

ISSUE BRIEF
DACA/Immigration Update**JUNE 15, 2018***Prepared by:*Cayla Kaplan (ckaplan@bosewashingtonpartners.com)Russell Armstrong (rarmstrong@bosewashingtonpartners.com)Ellen Fern (efern@bosewashingtonpartners.com)

OVERVIEW

As the number of immigrants and English learners continues to grow in the United States, the pressure on Congress to pass a comprehensive immigration reform bill increases as well. Now, in the wake of President Trump's executive actions that ordered the cancellation of the Deferred Action for Childhood Arrivals (DACA) program last fall, Congress is looking for a legislative fix for these young people as well as a broader path forward on immigration reform. By ending the DACA program, the Administration has placed an estimated 700,000 children and families in danger of being deported to countries that are foreign to them as they have spent their lives in the United States. While there are no doubt major policy consequences to ending DACA, some advocates note there are also economic repercussions. For example, there is a \$60 billion estimated loss in federal tax revenue and a potential \$280 billion decrease to the U.S. economy over the next decade, which includes growing vacancies in thousands of high-demand jobs (both low-wage and high-wage) across various industries.

Thus far, Congress has taken no successful bipartisan legislative action to replace DACA. In fact, Republican leadership has successfully blocked any immigration bill, including those from their own party, from reaching the floor for a full vote or debate by elected officials. While no bill has "crossed the finish line," many members of Congress – Democrat and Republican – continue to seek action in order to reinstate and secure some form of DACA. Over the past several weeks, many Representatives frustrated with their leadership attempted to bring the issue directly to the House floor, bypassing the Speaker's authority, through a discharge petition. The discharge petition included four DACA-like immigration bills, including: the long-standing H.R. 3440 – Dream Act of 2017; H.R. 4760 – Securing America's Future Act of 2018, commonly referred to as the "Goodlatte Bill"; H.R. 4796 - USA Act of 2018, ; and a fourth bill chosen at the discretion of House Speaker Paul Ryan (R-WI). While Republican moderates and Democrats were only two Members short of circumventing Republican Leadership and bringing the four immigration bills to the floor under the discharge petition, Speaker Ryan recently announced that his base will present two immigration bills to be voted on the week of June 18th. This effectively halted the discharge petition and the possibility of holding a vote on the DREAM Act in the near future. As of Wednesday, June 13th, Speaker Ryan agreed to hold votes on two of the bills, the "Goodlatte Bill" and a bill Republican leaders negotiated with moderates and conservatives. This compromise measure was released on June 14th and has already garnered criticism from both sides of the aisle – including President Trump who announced on June 15th he would not sign it.

BACKGROUND

The **DREAM Act** was first brought to the Senate floor in August 2001 by Senator Dick Durbin (D-IL) and Senator Orrin Hatch (R-UT). This bipartisan bill would provide a pathway towards permanent residency for specific undocumented students who were brought to the United States before they were 16 years old and had proof of residence for at least four consecutive years since the date of their arrival. These students must graduate from high school and demonstrate “good moral character.” Following either two years of military service for the United States or completion of two years of schooling at a four-year institution, participants would be eligible to receive permanent residency to the United States. The DREAM Act, if enacted, could affect over a million undocumented students and young adults, known as DREAMers.

Since 2001, the bill has been brought to the floor numerous times, but has never passed. In June of 2012, however, President Obama introduced DACA through an executive order to provide some level of relief to many DREAMers. While DACA is not a pathway to permanent residency or citizenship as the DREAM Act ensures, it does provide eligible undocumented immigrants with temporary legal immigration status as long as the student was brought to the United States under the age of 16; has lived in the United States for five years before June 14, 2012 (and was present in the United States on June 15, 2012); receives a GED or discharges honorably from the military following service; has not committed any federal offenses; and passes a background check. Eligible participants are able to obtain a driver’s license, enroll in college, apply for a workers permit, and stay in the United States without fear of being deported for two years. Following those two years, these individuals can apply to renew their temporary status. Republican member of Congress were not pleased when DACA was issued in 2012, stating that President Obama had overstepped his legal bounds and violated the law. President Obama did not consult with Congress before he issued the executive order and many Republican elected officials were not in support of this measure to benefit undocumented immigrants.

