February 17th, 2014

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Re: Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I- 821D, Revision of a Currently Approved Collection

OMB Control Number 1615-0124
Docket ID USCIS-2012-0124

Dear USCIS Desk Officer,

The United We Dream Network submits the following comments in response to the notice of revisions to Form I-821D, Consideration of Deferred Action for Childhood Arrivals (DACA), and accompanying instructions published in the Federal Register on December 18, 2013.

United We Dream (UWD) is the first and largest national network of youth-led immigrant organizations in the country, with 52 affiliates in 25 states. We aim to address the inequities and obstacles faced by immigrant youth and to develop a sustainable, grassroots movement, led by undocumented immigrant youth—Dreamers—and their allies. UWD leaders fought for the creation of the Deferred Action for Childhood Arrivals (DACA) program, and much of our membership has applied for and received DACA.

Introduction

In its December 18, 2013 notice, U.S. Citizenship and Immigration Services (USCIS) seeks public input on proposed changes to Form I-182D and the accompanying instructions. Form I-821D allows certain individuals who came to the United States as children to request or seek renewal of DACA based on a memorandum on prosecutorial discretion issued by the Secretary of Homeland Security on June 15, 2012. UWD has consulted with our members around the country about their concerns with the proposed form. We have also gathered input from undocumented youth organizers who have helped to implement the DACA program by creating and facilitating DACA clinics around the country.

We have five primary concerns with the DACA renewals process as articulated in the draft form and form instructions. First, we are concerned that the form is unnecessarily complicated and that applicants may be unable to complete it without the assistance of an attorney. Second, we are deeply worried that the costs of the renewals process will

prevent large numbers of immigrant youth from renewing their DACA grant. Third, the window of time within which a DACA grantee can apply to renew his or her status is unreasonably short. Fourth, the education requirement is unrealistic and insufficiently flexible. Finally, we are concerned about insufficient protections for Dreamers who drop out of the program or are detained by ICE. These shortcomings could result in many of our members losing their DACA status, which would have devastating consequences for both immigrant youth and the economies they form part of.

Below, we elaborate on these and other concerns regarding both the draft Form and the Form Instructions raised by our grassroots leaders. We thank you in advance for your consideration of these recommendations, and respectfully request that USCIS make the changes to the Form and Instructions outlined below.

A. Amend the Form and Form Instructions to Ensure Clarity and Simplicity

UWD leaders have identified a number of changes that would help to make the draft Form and Form Instructions more accessible for immigrant youth. These are outlined below.

i. Create a separate form or form section for renewals

First, the draft Form alternates between questions that are addressed solely for applicants soliciting an initial grant of DACA and questions that should be answered by those seeking a renewal of a prior DACA grant. At times, the instructions as to who should answer which questions are unclear. For example, some of our leaders expressed confusion about the instructions on page 4, part 3, which specifies which addresses must be provided by initial applicants and which must be provided by renewal applicants. Similarly, on page 5, part 4, the form indicates that initial requestors should skip questions 3 and 4. However, the heading of that instruction, immediately before questions 3 and 4, is titled "For Initial Requestors Only," which gives the impression that only initial requestors need fill out the subsequent questions.

This type of confusion could be avoided by simply separating out the questions for renewal applicants and those for initial applicants into separate forms. Although we recognize that doing so would likely require USCIS to issue a new draft form altogether, we believe that this approach would avoid the confusion that is likely to be caused by the existing form. In the alternative, we believe that the same form could be divided into two clear sections, first addressed for initial applicants and then for renewal applicants. In this way, each category of applicant will clearly understand which questions they must answer in order to successfully apply for DACA.

ii. Eliminate unnecessary questions

There are several questions that UWD believes are unnecessary to determine DACA eligibility, and which should therefore be eliminated. First, we recommend that question 5 of part 1, page 1 be eliminated for all applicants who are at least 15. Although an

individual's *current* immigration status is relevant to his or her eligibility for DACA, his or her history of having been placed in removal proceedings does not bear directly on eligibility for the program unless the applicant is applying before he or she has reached the age of 15. Moreover, many individuals may not know their full history, particularly if they were placed in proceedings while trying to enter the United States at or close to the U.S. border and subsequently reentered. Furthermore, youth who were placed in proceedings at a very early age and who have lost contact with their parents may be unaware of that history altogether. Finally, this question is likely to prompt some applicants to believe that they cannot fill out the form without the assistance of an attorney, which is cost-prohibitive for many of our members. Therefore, the question could undermine access to the program for many of the most vulnerable UWD leaders and should be removed from the form. For the same reason, the requirement that individuals include a copy of a final order of exclusion, deportation or removal with their application, which is implied by the checklist on page 13 of the Form Instructions, should also be eliminated.

