

# BIO International Student Immigration Updates

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# Session Outline

- **New Policies**

- Unlawful Presence
- Notice to Appear Policy Memo
- RFE/NOID Policy
- Public Charge Ground of Inadmissibility
- Third Party Placements (STEM OPT)
- Bridge Applications
- Looking Ahead: Regulatory Agenda
- Fee increases

- **Trends**

- RFEs (OPT, CPT, STEM, H1Bs)
- Form I-765 Updates
- H1-B premium processing issues

- **BIO Form updates**

- F-1 Curricular Practical Training (CPT)
- J-1 Academic Training (AT)

# Policy Updates & Trends

# USCIS: Unlawful Presence Policy

- Background:
  - New method of counting days of unlawful presence
  - In effect from August 9, 2018
- Why is this significant?
  - Prior policy: days of unlawful presence began accruing after USCIS official or immigration judge made a formal finding of a status violation
  - New policy: days of unlawful presence begins accruing the day after a status violation occurs
  - Days of unlawful presence is used to determine how long a student is subject to a bar on re-entry into the US.

## Unlawful Presence Accrual

+180 days = 3 year bar on re-  
entry

356 days or more = 10 year  
bar

# USCIS: Unlawful Presence Policy

- What does this new policy mean for UCB, advisors and students?
  - Errors in advising, BIO immigration reporting, database management have greatly increased impact on students
  - Seemingly small violations can have a big consequence, even years down the road
  - Academic advisors, faculty, and staff need to be mindful to refer international student to BIO for ANY issues impacting full-time enrollment, employment, etc
- What is BIO doing?
  - BIO is working with UC, campus counsel, and other national groups on advocacy and best practice
  - Increased BIO advisor training and immigration focus, increased database monitoring
  - Increased student communications and outreach regarding status maintenance (ULP email and tips to maintain status campaign)
  - Website, new student material updates

# Top 10 ways to Maintain F-1/J-1 Status

1. Keep Local U.S. address up-to-date in Cal central & BIO post-completion reporting systems
2. Maintain full-time enrollment.
3. Get BIO approval before a reduction in course load or withdrawal.
4. Avoid violating the UC Berkeley Code of Student Conduct or U.S. laws.
5. Students should attend the school noted on their I-20 (F-1s) or DS-2019 (J-1s).
6. Keep I-20 or DS-2019 valid at all times and understand the completion date.
  - Apply for extensions BEFORE expiration.
  - Completion = final semester of enrollment. Summer completion generally requires enrollment. Grads MUST check with BIO re: Summer completion!
7. Get proper travel endorsement and understand travel documents.
8. Understand grace periods after completion & options. (F-1s: 60 days. J-1s: 30 days)
  - F-1s can depart, apply for transfer or finish applying for OPT during grace period
  - J-1s can only depart. Transfer or AT requests must come before completion!
9. Work ONLY with proper Employment Authorization.
  - F-1: On campus automatic during program/I-20. Off-campus requires CPT or OPT.
  - J-1: On-Campus must be authorized! Off-campus requires AT.
10. J-1 students & dependents must maintain proper health insurance before & after completion

# What does this look like for students?

- F-1 accepts job offer internship, starts working on 10/1 before applying for CPT. They receive CPT authorization starting 10/25.
  - Days of ULP begin counting as of 10/1.
  - Options- travel? Consult counsel?
- J-1 GSI has been working on campus since Summer 2018 without J-1 employment authorization, starting 5/15/18.
  - Days of ULP have been counting since 8/9
  - Options- If discovered, BIO can request a record correction
- F-1 consults academic advising and is told they can have a 1 time drop below full-time units. Student drops on 9/01 without consulting BIO, record goes undetected.
  - Days of ULP counting from 9/01.
  - BIO runs regular reports to find under-enrolled students. If detected BIO would work on RCL options, if possible. If not, consequences could be severe depending on length of time.
- J-1 is advised that other insurance policies are cheaper than SHIP for spouses, purchases insurance for J-1 spouse that is not compliant with J regs.
  - ULP begins counting from day after compliant insurance expires.
  - Options- travel? Consult counsel?
- F-1 forgets that their I-20 expires on 5/11/2018 and has been ignoring BIO emails. They plan to complete the degree in Spring 2019.
  - Days of ULP have been counting since 8/9. Options- travel? Consult counsel? F-1 reinstatement?

