

SUMMARY OF THE “DREAM ACT”

S. 729/H.R. 1751

On March 26, 2009, Senator Richard Durbin (D-Ill.) re-introduced the Development, Relief, and Education for Alien Minors Act of 2009, otherwise known as the DREAM Act (S.729). Companion legislation entitled the “American Dream Act” (H.R. 1751) was also introduced in the House of Representatives by Rep. Howard Berman (D-Calif.) on March 26, 2009.

The DREAM Act has two major components:

- (1) it grants **amnesty** to illegal aliens who entered the country as children and have met minimal educational requirements; and
- (2) it reverses current law to allow states to provide taxpayer subsidized **in-state tuition to illegal aliens**.

The language in the 2009 Senate version of the bill is identical to the Senate bill introduced in the 110th Congress (S.774), with one exception: in this year’s Senate bill, any alien who is older than 35 is ineligible for the stay of removal and adjustment to conditional status. Last year’s Senate bill and this year’s House bill contain no age limit for eligibility.

I. Amnesty

The DREAM Act creates a tiered system to grant amnesty to illegal aliens who arrived in the U.S. before the age of 16. While the Senate bill limits eligibility to aliens who are younger than 35 as of the date of enactment, the House bill contains no age limit for eligibility. (Section 4(a)(1)(A) and (a)(1)(F)).

- Illegal aliens who are at least 12 years old and are enrolled in primary or secondary school are eligible for a **stay of removal**. (Section 7(b)).
- Illegal aliens who have obtained a high school diploma or a GED, or have simply been admitted to an institution of higher education, are eligible for **conditional LPR status**. There is **NO CAP ON THE NUMBER OF ALIENS** who may receive conditional LPR status and such status **MAY BE EXTENDED INDEFINITELY** (Sections 4(d) and 5(d)(2)(B), respectively).
- An illegal alien who has obtained conditional LPR status under the act and subsequently complete at least 2 years of a degree program or 2 years in the uniformed services (and if discharged, was honorably discharged) is eligible for **legal permanent resident status** (LPR status).

Stay of Removal: Under the DREAM Act, the Attorney General shall stay the removal of any alien who:

- Was continuously present in the U.S. for at least 5 years prior to enactment of the DREAM Act. (Sections 7(b)(1) and 4(a)(1)(A)). Continuous presence is not terminated by the initiation of removal proceedings. (Section 4(b)). Under the Senate bill, the alien is permitted to have left the country for up to 90 days at a time for a maximum of 180 days. (Section 4(c)(1))(*Note: in the House bill, the alien is considered to have maintained continuous presence so long as any absence was “brief, casual, and innocent,” but there is no 90/180 day test*). DHS can extend these periods for exceptional circumstances, such as illness or death of the alien or a relative. (Section 4(c)(2));
- Was under 16 years of age at the time of initial entry into the U.S. (Sections 7(b)(1) and 4(a)(1)(A));
- Has good moral character *since the time the alien applied for status* under the DREAM Act. Good moral character is not required for the time prior to application. In other words, DHS cannot consider past acts committed by an alien which may demonstrate that the applicant does not possess good moral character. For example, a violent criminal gang member who has never been convicted of a crime would be eligible for a stay and conditional status and could not be excluded even if the alien had committed numerous heinous felonies. (Sections 7(b)(1) and 4(a)(1)(B));
- Is not subject to a final order of exclusion, deportation or removal entered after the alien was 16 years of age. (Sections 7(b)(1) and 4(a)(1)(E))(*Note: this limitation is only present in the Senate bill and is not in the House bill*);
- Is neither inadmissible or deportable because the alien:
 - (1) Was convicted of committing certain crimes; engaged in drug trafficking, or engaged in a terrorist activity under INA §212(a)(2) or (3);
 - (2) Participated in or is a relative of a child abductor under INA §212(a)(10)(C), (*Note: this limitation on admissibility/deportability is only present in the Senate bill but is not contained in the House bill*); or
 - (3) Participated in alien smuggling under INA §212(a)(6)(E). DHS can waive this limitation on humanitarian grounds. (Sections 7(b)(1), 4(a)(1)(C) and 4(a)(2)).
- Is at least 12 years of age (Section 7(b)(2)), but not yet 35 years old as of the date the bill was enacted. (Section 4(a)(1)(F)) (*Note: the upward age limit of 35 years of age is only present in the Senate bill and is not contained in the House bill*); and
- **“Is enrolled full time in a primary or secondary school.”** (Section 7(b)(3)) (*Note: “primary or secondary school” is not defined in the legislation*).

- An illegal alien whose removal is stayed under this section “may be engaged in employment.” (Section 7(c)).
- The Attorney General shall lift the alien’s stay if the alien is no longer enrolled in primary or secondary school or otherwise ceases to meet the above requirements. *However, under Section 4 of the bill, an alien who has a high school degree or GED or is admitted to an institution of higher education may apply for conditional LPR status.* (Section 7(d)).

