

AAMVA Legislative/Regulatory Alert

To: Chief Motor Vehicle Officials
Chief Law Enforcement Officials

FR: Anne Ferro, AAMVA President and CEO

Date: November 21, 2014

RE: President Obama Outlines Executive Actions on Immigration

On November 20th President Obama outlined a series of executive actions with regards to immigration (attached). AAMVA reminds its membership that executive actions are meant to direct and advise federal executive agencies in the fulfillment of their duties, not to supplant federal or state law. Of particular interest in the presidential strategy is the expansion of prosecutorial discretion for deferred action status holders. AAMVA does not anticipate that the current executive order will constitute major changes for motor vehicle administrators. At this point, most AAMVA members have made the determination whether deferred action status holders are considered by the state to be legally present. While the presidential directives will increase the population of applicants eligible for deferred status, the process requirements for the states would likely stay the same as they have for previous deferred action status holders - confirmation of legal presence would continue to be provided through appropriate federal immigration documentation. AAMVA does advise consultation with counsel on potential effects to individual state laws.

According to the White House, the Administration's executive strategy:

- Would extend legal status to an estimated 4 million individuals who have lived in the United States for at least 5 years and are parents of U.S. citizens or of lawful permanent residents (LPR) by expanding the existing Deferred Action for Childhood Arrivals (DACA) program created in 2012
 - Parents would have to pass a criminal and national security background check
 - Submit biometric data
 - Pay taxes
 - Waivers would not apply to parents of illegal immigrants who have only obtained legal status through the DACA program or who have not been granted legal status at all
- Would remove the DACA program's current age limit, allowing any individual brought to this country as children to apply if they entered before January 1, 2010, regardless of how old they are today.
- Would make the DACA deportation waivers valid for three years, rather than the current two

- Providing portable work authorization for high-skilled workers awaiting LPR status and their spouses. Under the current system, employees with approved LPR applications often wait many years for their visa to become available. DHS will make regulatory changes to allow these workers to move or change jobs more easily.
- DHS is finalizing new rules to give certain H-1B spouses employment authorization as long as the H-1B spouse has an approved LPR application.
- DHS will expand immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the U.S. The criteria will include income thresholds so that these individuals are not eligible for certain public benefits like welfare or tax credits under the Affordable Care Act.
- DHS will propose changes to expand and extend the use of the existing Optional Practical Training (OPT) program and require stronger ties between OPT students and their colleges and universities following graduation.
- DHS will clarify its guidance on temporary L-1 visas for foreign workers who transfer from a company's foreign office to its U.S. office. DOL will take regulatory action to modernize the labor market test that is required of employers that sponsor foreign workers for immigrant visas while ensuring that American workers are protected.
- DHS will expand an existing program that allows certain individuals to apply for a provisional waiver for certain violations before departing the United States to attend visa interviews.
- DHS will clarify its guidance to provide greater assurance to individuals with a pending LPR application or certain temporary status permission to travel abroad with advance permission ("parole").
- Further Modernization of the visa process by Presidential memorandum.
- DHS will expand an existing policy to provide relief to spouses and children of U.S. citizens seeking to enlist in the military, consistent with a request made by the Department of Defense.

The attached White House release describes details on the executive actions, including:

- The requirements eligible immigrants must meet in order to qualify for relief from deportation
- The fact that the United States Citizenship and Immigration Services (USCIS) will not be accepting applications until early 2015
- The fact that immigrants must have been in the U.S. for at least 5 years to qualify for these programs, and that the executive actions will not benefit immigrants who entered the country after January 1, 2014; who may cross the border in the future; or who help those who cross in the future.
- The fact that knowingly misrepresenting or failing to disclose facts will subject applicants to criminal prosecution and possible removal
- A warning against unauthorized immigration services

AAMVA is still awaiting the official executive actions as released and signed by the President. When the formal orders are released, AAMVA will provide a complete analysis of what those orders entail and their impacts on the AAMVA membership.