

Are Individuals Granted Deferred Action under the Deferred Action for Childhood Arrivals (DACA) Policy Eligible for State Driver's Licenses?

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On June 15, 2012, the U.S. Department of Homeland Security (DHS) announced that, under its administrative authority, it would grant deferred action to immigrant youth residing in the U.S. who meet specific criteria. The Deferred Action for Childhood Arrivals (DACA) policy permits individuals who arrived in the U.S. before the age of 16 and who meet other age, education, continuous presence, and criminal history–related requirements to remain in the U.S. for a renewable two-year period and to apply for work authorization.

Deferred action is a longstanding form of relief that is included specifically in the federal REAL ID Act as a lawful status that would permit the issuance of a federally recognized driver's license, valid during the period of authorized stay in the U.S. In its "Frequently Asked Questions About Deferred Action for Childhood Arrivals" (the updated FAQ dated Jan. 18, 2013), U.S. Citizenship and Immigration Services (USCIS) confirmed that people granted deferred action under DACA are authorized by DHS to be present in the U.S. and are therefore considered to be lawfully present during the period for which they've been granted deferred action.

Since the rules governing eligibility for driver's licenses vary by state, a grant of DACA does not automatically provide access to a state driver's license for the individual. But DACA recipients who are granted deferred action and obtain work authorization and Social Security numbers fit well within the general rules for driver's license issuance in almost every state. Nevertheless, states such as Arizona and Nebraska have chosen to single them out for discriminatory treatment.

The National Immigration Law Center has conducted a review, focusing on whether DACA recipients fit within the current laws and policies governing driver's licenses and whether, in practice, DACA recipients have been able to obtain a state driver's license. This is a work in progress, which we are refining as the policies evolve.

Document Requirements

In general, applicants for a state driver's license must provide documents to establish four types of eligibility criteria: a Social Security number (SSN), evidence establishing lawful or authorized presence in the U.S., identity and date of birth, and state residency. States use various approaches in implementing these requirements, including whether exceptions or

LOS ANGELES (Headquarters)

3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax



WASHINGTON, DC

1444 Eye Street, NW, Suite 1110
Washington, DC 20005
202 216-0261
202 216-0266 fax

alternative documents are permissible. State departments of motor vehicles often have considerable discretion in determining which documents must be presented.

Some state laws and regulations do not require proof of lawful presence explicitly but accomplish the same result by requiring documents that only a lawfully present applicant would have. Two states, New Mexico and Washington, provide driver's licenses to eligible applicants regardless of their immigration status; and one state, Utah, provides a driving certificate (that cannot be used for identification) to individuals who cannot prove lawful presence. In November, Illinois, which already issues driver's licenses to individuals granted DACA, will offer temporary driver's licenses to eligible drivers, regardless of their immigration status. Similarly, Colorado, Connecticut, Oregon, Maryland, Nevada, and Vermont recently enacted laws providing access to driver's licenses or driver's cards to immigrants regardless of their status. The laws in Oregon, Maryland, Nevada, and Vermont become effective in January 2014; Colorado's law covers license applications filed on or after August 1, 2014. Connecticut's law goes into effect on January 1, 2015.

State Policies

Our preliminary research revealed that in most states DACA recipients who obtain an employment authorization document (EAD) and an SSN were likely to be eligible for a license under existing rules, provided that they are able to meet the state's document requirements. But a few state officials have announced that they will ignore or alter their states' rules by denying licenses to these youth, and some states already impose restrictive document requirements.

What we know so far:¹

- *Governors or other officials in most states have confirmed that DACA recipients are eligible for driver's licenses.*

Officials in at least 45 states (AL, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NV, NH, NM, NJ, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, UT, VA, VT, WA, WI, WY) have confirmed that DACA recipients are eligible for licenses or have been issuing licenses to people in this group. Three of these states (NM, WA, UT), issue driver's licenses or driver's privilege cards to eligible applicants regardless of their status.

