

**I-821D Public Comments - Instructions
Summary of Suggestions**

	<u>Category</u>		<u>Comment and Response</u>
Instructions	1	General Instructions	<p>Comment: The commenter (Numbers 5, 6, 8 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 24, 27, 28, 31 and 32) recommended that DHS and USCIS clarify in the form instructions if individuals seeking to renew their DACA will be without status and without employment authorization while their request is pending with USCIS. These commenters also recommended that the 120-days' time frame be extended because it may leave individuals in a precarious situation. Commenters recommended that 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.</p> <p>Response: Information about unlawful presence and employment authorization is found in the DACA FAQs instead of the form instructions. USCIS agreed with the commenters and will accept DACA renewal requests no more than 150 days prior to the expiration of a requestor's current period of deferred action. This information is now prominently displayed on the first page of the form instructions.</p>
	2	General Instructions	<p>Comment: The commenter (Numbers 18, 24, 29, and 30) recommended that USCIS should expand the proposed DACA renewal filing period from no more than 120 days to no more than 180 days prior to the requestor's DACA expiration date. The commenter Number 24 recommended the following language:</p> <p>START HERE. Type or print in black ink. Read the instructions for information on how to complete this form. <i>Renewal requests may be submitted up to 180 days prior to the expiration of your current period of deferred action.</i></p> <p>Response: USCIS will accept DACA renewal requests no more than 150 days prior to the expiration of a requestor's current period of deferred action. This information is now prominently displayed on the first page of the form instructions.</p>

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	3 General Instructions	<p>Comment: The commenter (Number 9) Recommendation on Page 1. “When Should I Use Form I-821D?”: Make the following change:</p> <p>“NOTE: . . . You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial Request request for consideration of deferred action.</p> <p><u>Renewal requests should be submitted within 120 days prior to the expiration of your current period of deferred action. If you file a renewal request more than 120 days before 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.”.</u></p> <p>The instruction that renewal requests be submitted within 120 days of the expiration of a requestor’s deferred action is not prominently displayed but instead relegated to the second page in a supplementary note. The 120-day requirement is a critical threshold requirement that virtually all requestors will need to know before completing a renewal request. Placement of this notice on the first page, under the header entitled “When Should I Use Form I-821D?” logically fits the purpose of this section and ensures that this requirement is immediately conveyed.</p> <p>Response: USCIS will accept DACA renewal requests no more than 150 days prior to the expiration of a requestor’s current period of deferred action. This information is now prominently displayed on the first page of the form instructions.</p>
	4 General Instructions	<p>Comment: The commenter (Numbers 6, 8, 12, 14, 19, 21, 24, 26, 28, 29, 30 and 32) recommended that USCIS should not request evidence and information that was previously submitted in the initial DACA request. The commenter also recommended that USCIS should only request that individuals seeking renewal only provide documentation of arrests and convictions that occurred after their initial DACA request was granted</p> <p>Response: USCIS agrees with the commenter that only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request. USCIS will issue a request for evidence if more information is needed. The instructions will be amended accordingly.</p>

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5	General Instructions	<p>Comment: The commenter (Number 11) recommended that USCIS should follow the TPS model and not require renewal requestors to submit evidence of their continuous residence. The commenter recommends that on Page 10, Evidence for Renewal Requests we add the following language: “Completing Part 3, Question 1.b on Form I-821D attesting to continuous presence will generally preclude the need for supporting documents or evidence.”</p> <p>Response: Only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request. USCIS will issue a request for evidence if more information is needed. The instructions will be amended accordingly.</p>
6	General Instructions	<p>Comment: The commenter (Number 11) recommended that USCIS clarify evidentiary requirements for renewals. On Page 10, Evidence for Renewal Requests, of the Form Instructions the commenter recommends the following:</p> <p>“If, at the time of your initial request for Deferred Action for Childhood Arrivals, you were enrolled in school, please visit the Frequently Asked Questions at www.uscis.gov/childhood arrivals for more detail on the education requirements for renewal requests. You will need to include supporting documents to demonstrate that you have graduated from school, have made substantial, measurable progress toward graduating from high school or the school in which you are enrolled, have passed a GED or other equivalent state-authorized exam, or are currently enrolled in a new/different education, literacy, or career training program (including vocational program) designed to lead to placement in postsecondary education, job training, or employment.”</p> <p>Please refer to Item Number 9 on page 8 of these instructions for additional guidance regarding what documents may demonstrate the educational requirements.</p> <p>Response: - No further change is recommended based on this comment. DHS has removed the education questions pertaining to DACA renewals.</p>

