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OF THE
UNITED STATES OF AMERICA

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November 29, 2021

The Honorable Alejandro N. Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Via electronic submission: www.regulations.gov

**RE: Deferred Action for Childhood Arrivals
86 Fed. Reg. 53736 (September 28, 2021)
RIN 1615-AC64**

Dear Secretary Mayorkas:

The U.S. Chamber of Commerce (“Chamber”) welcomes the opportunity to comment on the notice of proposed rulemaking (“NPRM”) entitled “Deferred Action for Childhood Arrivals.” The Chamber has long supported efforts to provide certainty and relief for Dreamers, as many of our members currently rely upon the contributions made by their employees that are DACA recipients. We appreciate the desire of the Department of Homeland Security (“DHS” or “Department”) to provide further protection for DACA recipients and help them maintain their ability to legally work in the U.S. This will help prevent business disruptions to companies that are struggling mightily to meet their workforce needs at this moment in time.

In addition, we welcome DHS’s acknowledgement that this proposal is not a permanent solution to the plight of DACA recipients.¹ We urge the Department to finalize a refined DACA rule in an expeditious manner to best ensure that DACA recipients can continue to legally live and work in the U.S. More importantly, we implore the Biden Administration to work with both political parties in Congress on a lasting, bipartisan legislative solution that includes, at a minimum, the provision of long-term legal status and work authorization for Dreamers and sorely needed improvements to our nation’s border security efforts.

Protecting DACA Recipients is Good for Businesses and the American Economy

Since the DACA Program’s inception in 2012, it has provided qualifying individuals with a reprieve from deportation and allowed them to pursue educational opportunities, obtain new job skills, find gainful employment, and build their lives in the U.S. Some DACA recipients have started their own businesses and they employ American workers.

¹ Proposed Rule, Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53736, 53739 (Sept. 28, 2021).

Many companies are having significant difficulties in meeting their workforce needs. The DACA program's continued existence ensures that the roughly 641,000 current program beneficiaries don't lose their ability to legally work in the U.S. If DACA recipients lost the ability to legally live and work in the U.S., it would cause significant business disruptions for our member companies.

A recent National Association of Business Economics survey found that nearly half of the American companies that responded reported difficulties in finding skilled workers.² The NABE survey is consistent with the anecdotal evidence provided by our members that care about DACA. Technology companies, manufacturers, retail firms, healthcare providers, among many others, are having significant difficulty filling their current job openings. These same companies are very concerned about the lack of certainty they have with being able to retain their DACA employees, as losing them would only exacerbate their workforce challenges.

Out of the roughly 641,000 active DACA recipients, over 200,000 are employed in fields included in DHS's Cybersecurity and Infrastructure Security Agency "essential critical infrastructure workforce,"³ 41,700 of which are healthcare workers.⁴ A study by the Association of American Medical Colleges found that by 2033, the U.S. could see an estimated shortage of between 54,100 and 139,000 physicians, including shortfalls in both primary and specialty care.⁵ While this data only reflects the problems afflicting one particular industry, it is illustrative of the fact that DACA employees are helping companies in various industries meet their current workforce challenges. The reliance that businesses have placed upon the continued employment of their DACA employees is not only critical for meeting their current workforce needs, but also for helping to meet their long-term labor needs.

Several empirical studies have shown the benefits of providing DACA recipients with the ability to legally live and work in the U.S. and more importantly, what our nation and our economy stand to lose if DACA recipients lose their protection from deportation and work authorization. One study by Ike Brannon and M. Kevin McGee found that making DACA permanent would increase federal, state, and local tax revenue by \$87 billion over a ten-year period.⁶ This study also found that DACA recipients would lose approximately \$120 billion dollars in lost income caused by the loss of their work authorization if the DACA program ceased to exist.⁷

² Annaken Tappe, *Nearly Half of American Companies Say They Are Short on Skilled Workers*, CNN Business (Oct. 25, 2021), [Nearly half of American companies say they are short on skilled workers - CNN](#).

³ Amy Sherman, Fact-check: Is DACA protecting over 200,000 essential workers from deportation?, [How many DACA recipients are essential workers amid COVID-19 pandemic? \(statesman.com\)](#) (Accessed Nov. 22, 2021).

⁴ Id.

⁵ Association of American Medical Colleges, [The Complexities of Physician Supply and Demand: Projections From 2018 to 2033 \(aamc.org\)](#), (June 2020), (accessed Nov. 22, 2021).

⁶ Ike Brannon, [Extending DACA's Protection Creates Jobs And Tax Revenue For The U.S. Economy \(forbes.com\)](#), citing Ike Brannon and M. Kevin McGee, *Estimating the Economic Impacts of DACA*, July 5, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420511, (accessed Nov. 22, 2021).

⁷ Id.

