

# BIO International Student Immigration Updates

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# Session Outline

## Policy & Regulatory Updates

### Big regulatory stuff

- Unlawful Presence Litigation updates
- Public Charge Rule & Litigation
- OPT/STEM Litigation

### Other regulatory stuff

- I-20 Form Distribution
- CPT/AT Guidance
- OPT Relation of Study Guidance
- USCIS Form Revisions, Expedite Criteria
- Social media Questions for CBP, USCIS, DOS
- H1-B Changes
- H-4 EADs
- Fee Adjustments
- Expedited Removal Expansion
- Duration of Status proposal
- Looking Ahead: Regulatory Agenda

## Trends

- Freedom of Expression & Intellectual Property
- RFEs (OPT, CPT, STEM, H1Bs)
- Lost EADs
- OPT Processing times
- Visa Processing times
- H1-B/OPT Cap Gap Issues
- STEM OPT Site Visits

## BIO Updates

- Again! F-1 Curricular Practical Training (CPT)
- OPT Workshops
- We are Moving... sometime

# Policy & Regulatory Updates

# USCIS: Unlawful Presence Litigation

- As of **August 9, 2018**, F-1/J-1/M-1 students would accrue [Unlawful Presence](#) as of the day of *any* status violation
- [Notice to Appear \(NTA\) memo](#) gave USCIS adjudicators discretion to issue NTAs if denying a petition for benefits based on perceived violation of status, essentially starting removal proceedings
- **On May 3, 2019** a District Court issued a [Preliminary Injunction](#) against unlawful presence memo. **June 30, 2019**, [USCIS issued statement of deferral of implementation](#) of NTA memo; no new implementation date has been announced.
- BIO continues to advise conservatively as though the rule is in effect. Referring students to legal counsel if in violation

## 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

See [BIO's Top 10 Tips for Maintaining Your F/J Status](#) page.

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

# USCIS & Dept. of State: Public Charge Rule & Litigation

See [BIO's Public Charge page](#).

- Published **August 14, 2019** to go into effect **October 15, 2019**.
- Established baseline for USCIS & DOS to deny permanent residency or immigrant/ non-immigrant visas based on usage of public benefits by non-immigrants
- **October 11, 2019** preliminary injunction issued on USCIS implementation on certain USCIS applications in the US; NO INJUNCTION on DOS implementation, but DOS is holding off for now.
- Background
  - Proposed rule with the stated purpose of ensuring aliens are self-sufficient and will not rely on public resources to meet their needs. Very complex!
  - 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 receives one or more public benefits "for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months)."
  - 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, or for non citizen dependents (Covered California)- are they on a subsidized plan or Medi-Cal?

# Public Charge- What's not OK?

## What public benefits ARE included in the new public charge rules?

According to the DHS and DOS rules, this is an exclusive list- but note that the list doesn't specifically name all state or local programs.

- Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), **including**:
  - Supplemental Security Income (SSI);
  - Temporary Assistance for Needy Families (TANF);
  - Federal, State or local cash benefit programs for income maintenance (often called "General Assistance" at the State level, but they may have other names);
- Supplemental Nutrition Assistance Program (SNAP) (commonly known as "food stamps");
- Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD Section 8 Project-Based Rental Assistance
- Medicaid **except** for:
  - Benefits received for an emergency medical condition
  - Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA);
  - School-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law;
  - Benefits received by an **alien under 21 years of age**, or a **woman during pregnancy and during the 60-day period beginning on the last day of the pregnancy**.
  - Public Housing under section 9

## What State of California assistance programs ARE or MIGHT BE included in the rule?

- CALWORKS
- CALFRESH
- Medi-Cal (age 21+)
- In-Home Supportive Services



# Public Charge- What is OK?

*What benefit programs ARE NOT included in the public charge rules?*

The DHS rule clarifies that the following common federal benefit programs are not included. But, students and scholars should be mindful that this is not clear under the DOS rule, and that receipt of any public benefits could be considered under the likelihood that you *might* become a public charge.

- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Medicare
- Disaster relief
- National school lunch or school breakfast programs
- Foster care and adoption
- Head Start
- Children's Health Insurance Program (CHIP)
- AIDS Drug Assistance Program (ADAP)
- Premium Tax Credit under the ACA; and the Earned Income Tax Credit (EITC) or Child Tax Credit.
- Pell grants and student aid programs
- Medicaid benefits received for an emergency medical condition
- Medicaid benefits received by an alien under 21 years of age
- Medicaid benefits received by a woman *during pregnancy* and *during the 60-day period beginning on the last day of the pregnancy*. (Note this does not include birth)
- Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA);
- School-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law

# OPT STEM Litigation

- **June 2016:** Washington Alliance of Technology Workers union (Washtech) filed suit against both the 24-month STEM OPT rule and the 12-month OPT rule. Primary argument is that DHS doesn't have the authority to establish post-completion training. (Prior lawsuit started in 2014 was dismissed.)
- **July 2019:** U.S. District Court for the District of Columbia found that DHS's 2016 STEM OPT rulemaking also had **the legal effect of reopening the legacy INS 12-month post-completion OPT regulation** that had been finalized in 1992.
  - WashTech plaintiffs can challenge DHS's underlying statutory authority to establish not only STEM OPT but standard post-completion OPT as well. Decision did not determine that DHS does not have such authority, but rather that it will consider the parties' arguments for and against that authority.
  - Amicus briefs due by Oct. 2019 and continuing litigation...

More info at <https://www.nafsa.org/professional-resources/browse-by-interest/stem-opt-washtech-litigation>

# Student Technical Issues

- I-20 Form Distribution
  - No recruiters (Mainly a Summer session affiliate issue)
- CPT Guidance
  - **July 2019** clarifying [Curricular Practical Training](#) policy interpretations
- OPT Relation to Employer Guidance
  - **Sept 2019** [OPT policy guidance](#) on the obligations of schools and students to document that there is a direct relationship between the student's major field of study and OPT employment

# USCIS/Other Govt. Dept Issues

- USCIS Form Revisions, Expedite Criteria
  - Revising forms for Public Charge
- Social media Questions for CBP, USCIS, DOS
  - **June 2019** DOS (Visa Applications)
  - **Sept 2019-** DHS published two notices asking for public comment on its plan to modify CBP, USCIS forms
- H1-B Change- forms, cap subject fee, labor certifications
- H-4 EADs
  - New rule intended to discontinue issuance of H-4 EADs; unclear if includes revocation of active H-4 EADs
  - **February 20, 2019** DHS submitted the proposed rule to Office of Management & Budget (OMB) for review
- Fee Adjustments
  - DHS, SEVIS ( F/J students)
- Expedited Removal Expansion
  - July 23, 2019- individuals who entered without inspection encountered by DHS anywhere inside the US if no continuous presence in the United States for at least 2 years. Prior policy 100 miles of a U.S. land border and in the United States for less than 14 days.

**Social Media**

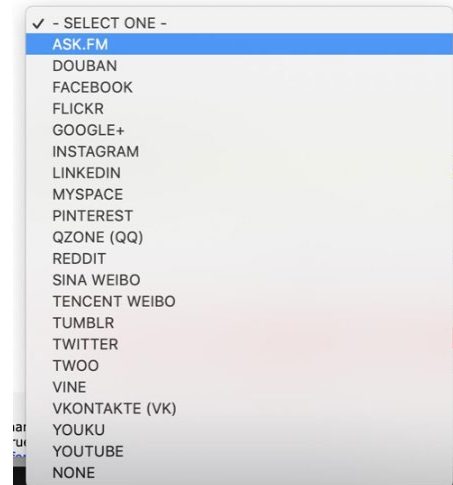
Do you have a social media presence?  
Select from the list below each social media platform you have used within the last five years. In the space next to the platform's name, enter the username or handle you have used on that platform. Please do not provide your passwords. If you have used more than one platform or more than one username or handle on a single platform, click the 'Add Another' button to list each one separately. If you have not used any of the listed social media platforms in the last five years, select 'None.'

**Help: Social Media**

Enter information associated with your online presence, including the types of online providers/platforms, applications and websites that you use to collaborate, share information, and interact with others. List the username, handle, screen-name, or other identifiers associated with your social media profile. (You do not need to list accounts designed for use by multiple users within a business or other organization.)