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	7 General Instructions	<p>Comment: The commenter (Numbers 28 and 31) recommended that USCIS make the evidentiary requirements for DACA explicit by specifically and expressly identifying which evidentiary requirements renewal requestors must satisfy. As we understand the renewal process, requestors seeking renewal will not be required to submit any evidence in support of their renewal request unless one of the following circumstances applies: (i) the individual is currently in exclusion, deportation, or removal proceedings; (ii) the individual has been charged with or convicted of a felony or misdemeanor in the United States, or a crime in any other country; or (iii) the individual initially received -DACA from ICE. If our understanding is correct, we request that USCIS make this explicit</p> <p>Response: USCIS agrees with the commenter that only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request. USCIS will issue a request for evidence if more information is needed. The instructions will be amended accordingly.</p>
	8 General Instructions	<p>Comment: The commenter (Number 11) recommended that, as a matter of efficiency, USCIS should notify DACA requestors in the event that they waive the collection of biometrics in order to facilitate prompt adjudication and eliminate unnecessary inquiries. The commenter recommends that the language on Page 3 of the Form Instructions under Biometric Services Appointment be modified as follows: “USCIS may, in its discretion, waive the collection of certain biometrics and will mail the applicant a notice of waiver of biometrics.”</p> <p>Response: No change is recommended based on this comment. Individuals requesting DACA must provide fingerprints, photographs, and signature (biometrics).</p>

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	9 General Instructions	<p>Comment: The commenter (Numbers 10, 11, 17, and 19) recommends that on Page 10, Section 12, B, the following sentence should be added after the existing instructions: “If you are seeking a renewal of Deferred Action for Childhood Arrivals, you do NOT need to resubmit evidence demonstrating the results of the arrests or charges brought against you if this evidence was submitted with your initial filing or in response to a Request for Evidence. The commenter also states that requiring the submission of arrest records introduces information to an applicant’s immigration file that has not been confirmed by criminal courts and may be false and prejudicial. Furthermore, this requirement may deter applicants residing in localities hostile to immigrants from applying because they do not wish to interact with local law enforcement in order to request their records. The commenter recommends the following change to the Form Instructions at Page 10, Section 12, B: “submit an original or court-certified copy of the complete arrest record and disposition for each incident.”</p> <p>Response: USCIS agrees with the commenter that only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request. USCIS will issue a request for evidence if more information is needed. The instructions will be amended accordingly. As described in the instructions, requestors should provide an original or court-certified copy of the complete arrest record, or an explanation if such documentation is not available. If a police report is available, that should be included as part of the arrest record.</p>

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10	General Instructions	<p>Comment: The commenter (Number 8) indicated that individuals should not be required to submit statements from arresting agencies or courts confirming that no charges were filed or that no records exist. However, if USCIS adopts this requirement, requestors should be given the opportunity to explain why the documents cannot be provided and their efforts to obtain the documents. Most importantly, applicants' inability to obtain these documents should not negatively impact the adjudication of their cases. The instructions should be amended to read (new language in bold italics):</p> <p>12.c. If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, submit:</p> <p>(1) An original or court certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction; or</p> <p>(2) An original statement from the court that no record exists of your arrest or conviction.</p> <p><i>If you are unable to provide such documentation or it is not available, you may provide an explanation, including a description of your efforts to obtain such evidence, in Part 9. Additional Information.</i></p> <p>Response: USCIS agrees that requestors should have an opportunity to explain their situation if they are not able to provide such documents. USCIS will adopt the changes to the instruction suggested in this comment.</p>
11	Page 13- Checklist	<p>Comment: The commenter (Numbers 7 and 12) recommended that that the form and form instruction clarify that the checklist included at the end of the form instructions be removed and be replaced by a clear list of those individuals that do have to provide additional supporting documents and those that do not. Below each category, USCIS should identify which types of documentation will be required.</p> <p>Response: USCIS has modified the checklist to make it easier to determine which sections are applicable to initial requests, renewal requests or both. USCIS has separately clarified in the form instructions which sections apply to those filing for initial DACA or for renewal.</p>