# USCIS: Notice to Appear

- Background: New Policy Memo describes the new USCIS policy on when they will issue NTAs
- Cases when an NTA may be issued:
  - Criminal conviction or charge
  - Committed acts that are chargeable
  - Fraud or misrepresentation is substantiated
  - Evidence that the applicant abuses the receipt of public benefits
  - Abuse of public benefits
  - **Applicant will be unlawfully present when the petition or application is denied**
- Why is this significant?
  - Prior policy: USCIS generally left the issuance of NTAs to other agencies (ICE) with a few exceptions
  - New policy: USCIS is now re-asserting its ability to use its discretion to issue NTAs in new situations, specifically with the denial of Forms I-539 (changing visa status, or applying for reinstatement and I-485 ( filing for Permanent Residency) OTHER FORMS TO FOLLOW ( like I-765 for OPT OPT STEM employment?)



# USCIS: RFE/NOID Policy

- Background:
  - Policy change with the stated purpose of discouraging “place holder” filings and allow USCIS to focus more on adjudicating/evaluating applications
  - Adjudicators will have full discretion to issue a denial for frivolous or incomplete filings instead of issuing an RFE or NOID
  - Adjudicators are trained on how to distinguish between an “innocent mistake” and incomplete filing
- Why is this significant?
  - Much higher stakes when filing petitions
- What does this mean?
  - Liabilities when advising on applications such as I-539 (COS & reinstatement) and I-765 (OPT)
  - BIO is reviewing current guidance provided on BIO websites to ensure forms are updated and information is correct
  - Proactive approach when filing applications or advising students who are about file application to include *all* evidence (*Example: Updating CPT course titles, forms, CIP code major name mismatch* )

# What does this look like for students?

- F-1 applied for OPT post-completion employment. They submit the application more than 30 days after the OPT I-20 is issued. They also forget to sign the I-765 form. No RFE is issued for the missing or incorrect documents. Application is denied more than 60 days after the student's program completion.
  - Days of ULP start from date of denial. Currently, no NTA
- F-1 student who forgot to extend I-20 has applied for F-1 reinstatement with form I-539 so they can complete the degree. I-20 expired 5/11/2018. Expected graduation is 8/10/2019. Student submits I-539 on 9/09/2018. Application is complex, USCIS denies application on basis of insufficient funding, with no RFE on 3/9/2019.
  - ULP counted from 8/9-9/8, begins counting again from 3/9/19. Student would accrue enough ULP for 3 yr bar by time of graduation
  - If student remains, possible NTA after 33 days

# USCIS: Inadmissibility on Public Charge Ground (Proposed)

- Background
  - Proposed rule with the stated purpose of ensuring aliens are self-sufficient and will not rely on public resources to meet their needs. BIO & counsel are STILL REVIEWING. 400+ pages of proposed regs.
  - Applies to anyone seeking admission into the US, requesting Adjustment of Status, or requesting Change/Extension of Status (I-539, I-129)
  - Defines ‘public charge’ as an alien who has received one or more public benefits
  - Defines ‘public benefits’ with a list of cash/noncash aid (SNAP, WIC, Medicaid) and sets a threshold for receiving such benefits before being considered a public charge
- Why is this significant?
  - USCIS (and DOS) will now be looking at the likelihood of an applicant for a visa, change of status or extension to become a “public charge”
  - Schools need to be mindful of which public benefits they are recommending to international students and scholars
  - Advisors may need to update advising and resources
  - Insurance while on OPT or AT, for non citizen dependents (Covered California)
  - SNAP and WIC for students and scholars with families

# USCIS: Third Party Placements (24-Month STEM OPT)

- Background:
  - USCIS has updated the information on their website multiple times (but has yet to issue an official policy memo)
- Key Takeaways:
  - New guidance stresses the importance of the “employer-employee” relationship component of STEM OPT
  - Employer is the entity that signs the I-983
  - Employer is the same entity that provides the training to the student
  - A student on STEM cannot train another student on STEM
  - The people providing the training may be contractors of the employer but they cannot be employees or contractors of the employer’s clients/customers
  - Staffing/Temp agencies may employ students as long as they meet criteria above

# USCIS: Change of Status Bridge Applications

- Background:
  - If current visa status will expire more than 30 days before the new status begins, change to new status will be denied unless a “bridge application” will be filed to cover the “gap” between the two primary status
- Key Take Aways:
  - Students may be forced to travel to change visa categories to student
  - Denials can result in NTA
  - Common with current students aging out of other categories ( i.e H-4 turns 21)
- Example issue: H-4 Junior turns 21 on 1/1/2019. They first approach BIO in August 2018 regarding COS to F-1. Family lives in US, they have no current abroad residence, travel is a problem. COS can take 4-8 months. If a denial comes mid-semester, student would need to exit the US. Denial is guaranteed if not approved within 30 days of expiration of current status UNLESS student works with attorney to file bridge app.
  - Travel may often be better option, but has risks.

