



## ***New USCIS Guidance on Unlawful Presence: What Students Need to Know***

*Last updated: September 13, 2018*

### **1. What is the new policy?**

[The Policy Memorandum](#) released by U.S. Citizenship and Immigration Services (USCIS) on August 9, 2018 relates to the accrual of unlawful presence for F (student), J (exchange visitor), and M (vocational student) nonimmigrants. **This fact sheet focuses on F (student) nonimmigrants.** The updated policy changes how and when nonimmigrant students begin accruing unlawful presence while residing in the United States. Effective August 9, 2018, **unlawful presence for students begins the day after the student violates their nonimmigrant status.**

### **2. What is unlawful presence?**

Unlawful presence is the time period following the expiration of authorized stay in the United States. A period of unlawful presence can later impact a [student's ability to re-enter](#) the United States for three or ten years depending on the length of unlawful presence. This is different from unlawful "status" but nevertheless has profound implications on a person's ability to seek admission in the United States in the future.

### **3. What was the previous policy?**

Under [previous policy guidance](#) related to this issue, F students who subsequently violated their nonimmigrant status began accruing unlawful presence:

- The day after USCIS made a [formal finding](#) that the visa holder violated their nonimmigrant status, while adjudicating the visa holder's request for an unrelated immigration benefit;
- The day after a specified [end date passed](#); OR
- The day after the immigration judge has ordered the visa holder deported, removed, or excluded.

This guidance was in place for over twenty years and was based on a number of Immigration and Naturalization Services (INS) policies. Following the dissolution of the INS, the various policies were consolidated in Adjudicators Field Manual - Chapter [40.9.2](#).

### **4. How are students affected by the new policy?**

Under the new policy, students who have violated their nonimmigrant status will begin accruing unlawful presence **the day after the status violation** occurred. Students admitted to the United States as F students are commonly admitted for the [duration of their status](#) as a student. This means an F student is authorized to remain in the United States as long as they maintain their "status" as a student within the parameters of their nonimmigrant visa.

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Students who **violate the terms** of their status can be deemed to no longer be lawfully present in the United States. Students can violate their status by making unauthorized changes to their course of study, engaging in unauthorized work, or remaining in the United States after their specified course of study end-date has passed. This means a student may violate their status by dropping a single class in their course of study or taking 11 credit hours in a semester, rather than the 12 required by their terms of their nonimmigrant visa.

This policy became effective on August 9, 2018. A student who violated their nonimmigrant status **before** August 9, 2018 would begin accruing unlawful presence on August 9, 2018, regardless of the date of the actual violation. A student who violates their nonimmigrant status **on or after** August 9, 2018 will begin accruing unlawful presence the date after the status violation occurred.

Following a status violation, students may file a “[reinstatement of status](#)” application. Under the new policy, if the application is filed within five months of a status violation and accepted, students will not accrue any period of unlawful presence. If the application is denied, the student will accrue unlawful presence from **the day after the status violation occurred**.

**5. How might the Penn State community be affected by this change in policy?**

International students play an important role at Penn State University. There are [7,000 international undergraduate students at Penn State](#), accounting for 10% of the undergraduate student population.

**6. What can I do now?**

It is now more important than ever for nonimmigrant students studying in the United States to be aware of the specific parameters of their status and the ways that any changes may affect their status. Active communication with their school of study is critical in the face of this new policy.

**7. Where can I find more resources?**

[Office of Global Studies at Penn State](#)

[U.S. Citizenship and Immigration Services – Policy Memorandum](#)

[NAFSA Article on New USCIS Policy](#)

[American Immigration Council Article on New USCIS Policy](#)

[Law 360 Article on New USCIS Policy](#)

[Penn State Law Center for Immigrants’ Rights Clinic Website](#)

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