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	12 Page 13 – Checklist	<p>Comment: The commenter (Numbers 18) recommended that that checklist on page 13 of the form instructions be amended as follows:</p> <p><i>For Initial Requests Only</i></p> <p>Did you submit Form I-765 along with the filing and biometric services fees (\$465) required for the application for employment authorization and did you also submit a completed Form I-765WS?</p> <p>Did you answer all of the questions, except for those marked “For Renewal Requests Only”?</p> <p>Did you provide an original, handwritten signature and date your request?</p> <p>Did you submit evidence to show that you came to the United States while under 16 years of age and established residence at that time?</p> <p>Did you submit evidence to prove identity, date of initial entry, and continuous residence from June 15, 2007 (or earlier) up to the present time?</p> <p>Did you submit evidence that you are currently in school, have a GED certificate, have graduated or received a certificate of completion from high school, or are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard?</p> <p>Did you provide evidence showing that you were in an unlawful status as of June 15, 2012, or if you were previously in lawful status, that your lawful status expired prior to June 15, 2012?</p> <p>If you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (if available)?</p> <p>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 (if available)?</p> <p>If you have ever been arrested for, charged with, or convicted of a 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 charges and final disposition for each incident?</p> <p>Continues within the next box</p>

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13	Continuation of Prior Box	<p>Continuation of Prior Box. Page 13, Checklist</p> <p><i>For Renewal Requests Only</i></p> <p><i>Did you submit Form I-765 along with the biometric services fee (\$85) required for the application for renewal of the employment authorization?</i></p> <p><i>Did you answer all of the questions, except for those marked "For Initial Requests Only"?</i></p> <p>Did you provide an original, handwritten signature and date your request?</p> <p><i>If, since you were granted DACA, you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (if available)?</i></p> <p><i>If, since you were granted DACA, your exclusion, deportation, or removal proceedings were terminated by an immigration judge, did you include a copy of the immigration judge's termination order (if available)?</i></p> <p><i>If, since you were granted DACA, you have ever been arrested for, charged with, or convicted of a 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 charges and final disposition for each incident?</i></p> <p>Response: The instructions checklist has been replaced by an itemized list of reminders. This list includes relevant items to be completed by initial or renewal requestors as well as any required documentation.</p>
14	General Instructions	<p>Comment: The commenter (Numbers 6, 8, 14, 19, 24, 29, 30 and 32) recommended that USCIS publish the form in other languages.</p> <p>Response: USCIS will consider publishing the form instructions in other languages and will take this recommendation under advisement.</p>

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15	General Instructions	<p>Comment: The commenter (Number 7) recommended that USCIS allow LGBT individual to opt to be contacted only by an online system rather than a physical address because he or she may be in transitional housing. This commenter acknowledged that USCIS requires a mailing address; but recommended that the new ELIS system permit individuals who do not have a permanent address to be contacted through the online system on ELIS and make question 4 of part 1 of the form optional and allow the individual to be contacted solely through electronic means.</p> <p>Response: At this time, DACA requests are filed within a paper-based environment and an electronic notification is not yet feasible.</p>
16	General Instructions	<p>Comment: The commenter (Number 7) recommended that USCIS clarify in the form instructions that the agency will not refer information about an individual who chooses not to renew his or her DACA to ICE.</p> <p>Response: Individuals are not obligated to renew DACA. Unless USCIS discovers derogatory information that requires any action, USCIS will not refer the information to ICE. USCIS will follow its existing policy on issuing Notices to Appear, which is available at www.uscis.gov/NTA.</p>

