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Laura Dawkins
Chief, Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services, Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

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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
78 Fed. Reg. 76636 (Dec. 18, 2013)**

Dear USCIS Desk Officer,

The American Immigration Council (“Council”) and the American Immigration Lawyers Association (AILA) submit 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.

The Council is a 501(c)(3) tax-exempt, not-for-profit educational and charitable organization whose mission is to increase public understanding of immigration law and policy, advocate for the just and fair administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America’s immigrants. Founded in 1987, the Council carries out its mission through its four divisions: the Legal Action Center, the Immigration Policy Center, the International Exchange Center, and the Community Education Center.

Founded in 1946, AILA is a voluntary bar association of more than 13,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. AILA’s mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

We commend USCIS for adopting a DACA renewal process that does not impose an onerous evidentiary burden on individuals who have already come forward and supplied USCIS with considerable documentation about their lives in the United States. We also appreciate that the draft Form I-821D

minimizes the amount of duplicative information those seeking renewal will be required to provide. While we welcome these developments, the form could be significantly improved in the following ways.

Simplify the Form I-821D

In its current condition, Form I-821D is overly complicated. Rather than consolidating and grouping questions according to whether renewal or initial requestors or both must respond, the form alternates between these categories in a way that will greatly confuse requestors.

Recommendation: Compile questions that renewal requestors must answer in one, continuous section of the form. The Form I-131 is an example of a multipurpose form that could work well as a model for the Form I-821D; for example, Part 3 instructs applicants other than DACA recipients to skip to Part 7 to apply for Advance Parole.

Address the Narrow Renewal Process Timeframe by Allowing Renewal Request Receipt Notices to Serve as Proof That the Requestor Is in Deferred Action Status

The renewal process timeframe is unrealistically narrow, with potentially harmful ramifications for employers and DACA recipients. DACA recipients whose initial period of deferred action lapses before their renewal period begins may lose work authorization and accrue unlawful presence. Moreover, the instructions advise requestors not to file for renewal until 120 days prior to the expiration date of the requestor's deferred action period, but do not encourage requestors to file for renewal the full 120 days in advance.

Given the agency's difficulty in processing DACA applications within the posted processing time¹ – 6 months at the fastest service centers² – we fear that requestors will receive renewals after the expiration of their original period of deferred action. EADs alone can take longer than the 90-day regulatory processing timeframe. For example, there have been periods of TPS renewal where EADs were delayed because of high volume. The likelihood of this is particularly high with respect to individuals who were initially granted DACA by Immigration and Customs Enforcement (ICE), as the renewal process for these individuals appears to require de novo adjudication.³

The consequences for DACA beneficiaries of not having DACA renewals or employment authorization documents processed before expiration of the initial grant are tremendous. Employers may have no choice but to terminate or suspend DACA recipients who find themselves without their status renewed in a timely manner. Moreover, absent a policy pronouncement from the agency, such individuals would accumulate unlawful presence, which could harm their ability to someday acquire nonimmigrant or immigrant status. Lastly, many DACA grantees have a variety of benefits tied to their deferred action grants, including in-state tuition, driver's licenses, and professional licenses.

¹ See Practice Alert on Long-Pending Cases at the Nebraska Service Center (Updated 12/30/13), AILA InfoNet Doc. No. 13110747 (posted Dec. 30, 2013).

² As of January 3, 2014, all of the USCIS Service Centers save Vermont reported a six month processing timeframe for DACA applications. See USCIS Processing Time Information, available at <https://egov.uscis.gov/cris/processTimesDisplayInit.do>. The Vermont Service Center is considerably slower. *Id.*

³ See Page 10 of Draft Instructions.

Recommendation: USCIS could avoid these severe consequences by permitting the DACA renewal request receipt notice to serve as proof that the individual is in deferred action status. Like the receipt for the Form I-751, Petition to Remove the Conditions of Residence, which clearly states work authorization is extended for one year from the date of the receipt,⁴ the I-821D receipt could clarify that deferred action status and work authorization are extended while the application is pending. The receipt could also clarify that this extension period does not result in the accrual of unlawful presence. The agency adopted a similar position with respect to the accumulation of unlawful presence for individuals who requested DACA before turning 18 years old.⁵ Additionally, USCIS routinely grants automatic extensions of Temporary Protected Status (TPS) for those applicants who timely file for renewal in order to allow time for EADs with new validity dates to be issued.