In the alternative, if such a question cannot be removed, we suggest clarifying that applicants should answer this question to the best of their knowledge and understanding. Furthermore, we suggest that a similar statement be included on page 2, part 1, question 20, so that individuals who are unsure whether they have other immigration-related requests pending (perhaps filed by family members with whom they are no longer in contact) are not penalized for providing incomplete information.

Second, the section labeled "processing information," on page 4, part 2 requests information that is irrelevant to DACA eligibility. It is unclear whether this information is requested for the benefit of the applicant. UWD leaders have expressed concern, however, that requesting information about race and ethnicity on the form could lead to racial profiling by adjudicators, and that the possibility that this information could be shared with law enforcement may dissuade some applicants from applying. Therefore, we suggest that Part 2 of the form be eliminated entirely. In the alternative, if such information is in fact requested for the benefit of the applicant, we recommend that the Form indicate that answering this question is optional for applicants, specifically state the purpose of the request and provide that the information will not be used to make a determination about an applicant's eligibility for DACA.

iii. Make the form more people-friendly

In addition to these changes, UWD leaders suggested that the Form and Form Instructions should be amended to be more "people friendly," so that applicants do not feel like they must rely on the assistance of an attorney to fill it out. USCIS could make some language changes that would help with this. For example, on page 4, part 3, question 1.a, the Form asks applicants to mark: "I initially arrived and established residence in the U.S. prior to 16 years of age," a formulation that might be difficult for some applicants to understand. Instead, this section should be translated into more colloquial language to read: "I initially arrived and began living in the U.S. before I turned 16." Similarly, on page 5, part 4, questions 1 and 2, we recommend that USCIS

substitute the more colloquial term "leave" rather than "departure", such that 1.a and 2.a would read "Date you left the U.S." rather than "Departure date", and 1.c. and 2.c would read "reason for leaving the U.S." rather than "reason for departure."

Furthermore, on page 2, part 1, question 17, the Form asks for an applicant's place of initial entry into the United States. UWD leaders are concerned that applicants may not understand that they need to identify the place on the U.S. side of the border where they initially entered the country. Many Dreamers identify the place of entry by the town on the Mexican side of the border. Therefore, we recommend that the form expressly request the following: "Place of Initial Entry into the United States (on the U.S. side of the border)."

Finally, about thirty-one percent of DACA-eligible youth have limited English proficiency, and about 10% report speaking English not well or not at all. Thus, a significant portion of individuals who are eligible for DACA will be unable to complete the Form on their own unless it is translated.[1] Therefore, UWD recommends that the Form and Instructions be published in multiple languages. Although we believe that the Form and Instructions must continue to be published in Spanish, we also believe that they must be published in several additional languages. In particular, a recent report on DACA implementation rates showed considerably lower implementation rates for DACA youth from Asian countries than from the rest of the world.[2] Therefore, it is especially important that the Form be translated into the most-spoken Asian languages as well as Spanish.

iv. Ensure that the form and form instructions are LGBT-inclusive

LGBT Dreamers have raised several concerns about the form. First, on page 2, part 1, question 10, the Form asks for an applicant's gender. However, some Dreamers do not identify as either "male" or "female". Therefore, we suggest adding a box to this question labeled "other". Furthermore, we suggest that the Form Instructions specifically state that an individual may change his or her gender between the time she or he initially applied for DACA and the time she or he requests a renewal. Furthermore, we suggest that the Form Instructions expressly state that, for the purposes of question 14 of part 1, an individual may identify his or her marital status according to the laws of the state in which he or she was married if the state in which he or she lives does not recognize that marriage.

