

DREAMers, DACA AND THE SENATE BILL

In the wake of the Senate bill's strong [passage](#) out of the Senate, advocates and DREAMers may be wondering whether it is wiser to apply for DACA or wait for legalization. The answer is simple: It made sense to pursue DACA [before S.744 was introduced](#) and it makes even more sense now. The fact of the matter is that the Senate bill is NOT law. And even if it becomes law, as presently structured, DACA recipients stand to benefit in various ways. This Fact Sheet describes the relationship between DACA and the DREAM Act within [S.744](#) and explains how provisions within the bill could render the legalization process cheaper and more streamlined for DACA recipients than for others going through the process.

- **Legalization for DREAMers**

Senate Bill 744 would establish three differing pathways to earned legalization for the nation's undocumented – one for DREAMers, one for agricultural workers, and one for individuals who don't fit into the aforementioned groups. [Sections 2101-03, 2211-12](#) (pgs. 137-203, 241-276). Except for agricultural workers, the legalization process begins with seeking Registered Provisional Immigrant (RPI) status, which is the temporary lawful status the bill would create. [Section 2101](#) (pg. 137). The pathways diverge on the question of *when* an RPI may seek a green card. Rather than waiting for the border triggers to be met, as other RPIs will be required to do, [Section 3\(c\)\(2\)](#) (pg. 13), DREAMers may seek their green cards five years after receiving RPI status, [245D\(b\)\(1\)\(A\)\(i\)](#) (pg. 196).

To qualify for the bill's fast track to permanent resident status for DREAMers, applicants will have to demonstrate that they held Registered Provisional Immigrant (RPI) status for five years, entered before the age of 16, graduated from high school or its equivalent and, unless they get a waiver, show that they pursued either higher education or military service.¹ [Section 245D\(b\)\(1\)\(A\)](#) (pg. 196).

Moreover, DREAMers will be able to apply for citizenship immediately upon receiving a green card, [section 245D\(b\)\(3\)](#) (pg. 201), whereas other RPIs will have to be green card holders for three years before applying for naturalization. [Section 2102\(c\)](#) (pg. 193-95).

- **Legalization for DACA Recipients**

Legalization could be faster and easier for DACA recipients. If the bill becomes law, it will take DHS many months before it starts accepting applications for RPI status. Among other implementation tasks, DHS will have to promulgate new rules after receiving comments from the public, design new forms and procedures, establish infrastructure, and train employees. DACA recipients stand to benefit before other RPI applicants because their application process will likely be different.

¹ Applicants may waive the higher education or military service requirement provided they can demonstrate "compelling circumstances" for the inability to meet the requirement. [245D\(b\)\(1\)\(B\)](#). Higher education means education beyond high school. Higher education institutions include universities, colleges and vocational schools. See [Section 245D\(a\)\(1\)](#) (cross-referencing 20 U.S.C. § 1002 which defines "institution of higher education").

DACA recipients may be able to become RPIs without filing new applications. [Section 245B\(c\)\(13\)](#) (pg. 170-71) authorizes DHS to *grant* RPI status to a DACA recipient if renewed national security and law enforcement clearances have been completed and the individual has not engaged in conduct since being granted DACA that would make him or her ineligible for RPI status.

DACA recipients may also be able to become green card holders more quickly. The bill allows DHS to adopt streamlined procedures for DACA recipients to apply for green cards under the DREAM Act. [Section 245D\(b\)\(2\)\(C\)](#) (pg. 201). If DHS chooses to do this, it will make the process for getting a green card easier and faster than the process for other DREAMer green card applicants.

Legalization could be a lot less expensive for DACA recipients. Legalization under the Senate bill would be expensive. It would involve paying penalties totaling \$2,000 as well as filing fees. But DACA recipients likely won't be hit so hard.

DACA recipients may not have to pay the filing fee to receive RPI status. [Section 245B\(c\)\(10\)\(A\)\(iii\)\(II\)](#) (pg. 167) allows the Department of Homeland Security to exempt "defined classes of individuals" from paying the RPI filing fee and singles out DACA recipients for this potential exemption.

In addition, those younger than 16 on the date they initially entered the country—a category that necessarily includes all DACA recipients—will not have to pay the \$1,000 penalty to receive RPI status. [Section 245B\(c\)\(10\)\(C\)\(i\)](#) (pgs. 167-68).

- **DREAMers versus DACA Recipients**

DACA recipients and those that would qualify for the bill's DREAM Act are not one and the same. In two significant ways, the DACA requirements are more restrictive than Senate Bill 744's DREAM Act. First, DACA is only available to individuals who resided in the United States continuously since June 15, 2007. [USCIS DACA FAQ](#). The DREAM Act, on the other hand, does not contain such a far reaching continuous residence requirement. [245D\(b\)](#) (pg. 196-97). Second, DACA is limited to individuals who were born on or after June 16, 1981. [USCIS DACA FAQ](#). By contrast, the DREAM Act would impose no age ceiling. [245D\(b\)](#) (pg. 196-97). In these ways, the DREAM Act is open to a wider universe of individuals than DACA.

The DREAM Act's education or military service requirement, however, is more onerous than the corresponding requirement for DACA applicants. DACA may be granted to individuals who go no further in school than high school or its equivalent. [USCIS DACA FAQ](#). By contrast, absent a waiver, the DREAM Act's fast track to permanent residency is limited to those who either go beyond high school into institutions of higher education or those who serve for four years in the military. [245D\(b\)\(1\)\(A\)\(iv\)](#) (pg. 196-97).