We suggest the following language for the DACA renewal receipt notice: “Your Deferred Action status is extended for a period of one year. During the one-year extension you are authorized for employment. (This extension and authorization for employment does not apply to you if your deferred action status is revoked.) You will not accrue unlawful presence while your renewal request is pending.”

Additionally, USCIS should expand the proposed DACA renewal filing period from no more than 120 days to no more than 150 days prior to the requestor’s DACA expiration date. USCIS should also make clear in the form and instructions that requestors should file for renewal the full 150 days in advance whenever possible.

Make Explicit the Evidentiary Requirements for DACA Renewal

As we understand the renewal process, requestors seeking renewal will not be required to submit any evidence in support of their renewal requests unless one of the following circumstances applies: (i) the individual is currently in exclusion, deportation, or removal proceedings (except removal proceedings that are administratively closed); (ii) the individual has been charged with or convicted of a felony or misdemeanor in the United States, or a crime in any country other than the United States; or (iii) the individual initially received DACA from ICE. If our understanding is correct, we request that USCIS make this explicit.

Recommendation: USCIS should specifically and expressly identify the evidentiary requirements renewal requestors must satisfy. In our comments on the form and instructions below, we offer more detailed proposals on how this could be accomplished.

Make DACA More Affordable for both Initial and Renewal Requestors

One of the biggest, if not *the* biggest, obstacles to applying for DACA is the filing fee. We frequently hear reports that individuals are unable to afford the filing fee and unable to qualify for the overly-stringent fee exemption. As a result, DACA-eligible individuals are foregoing or delaying filing for DACA.

⁴ See Form I-751 receipt notice (“Your conditional resident status is extended for a period of one year. During the one-year extension you are authorized employment and travel. (This extension and authorization for employment and travel does not apply to you if your conditional resident status has been terminated.)”).

⁵ See USCIS DACA Frequently Asked Questions, Q.5 under “About Deferred Action for Childhood Arrivals” (“If you are under 18 years of age at the time you submit your request, you will not accrue unlawful presence while the request is pending, even if you turn 18 while your request is pending with USCIS.”).

Recommendation: USCIS should consider a range of options to make DACA and DACA renewal more accessible to eligible individuals, including lowering the initial filing fee, making the renewal filing fee less than the initial filing fee, and instituting a less stringent fee exemption policy.

Adopt a Single, Streamlined Renewal Request Process

The draft form and instructions contemplate a two-track renewal process. For individuals who received DACA through USCIS, the renewal process appears to be relatively streamlined and free of onerous evidentiary requirements. For individuals who received DACA through ICE, the renewal process will be more cumbersome. Individuals in this latter group will be required to “submit documentation to establish how [they] satisfy the guidelines as if...filing an Initial request for consideration of deferred action.”⁶ These requestors, like those who initially requested DACA from USCIS, have already demonstrated their eligibility for DACA and should not be required to undergo the lengthy process of an initial requestor. A single, streamlined renewal process for all renewal requestors would be more efficient and would encourage timely renewals.

Recommendation: USCIS should adopt a single, streamlined renewal process for all renewal requestors, including those requestors who received DACA through ICE.

Changes to Form I-821D

Page 1, Part 1. Information About You

A renewal requestor whose initial DACA request was granted by ICE might not understand how to respond to the opening question on the form, which asks whether the individual is submitting an initial or a renewal request for DACA. While as a technical matter such a requestor will be seeking renewal of deferred action, he or she is instructed to complete the entire form and submit relevant documentation “as if...filing an Initial request for consideration of deferred action.”⁷ We presume that USCIS intends for these requestors to assert that they are filing a renewal request.⁸ We recommend that USCIS so specify on the form.

In addition, there appears to be an error in Part 1. Item 2.a. invites requestors to check a box that provides “Consideration of of Deferred Action for Childhood Arrivals – **Renewal Request**” [underlining added; **bold** text in original].

Recommendation: We encourage USCIS to modify Part 1. as follows (new language in ***bold italics*** except where indicated; stricken language in ~~strike through~~):

⁶ See Page 1 of Draft Instructions, “When Should I Use Form I-821D?”

⁷ See Page 1 of Draft Instructions.