This research also concluded that the likely impact of the DACA program's elimination is that such a policy change would harm the interests of not only the DACA recipients, but also the interests of American workers. The authors reasoned that the program's elimination would dramatically reduce the return on investment for a DACA recipient to obtain additional educational credentials and skills. This would likely force affected individuals to take jobs that don't allow them to take full advantage of their human capital, which would reduce the number of skilled workers in occupations where there are acute labor shortages and bring about increased competition for the types of jobs that require less educational credentials and tend to have a surplus of potential workers in those fields.⁸ The risk posed by this potential outcome has many companies concerned, as they do not want to lose valued employees at a time when they're struggling to meet their workforce needs.

Other reports have found that the loss of the DACA program would have a demonstrably negative impact upon employers. The Cato Institute estimates that employers would incur approximately \$6.3 billion in turnover costs if the DACA program were rescinded and the program's beneficiaries lost their ability to legally work in the U.S.⁹ Such an outcome would force American companies of all sizes to let go of hundreds of thousands of DACA employees and recruit, hire, and train replacements for these workers. Forcing employers to let go of workers when they cannot find enough people to hire will further limit their company's output, efficiency, and their company's ability to compete in an increasingly competitive global marketplace.

Given all these concerns of the business community regarding the continued employment of their DACA employees, we greatly appreciate the Department issuing this NPRM to protect the current workers of our members. However, given the Department has acknowledged that this is not a permanent solution to address the plight of this particular group of individuals, we urge the administration to work with the Congress on bipartisan legislation that will provide a lasting solution to this problem.

The Proposal Would Benefit from Recoupling the Application for Removal Protection with the Work Authorization Application

One consistent concern conveyed to us about the NPRM is the separation of the application process for the Form I-821D, Consideration of Deferred Action for Childhood Arrivals, from the Form I-765, Application for Employment Authorization. Historically, U.S. Citizenship and Immigration Services ("USCIS") administered the program in a manner where an individual seeking to obtain protection from removal under DACA needed to apply for both the deferral of removal and employment authorization at the same time. This proposal seeks to bifurcate that process where one need only file for the Form I-821D in order to benefit from the

⁸ Id.

⁹ David Bier, [Ending DACA Will Impose Billions in Employer Compliance Costs | Cato at Liberty Blog](#), (Sept. 1, 2017) (accessed Nov. 22, 2021).

program, whereas obtaining an employment authorization document is now optional for a putative DACA beneficiary.

Many chamber members have expressed concern over the bifurcation of the application process. Specifically, they are worried that bifurcating the DACA application processing might cause further delays in the processing of employment authorization documents (“EADs”). Given that many companies have experienced significant processing delays with respect to the issuance of EADs for their foreign national employees over the past 18 months, they are very concerned about similar employment authorization disruptions for their DACA employees. As businesses across industries are struggling to fill job openings, they can ill afford to have the employment authorization of their current DACA employees lapse due to EAD processing delays.

The Chamber fully appreciates DHS’ opinion that bifurcating the application process might provide more flexibility for individual DACA recipients. If the circumstances were such that DHS could approve initial DACA applications, one could reasonably surmise that new DACA recipients who are full-time students and currently unemployed would have a rational incentive to take advantage of this bifurcation and save some money in the application process. However, in our view, any potential benefits associated with making this policy change will likely not materialize in the manner expected by the Department, as USCIS is prevented by a court order from approving and conferring DACA benefits upon initial applicants.¹⁰

The only individuals who can currently obtain any benefits from the DACA program are individuals who are seeking to renew their status. Given that this cohort of individuals have always applied for both the deferral from removal and the employment authorization document together (as per the program’s requirements), the feedback from our members is that they are confident that DACA employees will continue to apply for both the removal protections and the employment authorization simultaneously. It is critically important for our members to ensure that their workers don’t have any lapses in work authorization, and the feedback that companies have provided to us indicates that their workers share that view.

Our members and their DACA employees understand the precarious situation of the program’s long-term viability. Given that uncertainty, many of our companies are of the view that the program would benefit from not changing the application process in the manner suggested in the NPRM. Alternatively, DHS could amend its proposal to provide a bifurcated application process for initial DACA applicants, should they be allowed to obtain benefits in the future, and maintain the historical application process of requiring both the Forms I-821D and I-765 to be filed simultaneously if an individual is seeking to renew his/her DACA status.

Conclusion

The Chamber appreciates the Department’s desire to protect DACA recipients through this notice of proposed rulemaking. We urge the Biden Administration to finalize a DACA rule

¹⁰ [State of Texas, et al., v. United States of America, et al.](#), 1:18-CV-00068, (S.D. TX) (July 16, 2021) (“Texas II”)

expeditiously and to do so in a manner that provides the most certainty for our members and their DACA employees. To that end, we fully agree with the Department's assertions that this NRPM is not a permanent solution to the plight of Dreamers, and we remain fully committed to working with the Biden Administration and Congress on finding a long-term legislative solution to address this problem.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baselice', is centered below the word 'Sincerely,'. The signature is fluid and cursive, with a large initial 'J'.

Jonathan Baselice
Vice President, Immigration Policy
U.S. Chamber of Commerce