Conditional Status — Under the DREAM Act, DHS shall grant conditional permanent resident status to any alien whose removal is stayed, as described above, subject to the following:

- Conditional permanent resident status is valid for a period of 6 years, and the language implies DHS may extend it in perpetuity. (Sections 5(a)(1) and 5(c)(3)).
- DHS shall terminate the conditional LPR status if an alien:
 - (1) Ceases to possess good moral character after the date of the alien’s application. (Sections 4(a)(1)(B) and 5(b)(1)(A));
 - (2) Becomes inadmissible or deportable because the alien: (1) engaged in criminal or terrorist activity; (2) participated in or is a relative of a child abductor (*this limitation is only contained in the Senate bill*); or (3) participated in alien smuggling, although DHS can waive this on humanitarian grounds. (Section 4(a)(1)(C) and 5(b)(1)(A));
 - (3) Becomes a public charge. (Section 5(b)(1)(B)); or
 - (4) Leaves the uniformed services on anything less than an honorable discharge. (Section 5(b)(1)(C)).

Note: If the alien’s conditional status is terminated for any of the above reasons, the alien automatically returns to prior immigration status. (Section 5(b)(2)).

- **There is no numeric cap on the number of illegal aliens who may qualify for conditional status under this Act.** (Section 4(d)).
- **DHS may not remove any alien who has a pending application for conditional status under this Act, for any reason.** (Section 4(f)).

Adjustment to LPR Status — An alien with conditional status may petition DHS for the removal of conditional status and to adjust to that of Lawful Permanent Resident, subject to the following:

- The petition may be filed not sooner than 6 months before and up to 2 years after the alien’s conditional status expires.

- To adjust, from conditional status an alien must demonstrate that, at the time of application to remove conditional status, the alien:
 - (1) Possessed good moral character during the period of conditional status. (Section 5(d)(1)(A));
 - (2) Is not removable for any specified criminal conviction, terrorist activity, or prohibited acts of smuggling or abductions. (Sections 5(d)(1)(B) and 4(a)(1)(C));
 - (3) Has not abandoned his or her U.S. residence by remaining outside of the U.S. for an aggregate of 365 days, except as required through uniformed service. (Section 5(d)(1)(C)); and
 - (4) Has provided a list of each secondary school in the U.S. the alien has attended. (Section 5(d)(1)(E)).
- The alien must also demonstrate that the alien has either:
 - (1) Earned a degree from an institution of higher education in the U.S.;
 - (2) Completed at least 2 years of a bachelor's (or higher) degree program in the United States; or
 - (3) Served at least 2 years in the uniformed services, and, if discharged, received an honorable discharge. (Section 5(d)(1)(D)).
- Despite these requirements to remove conditional status, DHS may still remove the conditional status if the alien:
 - Meets the first three requirements (good moral character, is not inadmissible/removable, has not abandoned residence);
 - Demonstrates “**compelling circumstances for the inability to complete**” any of the educational or service requirements; and
 - Demonstrates that the alien's removal would result in “**exceptional and extremely unusual hardship**” to the alien or a U.S. citizen relative. (Section 5(d)(2)(A)).
- Upon a showing of good cause, DHS may extend the time period in which the alien is required to complete this requirement *for an indefinite period of time*. (Section 5(d)(2)(B)).
- If DHS does not approve the petition, the conditional LPR status of the alien will be terminated. (Section 5(c)(2)).

- An alien who adjusts to LPR status may apply time spent during conditional status toward the 5-year residence requirements for naturalization. (Section 5(e)).
- An alien with conditional status may not apply for naturalization until the conditional status has been removed. (Section 5(e)).

Penalty for False Statements — Under Section 8 of the Senate bill, an alien who “willfully and knowingly” files a fraudulent application or conceals a material fact shall be fined pursuant to the criminal code (Title 18) and imprisoned up to 5 years. The House bill contains no penalties for false statements.

Confidentiality of Application Information — Section 9 of the Senate bill (Section 8 of the House bill) ensures confidentiality of information contained in any DREAM Act application. With respect to all applications under the Act, no officer or employee of the United States may:

- Use the information contained in the application to initiate removal proceedings against “any person identified in the application” (which could include persons other than the applicant who are not eligible for conditional status but are otherwise removable);
- Publish application information in a way that would enable identification of the applicant; or
- Permit anyone other than a U.S. Government officer or employee from examining any application.

Notwithstanding the above limitations, DOJ and DHS are required to furnish information disclosed under the act to: (1) law enforcement entities, upon written request, when requested in connection to a terrorist or criminal investigation or prosecution; or (2) in connection with the identification of a decedent.

II. In-State Tuition and Financial Aid

- The DREAM act allows universities to grant in-state tuition to illegal aliens by:
 - Repealing the federal requirement that a state not provide a benefit to an illegal alien that is not also provided to any citizen or national, regardless of residency under IIRIRA §505 (Section 3(a)); and
 - Retroactively mooted any lawsuits under §505 of IIRIRA for discrimination in favor of illegal aliens. (Section 3(b)).
- The Senate and House bills differ with respect to the kind of assistance an alien with conditional status is eligible to receive.
 - In the House bill (Section 10), an alien with conditional status is ineligible for:

- (1)** Federal Pell Grants; and
- (2)** Certain Federal supplemental educational grants (20 U.S.C. 1070a and 1070b).
- In the Senate bill (Section 11), any alien with conditional or unconditional LPR status pursuant to the DREAM Act is limited to the following forms of financial aid:
 - (1)** Most student loans, including need-based Perkins loans, under title IV of the Higher Education Act of 1965;
 - (2)** Work-study assistance under title IV; and
 - (3)** Student support services for additional instruction, counseling, and academic advice under title IV.

FAIR Staff Contacts: Zach Swartz and
Christopher M. Jaarda, 202-328-7004