⁸ We presume that USCIS lockbox facilities and Service Centers will place renewal requests and initial requests into two different queues, with the former expected to be processed more rapidly. We believe, therefore, that USCIS will benefit from the ability to quickly identify all renewal requests for placement in the expedited renewal queue.

Part 1. Information About You

I am not in immigration detention ***and*** [emphasis in original] I have included Form I-765, Application for Employment Authorization, and Form I-765WS, Form I-765 Worksheet; and

I am requesting:

1. ☐ Consideration of Deferred Action for Childhood Arrivals – **Initial Request**
OR [emphasis in original]
- 2.a. ☐ Consideration of ~~of~~ Deferred Action for Childhood Arrivals – **Renewal Request**
(***check this box regardless of whether USCIS or ICE initially deferred action in your case***)
AND [emphasis in original]
- 2.b. For this renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on
(mm/dd/yyyy) ►

Page 2, Part 1. Current Status and Pending Immigration-Related Requests

Questions 20.b. and 20.c. call for the requestor to identify “any other immigration-related requests pending.” USCIS should eliminate this question from the form. First, it may be difficult for requestors to determine how they should answer this question. For example, should beneficiaries of long-ago approved I-130s answer question 20.b. in the affirmative? Second, we are concerned that the solicitation of this information may delay or prevent the timely provision of legal services, particularly in group processing clinics where individuals seldom appear with their complete immigration history. Third, the information is not germane to the merits of the DACA request because only individuals in actual lawful status on June 15, 2012 or at the time of filing their DACA request are precluded from receiving DACA on account of their immigration status. Similarly situated individuals, such as TPS beneficiaries seeking renewal, are not required to provide such information.⁹

We do recognize that a requestor’s current immigration status bears on DACA eligibility for both initial as well as renewal requestors. However, USCIS may, in some instances, be better positioned than the requestor to determine this status. We would encourage USCIS to include in a parenthetical an illustrative list of immigration benefits commonly obtained by individuals granted DACA. The examples could also appear in a drop down menu similar to the one accompanying item 20.a.

Recommendation. We encourage USCIS to modify the text of item 20.b. and remove 20.c. as follows (new language in ***bold italics*** except where indicated; stricken language in ~~strikethrough~~):

Current Status and Pending Immigration-Related Requests [emphasis in original]

- 20.a. **For Initial Requests:** Provide your current immigration status.
- 20.b. **For Initial Renewal Requests:** ~~Indicate whether you have any other immigration-related requests pending~~ ***Provide any immigration status you have received since you received Deferred Action for Childhood Arrivals (e.g., Parole, U Visa, T Visa, LPR).***
- 20.c. ~~**For Renewal Requests:** Since you have received Deferred Action for Childhood Arrivals, provide any immigration status you have received and indicate whether you have any other immigration-related requests pending.~~

⁹ Compare Form I-821 with Draft Form I-821D.

Page 3, Part 1. Education and Military Service Information (For Renewal Requests Only)

This section of the form solicits information on how renewal requestors who were “currently in school” when they originally applied for DACA qualify for renewal under the benchmarks set forth in the DACA Frequently Asked Questions webpage.¹⁰ This section of Form I-821D is unwieldy and confusing, so we recommend USCIS comprehensively restructure it.

Recommendation. Modify questions 26 through 29 as follows (new language in ***bold italics***; stricken language in ~~strikethrough~~):

~~At the time I filed my Form I-821D that USCIS approved for my initial period of Deferred Action as a Childhood Arrival:~~

~~26. — I was enrolled in school and:~~

~~26.a. — ☐ I have since graduated from school.~~

~~26.b. — ☐ I was in elementary school, middle school, or junior high and I have made substantial, measurable progress toward graduating from high school or the school in which I was or am enrolled.~~

~~26.c. — ☐ I am still enrolled in school or an education program that assists students either in obtaining a high school diploma or its recognized equivalent under state law, and I have made substantial, measurable progress toward graduating.~~

~~26.d. — ☐ I have since passed a GED exam or other equivalent State authorized exam.~~

~~26.e. — ☐ I am currently 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.~~

~~27. — I was enrolled in an education 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 and:~~

~~27.a. — ☐ I have since obtained a high school diploma or its recognized equivalent.~~

