



MALDEF

The Latino Legal Voice for Civil Rights in America.

August 17, 2012



Please check <http://www.maldef.org> for updates to this guide.

TOOLKIT ON DEFERRED ACTION FOR CHILDHOOD ARRIVALS



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DISCLAIMERS

This educational guide provides general information about deferred action under federal immigration law, including “Deferred Action for Childhood Arrivals” announced by the U.S. Department of Homeland Security on June 15, 2012 and clarified on August 3, 2012 and August 14, 2012.

The information contained in this toolkit has been gathered from a number of sources and, while it is believed to be generally accurate, neither the Mexican American Legal Defense and Educational Fund (MALDEF) nor any volunteer attorney using this manual gives any guarantee or assurance of the accuracy or completeness of any particular information contained in this manual. The information provided is for general guidance and reference purposes only, and it is not intended to serve as, nor can it be relied upon as, legal advice to address any specific situation. This manual does not create any attorney-client relationship with MALDEF. Due to the complexity of deferred action and the intricacies of the immigration system, potential applicants (1) with criminal backgrounds, (2) with previous contact with immigration authorities, or (3) who may have committed fraud upon entry should contact a licensed immigration attorney before applying.

MALDEF will strive to update this manual as future developments in the 2012 “Deferred Action for Childhood Arrivals” process come to light. Check <http://www.maldef.org> for updates.

I. INTRODUCTION

On June 15, 2012, the U.S. Department of Homeland Security (DHS) announced a change in policy that will provide a way for certain immigrant youth and young people to remain in this country without being removed for two (2) years with possible future renewal. Under this new DHS effort, starting on August 15, 2012, individuals who meet a narrow set of criteria (outlined in official federal documents and this guide) will have an affirmative process to apply for time-limited deferred action and, in many cases, employment authorization.

Over the last three decades, the Mexican American Legal Defense and Educational Fund (MALDEF) and many others have worked to protect and extend the promise of *Plyler v. Doe*, MALDEF's 1982 U.S. Supreme Court victory protecting the right of undocumented youth to attend K-12 public schools. Much work remains to achieve federal comprehensive immigration reform and the DREAM Act, a federal bill that galvanized recent generations of *Plyler* beneficiaries into action and won them the name of "DREAMers."

This guide is intended to help potential applicants consider both the pros and the cons of the 2012 deferred action offering (sometimes referred to as DACA) and to prepare to apply if they chose to do so.

A. Why Is This Guide Needed?

To help eligible immigrant youth and young people prepare to navigate the new process of applying for "Deferred Action for Childhood Arrivals" and employment authorization, MALDEF researched

and created this resource. It presents educational information to help deferred action-eligible individuals gather their records, weigh the pros and cons of applying, and flag some of the more complicated scenarios that should warrant an individual discussion and consultation with a licensed and qualified attorney.

B. Who Is This Guide For?

This guide contains comprehensive information to help potential applicants and licensed attorneys navigate the application and renewal process for both 2012 "Deferred Action for Childhood Arrivals" and employment authorization. For example, the guide provides answers to some of the most frequently asked questions raised by DREAMers to date, including how to correctly file for "Deferred Action for Childhood Arrivals" and whether a driver's license is possible after getting the 2012 deferred action.

To prevent the ever-growing problem of *notario* fraud, this guide also has a section specifically geared toward educating community members on best practices to avoid *notario* fraud and providing a comprehensive list of authorities where individuals can report *notario* fraud. See Pages 28 and 30-33.

C. What Is Deferred Action?

Deferred action is the federal government's decision that it will not, at this point in time, remove someone from the United States who lacks permission to be in the country. As long as someone is in deferred action status, he or she will not be removed from the United States and can apply for work authorization. Some people can remain in deferred action status for

Earlier this summer, on June 15, 2012, we observed a significant legal milestone across the country. *Plyler v. Doe* – MALDEF's 1982 Supreme Court victory that secures a K-12 public education for undocumented immigrant students – turned thirty (30).

On the same day, DHS announced a sorely needed change in immigration enforcement priorities, which will functionally suspend the removal of certain immigrant youth and young people for at least two (2) years.

Deferred action is the federal government's decision that it will not, at this point in time, remove certain persons from the United States who lack permission to be in the country.

many years. Deferred action is not permanent. If the federal government ends an individual's deferred action status, then the individual may be placed in the removal process.

Last year, DHS announced that DHS employees can place lower priority on the removal of noncitizens with close family, educational, or military ties in the United States in order to prioritize removal of individuals who pose safety or national security threats. The 2011 memos operate, in part, to provide immigrant youth and young people already in removal proceedings a chance at deferred action.

II. OVERVIEW OF PROCESS

A. Forms

Under the 2012 “Deferred Action for Childhood Arrivals” program, U.S. Citizenship and Immigration Services (USCIS) will allow individuals to apply for deferred action and employment authorization. Individuals must complete and submit the following **two applications at the same time**:

- ❖ **Form I-821D** Request for Deferred Action for Childhood Arrivals

The form is available at <http://www.uscis.gov/USCIS/files/form/i-821d.pdf>

The instructions sheet to help fill out the form is available at <http://www.uscis.gov/USCIS/files/form/i-821dinstr.pdf>

DHS, through USCIS, has devoted a part of the agency website to the forms, instructions, and updates on “Deferred Action for Childhood Arrivals.” For the latest up-to-date information released by DHS, visit:

- <http://www.uscis.gov/childhoodarrivals>

- ❖ Application for Employment Authorization (composed of **Form I-765**, Application for Employment Authorization, and **Form I-765WS**, Form I-765 Worksheet)

The form is available at <http://www.uscis.gov/files/form/i-765.pdf>

The worksheet is available at <http://www.uscis.gov/USCIS/Forms/Form%20Pages/i-765ws.pdf>

Individuals filing Form I-821D **must also file** Form I-765 and Form I-765WS.

B. Filing Fee

DHS has stated that the filing fee for deferred action, biometrics, and employment authorization will be **a total of \$465**.

C. Process

DHS began to accept deferred action applications on August 15, 2012. Individuals should apply for the 2012 deferred action and employment authorization **at the same time** by submitting the forms, supporting documentation, and filing fee to USCIS.

IMPORTANT: Individuals applying for the 2012 deferred action should keep a **copy of everything** submitted for their records. Moreover, applicants should also **opt for tracking/delivery confirmation** through the post office or private carrier used.

Individuals will apply for deferred action and employment authorization at the same time by submitting the forms, supporting documentation, and the filing fee to USCIS.

Individuals applying for the 2012 deferred action should keep a copy of everything submitted for their records.

Applicants should also opt for tracking/delivery confirmation through the post office or private carrier they select.

After submission of the form, USCIS will schedule a biometrics appointment for applicants at a local USCIS Application Support Center so applicants can be photographed and provide their fingerprints. USCIS will run this information through criminal databases to run a criminal background check. USCIS will use the results of the background check, completed forms, and accompanying documentation to make a determination whether to grant deferred action or not. Individuals will be able to check the status of their requests online. As of now, DHS estimates that the entire process will take one (1) to six (6) months from the initial submission of the materials.

D. Electronic Updates

When an individual files an immigration form, including the forms for “Deferred Action for Childhood Arrivals” and employment authorization, he or she has the **option** of receiving an e-mail and/or text message informing the individual that USCIS has accepted his or her submission(s). USCIS will usually notify an individual who has opted for electronic notices within twenty-four (24) hours of receiving the individual’s immigration forms. Agency receipt of an individual’s forms, however, is not approval.

Individuals opting for electronic updates should complete and submit:

- ❖ **G-1145 Form:** <http://www.uscis.gov/files/form/g-1145.pdf>

E. Legal Assistance

While USCIS accepts applications *pro se* (i.e., without legal representation), individuals with complex situations are highly advised to consult a licensed attorney with immigration law experience or a Board of Immigration Appeals (BIA) accredited representative before filing, especially if the factors outlined in the blue box below apply to their situation. This is especially important because **DHS stated that it will put individuals who are rejected for the 2012 “Deferred Action for Childhood Arrivals” into removal proceedings if they have a criminal history or there is a finding of fraud in the application.** For more information on whether individuals should obtain a lawyer, please visit:

- ❖ <http://ailaleadershipblog.org/2012/08/03/do-dreamers-really-need-a-lawyer/>

Individuals should seek qualified legal representation if they:

- Had any sustained contact with law enforcement authorities;
- Were arrested or convicted of a crime as an adult;
- Were arrested or convicted of a crime as a juvenile;
- Are currently or were previously in removal proceedings;
- Left the country in the five (5) years preceding June 15, 2012;
- Had any contact with immigration authorities or previously filed applications, petitions, or other immigration documents; or
- Previously used fraudulent documents to work, enter the country, or for other purposes.