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	17 Page 9, Q.12A	<p>Comment: The commenter (Numbers 8 12, 10, 14, 16, 17, 19, 21, 22, 24, 26, 28, 29, 30, 31 and 32) indicated that the proposed Form I-821D instructions requests criminal history information that is not requested in the current instructions. For example, Q.12A on page 9 of the draft instructions requests the original official statements made by the arresting agencies if the applicant was arrested for a felony or misdemeanor in the U.S. or in any other country, but no charges were filed. Obtaining these documents will be extremely difficult for applicants because the arresting agency may not have any record of the arrest since no charges were filed. These commenters also indicated that this requirement will be even more burdensome for those requestors arrested outside the U.S. because foreign arresting agencies may not maintain files in cases where charges were not filed, most applicants no longer have contacts abroad that can help them obtain these files, and some countries may only release criminal records to the applicant in person. Moreover, these additional documents may prejudice a fair processing of the DACA request because the requested documents constitute allegations of conduct by law enforcement agencies in circumstances where the agencies themselves ultimately decided to not move forward with the prosecution. Q.12C asks for original or court-certified records of expungements, vacated convictions, sealed convictions, etc. According to an American Immigration Lawyers Association (AILA) survey, one of the reasons why DACA eligible individuals are not requesting DACA is because they are concerned as to how USCIS will treat their criminal history. To increase the confidence of potential DACA requestors, unnecessary documents such as original and court-certified records of arrests or convictions that have been removed, set aside, etc. should not be required. DACA was enacted to provide opportunities to individuals who have been in the U.S. for most of their lives and meet other specific requirements; hence, USCIS should be encouraging eligible individuals to apply through their policies. Additionally, USCIS should not require court-certified records of vacated convictions because vacated judgments are not considered a conviction for immigration purposes if they were vacated for constitutional defects, statutory defects, pre-conviction errors affecting guilt, and if the criminal court failed to advise a defendant of the immigration consequences of a plea. Similarly, where an applicant was never convicted of a crime, or was arrested and charged but the charge was dismissed, sealed and/or expunged, such charges should not count against the applicant in the immigration context. Our criminal justice system operates on the principle that a person is innocent until proven guilty, and ensures that persons charged with crimes cannot be convicted absent a judicial process that meets constitutional requirements. Other DACA applicants may navigate complex local procedures to gain access to their juvenile records only to discover that these records are sealed and unavailable. Moreover, submitting even those court records that are available to USCIS would be inherently prejudicial to the requestor as USCIS would see that the person at some point had contact with the criminal justice.</p> <p>Response: While arrests that do not result in conviction and convictions that are vacated or expunged are not automatically disqualifying for DACA purposes, the underlying facts are relevant to USCIS’s exercise of discretion. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident. If the requestor is unable to provide the requested documentation or it is not available, the form instructions permit the requestor to provide an explanation for the inability to provide the documentation. In response to the comments received, the instructions are being amended to clarify that an explanation of the requestor’s inability to provide the requested documents in connection with a vacated or expunged conviction may also be provided.</p>