~~27.b. — ☐ I have since passed a GED or other equivalent State authorized exam.~~

~~27.c. — ☐ I am currently enrolled in high school.~~

~~27.d. — ☐ I am currently enrolled in a new/different education 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.~~

~~28. — I was enrolled in an education, literacy, or career training program (*including vocational training*) designed to lead to placement in postsecondary education, job training, or employment and:~~

~~28.a. — ☐ I have since enrolled in postsecondary education.~~

~~28.b. — ☐ I have since completed an education, literacy, or career training program (*including vocational training*) and have obtained employment.~~

~~28.c. — ☐ I have made substantial, measurable progress toward completing an education, literacy, or career training program.~~

~~28.d. — ☐ I am currently enrolled in high school.~~

¹⁰ See USCIS DACA Frequently Asked Questions, Q.9 under “Education.”

~~28.e. ☐ I am currently 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.~~

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, middle school, high school, or secondary school.*

26.b. ☐ *Enrolled in an education 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 (including vocational training) 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 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.*

27.c. ☐ *Have passed a GED or other equivalent state-authorized exam.*

27.d. ☐ *Am enrolled in postsecondary education.*

27.e. ☐ *Have obtained employment for which I received training through the program in which I was enrolled when I initially requested DACA.*

27.f. ☐ *Am still in school and I have made substantial, measurable progress toward graduating from the school or completing the program in which I was enrolled when I initially requested DACA.*

27.g. ☐ *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.*

289. ☐ ~~Item Numbers 26., and/or 27., and 28.~~ do not apply to me. Note that if you select this box, you must use **Part 9. Additional Information to explain your reasons for not meeting the educational guideline. *why USCIS should renew your period of Deferred Action for Childhood Arrivals despite the inapplicability of questions 26 and 27.***

Additionally, we recommend that USCIS add clarifying language in the online [Frequently Asked Questions](#) on DACA on when enrollment in a “new/different education 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” would satisfy the renewal requirement.

Page 4, Part 2. Processing Information

Part 2. newly solicits information about the ethnicity, race, height, weight, eye color, and hair color of requestors. This entire section is mandatory; it must be completed by both initial and renewal

requestors.¹¹ The form refers to this section as “Processing Information” and the instructions call it “biometrics information.”¹² The instructions further state that providing this information as part of a request “may reduce the time [a requestor] spend[s] at” a biometrics appointment.¹³ No other information regarding how this data will be used – or not used – is provided.

The questions in Part 2. are not relevant to DACA eligibility. Furthermore, these questions may worry potential requestors, some of whom have hesitated to apply for the program for fear of revealing themselves to the government.¹⁴

We are aware of only one other USCIS application with a group of questions like those appearing in Part 2. of the draft Form I-821D: the N-400.¹⁵ The N-400, however, describes the information differently. On the N-400, questions regarding ethnicity, race, and physical description information fall under the heading “Information for Criminal Records Search.”¹⁶ Additionally, a prior version of the N-400 instructions provided that “[t]he [FBI] will use the information in this section, together with your fingerprints, to search for criminal records. Although the results of this search may affect your eligibility, we do **not** make naturalization decisions based on your gender, race, or physical description.” (Emphasis in original).

The agency’s description of the information it is soliciting in Part 2. of the I-821D is notably different from the description provided in the N-400 instructions. We are unable to discern whether the agency has included the questions in Part 2. of the draft Form I-821D to expedite requestors’ biometrics appointment, as is implied by the draft instructions, or whether the agency is seeking this information for criminal records search purposes, as in the context of N-400s.

Recommendation: USCIS should make the DACA request process as streamlined as possible and eschew any unnecessary questions. We therefore encourage USCIS to strike Part 2. in its entirety. In the alternative, USCIS should amend the instructions to explain in greater detail why USCIS is soliciting the information in this part and specify in the instructions that “USCIS will not decide whether to defer action in an individual case based on the requestor’s race, ethnicity, or physical description.”

¹¹ See Draft Instructions at Page 3.

¹² See Draft Instructions at Page 3.

