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## DHS Announces Final Rule to 'Preserve and Fortify' DACA Policy

**Legal Update**

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*This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.*

The Department of Homeland Security (DHS) announced a final rule to “preserve and fortify” the Deferred Action for Childhood Arrivals (DACA) policy for certain eligible noncitizens who arrived in the United States as children. DACA allows beneficiaries an opportunity to receive a renewable, two-year work permit. DHS said that DACA has allowed more than 800,000 young people, dubbed “dreamers,” to remain in the United States.

The rule, effective October 31, 2022, is expected to be published in the Federal Register on August 30, 2022. It continues the DACA policy announced in a 2012 memorandum from Janet Napolitano, then-Secretary of Homeland Security, that DACA recipients should not be a priority for removal. DHS received more than 16,000 comments during the public comment period. The final review codifies existing DACA policy, with limited changes, and replaces the DACA policy guidance set forth in the 2012 Napolitano memorandum. The final rule:

- Maintains the existing threshold criteria for DACA;
- Retains the existing process for DACA requestors to seek work authorization; and
- Affirms the longstanding policy that DACA is not a form of lawful status but that DACA recipients, like other deferred action recipients, are considered “lawfully present” for certain purposes.

DHS noted that it may grant DACA renewal requests under the final rule but cannot grant initial DACA requests and related employment authorization due to a court injunction that remains in partial effect.

Advocates hailed the Biden administration’s “positive step” but called for Congress to also act.