

# President Obama's Executive Action and the Agricultural Sector

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On November 20, 2014, **President Obama announced that he would take executive action affecting the U.S. immigration system.** The agricultural sector is not specifically addressed in the various components of President Obama's initiative on immigration. Nevertheless, there are some components of the initiative that could have a significant impact on agriculture workers and their employers.

## 1. Deferred Action for parents of U.S. citizens and lawful permanent residents

- Deferred action (relief from deportation and employment authorization) will soon become available to those individuals who:
  - As of November 20, 2014, have a son or daughter who is a U.S. citizen or lawful permanent resident (green card holder);
  - Have continuously resided in the United States since January 1, 2010;
  - Were physically present in the United States on November 20, 2014, and at the time of filing a request for deferred action with USCIS;
  - Are not an enforcement priority as follows:
    - Individuals engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
    - Individuals apprehended at the border or ports of entry while attempting to unlawfully enter the United States;

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- Individuals involved in certain gang activity;
  - Convicted felons, including those convicted of “aggravated felonies”;
  - Individuals convicted of significant or multiple misdemeanors;
  - Individuals who unlawfully entered the United States and cannot establish that they have been physically present in the United States continuously since January 1, 2014;
  - Individuals who have been issued a final order of removal on or after January 1, 2014, and have failed to abide by same.
- Present no other factors that, in the exercise of discretion, make the grant of deferred action inappropriate.

This expansion of deferred action is likely to have the greatest impact on the agricultural sector. USCIS has stated that it expects to begin accepting applications no later than 180 days from the date of the announcement (by May 19, 2015).

## **2. Deferred Action for Childhood Arrivals (DACA)**

Currently, individuals who meet the following requirements can apply for deferred action under the DACA program:

- Were under the age of 31 as of June 15, 2012;
- Came to the United States before reaching their 16th birthday;
- Have continuously resided in the United States since June 15, 2007;
- Were physically present in the United States on June 15, 2012, and at the time of filing a request for deferred action with USCIS;
- Had no lawful immigration status on June 15, 2012;
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

New DACA Requirements under President's Executive Action:

- Eliminate the age restriction (individuals 31 or older as of June 15, 2012 (born before June 15, 1981) may now apply);
- Require continuous residence in the United States since January 1, 2010, rather than the

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prior requirement of June 15, 2012;

- Extend the deferred action period and related employment authorization period from two years to three years (applies to renewals and new applicants);
- Require that applicants otherwise meet requirements listed above.

Essentially, individuals who were not able to take advantage of the DACA program initially because they were too old may now be able to take advantage of deferred action. USCIS has said that it will begin accepting applications under the new requirements no later than 90 days from the date of the announcement or mid-February.

### **3. Secure Communities Program**

The Department of Homeland Security (DHS) is discontinuing the controversial Secure Communities Program. Implemented in 2009, the Secure Communities Program used state and local law enforcement agency information sharing procedures to identify criminal aliens and facilitate their removal. In its place, Immigration and Customs Enforcement (“ICE”) will administer a program that will rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies and forward such data to the Federal Bureau of Investigation (FBI) for criminal background checks. Unless special circumstances exist, ICE will seek the transfer of only those aliens who are considered “enforcement priorities” (see #1 above).

This policy change, if properly implemented by ICE, should reduce the number of agricultural employees that are swept up into the immigration system because of traffic offences and other minor encounters with local police.

**4. Some agricultural employers have been able to obtain H-1Bs for animal scientists and other professional employees. Under the President’s initiative, the spouses of these H 1B employees will now be able to obtain employment authorization. It is expected that this policy change could go into effect in January 2015.**

**5. College students in F-1 status who obtain a degree from a U.S. college or university are eligible for 12 months of practical training. An additional 17-month period of employment authorization is available for students who obtained a bachelor’s, master’s or doctoral degree in a science, technology, engineering and mathematics (STEM) field. The list of degrees that qualify as STEM degrees will be expanded and may include more individuals who can work in the agricultural sector. A longer period of practical training is also expected for STEM degree holders. This policy change may not be in place until late 2015.**

It has been reported that as many as 250,000 agricultural sector workers will obtain employment authorization as a result of the President’s immigration initiative.

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