¹³ *Id.*

¹⁴ See, e.g., Miriam Jordan, *Young Immigrants’ Applications Fall*, Wall St. Journal, March 14, 2013, available at <http://online.wsj.com/news/articles/SB10001424127887324392804578360540737698764>; Tara Bahranpour, *Among Young Immigrants, Applications For Deportation Relief Have Slowed*, Wash. Post, Nov. 27, 2012, available at http://www.washingtonpost.com/local/among-young-immigrants-applications-for-deportation-relief-have-slowed/2012/11/27/fdd2e7e6-3425-11e2-bfd5-e202b6d7b501_story.html; Ted Robbins, *Many Young Undocumented Immigrants Have Yet To Seek “Deferred Action”*, National Public Radio, Dec. 16, 2013, available at <http://www.npr.org/blogs/codeswitch/2013/12/16/251462027/hundreds-of-thousands-still-need-to-apply-for-daca-program>.

¹⁵ Some forms solicit similar information. The I-589 asks for the applicant’s “Race, Ethnic or Tribal Group” for reasons plainly relevant to the law of asylum. See Form I-589, available at <http://www.uscis.gov/i-589>. The I-589 does not solicit information about race or a physical description of the applicant. *Id.* Forms EOIR 40, 42A and 42B solicit information about the applicant’s physical description, but do not include questions about the applicant’s race or ethnicity. See Forms EOIR 40, 42A and 42B, available at <http://www.justice.gov/eoir/formslist.htm>.

¹⁶ See Form N-400, at pg. 6.

Page 5, Part 4. Travel Information

Part 4. solicits travel information. Initial requestors are required to provide information about absences from the United States since June 15, 2007. Renewal requestors are required to provide information about absences from the United States since August 15, 2012, as well as certain information about advance parole and travel documentation.

The form provides that questions 3 through 5 are to be completed only by renewal requestors. However, the instruction immediately preceding those questions is phrased as follows:

For Initial Requests Only: If you are filing Form I-821D for consideration of *initial* deferred action, you may skip to **Part 5. Criminal, National Security, and Public Safety Information.** [Emphasis in original.]

We are concerned that requestors will mistakenly conclude that initial requestors only are required to complete questions 3 through 5. A quick glance at the bold language suggests that the questions that follow are for initial requests only. In fact, the opposite is true.

Questions 4.a. through 5. are irrelevant to DACA eligibility. Moreover, requiring this information may cause unnecessary delays, especially for requestors who seek assistance at group processing workshops where individuals rarely appear with all documents bearing on their immigration history.

Recommendation: We encourage USCIS to modify the text of Part 4. as follows (new language in ***bold italics***; stricken language in ~~strikethrough~~):

For Initial Requests: List all of your absences from the United States since June 15, 2007. ***You are not required to respond to question 3.***

For Renewal Requests: List only your absences from the United States on or after August 15, 2012. ***Respond to all of the questions in Part 4.***

If you require...

Departure 1...

1.a....

1.b....

1.c....

Departure 2...

2.a....

2.b....

2.c....

For Initial Requests Only: If you are filing Form I-821D for consideration of *initial* deferred action, you may skip to **Part 5. Criminal, National Security, and Public Safety Information.**

3. Have you left the United States without advance parole on or after August 15, 2012?
☐ Yes ☐ No

- ~~4.a. What country issued your last passport?~~
- ~~4.b. Passport Number~~
- ~~4.c. Passport Expiration Date (mm/dd/yyyy)~~
- ~~5. Border Crossing Card (if any)~~

Changes to Form I-821D Instructions

Introduction of ELIS

While we look forward to DACA's inclusion in the ELIS system, we caution USCIS to be sure that ELIS is fully capable of handling the number of applications it may receive. We realize that USCIS is expanding the role of ELIS, but note that individuals have experienced a number of difficulties with ELIS. For example, we received reports of system "bugs" like individuals being unable to pay their immigrant fee when their A number is 9 digits and begins with a "2," complaints that it is difficult to withdraw cases submitted through ELIS, and criticisms about the fact that attorneys are unable pay the ELIS fee from their ELIS account, among others. Additionally, ELIS does not yet allow an attorney or legal service organization to efficiently file a form on behalf of a client.

Clarify There Is No Maximum Age Limit for a DACA Renewal

The instructions should be updated to make clear that there is no maximum age limit for a DACA renewal, as long as the applicant qualifies for the initial grant.

Page 1, When Should I Use Form I-821D?

