Accrual of Unlawful Presence and F and J Nonimmigrants
Frequently Asked Questions

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What is Unlawful Presence?
Unlawful Presence is defined as presence in the United States after the expiration of an authorized period of stay.

When does the new policy take effect?
The new policy will take effect on August 9, 2018.

What was the previous policy on unlawful presence?
Previous policy stated that a status violation did not initiate unlawful presence and non-immigrants admitted in “D/S (Duration of Status)” on their I-94 began to accrue unlawful presence only when:
- An immigration judge determine a status violation, or
- INS/USCIS determined a status violation in the adjudication of an application/petition

What are the penalties for unlawful presence?
Per USCIS, “Individuals who have accrued more than 180 days of unlawful presence during a single stay, and then depart, may be subject to three(3)-year or ten(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 (1) 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.” For more details, please click here to go to the USCIS website.

What can I do to avoid accruing unlawful presence?

For Current F-1 Students:
- Pursue a full course of study (12 credits for undergraduates and 9 credits for graduates) or an authorized course load
- Follow all reporting requirements (change of address, change of major, change of degree level, course load reduction, change in earlier or later program completion date than what is stated on your I-20 including completing during summer term)
- Do not work without proper work authorization
- Depart the U.S. during your 60-day grace period

For F-1 Students on Post-Completion OPT or STEM OPT:
- Follow all reporting requirements (change of address, change of employer, STEM reporting every 6 months)
- Count unemployment days and depart before reaching the maximum allowable unemployment period
- Depart the U.S. during your 60-day grace period

For J-1 Exchange Visitor Student and other J categories:
- Follow all reporting requirements (change of address)
- Pursue full course of study (students), engage only in the authorized program described in your DS-2019
- Engage only in authorized employment. All employment, including on-campus, must be authorized by ISSS before the start of work
- Depart the U.S. during your 30-day grace period
What should I do if I think I have not maintained my status and may have accrued unlawful presence?
If you believe that you have accrued unlawful presence, seek legal counsel and speak with an experienced immigration attorney about the immigration consequences and to determine if you are subject to either the 3 or 10 year bar from returning to the U.S., or if you are permanently barred from returning to the U.S.

Can I apply for reinstatement?
Nonimmigrants that fall out of their immigration status and are eligible to apply for reinstatement should seek legal counsel and speak with an experienced immigration attorney about possible immigration consequences and to prepare and file the application for reinstatement if you are deemed eligible. A denial of a reinstatement application can trigger the 3-year or 10-year bar depending the processing time.