



Association of
International Educators

Understanding the DREAM Act

Immigration law and policy is complicated and confusing. Though there is ongoing public debate about immigration reform, most of the discussion is opinion-based commentary rather than attempts to clarify current law or any proposals to reform it. This Q&A seeks to provide greater detail on the bills in Congress, referred to collectively as the DREAM Act, that would create a path to legal immigration status for children born outside the United States who were brought to this country illegally and raised in our communities and educated in our schools.

Why is the DREAM Act necessary?

Thousands of young people raised in the United States without legal immigration status graduate from U.S. high school with few options to attend college or to obtain legal status. The DREAM Act provides legal immigration status for long-term U.S. residents who came to the United States illegally as children. These young people were never given the option to enter the United States legally because the decision to move to this country was made by their parents or other adults. The DREAM Act would give these children the opportunity to take corrective measures to obtain legal immigration status.

Who would be eligible to apply for relief under the DREAM Act?

The DREAM Act would change the law to allow young people who came to the United States illegally before they turned sixteen and attended U.S. schools to apply for conditional legal permanent residency. They would be able to apply for permanent green cards after six years, if they attend a U.S. higher education institution or enter military service, in addition to meeting other strict criteria. Of critical importance to immigrant children, the bill returns to states the power to make decisions regarding state residency for the purpose of higher education and makes work study and loans available to them.

Do the U.S. House and Senate version of the bill have the same name?

No. DREAM is the acronym for the Senate version of the bill named “The Development, Relief, and Education for Alien Minors Act of 2009” (S. 729). The House version of the bill has the name “The American Dream Act” (H.R. 1751). Both are generally referred to as the DREAM Act.

Is DREAM Act an amnesty where an applicant would immediately receive a green card without having to meet any conditions?

The DREAM Act is not an amnesty. It does not put students to the front line for green cards. DREAM Act students who meet initial requirements would receive conditional permanent residency status that is valid for six years. After six years they would be required to go through another application process to prove that they have met all the legal requirements under the law before receiving a green card.

What is “conditional residency status” as is envisioned by the DREAM Act?

As a general rule, U.S. immigration law views non-U.S. citizens as fitting into one of two groups: people who want to become Americans and those who want to visit or live in the country for period of time, be it a few days or a few years. By law, the first group are immigrants and the second are considered nonimmigrants.

However, there is an alternative path for a much smaller subset of people who intend to live in the United States permanently, but by law are required to meet certain ongoing requirements before they are granted full legal permanent residency status. It is important to note that the phrase “legal permanent residency” or “legal permanent resident status” is the legalistic way of saying that someone been given a green card by the U.S. government. Conditional residency status is more akin to trial-basis green card. Those granted conditional residency status must continue to meet the requirements of that status over a period of years before they can apply for the conditions to be removed to receive a green card unencumbered by additional requirements.

Conditional residency status recognizes that U.S. green cards are coveted documents. A green card affords its holders with more rights and benefits than those available to non-U.S. residents. Two examples of prospective immigrants for whom conditional status is granted are foreigners who obtain legal residency through marriage or in specific investment situations. The DREAM Act would add children raised in the United States without legal immigration status to this list.

What are the specific DREAM Act requirements to receive conditional residency status?

The specific DREAM Act requirements for conditional residency include the following:

- Entry to the United States before the age of sixteen;
- Continuous presence in the United States for at least five years;
- Good moral character;
- Admission to an institution of higher education in the United States, or receipt of a U.S. high school diploma or general education development certificate; and
- When the bill is enacted, all applicants must be under the age of thirty-five.

Would a DREAM Act student be able to apply for driver’s licenses, travel outside the United States, and legally work?

Yes. The DREAM Act would allow eligible students to apply for driver’s licenses, travel authorization, and to seek employment.

How long is the period of conditional residency status? What must a DREAM Act student do to continue to maintain legal immigration status?