III. 2012 DEFERRED ACTION

ELIGIBILITY

Individuals seeking to apply for the 2012 “Deferred Action for Childhood Arrivals” program must meet all requirements that DHS has outlined.

A. Checklist For 2012 “Deferred Action For Childhood Arrivals”

1. Age Requirements

To apply, an individual must meet **ALL** of the requirements in this section. DHS requires that an individual:

- Have arrived in the United States before age sixteen (16);
- Have been under the age of thirty-one (31) as of June 15, 2012; **and**
- Be fifteen (15) years or older when applying (but not exception below);

If an individual is in removal proceedings, has a final order of removal, or has a voluntary departure order, he or she can apply even if he or she is not fifteen (15) years or older.

Individuals who are younger than fifteen (15) and meet all the criteria may apply the day they turn fifteen (15).

2. Continuous Residence Requirements

To apply, an individual must meet **ALL** of the requirements in this section. DHS requires that an individual:

- Have entered the United States on or before June 15, 2007;

- Have continually resided in the United States for at least five (5) years immediately preceding June 15, 2012;
 - Brief and innocent absences will not violate this requirement.
 - You will violate this requirement if you travel outside the United States after August 15, 2012, either before you have requested deferred action or while your application is pending.
- Have been present in the United States on June 15, 2012; **and**
- Be physically present in the United States on the date he or she submits the application.

3. Education Requirement

To apply, an individual must meet **ONLY ONE** of the requirements in this section.

DHS requires that on the **date an individual submits his or her application**, that the individual:

- Be currently in school (a public or private elementary school, junior high or middle school, high school, or secondary school; certain literacy or career/vocational training programs; or a general education development (GED) program)
- Have graduated or received a certificate of completion from high school;
- Have obtained a GED certificate; **or**
- Be an honorably discharged veteran of the Coast Guard or Armed Forces.

Under the AGE and the CONTINUOUS RESIDENCE Requirements, ALL requirements must be met. Under the EDUCATION requirement, however, only ONE requirement must be met.

Please note that individuals that were not enrolled in school or a GED program on June 15, 2012 are still eligible to apply for relief as long as they reenroll in school or a GED program on the date they apply.

To learn more about meeting the EDUCATION Requirement, particularly if you are in a literacy or career/vocational program, please visit:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM10000082ca60aRCRD&vgnnextchannel=f2ef2f19470f7310VgnVCM10000082ca60aRCRD>

4. Criminal, National Security, And Public Safety Requirements

To apply, an individual must meet **ALL** of the requirements in this section. DHS requires that an individual:

- Have no conviction of a felony offense;
 - felony is defined as a “federal, state, or local criminal offense punishable by imprisonment for a term exceeding one (1) year.”

- Have no conviction of a significant misdemeanor offense;
 - A significant misdemeanor offense is defined as a criminal offense punishable by five (5) days to one (1) year of imprisonment. It is important to know that a significant misdemeanor includes:
 - ⇒ domestic violence;
 - ⇒ sexual abuse;
 - ⇒ sexual exploitation;
 - ⇒ burglary;
 - ⇒ driving under the influence of alcohol or drugs;
 - ⇒ unlawful possession or use of a firearm; and
 - ⇒ drug distribution or trafficking.
 - A significant misdemeanor offense also includes any offense for which an individual was sentenced to time in custody of more than ninety (90) days.
 - The time in custody does not include time served due to the honoring of a

detainer issued by U.S. Immigration and Customs Enforcement (ICE).

- Have not been convicted of three (3) or more misdemeanor offenses;
 - **Minor Traffic Offenses:** Minor traffic offenses, such as driving without a license, will not be considered a misdemeanor for purpose of this process.
 - **Multiple-Related Misdemeanors:** Misdemeanors occurring on the same day and arising out of the same act, omission, or scheme of misconduct count as a single misdemeanor for the purpose of the misdemeanor limit.
 - **State-Based Immigration Misdemeanors:** DHS has stated that “immigration-related offenses characterized as felonies or misdemeanors by state immigration laws will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action pursuant to this process.”

- Does not otherwise pose a threat to national security or public safety.
 - A threat to national security or public safety includes, but is not limited to:
 - ⇒ gang membership;
 - ⇒ participation in criminal activities, even if there are no criminal arrests or no convictions; and
 - ⇒ participation in activities that threaten the United States.

Under the CRIMINAL, NATIONAL SECURITY, and PUBLIC SAFETY Requirements, ALL requirements must be met.

When in doubt on the CRIMINAL, NATIONAL SECURITY, and PUBLIC SAFETY Requirements, please consult with a licensed attorney knowledgeable in immigration law.

Need help checking a prior conviction or arrest? Turn to Pages 19 and 20.

IV. APPLYING FOR EMPLOYMENT AUTHORIZATION

A. What Is Employment Authorization?

Individuals who obtain 2012 “Deferred Action for Childhood Arrivals” may be eligible for an employment authorization, commonly known as a “work permit.” Employment authorization is a legal status issued by the United States government indicating that the holder has a legal right to obtain employment in the United States. Once approved for employment authorization, the federal government issues an individual an Employment Authorization Document (EAD), which serves as proof of an individual’s right to work in the country. An EAD expires on the same date an individual’s deferred action expires, and is renewable along with an individual’s deferred action.

Obtaining employment authorization for people with deferred action status requires a showing an “economic necessity” to obtain employment.

Traditionally, DHS uses the poverty guidelines issued by the United States Department of Health and Human Services (HHS) along with other criteria (such as assets and expenses) to determine whether an individual is eligible for employment authorization. Currently, the 2012 poverty guidelines for a family of one (1), two (2), and three (3) people are \$11,170, \$15,130, and \$19,090 in annual income, respectively. HHS updates the poverty guidelines annually and the latest guidelines are available at HHS’s website:

❖ <http://aspe.hhs.gov/poverty/>

IMPORTANT: DHS will not necessarily deny employment authorization to individuals or families above the poverty line. The poverty guidelines are merely a tool that DHS uses to decide whether to grant employment authorization. Ultimately, DHS has complete discretion to deny or grant employment authorization.

B. How Do Individuals Apply For Employment Authorization?

To apply for an EAD, an individual must submit a Form I-765, a Form I-765WS, and supporting materials. While individuals applying for an EAD may do so without the assistance of legal counsel, those with complex situations should consult a licensed attorney experienced in immigration law to assist them in the process. The most up-to-date information regarding the EAD application process, including the latest form and instructions, is located at:

❖ <http://www.uscis.gov>

Below are direct links for Form I-765 resources:

❖ Form I-765: <http://www.uscis.gov/files/form/i-765.pdf>

❖ Form I-765 Worksheet: <http://www.uscis.gov/USCIS/Forms/Form%20Pages/i-765ws.pdf>

❖ Official I-765 Instructions: <http://www.uscis.gov/files/form/i-765instr.pdf>

Individuals who obtain 2012 “Deferred Action for Childhood Arrivals” may be eligible for an employment authorization document (EAD), commonly known as a “work permit.”

To apply for an EAD, an individual must submit a Form I-765, a Form I-765WS, and supporting materials.

DHS, however, has complete discretion to deny or grant employment authorization.

Wondering if an EAD will help you get a Driver’s License? Turn to Pages 9 and 10 to learn more.

