

USCIS issues new policy on unlawful presence for those in F, J, and M status

U.S. Citizenship and Immigration Services (USCIS) released a [policy memorandum](#) on May 10, 2018 that will abruptly change the way that the agency calculates unlawful presence in the United States for students (F-1), exchange visitors (J-1), and vocational students (M-1), together with their dependents. The new policy will be effective on August 9, 2018, but it is open for comments, and may be revised based upon those comments, until June 11, 2018.

Accruing unlawful presence is an important issue because it may affect an individual's ability to apply for immigration benefits in the future. Individuals subject to a 3-year, 10-year, or permanent bar to admission due to accrued unlawful presence are generally not eligible to apply for a visa, admission, or adjustment of status to permanent residence unless they qualify for a waiver of inadmissibility or some other special form of relief.

Under the previous policy, people entering the United States in F, J, or M status for the duration of their studies and applicable training periods (Duration of Status, or D/S, as marked in their Form I-94s) did not automatically begin accruing unlawful presence if they overstayed or violated the terms of their nonimmigrant status. Instead, unlawful presence only began to accrue upon a formal finding by USCIS of a status violation, or after being ordered excluded, deported, or removed by an immigration judge or by the Board of Immigration Appeals.

Under the new policy, anyone in F, J, or M status that has been granted D/S will begin accruing unlawful presence under any of the following circumstances:

- the day after the F, J, or M nonimmigrant no longer pursues the course of study or authorized activity, or the day after the person engages in an unauthorized activity;
- the day after completing the course of study or program (including any authorized practical training plus any authorized grace period);
- the day after the person's Form I-94 expires; or

- the day after an immigration judge or the Board of Immigration Appeals orders the person excluded, deported, or removed (whether or not the decision is appealed).

Persons who have accrued more than 180 days of unlawful presence during a single stay and depart the United States may be subject to a 3-year bar to admission. Persons who have accrued more than one year of unlawful presence during a single stay may be subject to a 10-year bar to admission. In addition, certain individuals who have accrued more than one year of unlawful presence and who reenter or attempt to reenter the United States without being admitted or paroled may be subject to the permanent bar; that is, they may be deemed permanently inadmissible to the United States.

The new policy, if adopted, represents a dramatic change in the way that students and exchange visitors will begin accruing unlawful presence.