Finally, we are concerned that many LGBT Dreamers may have difficulty identifying a permanent mailing address on the paper Form, since some of these Dreamers do not reside with their nuclear family and are in transitional housing. Although it is

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[1] Batalova, Jeanne, Randy Capps and Sandy Hooker. "Deferred Action for Childhood Arrivals at the One-Year Mark." Migration Policy Institute. August 2013, *available at http://www.migrationpolicy.org/pubs/CIRbrief-DACAatOneYear.pdf.*

[2] Tom Wong, Angela García, Marissa Abrajano, David Fitzgerald, Karthick Ramakrishnan and Sally Lee. "Undocumented No More: A Nationwide Analysis of Deferred Action for Childhood Arrivals, or DACA." Center for American Progress. September 2013, *available at http://www.americanprogress.org/wp-content/uploads/2013/09/DACAReportCC-2-1.pdf.*

understandable that USCIS would require a mailing address to contact an individual applying for DACA through a paper Form, the new ELIS system could permit individuals who do not have a permanent mailing address to be contacted through the online system rather than a physical address. Therefore, we recommend that the application on ELIS make question 4 of part 1 of the form optional, and allow the individual to choose to be contacted solely through electronic means.

v. Restructure questions about the education requirement

Questions 25-29 of Part 1 solicit information about a renewal applicant's educational status. However, UWD believes that the phrasing of the questions regarding the education requirement is likely to cause significant confusion. For example, question 27 and 28 seek information from applicants who, at the time they initially requested DACA, were enrolled in an educational program that assists students either in obtaining a high school diploma or its recognized equivalent under state law or in passing a GED exam or other equivalent state-authorized exam or were enrolled in an education, literacy or career training program (including vocational training) designed to lead to placement in postsecondary education, job training or employment. However, students enrolled in these types of programs are considered to have been "enrolled in school" at the time of initial application, and so must also fill in question 26. However, the options that students have available to them under question 26 differ from those available under 27 and 28. Applicants may therefore experience significant confusion regarding which question they should respond to, or whether they must respond to more than one of questions 26-28.

We recommend that the education questions be reformulated as outlined below. The justification for adding a box for students who have been continuously employed and for those with medical emergencies or disabilities is provided in part D of our recommendations.

Recommendation: Questions 26 through 28 should be stricken and replaced by the following:

26. At the time I filed my Form I-821D that USCIS approved for my initial period of Deferred Action for Childhood Arrivals I was

26.a. Enrolled in a public or private elementary school, junior high or middle school, high school or secondary school
26.b. Enrolled in an educational program that assists students in obtaining a high school diploma or its recognized equivalent under state law or in passing a GED exam or other equivalent state-authorized exam
26.c. Enrolled in an education, literacy or career training program designed to lead to placement in postsecondary education, job training or employment

27. At this time, I (check all that apply)

27.a. Have graduated or obtained a certificate of completion from the public or private elementary school, junior high or middle school, high school or secondary school I was enrolled in when I initially requested DACA
27.b. Have obtained a high school diploma or its recognized equivalent under state law
27.c. Have passed a GED or other equivalent State-authorized exam
27.d. I have since completed an education, literacy or career training program and am enrolled in a postsecondary education program, job-training program or in high school
27.e. I have since completed an education, literacy or career training program (including vocational training) and have since obtained employment
27.f. I am still enrolled in school and I have made substantial, measureable progress toward graduating from the school or completing the program in which I was enrolled when I initially requested DACA
27.g. I am enrolled in a new/different education, literacy or career training program (including vocational training) designed to lead to placement in postsecondary education, job training or employment or a new/different program that assists students either in obtaining a high school diploma or its recognized equivalent or in passing a GED exam or other equivalent state-authorized exam.
27.h. I did not complete or make progress in the program in which I was initially enrolled and I have not reenrolled in a new program, but I have been continuously employed since I dropped out
27.i. I did not complete or make progress in the program in which I was initially enrolled and I have not reenrolled in a new program due to a medical condition, pregnancy or disability
27.j. Other (If you select this box, you must use part 9, additional information to explain your reasons for not meeting this guideline).

vi. Clarify which individuals are not required to submit supporting documents

We are pleased that USCIS has decided not to require the majority of renewal applicants to submit supporting documentation with their renewal applications. However, we believe that the Form and Form Instructions do not make this sufficiently clear to applicants, and that the checklist included at the end of the Form Instructions is likely to confuse applicants rather than clarify their obligations. Therefore, we recommend that the checklist be struck from the Instructions and replaced by a clear list of those individuals that *do* have to provide additional supporting documents and those that do *not* have to. Below each category of individual, we recommend that USCIS identify which types of documentation will be required.