C. State-By-State Driver's License Chart (As of August 15, 2012)

State	Does the State Accept an EAD as Proof of Identity and/or Legal Status for Purpose of Getting a Driver's License?	Links to State Policies. If Links Do Not Work, Please Copy and Paste into a Web Browser
AK	Current policy is unclear, please contact the AK DMV.	http://doa.alaska.gov/dmv/akol/original.htm
AZ	No, as of the Governor's Executive Order dated August 15, 2012.	http://www.azgovernor.gov/dms/upload/EO_081512_2012-06.pdf
AR	Yes.	http://www.asp.state.ar.us/divisions/hp/pdf/ar%20dl%20study%20guide_october%202007.pdf
CA	Yes.	http://www.dmv.ca.gov/dl/dl_info.htm
CO	Yes.	http://www.colorado.gov/cs/Satellite/Revenue-Main/XRM/1216289012440
CT	Yes.	http://www.ct.gov/dmv/lib/dmv/selectct/selectid_accpt_docs3.pdf
DE	Yes.	http://www.dmv.de.gov/services/driver_services/drivers_license/dr_lic_doc_landing.shtml
DC	Yes.	http://dmv.dc.gov/info/proofofID.shtm
FL	Yes.	http://www.flhsmv.gov/ddl/aila/acceptabledocuments.pdf
GA	Yes.	http://www.dds.ga.gov/secureid/accepteddocs.aspx ; See also GA. Code Ann. § 40-5-21.1.
HI	Yes.	http://www1.honolulu.gov/csd/vehicle/dlrequirements.htm
ID	Yes.	http://itd.idaho.gov/dmv/DriverServices/driver_license_facts.htm
IL	Yes.	http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf
IN	Yes.	http://www.in.gov/bmv/files/SecureID_Documents_List.pdf
IA	Yes.	http://www.iowadot.gov/mvd/ods/foreign.htm
KS	Yes.	http://www.ksrevenue.org/dmvproof.html
KY	Yes.	http://transportation.ky.gov/Driver-Licensing/Pages/Non-US-Citizens.aspx
LA	Yes.	http://dpsweb.dps.louisiana.gov/DPSForms.nsf/8bad5589175b8981862575f20048ec65/0917c4745591791f8625733f006ac729/\$FILE/2004.pdf
ME	Yes.	http://www.maine.gov/sos/bmv/licenses/noncitizen.html
MD	Yes.	http://www.mva.maryland.gov/Driver-Services/Apply/proof.htm#lawful_status
MA	Yes.	http://www.mass.gov/rmv/license/AcceptableId.pdf
MI	Yes.	http://www.michigan.gov/documents/DE40_032001_20459_7.pdf
MN	Yes.	https://dps.mn.gov/divisions/dvs/forms-documents/Documents/IdentificationRequirements_English.pdf
MS	Current policy is unclear, please contact the MS DMV.	http://www.dps.state.ms.us/driver-services/new-drivers-license/non-u-s-citizen-information/
MO	Yes.	http://dor.mo.gov/pdf/idrequirements.pdf
MT	Yes.	https://doj.mt.gov/driving/required-docs/
NE	Yes..	http://www.dmv.ne.gov/examining/pdf/verificationdocs.pdf

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NV	Current policy is unclear, please contact the NV DMV.	http://www.dmvnv.com/dlresidency.htm
NH	Yes.	http://www.nh.gov/safety/divisions/dmv/driver-licensing/non-us-citizen/permanent.htm
NJ	Yes.	http://www.state.nj.us/mvc/pdf/Licenses/ident_ver_posterpint.pdf
NM	Yes. State also grants driver's license to undocumented individuals without an EAD.	http://www.mvd.newmexico.gov/Drivers/Licensing/pages/MVD-Proof-of-Identity.aspx
NY	Yes.	http://www.dmv.ny.gov/forms/id44.pdf
NC	Yes.	http://www.ncdot.gov/dmv/driver/license/#documents
ND	Yes.	http://www.dot.nd.gov/divisions/driverslicense/dlinfo.htm
OH	Yes.	http://www.bmv.ohio.gov/acceptable_id_documents.stm
OK	Current policy is unclear, please contact the OK DMV.	http://www.dps.state.ok.us/dls/pub/DOCS.pdf
OR	Yes.	http://cms.oregon.gov/ODOT/DMV/pages/driverid/idproof.aspx#legal_presence
PA	Yes.	http://www.dmv.state.pa.us/pdotforms/fact_sheets/pub195nc.pdf
RI	Yes.	http://www.dmv.ri.gov/documents/forms/license/LI-1.pdf
SC	Yes.	http://www.scdmvonline.com/dmvnew/default.aspx? n=accepted_forms_of_identification
SD	Yes.	http://dps.sd.gov/licensing/driver_licensing/obtain_a_license.aspx
TN	Yes.	http://www.tn.gov/safety/driverlicense/dlidentify.shtml
TX	Yes.	http://www.txdps.state.tx.us/DriverLicense/documents/ImmigrationStatusChart.pdf
UT	Yes. State also grants driver's license to undocumented individuals without an EAD.	http://publicsafety.utah.gov/dld/acceptable_id.html
VT	Yes.	http://dmv.vermont.gov/licenses/drivers/requirements/identity
VA	No. However, state does grant driver's license to individuals with deferred action.	http://www.dmv.state.va.us/webdoc/pdf/ead_chart.pdf
WA	Yes. State also grants driver's license to undocumented individuals without an EAD.	http://www.dol.wa.gov/forms/520431.pdf
WV	Yes.	http://www.transportation.wv.gov/dmv/Drivers-Licenses/Pages/default.aspx
WI	Yes.	http://www.dot.wisconsin.gov/drivers/drivers/apply/doc/proof-legal.htm
WY	Yes.	http://www.dot.state.wy.us/wydot/driver_license_records/new_licenses
PR	Yes.	Currently, website not operational.

V. FREQUENTLY ASKED QUESTIONS

Below are questions commonly raised since DHS announced the 2012 “Deferred Action for Childhood Arrivals” policy on June 15, 2012.

Potential applicants and allies for undocumented youth and young people have raised important questions on conference calls, at trainings, online, and at community events. United We DREAM was particularly helpful in gathering these questions.

A. General Background Questions

- ❖ **What is deferred action?**
- ❖ DHS says: “Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Deferred action **does not** confer lawful status upon an individual.” (emphasis added).
- ❖ **What is the Administration’s new “Deferred Action for Childhood Arrivals” policy?**
- ❖ Under the 2012 “Deferred Action for Childhood Arrivals” policy, certain undocumented immigrants who meet a narrow set of criteria may apply for and possibly receive deferred action from DHS, along with employment authorization. A grant of deferred action prevents undocumented immigrants from being removed and allows some of them to legally obtain employment in the United States. Additionally, a grant of

work authorization allows undocumented immigrants to obtain driver’s licenses in some states.

- ❖ **How is the 2012 policy different from other deferred action offerings?**
- ❖ Previously, DHS had no set criteria for granting deferred action and only granted deferred action to undocumented immigrants in very limited circumstances. In 2011, however, DHS issued new memos to guide deferred action determinations for those in removal proceedings. However, there was no affirmative process in place for individuals to come forward. The 2012 “Deferred Action for Childhood Arrivals” policy offers an affirmative path for certain immigrant youth and young people to come forward and seek deferred action as well as for those in removal proceedings, having a final removal order, or having a voluntary departure order.
- ❖ **Can individuals apply today for the new 2012 “Deferred Action for Childhood Arrival” policy?**
- ❖ Yes, as of August 15, 2012. DHS, however, said that for individuals currently in removal proceedings: “Individuals who believe they can demonstrate that they satisfy the eligibility criteria and are about to be removed should immediately contact either the Law Enforcement Support Center’s hotline at 1-855-448-6903 (staffed



A grant of deferred action protects undocumented immigrants from being removed and allows some of them to legally obtain employment in the United States.

Both deferred action and employment authorization are temporary.



24 hours a day, seven days a week) or the ICE Office of the Public Advocate through the Office’s hotline at 1-888-351-4024 (staffed 9 a.m. – 5 p.m., Monday – Friday) or by email at EROPublicAdvocate@ice.dhs.gov.”