In 2014, President Obama attempted to expand DACA and enact the Deferred Action for Parents of American Citizens and Legal Permanent Residents (DAPA) program through an executive order. DAPA would have expanded the previous reform and granted “deferred action” status to undocumented immigrants of any age who have lived in the U.S. since 2010 and have children who are either American citizens or lawful permanent residents. Essentially, DAPA would have provided expanded protection for the undocumented parents of United States citizens/permanent residents. Again, neither action would have granted a pathway to citizenship, yet opponents characterized these reforms as amnesty. The combination of these two executive actions would have delayed deportation for millions of undocumented immigrants. However, Texas and 25 other states sued the Obama Administration arguing the expansion of the DACA program through DAPA violated the Constitution and other federal statutes. The Fifth Circuit Court in New Orleans ultimately ruled in favor of the states declaring that the executive action put an undue financial burden on states to issue drivers licenses and other forms of identification to the millions of immigrants. The case was then brought to the Supreme Court, but following Justice Antonin Scalia’s death, the remaining eight justices could only come to a 4-4 split decision that set no precedent and left in place the lower court’s ruling, essentially blocking the expansion of the program.

THE TRUMP ADMINISTRATION & 115TH CONGRESS

President Trump and the Supreme Court on DACA

On September 5, 2017, less than a year into his presidency, President Trump rescinded DACA. Just as President Obama used executive authority to issue DACA, President Trump used his executive power to immediately and unilaterally reverse the mandate. By rescinding the legislation, any new application under DACA would no longer be accepted by the Trump Administration and all current DACA recipients' legal statuses and permits were set to expire in March 2018. The latter action was an effort to force Congress to take action legislatively forcing the body to come to some sort of permanent agreement on immigration reform. With the deadline looming and no congressional action taken, federal courts began issuing injunctions in early January of 2018, ordering the government to continue the DACA program. Many questioned the reasoning, or lack thereof, presented by the Administration for ending the program. Others claimed there were sufficient constitutional questions to be argued. The Department of Justice challenged the first court's ruling and asked the Supreme Court to immediately decide whether the Administration could shut down the program. However, the Supreme Court refused to take up the case and refuses to take up any related cases to date. The U.S. Citizenship and Immigration Services (USCIS) has resumed accepting requests to renew a grant of deferred action under DACA, but they are not accepting requests from individuals who have never before received deferred action under DACA.

Congressional Debate in the Senate

Around the same time that President Trump's executive order hit its first barrier in the courts, Congress was trying to finalize the FY 2018 budget. In an attempt to find a path forward on immigration reform, members on both sides of the aisle tried to attach a negotiated DACA bill to the must pass FY 2018 budget. If Congress wouldn't agree to the legislative fix for DREAMers then some in Congress were prepared to shut down the government by not agreeing to a budget. A bipartisan group of Members of Congress spent weeks meeting with President Trump and his staff during December and January looking to find a deal on DACA. On January 9, 2018, these lawmakers famously met at the White House with the President to discuss a deal and news cameras were allowed inside to capture nearly an hour of the negotiations. Senator Dick Durbin was later blamed by the President for misrepresenting his remarks in the meeting to the media and the negotiations broke down. Ultimately when the Senate took up the House passed FY 2018 budget measure that did not include a deal for DREAMers, many Democrats rejected it. With that failed bill, the government entered its first shutdown since 2013. The shutdown only lasted three days, with Democrats ultimately having to vote for the FY 2018 budget which did not include a DACA fix.

