USCIS Change in Policy on Unlawful Presence

On August 9, 2018, United States Citizenship and Immigration Services (USCIS) changed the way it determines accrual of Unlawful Presence. The new policy determines that an F, J or M non-immigrant will accrue unlawful presence on the earliest of the following:

- The day after the F or J nonimmigrant no longer pursues the course of study or 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 Form I-94 expires (if admitted for a date certain rather than “D/S”)
- The day after an immigration judge orders the nonimmigrant excluded, deported, or removed

OISS strongly recommends that you read the policy carefully: Read the policy here (link is external).

Accrual of Unlawful Presence has significant negative ramifications for future immigration benefits, including three-year, ten-year, and permanent bars to admission to the U.S., depending upon the amount of unlawful presence accrued. It is extremely important for F-1 students, J-1 exchange visitors, and F-2 and J-2 dependents to pay very careful attention to following all rules and regulations with regard to their nonimmigrant classifications, so that they do not unknowingly fall out of status and begin accruing unlawful presence. The Office of International Students & Scholars wants to reaffirm our dedication to supporting our students and scholars. We want to remind you that we are available to meet with you should you have any questions or concerns regarding your immigration status. Please do not hesitate to seek advice from our office.

To further assist with your understanding of the change in policy, please review the questions and responses below.

Q: Could I have violated my status in previous stays in the US and if so, how do I know?
A: If OISS was not monitoring your immigration status at that time, we have no way of knowing whether a status violation occurred or not. Our recommendation is that moving forward you take great care to maintain your status and be familiar with the regulations that dictate lawful status. You can read more about maintain status here: http://oiss.sa.ucsb.edu/students/currently-enrolled/staying-in-status

Q: How do I know if I’m accruing unlawful presence?
A: There is no way to officially check if you are accruing unlawful presence, USCIS does not maintain a database that you can check for accrual of unlawful presence. It is best to familiarize yourself with the rules to maintain status and seek advice from OISS if you have any questions about how best to maintain status.

Q: What if I violated the new Unlawful Presence policy before August 9, 2018?
A: If you failed to maintain status prior to August 9, 2018 and continue to fail after that date, you will be accruing Unlawful Presence as of August 9, 2018.

Q: At what point is “dropping below 12 units” noted? End of quarter? Add courses deadline?
A: OISS is notified on the first day of the quarter if students are not enrolled in 12 units. OISS will notify the student to enroll in 12 units or face termination of their I-20. If by the third week of the quarter a student is not enrolled in 12 units, their record will be terminated. It is very important that student’s monitor their UCSB email accounts for critical messages from OISS regarding their immigrations status. A termination will not occur for those students who have been approved for a Reduced Course Load.
Q: Does volunteer work for a student-run organization or even count as working without authorization?
A: Student-run organizations are “on-campus” and work with them does not require authorization for international students.

Q: What kind of volunteer activity need to be authorized? For example, volunteer at a shelter or an animal rescue needs to be authorized?
A: We always recommend students to come see an OISS advisor before doing any sort of volunteer work so we can help determine if authorization is required or not.

Q: If I am working 20 hours per week on campus, can I do Curricular Practical Training (CPT) off campus as well?
A: During Fall, Winter or Spring quarters when classes are in session, you are only allowed to work a maximum of 20 hours per week total (on and off campus employment combined). So if you are working 20 hours on campus, you are not eligible to work additional hours off campus on CPT. You must reduce your on campus hours to accommodate the amount of hours you want to work off campus. Please see an OISS advisor to discuss this situation further.

Q: If I am on Post-Completion Optional Practical Training (OPT), am I required to have health insurance?
A: No but it is STRONGLY advised to be covered under health insurance. Do not sign up for government subsidized health plans under the Affordable Care Act as that may jeopardize future immigration benefits.

Q: My I-20/DS-2019 is going to expire, what happens if I do not extend it before the expiration date?
A: NEVER allow your I-20 to expire if you plan on continue to study. If your I-20 or DS-2019 expires OISS cannot extend it. You will begin accruing unlawful presence by studying on an expired I-20 or DS-2019. Contact OISS at least 1 month before your document expires to ask about extending.

Q: Does on-campus employment require authorization? Would it matter for paid/unpaid work?
A: On-campus employment is a benefit for F-1 status and does not require authorization. 20 hours per week are allowed while school is in session, over 20 hours is allowed during breaks and summer quarter. Please see an OISS advisor if you have questions about what is considered on-campus.

Q: What happens to one’s legal status if the EAD card arrives after 90 days of unemployment?
A: Unemployment does not start accruing until the date on your EAD card. You do not accrue unemployment while you wait for your OPT application to be approved. If you have reached 90 days of unemployment (or 150 days of unemployment for all 3 years of STEM OPT), you will start accruing unlawful presence on your 91st day of unemployment.

Q: What grace period do I have?
A: The amount of time you receive is based on your situation. Please see the different grace period options below:

<table>
<thead>
<tr>
<th>Situation</th>
<th>Grace Period Before Leaving United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>F-1 upon completion of degree requirements</td>
<td>60 days</td>
</tr>
<tr>
<td>F-1 upon authorized early withdrawal</td>
<td>15 days</td>
</tr>
<tr>
<td>Event</td>
<td>Duration/Condition</td>
</tr>
<tr>
<td>------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>F-1 upon OPT completion</td>
<td>60 days</td>
</tr>
<tr>
<td>F-1 OPT pending past 60 day grace period</td>
<td>As long as application is pending adjudication</td>
</tr>
<tr>
<td>F-1 OPT/STEM OPT unemployment</td>
<td>90 total days or 150 total days (including unemployment during OPT)</td>
</tr>
<tr>
<td>F-1 upon <strong>unauthorized</strong> withdrawal</td>
<td>0 days</td>
</tr>
<tr>
<td>F-1 upon dismissal/transfer deadline</td>
<td>0 days</td>
</tr>
<tr>
<td>J-1 upon completion of degree requirements</td>
<td>30 days</td>
</tr>
<tr>
<td>J-1 upon Academic Training completion</td>
<td>30 days</td>
</tr>
<tr>
<td>Change of status (COS) pending</td>
<td>While COS is pending</td>
</tr>
<tr>
<td>SEVIS Transfer</td>
<td>Release of SEVIS record within 60 days and in class within 5 months of program end date or last day of class.</td>
</tr>
</tbody>
</table>