Next: Passport ▶

External links to other Internet sites should



Platform
ASK.FM
DOUBAN
FACEBOOK
FLICKR
GOOGLE+
INSTAGRAM
LINKEDIN
MYSpace
PINTEREST
QZONE (QQ)
REDDIT
SINA WEIBO
TENCENT WEIBO
TUMBLR
TWITTER
TWOO
VINE
VKONTAKTE (VK)
YOUKU
YOUTUBE
NONE

# Trends

# Freedom of Expression & Intellectual Property

- One of the norms of a U.S. university environment is the freedom to express oneself in open dialogue and discussion.
- Students should be able to express themselves without fear of any intimidation from others and understand that any views that they share in classroom discussions or public forums will not be used in an adverse or negative way that could lead to their harm.
- Students should be aware that there are certain rights that go along with discoveries or inventions by faculty or other students. They need to understand they must exercise caution in how they use the discoveries of others.
- For additional information about Intellectual Property, you are encouraged to review the [Berkeley Intellectual Property & Industry Research Alliances \(IPIRA\) FAQ](#) and this [UCOP Intellectual Property FAQ for students](#)

# Trends: OPT Issues

- Less Reports of increased Requests For Evidence for student issues, possibly due to BIO improvements? (OPT, CPT, STEM, H1Bs)
- Lost OPT EADs
- OPT Processing times
  - Spring 2019 increased from 3 month average to 4-5 months
  - Currently within 3 months
- H1-B/OPT Cap Gap Issues
- STEM OPT Site Visits

# Trends: Visa Delays Data

- **Numbers / citizenship trends**

43 students have reported visa delays to BIO in 2019.

- Overall up close to 50% over last year (28 students).
- **Chinese** students reporting visa delays has doubled since last year (32 in 2019, 15 in 2018)
- Students of other nationalities is about the same (11 in 2019, 13 in 2018) Countries: Bangladesh, France, **India, Iran, Pakistan**, Sweden

- **Current status / impact on studies**

- 18 students had to defer their start dates at UCB because of visa delays (from Fall 2019 to Spring 2020 or Fall 2020).
  - 5 have now gotten their visas and 13 still waiting
  - 1 student cancelled attendance at UCB due to visa delays
- Of the students who eventually got their visas:
  - 4 new students had visas approved after program start date. Others new students had to arrive later than the start of their bootcamps, or orientation sessions
  - 4 continuing PhD students applying for visa renewal during semester breaks had to continue studies from abroad while waiting for visas (1-4 months of admin processing).

- **Areas of study-** Top affected programs are Material Science and Engineering (12 students) and Mechanical Engineering (5 students)



# 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 Form Updates

CPT requests submitted after Oct 18, 2019 must use [the new, updated form](https://internationaloffice.berkeley.edu/students/employment/cpt) found here: <https://internationaloffice.berkeley.edu/students/employment/cpt>

## What's changed?

- 1) The [Academic Adviser's Recommendation](#) portion of the [CPT form](#) MUST now be completed by:
  - Declared Undergrads- Major Adviser ONLY
  - Undeclared Undergrads- Intended Major Adviser
  - Undergrads enrolled in Berkeley Global Internships OR Career Center Independent U.S. Internship- Study Abroad or Career Center
  - Graduate Students- Faculty Adviser/Graduate Student Affairs Officer
  
- 2) For students enrolling in **course-credit** CPT:
  - COURSE ENROLLMENT SHOULD BE IN STUDENT'S **MAJOR DEPARTMENT**. (Exception Undergrads enrolled in [Berkeley Global Internships](#) OR [Career Center Independent U.S. Summer Internship](#) ) Applications with no explanation of alternate enrollment will be denied.
  - IF COURSE ENROLLMENT IS NOT AVAILABLE IN STUDENT'S MAJOR DEPARTMENT- The student's **Major or Undeclared Intended Major Adviser** must still complete the CPT form, and provide additional explanations in the Academic Adviser's Recommendation Part 2 on the 2nd page of the form. Question 1) Explain why student is unable to enroll in appropriate course credit within the Major department. Question 2) Explain how the alternate enrollment is directly related to the Major.
  