B. Reduce the cost of DACA renewals

i. Reduce the overall cost of the fee

UWD leaders are deeply concerned that a large segment Dreamers will be unable to renew their DACA and therefore fall out of status because they will be unable to pay for the DACA renewal application fee. Many youth found the $465 fee to be very challenging to pay for when they initially applied for DACA, and will face even greater

challenges when they have to apply within a narrow window of time. After surveying our members, UWD leaders determined that a $200 fee would make the program significantly less cost-prohibitive for many youth. Therefore, we suggest that USCIS waive the fee for a work authorization document for all DACA renewals applicants and set the fee for renewal applicants at $115 in addition to the $85 biometrics fee. In other renewal contexts, USCIS permits individuals to pay a lower fee to renew their existing status. For example, while the total cost of adjusting to legal permanent resident status is $1070, the total cost of renewing a green card is $450, and the cost of removing the conditional basis of a green card is $590. USCIS should apply the same principle here and cut the cost of renewal approximately in half.

ii. Expand the categories of individuals who are eligible for a fee exemption

UWD believes that the existing criteria for granting a fee exemption are far too narrow[3], and that permitting DACA applicants to seek a fee waiver so long as income is less than 150% of the U.S. poverty level would greatly undercut the most significant barrier to applying for DACA. Doing so would permit DACA-eligible youth to apply for DACA at no cost if the applicant's income is below 150% of the federal poverty line. Currently, about a third of DACA-eligible youth live in families with incomes below 100% of the federal poverty level (FPL), and two-thirds live in families with incomes below 200% of the federal poverty level.[4]

Alternatively, the agency should consider adding several categories of individuals to the fee exemption criteria to allow more low-income applicants to access DACA. First, the agency should consider allowing all parents with children living in the home to be eligible for a fee exemption if their household income is below 150% of the federal poverty level. Currently, about 11% of DACA-eligible youth are parents with children living in the home. Youth who are ineligible for DACA due to educational barriers (which could be overcome simply by enrolling in an educational program) are about three times as likely as DACA-eligible youth to be parents with children living in the same household.[5] These young people are also more likely to be living in poverty despite their higher labor force participation rate, which stands as a barrier to enrollment in such programs and to accessing DACA. Thus, our members believe that Dreamers with children are more likely to need additional financial support in order to access the DACA program.

Moreover, many of our members who are currently enrolled in an education program, particularly in higher education, struggle to meet their financial commitments. Thus, we propose that individuals currently enrolled in educational programs also be eligible for a fee exemption if their household income is less than 150% of the federal poverty level.

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[3] *See* U.S. Citizenship and Immigration Services. Consideration for Deferred Action for Childhood Arrivals Fee Exemption Guidance, *available at http://www.uscis.gov/forms/forms-and-fees/consideration-deferred-action-childhood-arrivals-fee-exemption-guidance.*

[4] Batalova, Jeanne, Randy Capps and Sandy Hooker. "Deferred Action for Childhood Arrivals at the One-Year Mark." Migration Policy Institute. August 2013, *available at http://www.migrationpolicy.org/pubs/CIRbrief-DACAatOneYear.pdf.*

[5] *Id.*

iii. Alternative cost-reduction ideas

Alternatively, USCIS could implement fee reductions for various categories of low-income individuals. We propose that all individuals whose income falls below 100% of the federal poverty level (about a third of DACA-eligible youth) be eligible for a 75% reduction fee reduction (reducing the fee to $116, or $31 after the biometrics fee). Individuals whose income falls between 100% and 150% of the federal poverty level should be eligible for a 50% reduction (reducing the fee to $232, or $147 after the biometrics fee).

