To: Presidents, State-operated Campuses

From: Joseph B. Porter
Senior Vice Chancellor for Legal Affairs, General Counsel, and Secretary of the University

Date: September 11, 2017

Re: Repeal of DACA

On September 5, 2017, the Trump administration announced the repeal of the program known as the Deferred Action for Childhood Arrivals or DACA. For those eligible, DACA provides protection for undocumented individuals by deferring deportation proceedings against them, allowing them to work through an Employment Authorization Document ("EAD"), and granting them permission to travel outside the country and re-enter the U.S. on what is known as an advance parole travel document.¹ In general, DACA beneficiaries are recognized to have lawful presence in the U.S.

Background
The DACA program was created not through legislation but by a U.S. Department of Homeland Security ("DHS") memorandum issued on June 15, 2012. In response to threats of legal challenges, on September 5, 2017, DHS sent to various federal agencies under its jurisdiction a memorandum, which rescinded the June 15, 2012, memorandum and announced actions to wind down and eliminate the DACA program. In its memorandum, DHS stated it will:

1. Adjudicate—on an individual, case-by-case basis—properly filed pending DACA initial requests and associated applications for Employment Authorization Documents that have been accepted by the Department as of September 5, 2017;

2. Reject all DACA initial requests and associated applications for Employment Authorization Documents filed after September 5, 2017;

3. Adjudicate—on an individual, case-by-case basis—properly filed pending DACA renewal requests and associated applications for Employment Authorization Documents from current beneficiaries that have been accepted by DHS as of September 5, 2017, and from current beneficiaries whose benefits will expire

¹ Certain foreign nationals, including DACA beneficiaries, apply for an advance parole document when they seek to travel outside the U.S., so that they may re-enter with advanced permission.
between September 5, 2017, and March 5, 2018, that have been accepted by DHS as of October 5, 2017;

4. Reject all DACA renewal requests and associated applications for Employment Authorization Documents filed outside of the parameters specified above;

5. Not terminate the grants of previously issued deferred action or revoke Employment Authorization Documents, solely based on the DHS directive to repeal the DACA program, for the remaining duration of their validity periods;

6. Not approve any new applications for advance parole under standards associated with the DACA program, although it will generally honor the stated validity period for previously approved applications for advance parole. Notwithstanding the continued validity of advance parole approvals previously granted, Customs & Border Patrol (“CBP”) will retain the authority it has always had and exercised in determining the admissibility of any person presenting at the border and the eligibility of such persons for parole. Further, the U.S. Citizenship and Immigration Services (“USCIS”) will retain the authority to revoke or terminate an advance parole document at any time;

7. Administratively close all pending applications for advance parole filed under standards associated with the DACA program and refund all associated fees; and

8. Continue to exercise its discretionary authority to terminate or deny deferred action at any time when immigration officials determine termination or denial of deferred action is appropriate.

General Effect of DHS September 5, 2017, Memorandum
Based upon the above, current DACA beneficiaries continue to have lawful presence and employment authorization until their DACA approval expires (all DACA approvals expire in two years or less). If their DACA approval expires on or before March 5, 2018, then they have until October 5, 2017, to apply for a final two-year renewal. After October 5, 2017, no more renewal applications will be accepted. DACA beneficiaries with more than six (6) months remaining on their approvals (those that go beyond March 5, 2018) will not be allowed to renew; therefore, DACA approvals will start to expire on March 6, 2018.

DACA beneficiaries who are SUNY employees will be allowed to work until their EADs expire. As stated above, DHS will not terminate or revoke previous DACA grants of work authorizations based solely on its decision to repeal the DACA program.
Effect on Travel outside the U.S.
With regard to travel outside the U.S., DHS has stated that it will honor the validity period for previously issued applications for advance parole, but will not issue any new ones to DACA beneficiaries. This means that DACA beneficiaries who have an advance parole document should be able to re-enter the U.S. before the expiration of their advance parole document, but there is no guarantee of that since it is within the discretion of CBP to allow re-entry of any person regardless of whether they are in possession of an advance parole document. Moreover, DHS reserves the right to revoke or terminate a person’s advance parole document at any time even if such person is outside the country. In light of these circumstances, all DACA beneficiaries, even those with advance parole, should carefully consider any plans to leave the U.S.

Immigration Enforcement
With regard to immigration enforcement, the U.S. Immigration and Customs Enforcement (ICE) confirmed in a recent conference call with higher education institutions that it will continue to operate in accordance with its 2011 memorandum, which designates college campuses as “sensitive locations,” meaning that enforcement actions (i.e., arrests, searches, interviews, and surveillance) will not occur or be focused on college campuses unless: (a) as discussed below, exigent circumstances exist; (b) other law enforcement actions have led officers to the campus; or (c) prior approval is obtained.

Exigent circumstances exist when the enforcement action involves a national security or terrorism matter; there is an imminent risk of death, violence, or physical harm to any person or property; the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or there is an imminent risk of destruction of evidence material to an ongoing criminal case.

Advocacy
Consistent with the SUNY Board of Trustees’ resolution of January 24, 2017, SUNY System has initiated a dialogue with legislators about the need for legislative changes to protect DACA beneficiaries and undocumented students in general. However, campuses should be aware that state resources cannot be used to encourage SUNY community members to support any particular political position. Please contact campus counsel prior to undertaking any proposed advocacy activities.

Conclusion
The repeal of DACA will not affect an undocumented student’s ability to attend classes; however, the eventual elimination of employment authorizations could negatively impact a DACA student’s ability to pay for tuition and other related educational costs. Moreover, DACA beneficiaries face increased risk when traveling outside the U.S., even if they have an approved advance parole document. ICE’s confirmation that it will continue to operate under its 2011 memorandum regarding sensitive locations should provide some comfort that college campuses will not be the main targets for enforcement actions.

For your ready reference, I enclose my February 6, 2017, memorandum to you in which I highlighted SUNY’s commitment to support its undocumented students and answered frequently
asked questions regarding immigration policy. Our office will continue to apprise you of any further developments in this area. In addition, the National Association of Foreign Student Advisors (NAFSA) posts up-to-date information, which can be found at the following website:

DACA Resource Page: For International Student Advisers and Education Abroad Advisers

Enclosure

CC: Community College Presidents
    Chancellor Kristina M. Johnson
    Chancellor’s Cabinet
    Government Relations
    Office of General Counsel Attorneys and Staff