



# Are DACA Recipients Eligible for Federal Employment?

**Hillel R. Smith**

Legislative Attorney

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The Immigration and Nationality Act (INA) [prohibits](#) employers, including federal agencies, from knowingly hiring non-U.S. nationals (aliens) who are not authorized to work in the United States. By statute, certain aliens are generally authorized to work in the United States, and the Secretary of the Department of Homeland Security (DHS), by regulation, may [enumerate additional categories](#) of aliens who may obtain permission to work. Using this power, DHS has generally permitted aliens who obtain relief under the [Deferred Action for Childhood Arrivals \(DACA\) program](#) to seek employment in the United States. Aliens who qualify for DACA relief—namely, certain aliens who came to the United States as children, lack lawful immigration status, and have not engaged in activities that render them ineligible for relief—may be permitted to remain in the United States and receive work authorization for renewable two-year periods. (In 2017, the Trump Administration [announced](#) that it would rescind DACA; but as detailed in this [Sidebar](#), several federal district courts have enjoined most aspects of the announced rescission from taking effect.)

While DACA recipients may obtain [work authorization and certain other benefits, annual appropriations enactments](#) restrict federal employment eligibility for most non-U.S. citizens, including DACA recipients. In the last few years, there [has been some debate](#) over whether DACA recipients should be eligible for federal employment, and, in particular, whether they should be able to work as paid federal employees in congressional offices. This Sidebar briefly examines laws governing the employment of aliens in the United States, including restrictions on federal employment and their application to DACA recipients.

## Federal Restrictions on Alien Employment

Under [INA § 274A](#), it is unlawful for “a person or other entity . . . to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.” The provision also bars the continued employment of an alien found to be unauthorized. These restrictions apply to any

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“person or other entity” that hires, recruits, refers for employment, or continues to employ an alien known to lack employment authorization. These limitations apply not only to private entities, but also to “an entity in any branch of the federal government”; [federal regulations](#) implementing this provision, in turn, define an “entity” as “any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association.” Covered entities must also comply with certain employment verification requirements (e.g., examining documentation showing the alien’s identify and eligibility for employment and, depending on the entity, confirming employment eligibility through the “E-Verify” online verification system).

The employment restrictions mandated by INA § 274A apply to any alien who is *not* authorized to work at a particular time in the United States (described in INA § 274A as an “[unauthorized alien](#)”). Under the [statute](#), however, there are three general categories of aliens who are eligible to work in the United States: (1) an alien lawfully admitted for permanent residence ([LPR](#)); (2) an alien authorized by another statute to be employed in the United States (e.g., persons granted [Temporary Protected Status](#)); and (3) an alien “authorized to be so employed” by the Secretary of Homeland Security. For this latter category, DHS regulations [list certain classes of aliens](#) who may apply for employment authorization with U.S. Citizenship and Immigration Services in order to work in the United States, and who may be subject to certain restrictions regarding their employment. These designated categories include aliens granted [deferred action](#), “if the alien establishes an economic necessity for employment.” Based on these regulations, deferred action recipients, including those granted relief through the DACA initiative, are eligible for employment authorization if they establish the required economic necessity.

## Employment of Non-U.S. Citizens in the Federal Government

Although DACA recipients are generally able to work in the United States (assuming they apply for and receive employment authorization), there are some notable limitations imposed on the employment of non-citizens in the federal government. These restrictions, with varying degrees of exceptions, [have been in place](#) long before DACA was implemented in 2012. Currently, [annual appropriations enactments](#) prohibit the use of funds for the compensation of any federal government employee or officer in the continental United States unless that person is (1) a U.S. citizen, (2) an LPR who is applying for [naturalization](#), (3) a person admitted as a [refugee](#) or granted [asylum](#) who has filed a declaration of intent to become an LPR and eventually a U.S. citizen, or (4) a non-citizen, [U.S. national](#) who owes allegiance to the United States (e.g., a person born in American Samoa). This restriction does not apply to international broadcasters employed by the Broadcasting Board of Governors, translators temporarily employed by the federal government, temporary field service employees (for no more than 60 days), and Wildland firefighters employed for no more than 120 days.

DACA recipients do not fall within any of the categories of non-U.S. citizens currently exempted from annual appropriations enactments’ funding restrictions. As a result, except for a few narrow categories of federal employment (e.g., temporary translators and temporary Wildland firefighters), DACA recipients generally may not obtain federal employment.

[Federal regulations](#) also provide that no person is eligible for a “competitive service” position in the federal government unless he or she is a U.S. citizen or national. The Office of Personnel Management (OPM) defines “[competitive service](#)” positions as those involving a competitive hiring process (including a hiring examination) open to all applicants. While OPM has created an [exception](#) to the restrictions on competitive service positions when there are no qualified U.S. citizens available for the position, the non-U.S. citizen still may be hired [only if permitted by the appropriations law](#).

These restrictions on federal employment, however, do not bar DACA recipients from obtaining federal internships through [third-party organizations or fellowship programs](#) because, in those circumstances, the DACA recipients are not formally employed by the federal government. For example, the Congressional

Hispanic Caucus Institute offers an [internship program](#) in a congressional office for undergraduate college students, and the internship program is [available](#) for any student with work authorization, including DACA recipients. For that reason, although federal appropriations laws and regulations significantly limit the availability of federal employment for DACA recipients, these limitations do not entirely foreclose them from performing any work in federal government offices.

## Legislative Options

Given the restrictions on federal employment for non-U.S. citizens, particularly DACA recipients, some lawmakers have called for expanding the range of non-U.S. citizens who could pursue federal employment. [Some contend](#), for example, that because DACA recipients have been present in the United States since childhood, unlike other categories of aliens, they should be eligible to pursue federal employment like U.S. citizens or LPRs. Opponents of the expansion, among other things, [argue](#) that aliens with no lawful immigration status should not be able to compete with U.S. citizens for federal jobs. While [recent appropriations measures would extend](#) federal government funding through FY2019, they would not alter the restrictions on federal employment for DACA recipients and other non-U.S. citizens.

Nevertheless, there have been efforts by some in Congress to expand the classes of non-U.S. citizens who are eligible for federal employment, including in congressional offices. For example, in 2017, an [amendment](#) to the [Financial Services and General Appropriations Act](#) was introduced to allow DACA recipients with employment authorization to be eligible for federal employment. Additionally, in 2016 and 2017, bills were introduced ([H.R.97](#) and [H.R.4842](#)) that would have authorized the employment of DACA recipients in House and Senate offices. These and other legislative options with respect to DACA recipients may be considered in the 116th Congress.