By contrast, the governor or other state officials in only 2 states (AZ, NE) announced that DACA recipients will not be eligible for a driver's license. Arizona did this by creating — either formally or informally — special rules for DACA recipients. For example, the Arizona Motor Vehicle Division revised its list of identity documents to exclude EADs obtained by DACA recipients, while preserving eligibility for all other individuals with EADs. The exclusion by Arizona and Nebraska has been challenged in litigation, as was an exclusion imposed by Michigan state officials. However, the Michigan secretary of state announced on February 1 that

¹ These findings are summarized in the table that is a companion document to this issue brief, the table titled *Overview of State Driver's License Requirements for Individuals Granted Deferred Action under the Deferred Action for Childhood Arrivals (DACA) Policy*, www.nilc.org/wp-content/uploads/2016/06/DACA-and-drivers-licenses-table-2013-04-09.pdf.

the state would reverse its policy and resume issuing driver's licenses to individuals granted DACA.

North Carolina briefly stopped issuing drivers' licenses to DACA grantees while awaiting an opinion from the state attorney general. The attorney general concluded that, although they do not have a formal immigration status, people granted DACA are lawfully present in the U.S. and are therefore eligible for a state driver's license.² Although the state Department of Transportation decided to resume its policy of issuing licenses to this group, the licenses are now marked "LEGAL PRESENCE NO LAWFUL STATUS."

- *States that list the immigration statuses that make an individual eligible for a driver's license generally include deferred action as an eligible status.*

At least 15 states recognize deferred action as meeting a lawful presence requirement, either through explicit inclusion or by accepting documents showing a grant of deferred action (AR, CA, FL, GA, IN, KS, ME, MO, OK, PA, TX, UT, VT, VA, WI). California, under a law signed last year, clarified that it will accept any federal document provided to DACA recipients as proof of lawful presence, although they almost certainly would have been eligible without this law. A few states do not include deferred action in their list of statuses but indicate that statuses that are not listed may be considered.

- *Most states allow proof of lawful presence and identity through presentation of enumerated immigration documents, which generally include EADs.*

Most states list EADs specifically in their statutes or motor vehicles department websites as proof of lawful presence, whether the requirement is explicit or is implemented via document requests (e.g., AL, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, KS, KY, LA, ME, MD, MA, MI, MN, MO, MT, NH, NJ, NY, NC, ND, OR, PA, RI, SC, SD, TN, UT, VT, WI, WY). Arizona and Nebraska also list EADs as meeting an eligibility requirement but have announced that DACA recipients will not be eligible, even if they have an EAD. Some states refer more generally to USCIS documents that can be used to verify status with DHS or list an I-797 notice of action as sufficient, if accompanied by other documentary evidence that proves lawful presence (AL, CA, CT, DC, HI, IN, MS, NC, OH, VA, WV).

Generally, states list primary and secondary documents that are acceptable to prove identity and date of birth. Virtually all states accept a work authorization document as an element of proof of identity and date of birth, but may also require other documents.

- *Almost all states require proof of a Social Security number.*

Almost all states require proof of a Social Security number but differ in how that may be proved (whether through a Social Security card or other document showing an SSN) or whether

² Letter from North Carolina Atty. Gen. Roy Cooper to J. Eric Boyette, acting commissioner, North Carolina Division of Motor Vehicles, Jan. 17, 2013,

www.wral.com/asset/news/local/2013/01/17/11992902/AG_letter_to_DMV_on_DACA_licenses.pdf.

there are alternatives for those who don't have an SSN, such as a letter indicating ineligibility for an SSN, accompanied by proof of lawful status.

DACA recipients who obtain work authorization are entitled to obtain an SSN from the Social Security Administration.

- *All states require proof of state residence.*

Providing proof of state residence is a standard requirement for driver's license applicants, and many of the documents used to prove residence in the U.S. for DACA applications are likely to serve as proof of state residence for driver's license purposes.

Conclusion

Obtaining a driver's license is critically important for most DACA recipients. There are strong arguments for ensuring that they are able to obtain licenses, not only to facilitate their ability to work, support and care for their families, but to serve the public interest in having trained, tested, and insured drivers on the road. Immigrant youth granted deferred action under DACA should not be subjected to special requirements or singled out for denials of this essential document.