

VERY LATE BREAKING NEWS: USCIS Issues Revised Final Guidance on Unlawful Presence for Nonimmigrant Students and Exchange Visitors

As you know from the [August 2, 2018 Higher Education Law Report](#), the U.S. Citizenship and Immigration Services' ("USCIS") policy memorandum dramatically changing the way USCIS calculates unlawful presence for students and exchange visitors in F, J and M nonimmigrant status and their dependents took effect on August 9, 2018. Very late in the evening of August 9, 2018, USCIS released a revised final policy memorandum which supersedes the prior one and addresses unlawful presence for F and M nonimmigrants with timely filed or approved reinstatement applications and J nonimmigrants who are reinstated by the U.S. Department of State, the agency that administers the J-1 exchange visitor program.

The final policy memorandum includes the following additions regarding reinstatement applications:

- F and M nonimmigrants who fall out of status and timely file for reinstatement of their status will have their accrual of unlawful presence suspended while their application is pending with USCIS.
- For purposes of counting unlawful presence for F and M nonimmigrants, a reinstatement application will be considered timely filed if the applicant has not been out of status for more than five months at the time the application is filed.
- If the reinstatement application is denied, the accrual of unlawful presence resumes on the day after the denial.
- An F, J or M nonimmigrant whose application for reinstatement is ultimately approved will generally not accrue unlawful presence while out of status.

If you have any questions, please contact [Joanna Silver](#), or any other member of our [Immigration Practice Group](#) or [Higher Education Practice Group](#) or the attorney in our firm with whom you are regularly in contact.



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