DREAM Act conditional permanent resident status is valid for six years. Violation of conditional status will occur if the individual:

- Becomes a public charge;
- Is discharged from military service for other than honorable reasons; or
- Becomes deportable or inadmissible due to violations of immigration law.

A DREAM Act beneficiary is required to apply to remove the conditions on the green card status. This petition may be made beginning six months before the end of the six year conditional period or up to two years after the expiration of any extension of status.

The petition for the removal of the conditions must include the following:

- Demonstrated good moral character during conditional period;
- A list of each secondary school attended in the United States;
- Ongoing U.S. residency; and
- Completion of at least one of following:
 - Degree from an institution of higher education in the United States or completion of at least two years in good standing in a program for a bachelor's or higher degree in the United States, OR
 - Military service for at least two years, and, if discharged, that an honorable discharge was received.

Are waivers available for students who are unable to attend higher education or enter the military?

The DREAM Act does include a hardship exemption. Waiver applicants must demonstrate compelling circumstances for their inability to complete two years of higher education or military service while meeting the other status requirements. Additionally, the individual must demonstrate that removal from the United States would result in exceptional and extremely unusual hardship to the individual, or the individual's spouse, parent, or child who is a U.S. citizen or legal permanent resident. Stays of removal are available to children in primary and secondary school. Conditional residency status may be extended, with the time in conditional residency status counting towards eligibility for U.S. citizenship.

The Secretary of Homeland Security has exclusive jurisdiction to determine eligibility for relief, except if the individual has been placed in deportation, exclusion, or removal proceedings. In these instances, action by the Attorney General is required before DHS may make a determination of DREAM Act eligibility. The law would require expedited processing of the removal of conditions without additional fees.

Though DREAM Act eligible students have been state residents for many years, only a few states regularly allow these students to pay in-state tuition rates. Does the DREAM Act do anything to address this issue?

Yes, though the DREAM Act does not make in-state tuition mandatory for DREAM Act students.

It is well known that U.S. higher education is expensive, making it difficult for many Americans to afford it. Because lower tuition rates are available to state residents, defining state residency can control access to educational opportunities. A provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 has been interpreted by many states as eliminating discretion in defining in-state residency for tuition purposes as it relates to immigration status. Only a few states currently allow in-state tuition for illegal immigrant children. The DREAM Act would amend the law to again allow states to make individual determinations regarding residency for in-state tuition purposes as it relates to immigration status.

What financial aid options are available to DREAM Act students?

Though in-state tuition makes college more affordable, access to financial aid is also critical. The DREAM Act does not go as far as some would like in this area. It makes student loans and work study possible, but does not make Pell grants or other types of federal aid possible. States

are not limited in the type of financial aid they may make available, opening other avenues for aid.

Is there an option for young people who apply and receive green cards through the DREAM Act to later apply for citizenship?

Yes. If an applicant applies for and receives the removal of the conditions on the green card, that person may then apply for citizenship. Again, this would only be possible after a long period in conditional residency during which the immigrant would be required to meet the higher education attendance and other requirements.

Media reports differ on whether or not comprehensive immigration reform is possible in the near future. Is DREAM Act part of the overall immigration reform debate or is it moving through Congress independent of comprehensive immigration reform?

As of the summer of 2010, the immigration reform debate in Congress continues to center around comprehensive reform. To that end, the DREAM Act is included in the immigration reform framework released by a small group of Democratic Senators in April 2010. There is also separate legislation pending in both the Senate (S.729 - The Development, Relief, and Education for Alien Minors Act of 2009 or the DREAM Act) and the House (H.R. 1751- The American Dream Act).

Making the DREAM a reality.

The DREAM Act may not be perfect but it would create a clear path for legal residency and access to higher education for undocumented students who have grown up in the United States and have attended U.S. schools. To make this law a reality, ongoing advocacy is required. Contact your Senators and Representatives to urge them to support the DREAM Act so it will become law.