Finally, USCIS should permit individuals who are ineligible for a fee exemption, but who cannot pay the full cost of the fee at one time to make payments in installments over the course of a year (for a monthly amount of $38.75 per month).

C. Protect Youth While Adjudication is Pending

The proposed Form Instructions inform applicants that their application will be rejected if they file 120 days prior to the expiration date of their DACA. Currently, however, the posted processing times for DACA at all processing centers are 6 months, and UWD has heard of many Dreamers' cases that have been delayed for far longer.[6] Although the proposed Form and Instructions do not state the latest date on which an applicant can apply, the Instructions to Form I-765, Application for Employment Authorization, provide for a 90-day adjudication window in most cases.[7] However, in the case of DACA, the Instructions state that, "the 90-day period for adjudicating Form I-765 filed together with Form I-821D does not begin until DHS has decided whether to defer action in your case." Moreover, while USCIS typically will issue an interim Employment Authorization Document (EAD) for a period of 240 days if the agency fails to adjudicate an application within 90 days, the Instructions to Form I-765 state that this rule applies to DACA applicants only after USCIS has reached a determination on Deferred Action in their case.[8] Therefore, even if an applicant applies between 120 days and 90 days prior to the date his or her DACA expires, it is unlikely that USCIS will be able to guarantee that his or her renewal application will be adjudicated in time for the individual not to lose his or her work authorization. Furthermore, it is unlikely that applicants will receive an interim EAD pursuant to the existing I-765 Form Instructions in time for them not to suffer negative consequences from a delay, since the DACA application will need to be adjudicated first.

Furthermore, even if this one-month window did guarantee that an applicant would receive his or her DACA and EAD before the last one expired, UWD leaders are concerned that many applicants would find this window too narrow to meet. UWD leaders may be unaware of the specific timeframe within which they must apply, since

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[6] *See* USCIS Processing Time Information, available at *https://egov.uscis.gov/cris/processTimesDisplayInit.do.*
[7] *See* Instructions for I-765, Application for Employment Authorization, *available at http://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf.*
[8] *Id.*

the Form and Form Instructions do not make the timeframe readily apparent. Even if they are aware of the window, renewal applicants may have trouble accessing the legal support they need from non-profit or low-cost legal services providers. Therefore, UWD recommends that USCIS extend the window of time within which an applicant can apply from 1 month to 3 months, and clarify that an applicant may submit an application at any point between 180 days and 90 days prior to his or her DACA expiration date in order to guarantee that his or her DACA will be renewed on time.

Furthermore, we recommend that applicants who apply after that window but before their DACA expires (within 90 days of their DACA expiration date) be allowed an automatic extension of their employment authorization. In other renewals contexts, USCIS automatically extends an applicant's work authorization while adjudication of an application is pending. For example, USCIS sometimes publishes a notice in the Federal Register automatically extending work authorization for individuals who are seeking to to re-register for Temporary Protected Status (TPS). In order to demonstrate work authorization, TPS recipients can provide their TPS-related EAD and a copy of the Federal Register Notice noting the new EAD expiration date to their employer.[9] Similarly, the agency has also automatically extended work authorization for recipients of Deferred Enforced Departure (DED) in certain circumstances.[10] However, this approach may be more difficult in the context of DACA because, unlike with DED and TPS, DACA recipients' EAD's expire at different times. Furthermore, employers may be unable to determine whether individuals who received an EAD as a consequence of DACA are in fact DACA recipients, even if they are able to produce a copy of the Federal Register Notice.

Certain categories of non-immigrants with EAD's may also benefit from an automatic EAD extension. For example, 8 C.F.R. § 274a.12(b)(20) provides that certain classes of non-immigrants who have filed a timely application for an extension of their stay may be authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay. These nonimmigrant categories include a number of individuals affiliated with international organizations, governments, and companies as well as those with special skills and abilities. It also includes temporary workers on H-1, H-2A, H-2B, or H-3 visas, exchange visitors on J-1 visas and intra-company transferees on L-1 visas. USCIS instructs employers whose employees are in this situation to write "240-Day Ext." and the date he or she submitted the Form I-129 petition to USCIS in the margin of Form I-9 next to Section 2 for the purpose of the I-9 verification process.[11]

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[9] *See e.g.,* Federal Register Volume 78, Number 104 (Thursday, May 30, 2013) (automatically extending work authorization for TPS beneficiaries under the El Salvador designation).