- 3) F-1 Curricular Practical Training Verification Letter- The student's employer must print, complete, and sign a verification letter with specific text and information fields. Letters not meeting the exact template will be rejected.

# CPT Form Example- Enrollment outside of Major

## Academic Adviser's Recommendation (Part 2)

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."

**Work with your academic adviser to complete this section. Questions 1 & 2 are required for ALL CPT applicants.**

Undergrads = Major Adviser; Undeclared Undergrads= Intended Major Adviser; Graduates = Faculty Adviser/Graduate Student Affairs Officer

- 1. Describe the academic objectives and requirements of the CPT course enrollment or the degree requirement. What academic deliverables or academic work is required to satisfactorily complete the course or degree requirement?** (Advisers may need to consult with student and any participating faculty to determine this information.)

Oski will complete the following requirements for Stats197 course credit:

1. Complete a 1-3 page paper discussing application of Media Studies and Statistical Data Analysis theories in a real world user setting
2. Conduct an informational career interview with intern supervisor
3. Complete weekly journal entries regarding the work experience

Oski is unable to enroll in course credit in Media Studies because MS199 is not offered during the summer due to faculty staffing issues. Media studies supports alternate enrollment and internship experience as an integral part of the student's Media Studies degree.

- 2. Explain how this CPT experience directly relates to the student's current major area of study.** (Advisers should review student's verification letter for employment information and job description.):

The Summer Data Intern assignments with the New York Times will allow Oski to gain cross-disciplinary experience in working with a major media organization, using large data sets of media user demographics to track and analyze media user experience and trends, using statistical modeling. Students in Media Studies gain theoretical knowledge of online media user trends and theory through coursework/projects. This experience provides Oski a critical opportunity to practice those skills in a real-world scenario with big data sets and online mass media user interaction data unavailable at UC Berkeley. Real-world application of statistical analysis skills is critical to a full understanding of the Media Studies curriculum.

# CPT Employer Verification Letter

## F-1 Curricular Practical Training Verification Letter

Copy ALL TEXT below and print on Employer's Business letterhead. Completed letter must include all text and provide completed answers to 1-12 (13-14 as needed.)

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[Date]

To Berkeley International Office:

This letter is to certify the following F-1 student's participation in an F-1 Curricular Practical Training work-based learning experience. This letter serves as a cooperative agreement between the Employer and the UC Berkeley International Office. The Employer agrees to provide the student an educational work-based learning experience directly related the student's major field of study, fulfilling all or part of the student's degree or internship course enrollment requirement.

1. Student Full Legal Name:
2. Company Name:
3. Company Address:
4. Student's Job Title:
5. Student's Job Description:
6. Dates of Employment:
7. Hours per week:
8. Salary (or indicate "unpaid"):
9. Supervisor's Name:
10. Supervisor's Job Title:
11. Supervisor Email:
12. Supervisor Telephone:

13-14 required only if Company name or address differ than physical worksite name and address, or if using 3<sup>rd</sup> party or staffing company.

13. Student's Physical Worksite Name\*:
14. Student's Worksite Address\*

[Employer Official Signature- handwritten signature]

[Employer Official Name]  
[Employer Official Title]

# CPT website full of info!

Video!  
Sample forms!

## F-1 Curricular Practical Training (CPT)

In order to remain compliant with U.S. Federal Immigration Regulations, BIO has made necessary changes to our [Curricular Practical Training form](#) and process. CPT requests submitted after Oct 18, 2019 must use the new, updated form.

The biggest change to the form is the addition of the required academic-related training plan with learning objectives. Additionally, a job/internship offer letter will now also need to be submitted with the CPT form. [Sample completed CPT forms](#) are available below.

### What is Curricular Practical Training (CPT)?

Curricular Practical Training is a type of off-campus work permission for F-1 international students who are currently pursuing study programs in the United States and want to gain experience in their fields of study. CPT is not available after a student completes a degree program.

If an F-1 student uses 12 months or more of full-time CPT at the same degree level, the student forfeits [Optional Practical Training](#) eligibility. (Use of full-time CPT in a prior degree at the same level would be included in the 12-month calculation.) Accrual of part-time CPT should not negatively affect eligibility for OPT. While there are no limitations on part-time CPT, high CPT usage can cause DHS to subject records to increased scrutiny when applying for OPT, visa applications, or other DHS benefits like H-1-B petitions. UC Berkeley has noted a significant increase in Requests for Evidence for STEM OPT applications and H-1-Bs for students with high rates of CPT usage.