- ❖ **Will individuals with deferred action accrue unlawful presence?**
- ❖ No. DHS spoke to this issue: “[A]lthough an alien granted deferred action will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect, deferred action does not absolve individuals of any previous or subsequent periods of unlawful presence.”
- ❖ **What is unlawful presence?**
- ❖ For information on unlawful presence as it might apply to your situation, please contact a licensed immigration attorney.
- ❖ **How long will each grant of “Deferred Action for Childhood Arrivals” last?**
- ❖ Two (2) years. While each grant of “Deferred Action for Childhood Arrivals” will last two (2) years, deferred action is a discretionary measure which means that DHS may revoke the deferred action at any time and for any reason. Whether the next White House will offer “Deferred Action for Childhood Arrivals” on the same terms or at all remains to be seen.

- ❖ **Was the 2012 policy established through an executive order of the President?**
- ❖ No. The policy was set out through a memo issued on June 15, 2012 by Secretary of Homeland Security Janet Napolitano. The policy can be terminated or modified by the current Secretary of Homeland Security or future Secretaries of Homeland Security.
- ❖ **Can DHS revoke the 2012 “Deferred Action for Childhood Arrivals” policy?**
- ❖ Yes. This policy was enacted through DHS’s ability to exercise prosecutorial discretion. Accordingly, the current or a future DHS may rescind the policy at any time and, for any reason, refuse to grant deferred action to eligible individuals or even revoke or refuse to renew existing grants of deferred action.
- ❖ **If individuals not currently in the immigration system apply for the 2012 policy, will DHS maintain records of an individual in its immigration system?**
- ❖ Yes. Regardless of whether DHS approves or denies an individual for deferred action, DHS will maintain a record of an individual’s presence in the United States. Thus, individuals applying for “Deferred Action for Childhood Arrivals” should only apply if they are certain they meet

“[A]lthough an alien granted deferred action will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect, deferred action does not absolve individuals of any previous or subsequent periods of unlawful presence.”

-- DHS

The “Deferred Action for Childhood Arrivals” policy was enacted through DHS’s ability to exercise prosecutorial discretion. Accordingly, the current or a future DHS may rescind the policy at any time and, for any reason, refuse to grant deferred action to an eligible individual or even revoke or refuse to renew existing grants of deferred action.

eligibility criteria. DHS stated that it will not put individuals who are denied deferred action into removal proceedings unless they have certain criminal histories (*i.e.*, convictions or arrests) or there is a finding of fraud in the application.

❖ **What are the risks of applying for “Deferred Action for Childhood Arrivals” immediately?**

❖ The current Administration enacted the “Deferred Action for Childhood Arrivals” policy and has made public announcements that it will continue this policy until Congress establishes a long-term solution for DREAM Act eligible youth. Future Administrations, however, may not continue this policy and may refuse to grant deferred action, revoke existing grants of deferred action, or refuse to renew existing grants of deferred action.

❖ **How is the 2012 policy different from the DREAM Act?**

❖ There are several differences between this 2012 “Deferred Action for Childhood Arrivals” policy and the DREAM Act:

- the 2012 policy may be discontinued and DHS may revoke or refuse to renew;
- the 2012 policy does not create a path to citizenship or lawful permanent status; and

- the 2012 policy only offers relief to individuals thirty (30) years or younger (while some versions of the DREAM Act offer relief to individuals thirty-five (35) years or younger).

❖ **Will an individual who obtains “Deferred Action for Childhood Arrivals” be able to sponsor family members for immigration relief?**

❖ No. Deferred action, including the 2012 “Deferred Action for Childhood Arrivals,” does not confer complete lawful status on an individual. Individuals with deferred status cannot sponsor other family members for deferred action, permanent residency, citizenship, or any other form of immigration relief. For family members to be eligible for deferred action, they must each independently meet the criteria.

Future Administrations may not continue this policy and may refuse to grant deferred action, revoke existing grants of deferred action, or refuse to renew existing grants of deferred action.

To qualify for deferred action under the 2012 policy, individuals must meet all eligibility criteria.

B. Eligibility Questions

- ❖ **Will individuals who do not meet some or all eligibility criteria be able to get “Deferred Action for Childhood Arrivals?”**
- ❖ No. To qualify for deferred action under the 2012 policy, individuals must meet all eligibility criteria. If an individual does not meet even one (1) of the requirements, he or she will not be granted deferred action. Individuals who do not meet the requirements for the 2012 policy, however, may still seek prosecutorial discretion under the 2011 Prosecutorial Discretion Memoranda, which encourage immigration officers to exercise prosecutorial discretion in certain removal cases. These 2011 memos, however, do not establish any sort of affirmative application process. This means that individuals have to be in removal proceedings to seek relief under the 2011 memoranda.
- ❖ **Will individuals under the age of fifteen (15) be ineligible for the 2012 policy?**
- ❖ Individuals under the age of fifteen (15) are eventually eligible for the 2012 “Deferred Action for Childhood Arrivals” policy when they turn fifteen (15). Individuals under the age of fifteen (15) and in removal proceedings, subject to a final order of removal, or subject to an

order of voluntary departure are eligible to apply for deferred action. Individuals in removal proceedings or with a court order should consult a licensed immigration attorney for specific direction.

- ❖ **Are individuals currently in removal proceedings eligible for the 2012 policy?**
- ❖ Yes. See the answer above. In addition, DHS spoke to this issue for individuals in DHS custody: “If you meet the eligibility criteria and have been served a detainer, you should immediately contact either the Law Enforcement Support Center’s hotline at 1-855-448-6903 (staffed 24 hours a day, seven days a week) or the ICE Office of the Public Advocate either through the Office’s hotline at 1-888-351-4024 (staffed 9 a.m. – 5 p.m., Monday – Friday) or by email at EROPublicAdvocate@ice.dhs.gov.”
- ❖ **Are individuals with a final order of removal eligible for the 2012 policy?**
- ❖ Yes. DHS spoke to this issue: “An individual subject to a final order of removal who can demonstrate that he or she meets the [2012 deferred action] eligibility criteria can request a review of his or her case and receive deferred action for a period of two years, subject to renewal. All cases will be considered on an individualized basis.”

Individuals under the age of fifteen (15) are eventually eligible for the 2012 “Deferred Action for Childhood Arrivals” policy when they turn fifteen (15).

- ❖ **Does an individual’s method of entry into the U.S. (i.e., whether an individual entered without inspection or overstayed a visa) affect whether an individual is eligible for the 2012 policy?**
- ❖ No. An individual’s method of entry does not affect whether he or she is eligible for this policy. Entry into the United States using fraudulent documents, however, may affect eligibility for the 2012 “Deferred Action for Childhood Arrivals” policy. For more information on how entry using fraudulent documents might affect your eligibility, please contact a licensed immigration attorney.
- ❖ **Will individuals who were previously removed from the U.S. and unlawfully re-entered be eligible for the 2012 policy?**
- ❖ Maybe. Under 8 U.S.C. § 1326(a) unlawful re-entry is a felony, and an individual convicted of unlawful re-entry will not be eligible under the 2012 policy. An individual without a conviction may still have the unlawful re-entry counted as a negative factor in the application process. If the unlawful re-entry occurred after June 15, 2007, this will also break the continuous presence requirement under the 2012 policy. Unlawful entry, in which an individual enters the United States for the first time, is only a misdemeanor under 8 U.S.C. § 1325. Thus, under DHS’s 2012 policy in which immigration-related misdemeanors do not count toward the misdemeanor limit, it is unlikely that misdemeanor unlawful entry in the United States will affect eligibility even if an individual was initially prosecuted.
- ❖ **Does the 2012 policy provide relief to those who currently live outside of the country?**
- ❖ No. The 2012 policy does not provide any relief for individuals who live in a foreign country.
- ❖ **Will individuals who, within the last five (5) years, left the U.S. and returned be eligible for the 2012 Policy?**
- ❖ Yes. If the absence was “brief, casual, and innocent.”
- ❖ **What qualifies as “brief, casual, and innocent” absences?**
- ❖ DHS spoke to this issue: “A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent, if it was before August 15, 2012,” and “[t]he absence was short and reasonably calculated to accomplish the purpose for the absence; [t]he absence was not because of an order of exclusion, deportation, or removal; [t]he absence was

The 2012 policy does not provide any relief for eligible individuals who live in a foreign country.