[10] *See e.g.,* "Deferred Enforcement Departure Extended for Liberians: USCIS Automatically Extends Validity of Employment Authorization Documents." (March 15, 2013), available at http://www.uscis.gov/news/public-releases-topic/deferred-enforced-departure/deferred-enforced-departure-extended-liberians (extending DED and work athorization for DED recipients from Liberia).

[11] See "Temporary Non-Immigrant Workers Extension of Stay with the Same Employer," available at http://www.uscis.gov/uscis-tags/unassigned/temporary-nonimmigrant-workers.

Finally, in some circumstances, a simple receipt that an individual has filed for a renewed document will suffice as an extension of work authorization. The online I-9 instructions to employers provide that receipts may be valid in lieu of another qualifying document to complete the reverification sections of the Form I-9. Specifically, they instruct employers that: "your employee may present a receipt for the application for the replacement of any List A, List B, or List C document. This receipt is valid for 90 days. When it expires, the employee must show you the replacement document for which the receipt was given."[12] An EAD is considered a List A document.

UWD recommends that USCIS clarify expressly that the receipt of an application for a DACA renewal be considered an automatic extension of an EAD for 90 days. If a new EAD has not been issued within 90 days of filing the Form I-821D along with the Form I-765, USCIS should allow applicants to receive an interim EAD valid for an additional 240 days. The agency should make the process for receiving an interim EAD clear on both the I-821D Form Instructions and the I-765 Form Instructions. Thus, Dreamers who are unable to apply within the very narrow application window will not be penalized for the agency's delays in adjudication.

D. Ensure that the Education Requirement Does Not Bar Renewal

About 22% of potentially DACA-eligible youth are currently ineligible because they do not meet the education criteria.[13] These youth are often the most vulnerable Dreamers, with lower English proficiency and lower incomes than their currently-eligible peers. Moreover, as noted above, they are three times as likely as DACA-eligible youth to be parents with children living in the same household. UWD leaders feel strongly that the DACA renewals process should be especially accessible to this subset of Dreamers. Therefore, we provide the following recommendations.

i. Ensure that all students can enroll in a new program or make substantial, measurable progress in their initial program to qualify for a renewal

The requirements for DACA applicants who are enrolled in a program that assists students in passing the GED or other equivalent state-authorized exams differ noticeably from the standard imposed on applicants who are enrolled in a public or private elementary school, junior high or middle school, high school or secondary school and those enrolled in an education, literacy, or career training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment. Students enrolled in both of the latter categories of programs are permitted to demonstrate that they have made "substantial, measurable progress" toward graduating from or completing the program they were enrolled in, but those enrolled in in a GED program or other program for an equivalent state-authorized exam must actually pass the exam or receive a high school diploma. USCIS' FAQ's provide no rationale for this unwarranted distinction.

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[12] *See* "Receipts," available at http://www.uscis.gov/i-9-central/acceptable-documents/receipts/receipts.
[13] Migration Policy Institute, "Deferred Action for Childhood Arrivals at the One Year Mark." August 2013, *available at* http://www.migrationpolicy.org/pubs/CIRbrief-DACAatOneYear.pdf.

In fact, rather than establishing a tougher standard for students enrolled in GED programs compared to those in traditional schools and education, literacy and career training programs, recent policy changes warrant creating a more generous standard. Current GED exams are based on the 2002 exam series, which expired at the end of 2013. Since January 2014, students who have not completed all GED tests with passing scores and the required overall point total have had to start the entire test battery over again. Moreover, the new GED exam will be administered on computers and aligned with the new Common Core State Standards. Therefore, fewer students will be prepared to take the new exam than the old one, which requires a higher level of computer literacy and is more academically rigorous.[14] For example, the old GED test allowed students to deduce answers to all questions simply with information provided in the test materials, while the new test requires a higher level of background content knowledge.[15] Although the GED exam is not the only high school equivalency exam available in the U.S., it is by far the most common and well-known high school equivalency test, and the only option available to students in about 18 states.[16] Given the difficulties that are likely to arise with these changes to the GED test, students in GED and similar programs should be held to the same standard as those in other programs. Thus, GED students who make substantial, measurable progress in these programs must be able to qualify for a renewal of DACA. Although the education question on the form should be reformulated in accordance with the recommendation above, this standard should be clarified by USCIS on its website in the form of an FAQ.