As noted earlier in these comments, individuals who initially received DACA through ICE are required to "submit documentation to establish how [they] satisfy the guidelines as if...filing an Initial request for consideration of deferred action." While we believe USCIS should adopt a single renewal process for all renewal requestors, there are edits to the form instruction that are necessary even if USCIS decides to maintain a two-track renewal process. Individuals who received DACA through ICE -- especially those who lacked counsel -- may have handed over to ICE the only copies of crucial documents evidencing their eligibility for DACA. Some of these individuals may not know to file Freedom of Information Act requests. As a result, USCIS should consider all relevant evidence in the requestor's Alien File, in addition to the supporting documents that the requestor submits, when deciding whether or not to renew the individual's deferred action.

Recommendation: Modify as follows the text of the Note falling under the heading "When Should I Use Form I-821D?" (new language in ***bold italics***):

NOTE: If U.S. Immigration and Customs Enforcement (ICE) has already deferred action in your case, you may file Form I-765 and Form I-765WS with USCIS to request work authorization. You do not need to file this Form I-821D with USCIS unless you are requesting consideration of a Renewal of your deferred action. If ICE initially deferred action in your case and you are seeking a Renewal, you must complete the entire form and respond to **all** the questions on the form, regardless of whether the section states "For Initial Requests Only" or "For Renewal Requests Only." You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action. ***In determining whether to defer action in your case, USCIS will consider the evidence you submit with your***

renewal request as well as any supporting evidence in your Alien File that you previously submitted to ICE.

Page 2, Who May File Form I-821D?

The draft instructions provide that USCIS may reject renewal requests submitted more than 120 days prior to the expiration date of a requestor's period of deferred action,¹⁷ but do not advise requestors to file for renewal as *early as possible within* the 120-day window. Given lengthy processing times for initial requests and difficulties inquiring about currently pending DACA cases, requestors should be encouraged to file as early as possible within the 120-day period to avoid potential negative consequences associated with any gap in deferred action status.

Recommendation: We encourage USCIS to modify as follows the text of the Note following items 4. and 5. falling under the heading "Who May File Form I-821D" (new language in ***bold italics***):

NOTE: If you file this request **more than 120 days prior** to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date. ***USCIS recommends that you submit your renewal request as early as possible within the 120-day period prior to the expiration of your current period of deferred action to minimize the chance that your deferred action will expire. There may be serious consequences if your deferred action grant expires, including loss of work authorization and accrual of unlawful presence, which could affect your ability to obtain certain immigration benefits in the future.***

Page 3, General Instructions, How to Fill Out Form I-821D, 6. Processing Information.

As indicated in the discussion on pages 7-8, *supra* we would appreciate clarification from USCIS regarding the reason(s) why the agency is soliciting information about the race, ethnicity and physical description of DACA requestors.

Page 4, General Instructions, How to Fill Out Form I-821D, 7. Statement, Certification, Signature, and Contact Information of the Requestor.

It is unclear whether children under the age of 14 are required to sign Form I-821D. The draft instructions provide that "[e]very request must contain the original requestor's signature." However, the instructions also provide that a parent or legal guardian may sign the form on behalf of requestors under the age of 14 years of age.

In addition, advocates are not clear on whether requestors with severe developmental disabilities may or must sign Form I-821D. When a requestor signs Form I-821D, the requestor affirms, *inter alia*, that he or she "understand[s] each and every question and instruction on this form, as well as [his or her] answer to each question."¹⁸ We propose that requestors with developmental disabilities who may be unable to understand Form I-821D be permitted to have their parent or legal guardian sign the DACA application on their behalf.

¹⁷ We previously expressed our concern regarding USCIS's capacity to adjudicate renewal requests within fewer than 120 days. *See* text accompanying notes 1-2, *infra* page 2.

¹⁸ *See* Draft Form I-821D, Part 6., Questions 1.a.-b.