Individuals who left the United States in the five (5) years leading up to the 2012 deferred action policy should consult a licensed immigration attorney before applying.

not because of an order of exclusion, deportation, or removal; [t]he absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and [t]he purpose of the absence and/or your actions while outside the United States were not contrary to law.” Regardless, individuals who left the country in the five (5) years leading up to the June 15, 2012 policy should consult a licensed immigration attorney before applying.

❖ **How can an individual demonstrate that he or she was present in the U.S. on June 15, 2012?**

- ❖ An individual can demonstrate he or she was present in the United States on June 15, 2012 by providing copies of school records, medical records, receipts, credit card statements, or other documentation with name and date. Additionally, individuals can present evidence demonstrating they were in the United States immediately before and immediately after June 15, 2012.

❖ **Would an individual residing in a Territory of the U.S. be eligible for the 2012 policy?**

- ❖ Yes. Individuals who meet the eligibility criteria but lived in a Territory, such as Guam or Puerto Rico, will be eligible for

the “Deferred Action for Childhood Arrivals” policy.

❖ **Must an individual not be older than the age of thirty (30) on the date DHS announced the “Deferred Action for Childhood Arrivals” policy (June 15, 2012)?**

- ❖ Yes. Assuming all other eligibility requirements are met, an individual born on or after June 16, 1981 can apply. Individuals not yet thirty-one (31) years old on June 15, 2012 can apply. Unlike the DREAM Act, there is no “grandfather clause” under the 2012 policy.

An individual can demonstrate he or she was present in the United States on June 15, 2012 by providing copies of school records, medical records, receipts, credit card statements, or other documentation with name and date.

C. Criminal Background Questions

- ❖ **What qualifies as a felony?**
- ❖ A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one (1) year.

- ❖ **What qualifies as a misdemeanor?**
- ❖ A misdemeanor is a federal, state, or local criminal offense punishable by imprisonment for a term up to one (1) year.

- ❖ **Do immigration-related misdemeanors count toward the misdemeanor limit?**
- ❖ No. DHS stated that immigration-related misdemeanors, such as driving without a license and misdemeanor illegal entry (under 8 U.S.C. 1325), will not count toward the limit of misdemeanors.

- ❖ **Do traffic citations count toward the misdemeanor limit?**
- ❖ No. Traffic citations and moving violations do not count toward the limit of misdemeanors. Criminal traffic offenses, however, may qualify as either misdemeanors or felonies, depending on the offense and the term punishable under state or local law. For more information on this front, please consult the relevant

state’s law and/or contact a qualified immigration attorney.

- ❖ **Do local, state, and federal law differ on what offenses are misdemeanors or felonies?**
- ❖ Yes. Different localities and states have different classifications of offenses. For example, an offense that is considered a misdemeanor in one state may be considered a felony in another. Thus, it is critical that individuals with a criminal history consult a licensed immigration attorney before applying for the 2012 “Deferred Action for Childhood Arrivals.”

- ❖ **Will multiple misdemeanors stemming from the same act or occurrence count as one (1) misdemeanor for the purposes of the 2012 policy?**
- ❖ Yes. The three (3) or more disqualifying misdemeanors must not occur on the same date and must not arise out of the same act, omission, scheme, or misconduct. While no specific guidelines have been promulgated to determine whether a misdemeanor stems from the same act or occurrence, DHS will likely look at whether the misdemeanors were as a result of the same incident and how closely related in time the misdemeanors were to each other.

DHS stated that immigration-related misdemeanors, such as driving without a license and misdemeanor illegal entry (under 8 U.S.C. 1325), will not count toward the limit of misdemeanors.

Traffic citations and moving violations do not count toward the limit of misdemeanors.

- ❖ **What is a significant misdemeanor?**
- ❖ DHS spoke to this issue: “For the purposes of this process, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:
 - Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or,
 - If not an offense listed above, is one for which the individual was sentenced to time in custody of more than ninety (90) days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence. The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by . . . ICE.”
- ❖ **Will individuals who were convicted of DUI or DWI be eligible for the 2012 policy?**
- ❖ No. Individuals with a DUI or DWI conviction will not be eligible for “Deferred Action for Childhood Arrivals,” even if the conviction is a misdemeanor.
- ❖ **Do convictions for a crime require a court to sentence an individual to jail or prison?**
- ❖ A conviction for a crime does not require that an individual serve jail or prison time. Individuals who faced punishments such as fines, probation, a requirement for “good behavior,” the loss of a driver’s license, or mandatory classes for alcohol abuse may still have a conviction on their records. Accordingly, an individual should obtain certified dispositions of all arrests to verify what the arrest was for and whether convicted.
- ❖ **Will DHS consider expunged or juvenile convictions in determining whether to grant “Deferred Action for Childhood Arrivals?”**
- ❖ DHS spoke to this issue: “Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted. If you were a juvenile, but tried and convicted as an adult, you will be treated as an adult for purposes of the “Deferred Action for Childhood Arrivals” process.”

Individuals with a DUI or DWI conviction will not be eligible for “Deferred Action for Childhood Arrivals,” even if the conviction is a misdemeanor.

A conviction for a crime does not require that an individual serve jail or prison time. Individuals who faced punishments such as fines, probation, a requirement for “good behavior,” the loss of a driver’s license, or mandatory classes for alcohol abuse may still have a conviction on their records.

“Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted.”

-- DHS

- ❖ **Will the following scenarios have an impact on an individual’s eligibility for “Deferred Action for Childhood Arrival?”**
 - **Individual was arrested and later released without being charged with a crime;**
 - **Individual was arrested, charged with a misdemeanor or felony and later had those charges dropped;**
 - **Individual was arrested, charged with a misdemeanor or felony, and found not guilty or acquitted; or**
 - **Individual was arrested, charged with a misdemeanor or felony but the prosecutor dismissed the charges before trial or the verdict.**
- ❖ Probably not. The above scenarios will not affect an individual’s eligibility concerning the misdemeanor and felony requirements of the 2012 policy because there was no conviction. However, even if an individual was never convicted, he or she may be ineligible for relief if they pose a threat to national security or public safety, which does not require a conviction or even an arrest, or DHS exercises its discretion to deny relief in the case.
- ❖ **What steps should an individual who has been arrested or charged with an offense take before applying for the 2012 relief?**
- ❖ If an individual has been arrested or charged with violating the law as an adult or as a juvenile, then he or she must obtain a “certified disposition” for each incident. A certified disposition shows the final result of an individual’s arrest, including whether that individual was charged, convicted, acquitted, etc. Individuals may obtain certified dispositions by visiting or writing the clerk’s office of the court in the jurisdiction in which the arrest or charge occurred and making an official request. Individuals must bring sufficient money to cover the clerk’s copying costs. For more information, please consult the clerk’s office website or call the clerk’s office in the jurisdiction you were arrested.
- ❖ **What steps can an individual who is unsure of the specifics of his or her criminal history take before applying for the 2012 relief?**
- ❖ If an individual is not sure whether he or she was arrested, or not sure when or where that arrest occurred, then he or she may request an FBI Identification Record, also known as a criminal history record. An FBI Identification Record lists information obtained through fingerprint submissions in connection with arrests. Most individuals who were arrested will

If an individual has been arrested or charged with violating the law as an adult or as a juvenile, then he or she must obtain a “certified’ disposition” for each incident.

If an individual is not sure whether he or she were arrested, or not sure when or where that arrest occurred, then he or she may request an FBI Identification Record, also known as a criminal history record.

have that arrest, along with the date, law enforcement agency, and other vital information listed on an FBI Identification Record. For more information on requesting your FBI Identification Record, visit the FBI’s website at <http://www.fbi.gov> and click the “Stats and Services” link. Please note that individuals should contact a licensed immigration attorney before submitting a request for an FBI Identification Record.

- ❖ **What qualifies as posing a “threat to national security or public safety?”**
- ❖ DHS spoke to this issue: “If the background check or other information uncovered during the review of an individual’s request for deferred action indicates that the individual’s presence in the United States threatens public safety or national security, he or she will be ineligible for an exercise of prosecutorial discretion. Indicia that an individual poses such a threat include, but are not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the United States.” Additionally, DHS may also consider previous arrests even if an individual was not charged or convicted.
- ❖ **Will individuals who previously worked under a false Social Security Number or a Social Security**

Number belonging to another person be eligible for the 2012 policy?