CPT is an academic experience, and is not intended to be used for regular on-going off-campus work. Students should be mindful to keep all records of CPT and the academic work related to CPT, and how that employment is integral to the degree program. Students will need to retain copies of all previous CPT I-20s when applying later for OPT.

[expand all](#)

Eligibility for CPT +

### Types of CPT

Degree Requirement CPT +

Course Credit CPT +

### Employment Dates and Hours

Fall and Spring CPT +

Summer CPT +

### The CPT Application Process

Important! CPT Processing Time: The standard processing for all student requests, including CPT, is three business days (excluding weekends and holidays). Please keep this in mind as you plan your employment start date. Expedites are not available and we are unable to back-date CPT start dates. DO NOT begin any employment until CPT has been approved and authorized on your I-20. Beginning or continuing employment without authorization is a serious violation of your F-1 status. Incomplete applications may cause CPT to be denied or delayed.

Steps to Apply +

Extending CPT +

Do I need a Social Security Number? +

Sample CPT forms +

### CPT TUTORIAL



### EMPLOYMENT

- 1 On Campus Employment
- 2 **F-1 Curricular Practical Training (CPT)**
- 3 F-1 Optional Practical Training (OPT)
- 3 F-1 OPT 24-Month STEM Extension
- 3 J-1 Academic Training
- 3 J-1 Fellowship Authorization
- 3 H-1B and OPT Cap-Gap Extensions
- 3 Employment Workshops for International Students
- 3 Special Employment Authorizations

### Hiring Guide

A U.S. Employer's Guide to Hiring UC Berkeley International Students

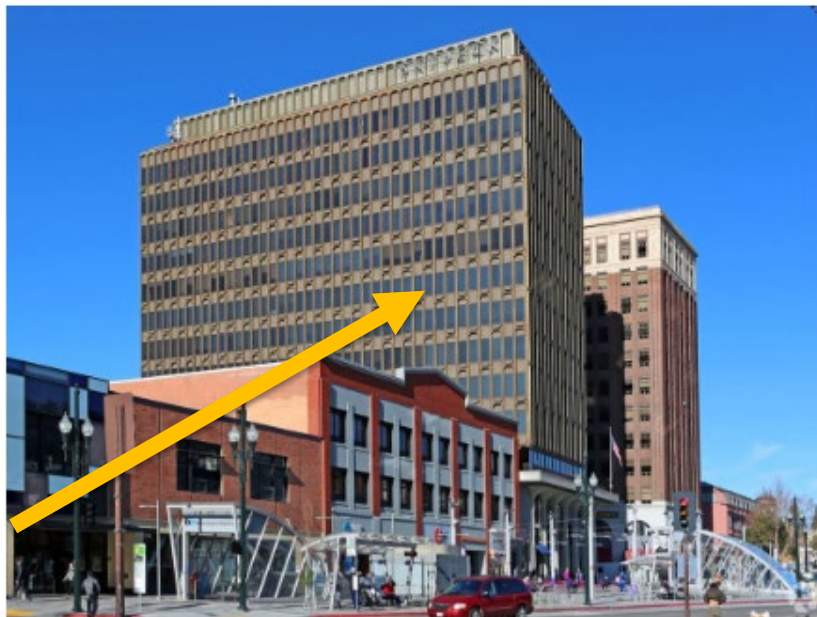
### USEFUL EMPLOYMENT AND CAREER LINKS

- [Social Security Numbers](#)
- [Career Center's Int'l Student Website](#) #
- [Employer Guide for Hiring Int'l Students](#) #
- [Networking & Mingling](#)
- [U.S. Tax Reporting Requirements](#)

# OPT Updates

- New Document Check online and in-person workshops!

## BIO's on the move!



Berkeley International Office is excited to announce that we will be relocating to a new office space at 2150 Shattuck Avenue (directly in front of Downtown Berkeley BART station) in Spring 2020. Stay tuned for more details!