2020 through December 6, 2020, EADs issued to DACA recipients were issued for a validity period of only 1 year. Beginning December 7, 2020, USCIS again began accepting new DACA applications and continued to renew DACA statuses, for two-year validity periods (resulting in two-year EADs issued to DACA recipients). EADs issued to DACA recipients between July 28, 2020 and December 6, 2020 were extended to be valid for two years (instead of one year). USCIS is providing an I-797 Extension Notice to DACA recipients who were originally given a one-year EAD, which we can verify via VLS/SAVE. In other words:

- DACA EADs issued on or before July 27, 2020 = valid for two years
- DACA EADs issued between July 28 and December 6, 2020 = **originally issued for one year, but now extended to two years with I-797 Extension Notices**
- DACA EADs issued on or after December 7, 2020 = valid for two years

USCIS has directed states to rely on an applicant's SAVE results to demonstrate that their EAD has been extended for one year. Therefore, an applicant may present an unexpired EAD, an expired EAD, no documentation, or an I-797 Extension Notice issued by USCIS showing that their deferred action status has been extended for one year. **As always, we should continue to run all documentation through SAVE and issue the driver's license for the length of authorized stay verified through the system, even if SAVE returns a two-year validity period response contradicting the one-year validity period printed on the EAD.** This is similar to how DHS extends the "temporary protected status" of individuals via federal register notice and they continue to have lawful status verifiable through SAVE, even if their paper EAD document shows expired.

NEW

As of July 16, 2021, USCIS was ordered to again stop accepting new DACA applications. However, the injunction does not prevent current DACA recipients from maintaining their current status, nor does it prevent current DACA recipients from applying for renewal of their DACA status.

BUSINESS IMPACT

We will continue to issue credentials to individuals in the DACA program with a valid EAD as we always have, but it is important to understand what this directive does and how it impacts our customers. Specifically, there will be no new DACA applications accepted by USCIS as of July 16, 2021.

You may continue to see customers present an EAD with a one-year or two-year expiration date or an I-797 DACA extension notice, and we must issue the driver's license for the duration of stay that is verified through SAVE. DACA recipients who were issued a one-year EAD are eligible to obtain a driver's license with a two-year expiration date, as long as you verify their two-year duration of stay prior to issuance of the credential. **We should always rely on the SAVE response** demonstrating their two-year EAD validity period even if it contradicts the one-year validity printed on the EAD or if the applicant does not present an I-797 showing their one-year EAD extension.

QUESTIONS AND ANSWERS

The following questions and answers provide additional information for you and for customers.

CAN I STILL ISSUE A CREDENTIAL TO AN INDIVIDUAL IN THE DACA PROGRAM?

Yes, as long as the individual still holds a valid, unexpired EAD, we may issue an Iowa credential to that individual for the length of time the EAD is valid as verified in SAVE. If the customer is in the process of renewing their EAD, they may present an expired EAD, an I-797 document with no duration of stay, or no documentation, and if we receive a SAVE response of "application pending," we are authorized to issue a one-year renewal of their driver's license or ID. Please see the SAVE memo (MVD PM # 18-01 for additional information). If a specific duration of stay is listed in the SAVE response, we should issue the credential for the full length of time returned via SAVE. This is the same practice we would follow for any customer issued a driver's license with an expiration date matching their authorized length of stay in the United States.

HOW LONG WILL AN EAD ISSUED UNDER THE DACA PROGRAM BE VALID?

All EADs issued to a person renewing their DACA status will have a two-year validity period, even if their EAD was issued between July 28, 2020 and December 6, 2020 and therefore shows a one-year validity period. These individuals may or may not present an I-797 showing the one-year EAD extension in conjunction with their originally issued one-year EAD, so we will continue to rely on the confirmation of duration of stay returned by VLS/SAVE to determine the license expiration date for a non-U.S. citizen, including DACA recipients.

WHAT DOCUMENTATION IS USCIS PROVIDING TO INDIVIDUALS WHOSE EAD WAS EXTENDED FROM ONE-YEAR TO TWO-YEARS UNDER THIS NEW DECISION?

USCIS began issuing I-797 Extension Notices to DACA recipients whose EAD was extended for one year, which the recipients will have in conjunction with their originally issued one-year EAD.

The category code on the original EADs impacted by the I-797 extension is C33. Because impacted DACA recipients may present various documentation when they appear to renew their credential it is critically important that we rely on the SAVE response to determine the validity period of an EAD, rather than relying on the paper EAD or I-797 alone.