Debate in the House: Discharge Petition

With the Senate "gone quiet" after the government shutdown drama, a group of moderate Republicans and Democrats have been working together in an attempt to circumvent House Republican Leadership through a "discharge petition" to bring a compromise immigration reform measure to help DREAMers to the floor for a vote by the full House of Representatives. Frustrated that Speaker Ryan has refused to bring up any measure related to DACA, three moderate Republican House Members – Representatives Will Hurd (R-TX), Jeff Denham (R-CA), and Carlos Curbelo (R-FL) – introduced a discharge petition, which would force a vote on the House floor on four immigration bills (including the DREAM Act) if signed by 218 Members.

When increasing pressure on Speaker Ryan and Majority Leader Kevin McCarthy (R-CA) took hold and the number of Members signed onto the discharge petition reached 215, GOP leadership realized action was necessary. After days of heavy negotiations to avoid embarrassing

the embattled Speaker and forcing “hard votes” on the floor related to DREAMers and funding President Trump’s border wall, Ryan announced he would hold votes on two immigration proposals the week of June 18th (probably on Thursday, June 21st) effectively halting the discharge petition. The proposals the House will vote on will include Judiciary Committee Chairman Bob Goodlatte’s (R-VA) proposal, while the second is a compromise package put together by the Speaker.

The “Goodlatte Bill”, otherwise known as the **Securing America’s Future Act**, is cosponsored by Representatives Michael McCaul (R-TX), Raul Labrador (R-ID), and Martha McSally (R-AZ), and is supported by “hardline” conservatives. The bill ends the Diversity Visa program, ends so-called chain migration by limiting family-based immigration to spouses and minor children of citizens and green card holders, increases the number of green cards available for skilled workers, requires employers to use the E-Verify system, and authorizes additional measures for a border wall. It is estimated to decrease legal immigration levels by about 38 percent, according to the conservative CATO Institute.

The bill put forth by Speaker Ryan addresses the “four pillars” outlined by President Trump including: 1) legal protection for DREAMers; 2) border security; 3) ending the diversity visa lottery; and 4) adding new restrictions for family-based legal immigration. In addition Ryan’s bill would end the Administration’s practice of separating children from their parents at the border. Specifically, the bill would create a new merit-based visa lottery system for DREAMers and would end per-country visa limits while maintaining the current cap on visas, meaning the number of new immigrants allowed into the country would be reduced as visas are granted to DREAMers. Lastly, the bill includes language to halt the new visas if Congress denies funding for President Trump’s border wall.

Each bill being considered is aimed at satisfying a different ideological wing of the Republican Party. Democrats have indicated they are solidly opposed to both proposals. On Friday, after earlier indications he would support the compromise measure, President Trump reversed course stating he would not sign it, delivering a major blow to Republican leadership’s plans and even threatening full debate by the House of Representatives.

TESOL’s Interests and Public Position

TESOL has publicly supported both the DACA program and the DREAM Act for a number of years. In TESOL’s **Position Statement on Immigration Policy and Reform in the United States**, it is clearly stated that TESOL supports: offering protections for undocumented students who were brought into the country as minors; the lowering of barriers that unfairly target students and scholars who wish to come to the United States legally for academic and language study; and offering orderly and fair pathways to legal residency and citizenship for all immigrants. TESOL joined over 50 organizations in a letter to President Trump stating the benefits of DACA, as well as the economic consequences of ending the program. TESOL also **denounced** President Trump’s September 2017 decision to end DACA, commenting on the tremendous affect that this decision has on over 800,000 individuals. TESOL applauded the DREAM Act when it was reintroduced in 2017, advocating strongly for the passage of fair and reasonable immigration policy that gives equality opportunities to English learners.

As Congress continues to struggle identify a solution to help DREAMers, advocacy by TESOL members is occurring at an opportune time to explain the association’s position to Members of

Congress and their staff regarding the importance of supporting legislation that is not discriminatory, inequitable, or unfair to children and families while aligning to TESOL's priorities.