Furthermore, UWD is encouraged that the existing Form questions regarding the education requirement allow students to enroll in a new or different educational program in order to meet the renewal requirements. We urge the agency to continue to allow this option and to clarify this option in the form of an FAQ on its website.

ii. Create a work option

Youth who appear not to meet DACA's education requirement have a higher rate of labor force participation (at 71%) than the rest of the DACA-eligible population (at 55%). In order to allow this segment of the immigrant youth population to access the economic and family stability that their more privileged peers have access to, USCIS should permit individuals who cannot meet the completion or substantial progress standards outlined above to renew their DACA status so long as they can demonstrate that they were "continuously employed" when they did not meet the education requirement. In addition, if USCIS creates this new option for renewal applicants, it should also grant this option to all DACA applicants who are applying after the date the renewal period opens, including first-time applicants who cannot meet the education requirement.

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[14] GED Testing Service. "The GED Test: A Content Comparison Between 2002 and 2014," *available at* http://www.gedtestingservice.com/uploads/files/2487f6e1ca5659684cbe1f8b16f564d0.pdf.
[15] GED Testing Service, "Programs and Services," *available at* http://www.gedtestingservice.com/educators/2014-faqs#credential.
[16] The Working Poor Families Project, "Preparing for the New GED Test: What to Consider Before 2014. 2012, *available at* http://www.workingpoorfamilies.org/wp-content/uploads/2012/12/WPFP-fall-brief_2012.pdf.

USCIS should adopt a similar employment standard as that established in Section 245C(b)(3) of S. 744 as a requirement for adjustment from Registered Provisional Immigrant (RPI) Status to LPR status. In particular, a DACA renewal applicant should be found to have been "continuously employed" so long as he or she was regularly employed throughout the period beginning 90 days after USCIS deferred action in his or her case or he or she discontinued his or her qualifying educational program, allowing for brief periods of unemployment of not more than 90 days.

As provided in S. 744, evidence of employment could include:

(a) records that
    a. establish, by the preponderance of the evidence, compliance with such employment standard
    b. have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency or
(b) Reliable documents not described in clause (a) that provide evidence of employment, including but not limited to
    a. Bank records
    b. Business records
    c. Employer records
    d. Records of a labor union, day laborer center, or organization that assists workers in employment
    e. Sworn affidavits from nonrelatives who have direct knowledge of the alien's work or education, that contain
        i. The name, address and telephone number of the affiant;
        ii. The nature and duration of the relationship between the affiant and the alien; and
        iii. Other verification or information; and
    f. Remittance records

In addition, the same temporary exceptions that are applicable to the employment requirement in S. 744 should apply to the work option in this case. Specifically, 245C(3)(E)(ii) provides that the employment and education requirements shall not apply during any period during which the applicant:

(a) was on medical leave, maternity leave or other employment leave authorized by Federal law, State law, or the policy of the employer;
(b) is or was the primary caretaker of a child or another person who requires supervision or is unable to care for himself or herself; or
(c) was unable to work due to circumstances outside the control of the applicant.