- ❖ DHS has not spoken to this issue. Please contact a licensed immigration attorney if this situation applies to you.
- ❖ **Will individuals who entered the United States using fraudulent immigration documents be eligible for the 2012 policy?**
- ❖ DHS has not spoken to this issue. Please contact a licensed immigration attorney if this situation might apply to you.
- ❖ **What steps should individuals who have previous contact with immigration authorities take?**
- ❖ Individuals with previous contacts with immigration authorities should collect copies of every form, application, and letter sent to and received from immigration authorities. Additionally, individuals should speak with their parents or other individuals who may have filed a petition on his or her behalf and determine whether they were ever listed on any sort of immigration application as either a derivative or a beneficiary. Individuals should review these documents with a licensed immigration attorney to determine if any of these previous contacts or representations to immigration authorities will affect eligibility.

“If the background check or other information uncovered during the review of an individual’s request for deferred action indicates that the individual’s presence in the United States threatens public safety or national security, he or she will be ineligible for an exercise of prosecutorial discretion.”

-- DHS

Individuals with previous contacts with immigration authorities should collect copies of every form, application, and letter sent to and received from immigration authorities.

D. Benefit Questions

- ❖ **What is the procedure to apply for employment authorization?**
- ❖ Individuals must file for employment authorization at the same time they file for “Deferred Action for Childhood Arrivals.” Individuals must complete and submit Form I-765, Application for Employment Authorization and the worksheet, Form I-765WS. The most up-to-date information regarding the application process for employment authorization, including the latest form and instructions, is located on USCIS’s website at: <http://www.uscis.gov>.
- ❖ **How do individuals demonstrate economic necessity?**
- ❖ Individuals must submit Form I-765WS, along with their application for employment authorization and a listing of their “assets, income, and expenses,” which serves as “evidence of his or her economic need to work.” Please see Page 8 of this guide for more information on proving economic necessity.
- ❖ **Will individuals be denied an initial grant or a renewal of employment authorization if he or she has significant assets or has an income above the poverty level?**
- ❖ DHS will not necessarily deny employment authorization to individuals or families above the poverty line. The poverty guidelines are a tool that DHS uses to decide whether to grant employment authorization. Ultimately, DHS has complete discretion to deny or grant employment authorization.
- ❖ **How long does the grant for employment authorization last?**
- ❖ Employment authorization expires on the same date an individual’s deferred action expires and must be similarly renewed.
- ❖ **Do individuals with deferred action have the same employment opportunities as others?**
- ❖ Individuals with deferred action will, for the most part, have the same employment opportunities as legal permanent residents and citizens. However, certain high-clearance or security-related jobs in both the private and public sector may not be available to individuals with deferred action.
- ❖ **Under the 2012 policy, are individuals eligible for a Social Security Number?**
- ❖ Yes. An individual with employment authorization may apply for and receive a Social Security Number from the Social Security Administration (SSA). To apply,



Individuals must file for employment authorization at the same time they file for “Deferred Action for Childhood Arrivals.” Individuals must complete and submit Form I-765, Application for Employment Authorization, and the worksheet, Form I-765WS.

An individual with employment authorization may apply for and receive a Social Security Number from the Social Security Administration (SSA).

an individual must complete Form SS-5, Application for a Social Security Card, and bring at least two original documents proving his or her identity, work-authorized immigration status, and age to your local Social Security office. For more information on the application process, please consult the following resources:

- SSA's instructions: <http://www.socialsecurity.gov/pubs/10096.html>
- Form SS-5: <http://www.socialsecurity.gov/online/ss-5.html>
- SSA Office Locator: <http://www.socialsecurity.gov/locator/>

❖ **Will individuals with deferred action be able to travel by airplane inside the United States?**

❖ Yes. Individuals with deferred action will be able to travel domestically on airlines.

❖ **Will individuals with deferred action be able to travel outside of the United States?**

❖ Yes, under certain circumstances. An individual with deferred action must request and receive **advance parole to re-enter** the U.S. **before** leaving the country. If a deferred action holder departs the U.S. before DHS decides on the advance parole request, that individual

will be considered to have abandoned his or her deferred action status. DHS spoke to this issue: "If USCIS has decided to defer action in your case and you want to travel outside the United States, you must apply for **advance parole** by filing a Form I-131, Application for Travel Document and paying the applicable fee (\$360). USCIS will determine whether your purpose for international travel is justifiable based on the circumstances you describe in your request. Generally, USCIS will only grant advance parole if you are traveling for humanitarian purposes, educational purposes, or employment purposes. You may not apply for advance parole unless and until USCIS defers action in your case pursuant to the consideration of deferred action for childhood arrivals process. You cannot apply for advance parole at the same time as you submit your request for consideration of deferred action for childhood arrivals. All advance parole requests will be considered on a case-by-case basis."

❖ **Will individuals eligible for deferred action be able to travel outside of the United States before receiving deferred action?**

❖ No. Traveling outside the United States before being granted deferred action and parole will void your eligibility for deferred action. DHS spoke to this issue: "After

You may not apply for advance parole unless and until USCIS defers action in your case.

Traveling outside the United States before being granted deferred action and parole will void your eligibility for deferred action.

August 15, 2012, if you travel outside of the United States, you will not be considered for deferred action under this process. If USCIS defers action in your case, you will be permitted to travel outside of the United States only if you apply for and receive advance parole from USCIS.”

❖ **Will individuals with deferred action be able to obtain a driver’s license?**

❖ Different states have different requirements concerning driver’s licenses for immigrants. Some states will accept an Employment Authorization card as proof of identity while others will not. The federal REAL ID Act lists an Employment Authorization card as an acceptable form of identification. Please consult the driver’s license portion of this toolkit, at Pages 9 and 10, for a list of the states that issue driver’s licenses to individuals with an Employment Authorization card and/or to those with deferred action.

❖ **Will individuals with deferred action have access to federal financial assistance for college?**

❖ No. Individuals with deferred action will not qualify for any federal financial aid, including student loans, Pell Grants, and federal work study.

❖ **Will individuals with deferred action gain in-state tuition or state-based financial aid?**

❖ Deferred action will not affect whether an individual is eligible for in-state tuition and/or state-based financial aid. Different states have different laws concerning college-bound undocumented immigrants. For more information on these policies, including a list of which states offer in-state tuition or state-aid for undocumented immigrants, please consult the following resources:

- National Institute for Higher Education Law and Governance: <http://www.law.uh.edu/ihelg/>
- Law Professor Michael A. Olivas’s Compilation on in-state tuition: <http://www.law.uh.edu/ihelg/documents/Statute2011-TableOne.pdf>
- Dream Activist’s in-state tuition guide: <http://www.dreamactivist.org>

❖ **Can individuals with deferred action serve in the Armed Forces or Uniformed Services?**

❖ No. Individuals with deferred action will not be eligible to enlist in the Armed Forces or Uniformed Services.

Please consult the driver’s license portion of this toolkit, at Pages 10 and 11, for a list of the states that issue driver’s licenses to individuals with an Employment Authorization card.

Individuals with deferred action will not qualify for any federal financial aid, including student loans, Pell grants, and federal work study.

For private scholarships, including those MALDEF offers, please visit:

http://www.maldef.org/assets/pdf/2011_2012_Scholarship_List.pdf

http://www.maldef.org/assets/pdf/MALDEF_2012_DREAM_Application.doc

- ❖ **Will individuals have to register for the Selective Service to apply for the 2012 policy?**
- ❖ Regardless of whether an undocumented youth or young person plans to apply for this policy, all males between the ages of eighteen (18) and twenty-five (25) living in the United States must register with the Selective Service within 30 days of their eighteenth (18th) birthday or as soon as possible. Additionally, the Selective Service System spoke to this issue: “Selective Service does not collect any information which would indicate whether or not you are undocumented. You want to protect yourself for future U.S. citizenship and other government benefits and programs by registering with Selective Service. Do it today. If you are a man ages 18 through 25 and living in the U.S., then you must register with Selective Service. It’s the law. According to law, a man must register with Selective Service within 30 days of his 18th birthday. Selective Service will accept late registrations but not after a man has reached age 26. You may be denied benefits or a job if you have not registered. You can register at any U.S. Post Office and do not need a social security number.” For more information, please visit: <http://www.sss.gov>.