# Looking Ahead: What to expect next...

- Looking at the Unified Regulatory Agenda
  - [http://www.nafsa.org/Professional\\_Resources/Browse\\_by\\_Interest/International\\_Students\\_and\\_Scholars/Compilation\\_of\\_Agency\\_Initiatives\\_from\\_the\\_Unified\\_Agenda\\_of\\_Regulatory\\_and\\_De\\_regulatory\\_Actions/](http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Compilation_of_Agency_Initiatives_from_the_Unified_Agenda_of_Regulatory_and_De_regulatory_Actions/)
  - Establishing a Maximum Period of Authorized Stay for F-1 and Other Nonimmigrants.
  - H4 EAD (11/00/2018)
  - Practical Training Reform (Long Term Action)
  - Strengthening Oversight of Schools Certified to Enroll F and M Nonimmigrant Students (removed)
  - Eligibility Checks of Nominated and Current Designated School Officials of Schools That Enroll F and M Nonimmigrant Students and of Exchange Visitor Program-Designated Sponsors of J Nonimmigrants
- Proposed SEVIS fee increase for all new F-1/J-1 students, programs.
  - F-1: \$200 to \$350 J-1: \$180 to \$220 School recertification (every 2 years): \$1,250

# Trends: RFEs

- Reports of increased Requests For Evidence. Will we continue to see RFEs, or just denials?
- STEM OPT
  - CIP Code Clarification
    - Example: Master of Journalism degree program approved to change from CIP 09.0401 (Journalism) to 09.0702 (Digital Communication Media/Multimedia).
  - Relationship between position and education
- H1B and use of CPT
  - 12 months of “training” (CPT + OPT > 12mo)
  - CPT as an integral nature to degree, field of study
- Change of Status
  - Proof of attendance, huge document requests

# Trends: USCIS OPT & OPT STEM Form Updates

- Background:
  - Multiple changes to the USCIS Form I-765
  - Went from 2 to 7 pages
  - Complex instructions
- Refer students to BIO OPT information and tutorials!



# Trends: H1-B Premium Processing Suspension

- Background:
  - H1-B work visa premium processing suspended during peak processing times
  - Many student changes to H1-B delayed, employment ended

# What does all this mean?

## What can you do?

- Stakes are increasingly higher for international students
- Be aware of the current Deny, Delay, Discourage approach
- Be flexible when working with students needing additional documentation, requests
- Be patient with BIO as we tighten advising and processes to meet a more conservative regulatory environment. We are aiming to best protect students and their records.
- Advocate! <https://www.connectingourworld.org/>
- For more detailed regulatory info: [nafsa.org/reginfo](https://nafsa.org/reginfo)
- Refer students to BIO!
  - BIO Drop-In Advising hours Monday-Tuesday & Thursday-Friday 10am-12pm & 1:00-4:00pm (no advising on Wednesdays)
  - Email: [internationaloffice@Berkeley.edu](mailto:internationaloffice@Berkeley.edu) Phone: 642-2818

# CPT AT Form Updates

# BIO Changes to CPT & AT Forms

- F-1 Curricular Practical Training (CPT)- employment authorizations for internships, field studies completed during degree program
- F-1 students may participate in a Curricular Practical Training program that is "an integral part of an established curriculum" and "directly related to the student's major area of study."
  - Either degree requirement for all students in degree program OR course enrollment required (often 199/197 or 299/297)
- J-1 Academic Training- employment authorization for internships, field studies completed during degree program or post-completion
- directly related to the major field of study
- Student must submit a letter of recommendation from the student's academic dean or advisor with:
  - The goals and objectives of the specific academic training program;
  - A description of the academic training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;
  - How the academic training relates to the student's major field of study; and
  - Why it is an integral or critical part of the academic program of the student.

