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# USCIS Changing Policy on Accrued Unlawful Presence by Nonimmigrant Students and Exchange Visitors

## USCIS Changing Policy on Accrued Unlawful Presence by Nonimmigrant Students and Exchange Visitors <sup>[1]</sup>

Submitted by Chief Editor on May 12th 2018

**WASHINGTON** U.S. Citizenship and Immigration Services (USCIS) today posted a [policy memorandum \(PDF, 179 KB\)](#) <sup>[2]</sup> changing how the agency will calculate unlawful presence for students and exchange visitors in F, J, and M nonimmigrant status, including F-2, J-2, or M-2 dependents, who fail to maintain their status in the United States.

This policy aligns with President Trump's [Executive Order: Enhancing Public Safety in the Interior of the United States](#) <sup>[3]</sup> to enforce the immigration laws of the country and will go into effect on Aug. 9, 2018.

USCIS is dedicated to our mission of ensuring the integrity of the immigration system. F, J, and M nonimmigrants are admitted to the United States for a specific purpose, and when that purpose has ended, we expect them to depart, or to obtain another, lawful immigration status," said USCIS Director L. Francis Cissna. "The message is clear: These nonimmigrants cannot overstay their periods of admission or violate the terms of admission and stay illegally in the U.S. anymore."

Individuals in F, J, and M status who failed to maintain their status before Aug. 9, 2018, will start accruing unlawful presence on that date based on that failure, unless they had already started accruing unlawful presence, on the earliest of any of the following:

- The day after DHS denied the request for an immigration benefit, if DHS made a formal finding that the individual violated his or her nonimmigrant status while adjudicating a request for another immigration benefit;
- The day after their I-94 expired; or
- The day after an immigration judge or in certain cases, the Board of Immigration Appeals (BIA), ordered them excluded, deported, or removed (whether or not the decision is appealed).

Individuals in F, J, or M status who fail to maintain their status on or after Aug. 9, 2018, will start accruing unlawful presence on the earliest of any of the following:

- The day after they no longer pursue the course of study or the authorized activity, or the day after they engage 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 I-94 expires; or
- The day after an immigration judge, or in certain cases, the BIA, orders them excluded, deported, or removed (whether or not the decision is appealed).

Individuals who have accrued more than 180 days of unlawful presence during a single stay, and then depart, may be subject to three-year or 10-year bars to admission, depending on how much unlawful presence they accrued before they departed the United States. Individuals who have accrued a total period of more than one year of unlawful presence, whether in a single stay or during multiple stays in the United States, and who then reenter or attempt to reenter the United States without being admitted or paroled are permanently inadmissible.

Those subject to the three-year, 10-year, or permanent unlawful presence bars to admission are generally not eligible to apply for a visa, admission, or adjustment of status to permanent residence unless they are eligible for a waiver of inadmissibility or another form of relief.

This policy memorandum is updating [Chapter 40.9.2](#) [4] of the USCIS Adjudicator's Field Manual.

USCIS is accepting comments on the policy memorandum. The 30-day public comment period begins today and closes on June 11, 2018. For complete information on the comment process, visit the [Policy Memoranda for Comment](#) [5] page.

## Team Notes:

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[1] <https://immigration.com/news/uscis-changing-policy-accrued-unlawful-presence-nonimmigrant-students-and-exchange-visitors>

[2] <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Draft%20Memorandum%20for%20Comment/AccrualofUnl>

[3] <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

[4] <https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-17138/0-0-0-18383.html#0-0-0-621>

[5] <https://www.uscis.gov/outreach/feedback-opportunities/policy-memoranda-comment>

[6] <https://immigration.com/visa/nonimmigrant-visas/m-visa>

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