

Unlawful Presence Policy for F-1 Students



Understanding “Unlawful Presence”

The United States Citizenship and Immigration Services (USCIS) recently issued a policy directed at F, J and M visa holders. According to this policy, USCIS will begin counting and tracking “unlawful presence” for any individual on one of these visas, who does something, intentionally or unintentionally, either to violate the terms of, or to “lose” their legal status. While we don’t know exactly how this will play out, it is now more important than ever to understand [how to maintain legal status in the U.S](#) [1]. The new rule has the potential to cause individuals to be barred from returning to the U.S. for three years, ten years, or even permanently.

International students are important and valued members of the Yale community. The staff of OISS work diligently to audit student data, send alerts to students and monitor changing regulations. However, maintaining legal status under immigration law is a team effort, and students are responsible for understanding and following the regulations. With this new policy, innocent actions, such as working on campus 21 hours per week instead of the maximum 20 hours per week, could have serious repercussions if not identified immediately. As always, please contact [your OISS adviser](#) [2] at any time should you have questions about this new policy.

What is the New Policy?

The new USCIS policy aims to penalize F-1 students who are currently in violation of their status, or have violated their status in the past. The language of the policy memo is sometimes difficult to understand. Below is text from the August 9, 2018 USCIS Revised Policy Memo. To better understand the memo it may be helpful to read the sections that follow.

An individual who failed to maintain legal status **before August 9, 2018** started accruing unlawful presence based on that failure on August 9 unless the individual already started accruing unlawful presence on the earliest of the following:

- The day after DHS denied the request for an immigration benefit, if DHS made a formal finding that the student/scholar violated their non-immigrant status while adjudicating a request for another immigration benefit;
- The day after the I-94 record expires (if date certain, this does not pertain to Duration of Status)
- The day after an immigration judge ordered the student/scholar excluded, deported, or removed (whether or not the decision is appealed).

If status is lost **on or after August 9, 2018**, an individual begins accruing unlawful presence, as follows:

- The day after the F visa holder no longer pursues the course of study
 - The day after they engage in an unauthorized activity;
-

Unlawful Presence Policy for F-1 Students

Published on Office of International Students & Scholars (<https://oiss.yale.edu>)

- The day after completing the course of study or program (including any authorized practical training plus an authorized grace period, as outlined in 8 CFR 214.2). Visa holders who have successfully completed their course of study have a 60 day grace period after the completion of their program
- The day after the I-94 record expires (if date certain, this does not pertain to Duration of Status)
- The day after an immigration judge ordered the student/scholar excluded, deported, or removed (whether or not the decision is appealed).

What are Examples of Ways F-1 Students Might Lose Legal Status?

These are the most common situations where students lose their legal status, but this is not an exhaustive list:

- Students who fail to correctly report a new residential [address to OISS](#) [3] within ten days of moving to a new address
- Students who **enroll below full-time** without obtaining OISS permission in advance
- Students [who work more than 20 hours per week during term time](#) [4]
- Students who **do not extend an expiring I-20** before the end date
- Students who are **withdrawn by the school for misconduct or other violations** and do not leave the U.S.
- Students who **work off-campus without obtaining employment authorization (including CPT and/or OPT)**
- Students who **graduate or complete their OPT** but do not 1) depart the U.S. by the established deadline, 2) transfer to a new school/program, or 3) change to another immigration status in a timely way (F-1 students have a 60 day grace period following graduation or the end of OPT)

What Happens if I Accrue Unlawful Presence?

The very first step would be for USCIS to identify that an individual has violated the terms of their visa status. They would presumably issue a notice and name a date when the violation began. While it is still too early to know how frequently the government will investigate F-1 violations, the most common ways of receiving a notice are when the student is applying by mail to USCIS for one of the following:

- A request for Optional Practical Training work permission, or
- A request to change visa status

From the date listed on the notice, the F-1 student would begin to accrue unlawful presence time. This is an important concept - the longer you wait to resolve the issue, the more severe the penalty may be. Please notify OISS right away if you receive any correspondence from USCIS (also note there are [scams going on now](#) [5] - USCIS would never call a student or demand money to fix the problem.)

USCIS states the following in their policy memo:

“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.”

What Can I do to Avoid Losing my Legal Status?

It is your responsibility to maintain your F status. OISS and other university offices are here to help international students understand often complex immigration regulations and provide resources to keep up to date with immigration regulations. However, we cannot monitor all student activity. It is your responsibility to maintain your F status. Your best defense against losing your legal status is to:

- **Read your emails** from OISS, including [the weekly newsletter](#) [6]. OISS sends very few announcements - so when you see email from us, please read it.

Unlawful Presence Policy for F-1 Students

Published on Office of International Students & Scholars (<https://oiss.yale.edu>)

- **Be aware of your own immigration situation.** While OISS utilizes technology available to us to monitor student records and send out alert messages, sometimes technology fails. These reminders are a courtesy we provide, but, ultimately the law holds you responsible for maintaining your immigration status. Be aware of when your I-20 expires, keep your U.S. address updated, and make sure you are enrolled full-time or have authorization from OISS to drop below full-time.
- Please read [Maintaining Legal Status](#) [1]

Some Expired Documents do not Count Towards Unlawful Presence

As mentioned previously F-1 students have a 60-day grace period after the successful completion of their program of study, or after OPT. In other words, a student who will graduate on May 21st will have an F-1 Form I-20 that expires on May 21st. However, if they graduate they have the option of remaining an additional 60 days in the U.S. (the student is not permitted to work for anyone or travel internationally during this time.)

Some F-1 students may have an expired U.S. embassy visa stamp in their passport. While inside the U.S., if otherwise maintaining legal F-1 status, the expired visa stamp does not trigger accrual of unlawful status. There is a [difference between legal status, and the visa](#) [7] which is an entry permit. Your visa does not control activities inside the U.S.

There are other provisions, such as having legal status while [transferring between two schools](#) [8], or having work permission between [OPT and H-1B status in some cases](#). [9] These exceptions to the unlawful presence rule can be complicated, so after reading our information if you still have doubts, please [contact your OISS adviser!](#) [2]

Do these Policies Apply to F-2 Dependents?

If a F-1 student violates their status, then the F-2 dependent will also accrue unlawful presence (except for children who are under the age of 18.) If the F-2 violates their own status, this does not affect the F-1 (with respect to accrual of unlawful status.) Please read the regulations about how an [F-2 maintains legal status](#). [10]

Source URL: <https://oiss.yale.edu/immigration/f-1-students/maintaining-legal-status/unlawful-presence-policy-for-f-1-students>

Links

[1] <https://oiss.yale.edu/immigration/f-1-students/maintaining-legal-status>

[2] <https://oiss.yale.edu/node/1286>

[3] <https://oiss.yale.edu/immigration/report-your-address/f-1-j-1-students>

[4] <https://iiss.umn.edu/fstudent/fullcourse.html>

[5] <https://oiss.yale.edu/campus-community-life/for-students/safety-resources/scams-fraud>

[6] <https://oiss.yale.edu/programs-events/newsletter-social-media>

[7] <https://oiss.yale.edu/immigration/visa-and-immigration-status>

[8] <https://oiss.yale.edu/immigration/f-1-students/maintaining-legal-status/transferring-from-or-leaving-yale>

[9] <https://oiss.yale.edu/immigration/f-1-students/employment/optional-practical-training/h-1b-cap-gap-extension-of-opt>

[10] <https://oiss.yale.edu/immigration/f-1-students/f-2-status-for-spouses-partners-children>