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Category	Comment and Response
18	<p>Page 10, Evidence for Renewal Requests</p> <p>Comment: The commenter (number 12) recommended the following revisions:</p> <p><i>Page 10 , Evidence for Renewal Requests</i></p> <p>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.”</p> <p>You do <u>not</u> need to submit evidence with your renewal request if:</p> <ol style="list-style-type: none"> 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; <u>and</u> 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 <p>If USCIS initially deferred action in your case <u>and</u> you thereafter were placed in exclusion, deportation, or removal proceedings, submit the evidence required under Item Number 11. (above).</p> <p>If USCIS initially deferred action in your case <u>and</u> 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).</p> <p>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.</p> <p>If you are currently in exclusion, deportation, or removal proceedings, see Item Number 11. (above) for additional guidance.</p> <p>If you have any criminal history, see Item Number 12. (above) for additional guidance.</p> <p>Response: USCIS has modified the instructions. The revisions make it easier to determine which sections are applicable to initial requests, renewal requests or both. When a section applies to both types of requests, language was added that clarifies if/how the section is to be filled out differently depending on whether the filer is seeking DACA for the first time or is seeking renewal of DACA. Only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request.</p>

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	<p>19 Page 10, Evidence for Renewal Requests</p>	<p>Comment: The commenter (number 18) recommended that the instructions be amended as follows: Page 10. Evidence for Renewal Requests <i>Evidence for Renewal Requests</i></p> <ol style="list-style-type: none"> 1. <i>If I have never been in removal proceedings and have not been arrested for, charged with, or convicted of a crime since receiving DACA, what evidence do I need to submit with my renewal application?</i> <i>If you have not been arrested for, charged with, or convicted of a felony or misdemeanor in the U.S. or any crime outside the U.S. since you received DACA and have never been in removal proceedings, then you are not required to provide any supporting evidence.</i> 2. <i>If you were arrested for, charged with, or convicted of a felony or misdemeanor in the U.S. or arrested for, charged with, or convicted of a crime in another country AFTER being granted DACA, what evidence should you provide?</i> <i>You must include a certified court disposition, charging document, verdict or judgment of conviction, sentencing record, etc., for each incident, unless the records involved incidents handled in juvenile court. You do not need to re-submit evidence of any arrests, charges, or convictions for felonies or misdemeanors in the U.S. or crimes in other countries that you already submitted to USCIS prior to your DACA grant.</i> 3. <i>What documents should you submit if you have been in exclusion, deportation, or removal proceedings since receiving DACA?</i> <i>You must submit a copy of any document issued by the immigration judge or final decision of the Board of Immigration Appeals (BIA), if available. If you have not been in exclusion, deportation, or removal proceedings, this question does not apply to you. You do not need to re-submit evidence related to exclusion, deportation, or removal proceedings that you already submitted to USCIS prior to your DACA grant.</i> <p>Response: USCIS has modified the instructions. The revisions make it easier to determine which sections are applicable to initial requests, renewal requests or both. When a section applies to both types of requests, language was added that clarifies if/how the section is to be filled out differently depending on whether the filer is seeking DACA for the first time or is seeking renewal of DACA. Only information that was not previously submitted with a prior DACA request will need to be submitted with the renewal request.</p>

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19	General Instructions	<p>Comment: The commenter (Numbers 11 and 18) recommended that requestors should not be required to disclose juvenile delinquency incidents or provide evidence thereof, as the requirement creates an irregular standard among states, places an undue burden on both the government and applicants, and is inconsistent with immigration case law (Dispositions of juvenile delinquency are not considered convictions for the purpose of immigration law. See Matter of Devison, 22 I&N Dec. 1362 (BIA 2000) (<i>en banc</i>)). On Page 9, Section 12 of the Form I-821D instructions commenter Number 11 suggested the following revision: “If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence is not required.” Commenter 18 recommended the following language: Have you EVER been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? <i>Do not include minor traffic violations unless they were alcohol- or-drug-related. Do not include incidents handled in juvenile court.</i></p> <p>Response: No changes recommended based on this comment. While dispositions of juvenile delinquency are not considered convictions for immigration purposes, the underlying facts are relevant to USCIS’s exercise of its discretion to determine whether a requestor merits deferred action. Such facts are evaluated on a case by case basis.</p>
20	General Instructions	<p>Comment: The commenter (Number 28) recommended that USCIS should remove the request for records where arrests or convictions have been removed, set aside, vacated, or expunged. USCIS should also remove the request for any records where disclosure is prohibited by law.</p> <p>Response: While arrests that do not result in conviction and convictions that are vacated or expunged are not automatically disqualifying for DACA purposes, the underlying facts are relevant to USCIS’s exercise of discretion. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident. If the requestor is unable to provide the requested documentation or it is not available, the form instructions permit the requestor to provide an explanation for the inability to provide the documentation. In response to the comments received, the instructions are being amended to clarify that an explanation of the requestor’s inability to provide the requested documents in connection with a vacated or expunged conviction may also be provided. The form instructions specify that requestors do not need to submit records that cannot be disclosed under state law.</p>

