

Date: July 19, 2018
To: International Students and Exchange Visitors
From: Office of International Student & Scholar Services
Re: USCIS Tightens the Unlawful Presence Policy for Non Immigrants in F and J Status:

This memo is a notification of the important immigration changes that may affect your ability to continue your studies as an international student in the United States after August 9, 2018.

On May 10, 2018, the United States Citizenship and Immigration Services (**USCIS**) issued a guidance memo on the changes they are making to account the accrual of unlawful presence in the country by certain nonimmigrants. This policy, which goes into effect on Thursday, August 9, 2018 will redefine how students in F-1 status and exchange visitors in J-1 status may become unlawfully present in the United States, and, accrue unlawful presence. The redefinition could potentially subject some of you to either a 3 or 10 year bar to reenter the country, and, result in the revocation of your existing visas. It may also make you ineligible for changes and extensions of international Student immigration status, adjustment of status to lawful permanent residency (green card), and, terminate your employment eligibility.

What does this mean?

In a nutshell, the law stipulates that anyone who accumulates more than 180 days of unlawful presence in the country and then decides to leave the country voluntarily is barred from coming back to the U.S. for three years. Similarly, anyone who is unlawfully present in the U.S. for more than 365 days (one year) and then leaves the country is barred from returning to the United States for 10 years. Moreover, when someone becomes unlawfully present in the United States, even for one day, the following consequences are triggered:

- The person's existing visas are automatically revoked;
- The person is no longer eligible for an extension or a change of status to any other immigration classification;
- The person becomes ineligible for an adjustment of status to lawful permanent residency (green card) with the exception of lawful permanent residency through marriage to a US citizen; and
- The person becomes removable (deportable) from the United States.

How does this affect international students and exchange visitors?

F-1 international students and J-1 exchange visitors, who have violated their status for different reasons, such as failing to maintain the full time course load requirement (12 credits for undergraduates and 9 credits at the graduate level), unauthorized employment, etc., will be negatively affected by the new policy; and, all, or some of the serious consequences and penalties listed above will be triggered.

For example, if a student had a status violation in the Spring 2018 semester, on August 9, 2018, the student will become unlawfully present in the United States, and, the above consequences will be triggered. Furthermore, if that student leaves the United States, and, wishes to come back in the Fall 2018 semester

with his/ her valid F-1 visa, the student may be denied entry at the airport, because, if the student's unlawful presence was triggered on August 9, 2018, the student's existing visa will also be revoked automatically.

On the other hand, if a student has a status violation after August 9, 2018, the student's unlawful presence will be backdated retroactively to the moment of the violation.

For example, if a student drops below a full-course of study in the Fall 2018 semester, and, leaves the US for a family visit in the summer of 2019, the Department of Homeland Security (**DHS**) will count the student's unlawful presence from the first day the student fell out of status, and, not only will refuse entry to the student, but, will be able to penalize the student with a re-entry bar of 3 or 10 years.

Similarly, as a further example, if a student leaves the US in the summer of 2019 for a family visit, and, at the student's return, DHS agents, in inspection, find out that the student has been working in the US without authorization, the DHS will backdate the student's unlawful presence to the first day of the student's unauthorized employment or August 9, 2018, whichever happens latter, and, impose penalties based on the duration of unlawful presence.

Therefore, given the serious consequences and penalties, please speak to your international student advisors immediately for all the details.

Is this a new policy?

Yes and No: The policy for unlawful presence and re-entry bars have been in existence. "The statutory provisions that created the penalties for "unlawful presence" are not new; they were added to the Immigration and Nationality Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ([IIRIRA](#))." However, under the old regulations, F and J visa/ status holders and their dependents were significantly protected from the unlawful presence penalties. Before the new changes, an F or a J visa/ status holders and their dependents became unlawfully present in the US, only if (1) an immigration officer found them to be unlawfully present while adjudicating a benefit they sought from the USCIS, such as an OPT, reinstatement, or a change of status request; or (2) if they were brought in front of an immigration judge, and, the judge determined that they were unlawfully present in the US. And, in these situations, the unlawful presence started only from the date of the immigration officer or judge's determination. It was not backdated or retroactive. An F and J visa/ status holder or their dependents were not deemed to be unlawfully present in the United States if they violated their statuses—such as dropping below a full-course of study without prior authorization from the school, stop attending their educational programs, accepting unauthorized employment, etc. In those situations, the students were deemed to be "out-of-status", but, without a formal determination of an immigration officer or a judge, students in F or J status were not subject to the penalties that come with unlawful presence.

USCIS is redefining the way it will be triggering and counting days of unlawful presence for nonimmigrants in F-1, F-2, J-1, and J-2 visa categories from August 9, 2018 onwards.

What are the differences between the current rule and the one that goes into effect on August 9, 2018?

- Under current policy, which has been in place for 20 years, the unlawful presence begins only after a formal finding of a status violation by a DHS officer or an immigration judge.

- Under the newly proposed policy, the unlawful presence count begins the day after the status violation, and, a formal finding of a status violation by a DHS officer or an immigration judge is not necessary.
- Under both the current and proposed policies:
 - Remaining in the United States beyond the expiration of a date-specific Form I-94 also starts the unlawful presence clock; and
 - There are a number of important exceptions (such as unlawful presence not being counted if USCIS approves a student's application for reinstatement)

How will USCIS know that there has been a violation of immigration status?

Status violation is a reportable event in SEVIS. International Student Advisors, who are the Designated School Officials (DSOs) by the Department of Homeland Security, are required by the federal mandate to report such activities on SEVIS records within the first 30 days of program start date. The following federal agencies, including USCIS have access to review SEVIS records. The agencies are all able to see all updates on students' and exchange visitor's records.

- **ICE:** Immigration and Custom Enforcement with its prescribed enforcement responsibilities
- **SEVP:** Student Exchange and Visitor Program for F-1 students and Department of State – Exchange Visitor Program for those in J-1 status, regarding their SEVIS records.
- **CBP:** Customs and Boarder Protection regarding your admission into the United States at the port of entry e.g. airports.
- **DOS:** Department of State - Consular Affairs (Embassies/Consulates abroad), regarding your eligibility for a nonimmigrant visa. Student is sometimes advised to reinstate their status by exiting the country and apply for a new visa and reenter the country. However, this will not be feasible anymore since a student could be subjected to the reentry bars (3 years or 10 years).

Is there anything that the International Student Advisors can do?

If you have any status violations, you should immediately contact your international student advisor. The advisor may help you in getting back to status, or, to mitigate your damages. After August 9, 2018, your options will be much more limited. Because this is a new change, and, will not be implemented until August, the DHS has not started acting on it—therefore, we know little about the practical implementation of these changes, and, how the DHS enforcement will change accordingly yet. Therefore, please carefully continue to review the updates coming from your international advisors.

What can International Students and Exchange Visitors do?

The good news is that this restriction does not go into effect until August 9, 2018. This gives international students and exchange visitors enough time to take action and avoid being unlawfully present and subject to either the 3 or 10 years bar penalties.

Remember:

- Maintain your immigration status.
- Speak to your international student advisors about any challenges you might be facing that can affect your status maintenance.
- Visit your international student advisors' office for any immigration questions or concerns you might have.

- Always update your contact information with your college international student office, and, make sure that you are receiving all communications coming from your international advisors.
- If you have failed to maintain your nonimmigrant status, go and speak to your international student advisor **immediately**; the clock is ticking and the new rule will negatively impact you.