Finally, S. 744 grants authority to the Secretary to waive the employment or education requirements for any individual who demonstrates extreme hardship to himself or herself or to a spouse, parent or child who is a United States citizen or lawful permanent resident. Similarly, USCIS should explicitly allow DACA renewal applicants to be exempt from the education or work requirement altogether if they can demonstrate extreme hardship in

these circumstances. USCIS must make these standards clear both in the Form Instructions and on its website in the form of an FAQ.

iii. Allow for medical and disability exceptions to the education requirement

In addition to these exceptions, S. 744 provides for an explicit exception to the employment and education requirements for an RPI who "has a physical or mental disability (as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. §12102(2)) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary." Dreamers with disabilities and those who are pregnant should be similarly exempt from the education-related requirement of the DACA program. Furthermore, UWD has heard of individuals who were forced to drop out of an educational program because they could not meet the program's attendance requirements due to frequent doctors' visits resulting from a medical condition. These individuals should also be exempt from having to meet the education requirement at renewal. The language of this exception is provided in the recommended education question above.

If USCIS declines to establish a disability, pregnancy and medical exception akin to the one provided in S. 744, the agency might consider creating an exception similar to the exception to the English and civics requirements for naturalization.[17] In that context, USCIS conducts an independent assessment of whether the applicant is eligible for a waiver based on his or her disability. The disability must be permanent, lasting or expecting to last at least 12 months, cannot result from having taken illegal drugs, and must prevent the applicant from learning English or civics. The applicant must be unable to pass the test even with "reasonable accommodations," as defined in the Rehabilitation Act of 1973.[18] The applicant must submit a Form N-648, in which a medical professional diagnoses the disability and provides information to certify that it is a qualifying disability.[19]

Although the disability exception to the English and civics requirements for naturalization are more narrowly tailored than those in S. 744, it is a burdensome, cost-intensive process for both the applicant and the agency to determine that a waiver is warranted in a particular case. Such a process may be inaccessible for many undocumented immigrant youth. Therefore, USCIS would be better served by a broader exception that relies on existing definitions of disability rather than case-by-case assessments that are specific to DACA applicants.

Although UWD supports the inclusion of this exception for both initial and renewal applicants, we find that it is especially important that USCIS provide these exceptions at the renewal stage because youth will suffer significant economic setbacks if they lose their work authorization after they have acquired DACA.

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[17] 8 U.S.C. §1423(b)(1) ("The requirements of subsection (a) shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith").
[18] Catholic Legal Immigration Network. "The Disability Waiver and Accommodations," *available at* https://cliniclegal.org/sites/default/files/231718_CLINIC_07.pdf
[19] "Form N-643, Medical Certification for Disability Exception," *available at* http://www.uscis.gov/sites/default/files/files/form/n-648.pdf.

E. Protect Youth From ICE

i. Allow USCIS to retain jurisdiction over applications from detention

The draft Form states that an individual who is currently in immigration detention may not request consideration of DACA or renewal for DACA from USCIS. Rather, these individuals should identify themselves to their deportation officers. However, UWD leaders fear that ICE may adjudicate these requests in a manner that is inconsistent with USCIS' practice.

Therefore, we recommend that USCIS receive applications from detained individuals, and that ICE permit individuals to apply for DACA or DACA renewal from detention if ICE initially determines that the individual is not eligible for DACA. We do not suggest that jurisdiction be limited solely to USCIS, but rather recommend that USCIS have the ability to adjudicate a detained individual's application after ICE has denied a DACA request or has determined that the individual is not prima facie eligible for DACA and therefore has refused to release the person from detention. Furthermore, USCIS should accommodate detained applicants' inability to meet the educational requirement.

ii. Protect the confidentiality of youth who lose DACA

Neither the Form nor the Form Instructions state what will happen to individuals who *choose* not to renew their DACA, either because it is not convenient for them to do so or because they are unable to meet a DACA eligibility requirement or pay the fee for renewal. In FAQ number 11, USCIS stated that, "individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE."[20] However, it does not state what will happen once deferred action has expired. UWD leaders are concerned about the potential repercussions of falling out of the DACA program. Therefore, we recommend that the Form Instructions state that USCIS will not refer information about an individual who chooses not to renew his or her DACA grant to ICE because that individual's grant of Deferred Action has expired.

Conclusion:

We appreciate this opportunity to comment on Form I-821D, Consideration for Deferred Action for Childhood Arrivals, and the accompanying Form Instructions. We hope that USCIS will consider making the changes outlined herein.

Sincerely,

UNITED WE DREAM NETWORK

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[20] *See* "Frequently Asked Questions," available at *http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions.*