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	21 Page 8, Q.9	<p>Comment: The commenter (Numbers 10, 12, 16, 21, 22, 28 and 31) recommends clarifying the rule regarding non-profit literacy programs by revising the Form Instructions under “Evidence for Initial Requests” Question 9, page 8 as follows:</p> <p>9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing...? USCIS recognizes...</p> <p>A. To be considered “currently in school,” you are to demonstrate that...</p> <p>(1) A public...</p> <p>(2) An education, literacy, or career training program (<i>including vocational training or an English as a Second Language (ESL) course</i>) 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:</p> <p>(a) If a literacy program, is administered by a non-profit entity; or</p> <p>(b) Is funded in whole or in part by Federal, state, local, or municipal funds; or</p> <p>(c) Is of demonstrated...</p> <p>(3) An education...</p> <p>(a) Is funded...</p> <p>(b) Is of demonstrated...</p> <p>(4) A public...</p> <p>Evidence of enrollment may include...</p> <p>If you have been accepted for enrollment...</p> <p><i>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 equivalent section of prior code.</i></p> <p><i>May also include a class catalog or description that indicate the program is run by a nonprofit or information from the organization’s website.</i></p> <p>If you are enrolled in an educational, literacy, or career training program (<i>including vocational training or an ESL course</i>), evidence that the program is funded in whole or in part by Federal...</p> <p>If you are enrolled in an educational, literacy, or career training program that is not publicly funded....</p> <p>Response: USCIS has adopted this recommendation, in part. The instructions now reflect that individuals who demonstrate that they are enrolled in an education, literacy, or career training program, or an education program assisting students in obtaining a regular high school diploma or its recognized equivalent under state law and is administered by a non-profit entity will satisfy the “currently in school” component of the educational guideline.</p>

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22	General Comment	<p>Comment: The commenter (Numbers 12 and 18) indicated that USCIS should make the DACA request process as streamlined as possible and eschew any unnecessary questions. This commenter asked that USCIS strike Part 2 of the form 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.”</p> <p>Response: The form reflects the processing information as it is being amended on all USCIS forms. The questions comply with the Office of Management and Budget’s requirements for the collection of race and ethnicity as provided in its memorandum found at: http://www.whitehouse.gov/omb/fedreg_1997standards/</p>
23	General Comment:	<p>Comment: The commenter (Number 12) recommended that USCIS be sure that ELIS is fully capable of handling the number of applications it may receive. The commenter noted that individuals have experienced a number of difficulties with ELIS. For example, they have 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.</p> <p>Response: This is not an issue. Currently there is no projected timeframe in which DACA requestors will be utilizing ELIS to submit the DACA package.</p>
24	General Comment	<p>Comment: The commenter (Number 12) recommended that USCIS clarify in the form instructions that there is no maximum age limit for a DACA renewal, as long as the requester satisfied the upper age limit in the initial request.</p> <p>Response: No change recommended to the instructions based on this comment. USCIS will provide clarification on this issue through filing tips on the USCIS Web page.</p>

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<u>Category</u>		<u>Comment and Response</u>
25	General Comment	<p>Comment: The commenter (Number 12) recommended that USCIS modify as follows the text of the Note falling under the heading “When Should I Use Form I-821D?” (new language in <i>bold italics</i>):</p> <p>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. <i>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.</i></p> <p>Response: It is anticipated that all individuals granted DACA by ICE will have filed for renewal prior to the release of this revised form. However, should future ICE grantees need to file for renewal after the new version of the form is available, those individuals must complete all questions of the form as if they were filing an initial request and submit documentation to establish how they satisfied the guidelines as if they were filing an initial request for DACA.</p>