# CPT Form Updates

- Describe academic requirements of CPT course or degree requirement
- Explain how CPT directly relate to student's current major field of study
- Explain how CPT experience is an integral part of student's curriculum
  - If PhD requesting FT CPT in Fall/Spring, explain why the FT employment experience is necessary or integral to the completion of thesis or dissertation

## Academic Advisor's Recommendation (Required)

F-1 visa regulations state that an F-1 student may participate in a "curricular practical training program" that is "an integral part of an established curriculum" and "directly related to the student's major area of study."

*This section must be completed with your academic advisor. Undergraduates= College/Department Advisor;*

*Graduates = Faculty Advisor/Graduate Students Affairs Officer*

<b>Describe the academic requirements of the CPT course enrollment or the degree requirement:</b>  █		
<b>Explain how this CPT experience directly relates to the student's current major field of study:</b>  █		
<b>Explain how this CPT experience is an integral part of the student's curriculum. (If the student is a PhD advanced to Candidacy requesting full-time CPT in Fall/Spring, please explain why the full-time employment experience is necessary or integral to the completion of the thesis or dissertation):</b>  █		
<input type="checkbox"/> <b>I confirm that I have reviewed and approve the Curricular Practical Training plan as described in this form.</b>		
<b>Advisor Name</b> █	<b>Title</b> █	<b>Title</b> █

## CPT Form Example- Statistics

- Describe academic requirements of CPT course or degree requirement:
  1. *Oski will complete a 7-10 page paper on topic XXXXX*
  2. *Oski will complete a weekly experiential journal entry reflecting on their practical training experience*
- Explain how CPT directly relate to student's current major field of study
  - *Oski's major is Statistics. Specifically, the Summer Data Intern assignments with Apple will **allow Oski to gain experience in** working with large data sets and extensive statistical modeling.*
- Explain how CPT experience is an integral part of student's curriculum
  - ***Students in Statistics major gain theoretical knowledge of** statistical modeling and analysis through coursework/projects. **This experience provides Oski a critical opportunity to practice those skills in a real-world scenario** with big data sets and analytical technology unavailable at UC Berkeley. **Real-world application of quantitative skills is critical to a full understanding of the Stats curriculum.***
- If PhD requesting FT CPT in Fall/Spring, explain why the FT employment experience is necessary or integral to the completion of thesis or dissertation
  - ***This experience provides Oski with access to large data sets and analytical technology unavailable at UC Berkeley. Real-world application of quantitative skills, and these particular data sets and proprietary technology are necessary to the completion of Oski's dissertation on XXXXXX.***

# AT Form Updates

- Describe academic goals or objectives
- Explain how AT directly relates to student's current major field of study or EAP field of study
- Explain how AT experience is an integral or critical part of student's program
- If PhD requesting additional 18 month extension of post-completion AT, explain the research aspect of the AT experience

Describe the academic goals and/or objectives of the student's Academic Training experience:  ■		
Explain how this Academic Training experience directly relates to the student's current UC Berkeley degree or Education Abroad Program (EAP) field of study:  ■		
Explain why this Academic Training experience is an integral or critical part of the student's academic program:  ■		
PhD STUDENTS ONLY- If the student has completed a Ph.D. and is requesting an extension beyond the initial 18 months of work authorization, please briefly address the research aspect of the Academic Training experience:  ■		
Advisor Name ■	Title ■	Advisor Email or Phone:

# AT Form Example- Mechanical Engineering

- Describe academic goals or objectives of the academic training experience:  
*Oski's academic goals for work-based learning related to his ME degree include:*
  - 1) *gaining exposure and competency in utilizing proprietary 3-D design tools,*
  - 2) *advancing his overall design skills, and*
  - 3) *deepening his understanding of how parts behave in different real-world environments.*
- Explain how CPT directly relate to student's current major field of study
  - *Oski has completed a PhD in Mechanical Engineering and completed his dissertation on 3D modeling. Specifically, the 3D mechanical design and tooling design assignments with **Apple will allow Oski to gain experience in a number of design tools and techniques described in his dissertation.***
- Explain how the AT experience is an integral part of student's academic program
  - *PhD Students in ME **gain theoretical knowledge** of engineering/design through coursework/research. **This experience provides Oski a critical opportunity to practice those skills in a real-world scenarios** with hardware and technology **unavailable at UC Berkeley. Real-world experience of design and implementation is critical to complete a fully rounded post-graduate ME curriculum.***