Recommendation: We encourage USCIS to modify as follows item 7. falling under the heading “Who May File Form I-821D” (new language in ***bold italics***; stricken language in ~~strikethrough~~):

7. Statement, Certification, Signature, and Contact Information of the Requestor. Select the box that indicates whether someone interpreted this form for you. If applicable, the attorney, accredited representative, or other individual who helped prepare this form for you must complete **Part 8.** and sign and date the form. [¶]

Every request must contain the original requestor’s signature. *There are two exceptions to this requirement.*

1. *If a requestor is under the age of 14, the requestor’s parent or legal guardian may sign the request on the requestor’s behalf.*
2. *If a requestor suffers from a developmental disability such that the requestor may not understand each and every question, instruction, and answer on Form I-821D, the requestor’s parent or legal guardian may sign the request on the requestor’s behalf.* [¶]

A photocopy of a signed request or a typewritten name in place of a signature is not acceptable. Sign and date the form and provide your daytime telephone number, mobile telephone number, and e-mail address. ~~If you are under the age of 14 years of age, your parent or legal guardian may sign the request on your behalf.~~

Page 8, Evidence for Initial Requests, 9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing...?

The instructions indicate that individuals enrolled in certain literacy programs may establish that they meet the “currently in school” guideline by submitting evidence that the relevant program is funded in whole or in part by Federal, state, local, or municipal funds; or is of demonstrated effectiveness. This language mirrors the USCIS DACA Frequently Asked Questions webpage. Missing from both the FAQ and the draft instructions is the fact that individuals enrolled in literacy programs administered by non-profit entities can establish that they meet the “currently in school” guideline by providing evidence of enrollment in such programs. We learned this information from the DACA Standard Operating Procedures Manual, which was obtained from USCIS in response to a Freedom of Information Act request.¹⁹ This rule regarding non-profit literacy programs should be shared with the broader public.

Recommendation: We encourage USCIS to modify as follows item 9. falling under the heading “Evidence for Initial Requests” (new language in ***bold italics***):

9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing...?

USCIS recognizes...

- A.** To be considered “currently in school,” you are to demonstrate that...
(1) A public...

¹⁹ National Standard Operating Procedures (SOP) Deferred Action for Childhood Arrivals, prepared by Service Center Operations Directorate, September 13, 2012, at 54, 59, *available at* http://legalactioncenter.org/sites/default/files/2013-HQFO-00305_Document.pdf.

- (2) An education, literacy, or career training program (*including vocational training or an English as a Second Language (ESL) course*) that is designed to lead to placement in post-secondary education, job training, or employment, and where you are working toward such placement, and that the program:
 - (a) ***If a literacy program, is administered by a non-profit entity; or***
 - (b) Is funded in whole or in part by Federal, state, local, or municipal funds; or
 - (c) Is of demonstrated...
- (3) An education...
 - (a) Is funded...
 - (b) Is of demonstrated...
- (4) A public...

Evidence of enrollment may include...

If you have been accepted for enrollment...

If you are enrolled in a literacy program, evidence that the program is administered by a non-profit entity includes a copy of a valid letter from the Internal Revenue Service confirming exemption from taxation under section 501(c)(3) of the Internal Revenue Service Code of 1986, as amended, or the equivalent section of a prior version of the code.

If you are enrolled in an educational, literacy, or career training program (*including vocational training or an ESL course*), evidence that the program is funded in whole or in part by Federal...

If you are enrolled in an educational, literacy, or career training program that is not publicly funded....

Page 10, Evidence for Renewal Requests

As stated earlier in these comments, USCIS should clarify what evidence a requestor seeking renewal must submit. Additionally, the draft instructions currently provide that renewal requestors with “any criminal history” must comply with the evidentiary provisions set forth in Item Number 12. Unless modified, this language will obligate all renewal requestors to submit evidence required under Item Number 12 regardless of when the relevant criminal incident occurred. Thus, individuals who received DACA *from USCIS* will be required to submit duplicative evidence for criminal incidents predating their initial DACA requests. We propose limiting this requirement to individuals whose criminal history post-dates their initial DACA request.

Finally, we believe this is an appropriate place for USCIS to reiterate that, with respect to individuals originally granted DACA by ICE, the agency will consider all relevant evidence in the requestor’s Alien File. *See* discussion on pages 10-11, *supra*.

Recommendation: We encourage USCIS to modify as follows the text falling under the heading “Evidence for Renewal Requests” (new language in ***bold italics*** except where indicated; stricken language in ~~strikethrough~~):

Evidence for Renewal Requests

If you are seeking a **Renewal** of Deferred Action for Childhood Arrivals, respond to all questions, except where the section or question indicates “For Initial Requests Only.”