**I-821D Public Comments - Instructions
Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
	26 General Comment	<p>Comment: The commenter (Number 12) 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):</p> <p>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.</p> <p>Every request must contain the original requestor’s signature. There are two exceptions to this requirement.</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>Response: USCIS has modified this section for clarity. Item 7 is now Item 6. This item states:</p> <p>Part 5. 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 7 and sign and date the form. Every request must contain the requestor’s original signature. 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 email address. If you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign here if the applicant is unable to sign due to a physical or developmental disability or mental impairment.</p>

**I-821D Public Comments - Instructions
Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
	27 General Comment	<p>Comment: The commenter (Numbers 9) recommended modifying the language on Page 3. General Instructions. Translations to reflect:</p> <p><u>“Translations. Any document . . . foreign language into English. <i>An example certification wo u ld read ‘I, [typed name], certify that I am fluent (conversant) in the English and [language] languages, and that the above/attached document is an accurate translation of the document attached entitled [name of document].’ The certification should also include the date and the translator’s sign atu re, typed name , and address. ”.</i></u></p> <p>The instructions do not give an example of a template translation certification. This recommendation ensures that a requestor will provide a certification that contains all of the necessary information and is identical to the guidance provided by USCIS under the “General Tips on Assembling Applications for Mailing” section of its website.</p> <p>Response: USCIS has adopted this recommendation. An example of a certification is provided in the section entitled General Instructions of the Form I-821D instructions.</p>
	28 Pages 1, 5, and 8	<p>Comment: The commenter (Number 9) recommended that USCIS revised the language on pages 1, 5, and 8: All references to entering “without inspection” should be changed to “without lawful status”. Under Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010), individuals without lawful status who were admitted and inspected are not considered to have entered without inspection (EWI) and are nonetheless eligible to request deferred action. Technically, these individuals neither entered without inspection nor remained after expiration of their lawful immigration status. Accordingly, USCIS should clarify the instructions to ensure that these individuals are aware that they are eligible for relief. This recommendation functions in parallel with USCIS’s previous changes to Form I-821D, which changed references to “without inspection” to “no lawful status” in light of Matter of Quilantan.</p> <p>Response: USCIS has modified the instructions to consistently use the term “had no lawful status on June 15, 2012”.</p>

**I-821D Public Comments - Instructions
Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
	29 Page 1/ Form I-765WS - Economic Necessity	<p>Comment: The commenter (Number 18) indicated that renewal requestors are instructed to file the Form I-765 Worksheet (I-765WS) along with their Form I-821D for renewals. This commenter believes that renewal requestors are being asked to re-establish economic necessity, and recommends that individuals who previously demonstrated economic necessity should not be required to demonstrate economic necessity at the time of renewal. Any references to completing Form I-765WS in the instructions should be removed.</p> <p>Response: No change is required based on this comment. To determine a requestor’s eligibility for work authorization, he or she, regardless of whether he or she is seeking an initial or renewal of his or her deferred action under this process, must establish economic necessity.</p>
	30 Page 12. Form I-821D. Processing Information. Decision.	<p>Comment: The commenter (Number 5) recommended that DHS and USCIS create an appeals process. This commenter also indicated that reapplying may be financially prohibitive, and that the appeals process would be a fair and equitable solution to increased DACA requests denials.</p> <p>Response: The comment is not adopted. DACA is a discretionary form of relief and the agency considers the totality of the circumstances in each case. DHS decided that a motion or appeal of such a discretionary action was not appropriate. In addition, the filing fee for Form I-290B, Notice of Appeals or Motion, is \$630, whereas the total fee for Forms I-821D, I-765, I-765WS and biometric services is only \$465, so submitting a new request is less expensive than appealing.</p>