E. Application Questions

- ❖ **After submission of the initial application, how long will DHS take to process a request for “Deferred Action for Childhood Arrivals?”**
- ❖ DHS has not spoken definitively to this issue. The agency has estimated anywhere from one (1) to six (6) months.

- ❖ **Can individuals apply for “Deferred Action for Childhood Arrivals” and employment authorization at the same time?**
- ❖ Yes. Individuals are expected to apply for deferred action offering and employment authorization at the same time.

- ❖ **Are in-person interviews required as part of the 2012 deferred action process?**
- ❖ Generally no. An in-person interview will not be required for individuals applying for deferred action unless there is suspicion of fraud in the application or other special circumstances. Applicants will mail their completed application and be able to monitor their case status online. Individuals, however, will have to schedule an appointment to visit a USCIS Service Center to provide biometric data.

- ❖ **For foreign-language documents, will applicants have to submit the documents along with a translation?**
- ❖ Yes. USCIS only processes English-language documents. Foreign-language documents, such as birth certificates, must be translated and accompanied by a certificate of translation. A certificate of translation indicates that the translation is true, accurate, and correct to the best of the translator’s knowledge and ability. The translation certificate must be signed and does not need to be notarized.

- ❖ **What are the filing fees to apply for “Deferred Action for Childhood Arrivals” and Employment Authorization?**
- ❖ The fee to apply for both deferred action and employment authorization is \$465.

An in-person interview will not be required for individuals applying for deferred action unless there is suspicion of fraud in the application or other special circumstances.

Foreign-language documents, such as birth certificates, must be translated and accompanied by a certificate of translation.

The translation certificate is signed and does not need to be notarized.

- ❖ **Will there be any fee waivers or exemptions for individuals who cannot afford the fee?**
- ❖ There will be a fee *exemption* available on a very limited basis. The individual must apply for the exemption before submitting an application for deferred action. DHS spoke to this issue: “There are no fee waivers available for employment authorization applications connected to the deferred action for childhood arrivals process. There are very limited fee exemptions available. Requests for fee exemptions must be filed and favorably adjudicated before an individual files his/her request for consideration of deferred action for childhood arrivals without a fee. In order to be considered for a fee exemption, you must submit a letter and supporting documentation to USCIS demonstrating that you meet one of the following conditions:
 - You are under 18 years of age, homeless, in foster care or otherwise lacking any parental or other familial support, and your income is less than 150% of the U.S. poverty level.
 - You cannot care for yourself because you suffer from a serious, chronic disability and your income is less than 150% of the U.S. poverty level.
 - You have, at the time of the request, accumulated \$25,000 or more in debt in the past 12 months as a result of unreimbursed medical expenses for

yourself or an immediate family member, and your income is less than 150% of the U.S. poverty level.”

- ❖ **If DHS denies an “Deferred Action for Childhood Arrivals” application, will that individual be put into removal proceedings as a result?**
- ❖ Possibly, but only if there are criminal convictions or findings of fraud. DHS spoke to this issue: “For individuals whose requests for deferred action are denied by USCIS, USCIS will apply its existing Notice to Appear guidance governing USCIS’s referral of cases to ICE and issuance of notices to appear. Under this guidance, individuals whose requests are denied under this process will be referred to ICE if they have a criminal conviction or there is a finding of fraud in their request.” DHS will not put an individual into removal proceedings even if the application is denied unless there is a finding of fraud or the individual has a criminal conviction. Thus, it is essential that an individual verify his or her eligibility before applying. When in doubt on either topic, please seek assistance from a licensed immigration attorney.
- ❖ **Will DHS Use the Information in a “Deferred Action for Childhood Arrivals” Application to Identify Undocumented Relatives?**
- ❖ No. DHS has stated that it will not use the

“Under this guidance, individuals whose requests are denied under this process will be referred to ICE if they have a criminal conviction or there is a finding of fraud in their request.”

-- DHS

information provided in a 2012 deferred action application to place undocumented relatives into removal proceedings. Specifically, the agency stated: “If your case is referred to ICE for purposes of immigration enforcement or you receive an NTA, information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians. However, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of the deferred action for childhood arrivals request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.” However, this DHS or a subsequent DHS administration can change its policy at any time and for any reason.

- ❖ **Can an Individuals Complete and Submit an Application for Deferred Action on His or Her Own Without the Help of an Attorney?**
- ❖ Individuals can apply for deferred action without the help of an attorney. However, due to the complexity of the application process, the lack of any sort of appeal system, and the intricacies of immigration law, MALDEF recommends that

prospective applicants with particularly complex situations retain licensed legal counsel knowledgeable in immigration law experience.

- ❖ **How can applicants find qualified legal representation to assist them with 2012 “Deferred Action for Childhood Arrivals” questions?**
- ❖ The United States Department of Justice (DOJ) provides a list of *pro bono* (i.e., reduced cost or free) immigration attorneys for all fifty (50) states and the District of Columbia. This list is updated regularly and available here:

<http://www.justice.gov/eoir/probono/states.htm>

The American Immigration Lawyers Association also has an online tool to find accredited immigration attorneys:

<http://www.aialawyer.com/>

DISCLAIMER: MALDEF does not make any representations regarding the quality of legal services offered by individuals or organizations listed in the DOJ or AILA listings.

DHS stated that it would not use the information provided in a 2012 deferred action application to place undocumented relatives into removal proceedings.

“However, th[e] information [provided] may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of the “Deferred Action for Childhood Arrivals” request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.”

-- DHS

❖ **What is a *notario*?**

❖ “*Notario*” is the Spanish translation for notary. *Notarios* have different roles in the United States and Latin America. Unfortunately, certain *notarios* hold themselves out to immigrant communities in the United States as immigration law experts and they often take advantage of immigrants by charging exorbitant fees, making false promises, and/or failing to file immigration paperwork correctly or at all. Use of *notarios* to file immigration requests before DHS is highly discouraged and could lead to financial loss or DHS placing an individual in removal proceedings.

❖ **How is a *notario* different from a notary public?**

❖ In many Latin American countries, *notarios* play a quasi-judicial role and have passed rigorous examinations to obtain a *notario* license. Accordingly, unlike American notaries who serve a mainly clerical function, *notarios* in such societies are highly educated, closely regulated, and are viewed as knowledgeable on legal issues. Notaries in the United States, by comparison, serve as witnesses to signatures on documents.

❖ **What should I look for to identify *Notario* fraud in the United States?**

❖ The following “red flags” are worth keeping in mind:

- If you hear someone referring to himself or herself as a “*notario*,” know that he or she cannot offer legal advice or serve as a lawyer.
- If someone is asking you to pay them to help fill out your paperwork, get documents for you, or provide legal advice on your application, verify that the state bar in your state licenses that person.
- If someone is offering to place your application “at the front of the line” proceed with caution because there is no mechanism to move your application to the front of the line.

❖ **What should I do if I spot a *notario* engaged in questionable practices or I am the victim of *notario* fraud?**

❖ Individuals should report *notario* fraud immediately. All states have a means for you to report this type of fraud. Most states allow for you to file a consumer complaint form with the State Attorney General and/or the State Bar Association. See the Appendix, starting on Page 30, for information on where to file in your state.

“*Notario*” is the Spanish translation for notary. *Notarios* have different roles in the United States and Latin America. Unfortunately, certain *notarios* hold themselves out to immigrant communities in the United States as immigration law experts and they often take advantage of immigrants by charging exorbitant fees, making false promises, and/or failing to file immigration paperwork correctly or at all.

Individuals should report *notario* fraud immediately.

See the Appendix, starting on Page 30, for information on where to file in your state.



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APPENDIX

Resource: How To Report *Notario* Fraud

Resource: How To Report *Notario* Fraud

STATE	OFFICE TO REPORT <i>NOTARIO</i> FRAUD	STATUTE
Alabama	Alabama Office of the Attorney General, Consumer Protection Services Alabama State Bar, Unauthorized Practice of Law Committee	ALA. CODE § 25-5-227 (2012). 56 ALA. LAW. 288. ALA. CT. R. 36.
Alaska	Alaska Office of the Attorney General, Consumer Complaints Alaska State Bar, Unauthorized Practice of Law Committee	ALASKA STAT. § 45.50.471 (2012). ALASKA STAT. § 08.08.23 (2012).
Arizona	Arizona Office of Attorney General, Consumer Information and Complaints	ARIZ. REV. STAT. ANN. § 12-2702 (2012). ARIZ. SUP. CT. R. 31.
Arkansas	Arkansas Office of the Attorney General, Consumer Protection Division	ARK. CODE ANN. § 4-88-107 (West 2012). ARK. CODE ANN. § 16-22-208 (West 2012). ARK. CODE ANN. § 16-22-501 (West 2012).
California	California Office of the Attorney General, Office of Immigrant Assistance	CAL. BUS. & PROF. CODE § 22440 (2012). CAL. BUS. & PROF. CODE § 22445 (2012).
Colorado	Colorado Office of the Attorney General, Department of Law	COLO. REV. STAT. § 6-1-102 (2012). COLO. R. CIV. P. 230.
Connecticut	Connecticut Office of the Attorney General, Consumer Assistance	CONN. GEN. STAT. § 42-110B (2012). CONN. GEN. STAT. §51-88 (2012).
Delaware	Delaware Office of the Attorney General, Consumer Complaints	DEL. CODE ANN. tit. 6, § 2513 (West 2012). DEL. CODE ANN. tit. 6, § 2532 (West 2012).
District of Columbia	Government of the District of Columbia	D.C. CODE § 28-3904 (2012).
Florida	Florida Office of Attorney General, Division of Consumer Services Florida State Bar	FLA. STAT. § 501.204 (2012).
Georgia	The State Bar of Georgia Georgia Office of the Attorney General, Office of Consumer Protection	GA. CODE ANN. § 15-19-51 (West 2012). GA. CODE ANN. § 10-1-393 (West 2012). GA. CODE ANN. § 45-17-20 (West 2012).

Hawaii	Hawaii Office of the Attorney General, Office of Consumer Protection	HAW. REV. STAT § 605-14 (2012). HAW. REV. STAT § 480-2 (2012).
Idaho	Idaho Office of the Attorney General, Consumer Protection	IDAHO CODE ANN. § 3-420 (West 2012). IDAHO CODE ANN. § 48-601 (West 2012).
Illinois	Illinois Office of the Attorney General, Immigrant Assistance Program Illinois Office of the Attorney General, Consumer Fraud Bureau	705 ILL. COMP. STAT. 205/1 (2012). 705 ILL. COMP. STAT. 220/2 (2012). 815 ILL. COMP. STAT. 505/2AA (2012).
Indiana	Indiana Office of the Attorney General, Consumer Complaints The State Bar of Indiana, Members of the Committee for Unauthorized Practice of Law	IND. CODE § 24-5-0.5-12 (2012). IND. CODE § 33-43-2-1 (2012).
Iowa	Iowa Office of Attorney General, Consumer Fraud	IOWA CODE § 714.16 (2012).
Kansas	Kansas Office of the Attorney General, Consumer Protection	KAN. STAT. ANN. § 50-626 (West 2012).
Kentucky	Kentucky Office of Attorney General, Consumer Protection	KY. REV. STAT. ANN. § 524.130 (West 2012). KY. REV. STAT. ANN. § 367.170 (West 2012).
Louisiana	The Louisiana Attorney General's Office, Public Protection Division, Consumer Protection Section	LA. REV. STAT. ANN. § 51:1409 (2012).
Maine	Maine Office of the Attorney General, Consumer Mediation Services	ME. REV. STAT. tit. 5, § 207 (2012). ME. REV. STAT. tit. 4, § 807-B (2012).
Maryland	Maryland Office of the Attorney General, Attorney Grievance Committee	MD. CODE ANN., COM. LAW §13-303 (West 2012). MD. CODE ANN., COM. LAW §14-3306 (West 2012).
Massachusetts	Massachusetts Office of the Attorney General, Consumer Resources	MASS. GEN. LAWS. ch. 221 § 41 (2012). MASS. GEN. LAWS. ch. 93A, § 4 (2012).
Michigan	Michigan Office of the Attorney General, Consumer Protection Division The State Bar of Michigan	MICH. COMP. LAWS § 600.916 (2012). MICH. COMP. LAWS § 338.3467 (2012).
Minnesota	Minnesota Office of the Attorney General, Consumer Complaints	MINN. STAT. § 481.04 (2012). MINN. STAT. § 325E.69 (2012).
Mississippi	Mississippi Office of Attorney General, Consumer Complaints	MISS. CODE ANN. § 73-3-55 (2012). MISS. CODE ANN. § 75-24-5 (2012).

Missouri	Missouri Office of the Attorney General, Consumer Complaints	MO. REV. STAT. § 484.020 (2012). MO. REV. STAT. § 407.020 (2012).
Montana	Montana Office of Consumer Protection	MONT. CODE ANN. § 37-61-210 (2011).
Nebraska	Nebraska Commission on Unauthorized Practice of Law	NEB. REV. STAT. § 7-101 (2011).
Nevada	State Bar of Nevada Office of Bar Counsel	NEV. REV. STAT. § 7.285 (2011).
New Hampshire	New Hampshire Office of the Attorney General, Consumer Protection and Antitrust Bureau	N.H. REV. STAT. ANN. § 311:7-A (2012).
New Jersey	New Jersey Attorney General, Office of Consumer Affairs	N.J. STAT. ANN. § 56:8-1 (West 2012).
New Mexico	New Mexico Attorney General, Consumer Protection Division	N.M. STAT. ANN. § 36-3-6 (West 2012).
New York	New York Office of the Attorney General, Immigration Services Fraud Unit	N.Y. GEN. BUS. LAW § 460 (McKinney 2012).
North Carolina	North Carolina State Bar, Authorized Practice of Law Committee	N.C. GEN. STAT. § 84-37 (2012).
North Dakota	North Dakota Attorney General, Consumer Protection North Dakota State Bar, Consumer Protection Committee	N.D. R. R.P.R. § 8. N.D. CENT. CODE § 51-15-02 (2011).
Ohio	Ohio Attorney General	OHIO REV. CODE ANN. § 1345.02 (West 2012).
Oklahoma	Oklahoma Attorney General	OKLA. STAT. tit. 15, § 753 (2012).
Oregon	Oregon Department of Justice, Consumer Protection	OR. REV. STAT. § 646.608 (2012).
Pennsylvania	Pennsylvania Attorney General	73 PA. STAT. § 201-2 (2012).
Puerto Rico	Attorney General of Puerto Rico	P.R. LAWS ANN. tit. 3, § 84D (West 2009).
Rhode Island	Rhode Island Attorney General	R.I. GEN. LAWS ANN. § 11-27-19 (West 2012).
South Carolina	South Carolina Attorney General, Department of Consumer Affairs	S.C. CODE ANN. § 40-5-310 (2011).
South Dakota	South Dakota Attorney General	S.D. CODIFIED LAWS § 16-18-1.
Tennessee	Tennessee Attorney General	TENN. CODE ANN. § 23-3-103 (West 2012).
Texas	State Bar of Texas, Unauthorized Practice of Law Committee Office of the Attorney General, Consumer Protection	TEX. GOV'T CODE ANN. § 81.104 (West 2011). TEX. BUS. & COM. CODE ANN. § 17.46 (West 2011).
Utah	Utah Division of Consumer Protection	UTAH CODE ANN. § 13-11-4 (West 2012).
Vermont	Consumer Assistance Program, Vermont Attorney General	VT. STAT. ANN. tit. 9, § 2453 (West 2012).
Virginia	Virginia State Bar	VA.R.S.C.T. PT. 6 § 4 PAR. 10.
Washington	State Bar of Washington, Practice of Law Board Washington State Office of the Attorney General	WASH. GEN. R. 25. WASH. REV. CODE § 19.86.020 (2012).
West Virginia	West Virginia Attorney General, Consumer Protection	W. VA. CODE § 30-2-4 (2012).
Wisconsin	Department of Agriculture and Consumer Protection	WIS. STAT. § 757.30 (2011).
Wyoming	Wyoming Attorney General, Consumer Protection Unit	WYO. STAT. ANN. § 33-5-117 (West 2012).