You do not need to submit evidence with your renewal request if:

- 1. USCIS initially deferred action in your case;*
- 2. You are not currently in exclusion, deportation, or removal proceedings or if your removal proceedings are administratively closed; and*
- 3. You have not been charged with or convicted for a felony or misdemeanor in the United States, or a crime in any country other than the United States since you initially requested DACA*

If USCIS initially deferred action in your case and you thereafter were placed in exclusion, deportation, or removal proceedings, submit the evidence required under Item Number 11. (above).

If USCIS initially deferred action in your case and you thereafter were charged with or convicted of a felony or misdemeanor in the United States, or a crime in any country other than the United States, submit the evidence required under Item Number 12. (above).

If ICE initially deferred action in your case, you must complete the **entire** form and respond to **all** the questions on the form, regardless of whether the section states “For Initial Requests Only” or “For Renewal Requests Only.” You also must submit documentation to establish how you satisfy the guidelines *as if you were filing an Initial request for consideration of deferred action.* [Emphasis in original.] *USCIS will consider the evidence you submit as well as any relevant evidence in your Alien File in determining whether to defer action in your case.*

~~If you are currently in exclusion, deportation, or removal proceedings, see **Item Number 11.** (above) for additional guidance.~~

~~If you have any criminal history, see **Item Number 12.** (above) for additional guidance.~~

Page 13, Checklist

We appreciate that USCIS includes a checklist in the instructions to Form I-821D. We offer a number of suggestions to make the checklist more specific and user-friendly.

The fourth checklist item under the heading “For Initial and Renewal Requests” asks the requestor whether he or she submitted “the necessary documents.” We do not believe that requestors will benefit from this general question. Worse, since many renewal requestors will not be required to submit additional evidence, we fear that this question may affirmatively cause confusion. We propose replacing the “necessary documents” question with a variety of sub-questions designed to clarify the evidentiary obligations with which some renewal requestors must comply. We believe the form will be more user-friendly if evidentiary matters relating to renewal requestors are given their own headings.

The checklist asks whether the requestor provided a copy of his or her order terminating removal proceedings, if applicable. Nowhere else are requestors told that they should provide this particular document. We would therefore request that this item be removed from the checklist or that this obligation be specified elsewhere in the instructions.

Finally, the checklist asks whether requestors with certain criminal issues submitted “an original official or court-certified document that shows your complete arrest record and final disposition for each incident.” This language does not track the language appearing in Item 12. Since that language is rather detailed, we would recommend drawing the requestor’s attention directly to it.

Recommendation: We encourage USCIS to modify the checklist as follows (new language in ***bold italics*** except where indicated; relocated language in underline; stricken language in ~~stricken~~):

For Initial and Renewal Requests [bold italics in original]

- ☐ Did you submit...
- ☐ Did you answer...
- ☐ Did you provide...
- ☒ ~~Did you submit the necessary documents?~~
- ☒ ~~If your exclusion, deportation, or removal proceedings were terminated by an immigration judge, did you include a copy of the immigration judge’s termination order?~~

For Initial Requests Only [bold italics in original]

- ☐ Did you submit evidence to show...
- ☐ Did you submit evidence to prove...
- ☐ Did you submit evidence that you...
- ☐ Did you provide evidence showing that you...
- ☐ If you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (if available)?
- ☐ If you have ever been arrested for, charged with, or convicted of any felony or misdemeanor in the United States or any crime in any country other than the United States, did you submit ~~an original official or court-certified document that shows your complete arrest record and final disposition for each incident~~ ***the evidence required under Item Number 12?***

For Renewal Requests Only

- ☐ ***If you were placed in exclusion, deportation, or removal proceedings since you initially requested DACA, did you submit a copy of the removal order, any document issued by the immigration judge, or the final decision of the Board of Immigration Appeals (if available)?***
- ☐ ***If you have been charged with or convicted for a felony or misdemeanor in the United States, or a crime in any country other than the United States since you initially requested DACA, did you submit the evidence required under Item Number 12?***

CONCLUSION

We encourage USCIS to consider our proposals outlined above and to make corresponding changes to the DACA Form and Instructions. We appreciate the opportunity to comment on Form I-821D, Consideration of Deferred Action for Childhood Arrivals, and the accompanying instructions and thank you in advance for your consideration.

Sincerely,

THE AMERICAN IMMIGRATION COUNCIL

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION