

## Accrual of Unlawful Presence to Change in August for Foreign Students

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A new [policy memorandum](#) issued by U.S. Citizenship and Immigration Services affects foreign students and exchange visitors and will change the way the government determines the accrual of unlawful presence.

Currently, F, J and M visa holders - students and exchange visitors - are typically admitted for the duration of their status. If you are a student, you are allowed to lawfully be in the U.S. for the time you are enrolled in college. Because there is no "set in stone" end date to this duration of status, these visa holders would not start accruing unlawful presence unless USCIS were to find a violation of that status or if they were to be ordered by an immigration judge to be removed or deported. The date on which the violation or order was discovered is when the clock started on counting the days of unlawful presence. A status violation could occur unintentionally such as not maintaining full-time student status or participating in an unauthorized activity.

Under the new policy, which goes into effect August 9, an F, J or M visa holder begins accruing unlawful presence, due to a failure to maintain status on the earliest of any of the following:

- The day after the F, J, or M nonimmigrant no longer pursues the course of study or the authorized activity, or the day after he or she 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, as [outlined in federal law](#)).
- The day after the Form I-94 expires, if the F, J, or M nonimmigrant was admitted for a date certain.
- The day after an immigration judge or, in certain cases, the Board of Immigration Appeals orders the alien excluded, deported or removed (whether or not the decision is appealed).

Under the new policy, the days can start to accrue quickly and the penalties are harsh. Unlawful presence up to 180 days can result being barred entry into the U.S. for three years and more than one year of unlawful presence results in 10 years of being barred entry to the U.S. The penalties also extend to the visa holders' dependents in F-2, M-2 and J-2 status.

The key to preventing the accrual of any unlawful presence is to make sure the visa holder, school and employer work together to ensure that careful attention is paid to the information contained in their Student and Exchange Visitor Information System (SEVIS) record and know what constitutes a status violation.

If you have questions about the new conditions of the law, please [contact me](#) or any of the attorneys in the [Barley Snyder Immigration Practice Group](#).

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