

5-Year Rule/ 2 Year Bar / 12 Month Bar for J-1 Exchange Visitor's in Professor/Research Scholar Categories

On January 11, 2007 the U.S. Department of State (DOS) published a final rule to implement changes to the Exchange Visitor regulations affecting the J Professor and Research Scholar categories. The effective date of the rule is retroactive to November 18, 2006. The major changes to the rule are as follows:

- The maximum period of the participation for J Professor and Research Scholars has been increased from three years to five years. The five year period is not an aggregate of five years, but a continuous five-year period given to a participant on a "use or lose" basis.
- A new **two year bar** on "repeat participation" in the J Professor or Research Scholar categories will apply to those who complete their program in these categories.

What is the 2 year "Repeat Participation" Bar?

Any individual who participates in an Exchange Visitor Program in the Professor or Research Scholar categories on or after November 18, 2006 is subject to a two year bar on "repeat participation" in these categories. Scholars subject to the bar may not return to the U.S. as a J-1 scholar in the Professor or Research Scholar categories for a two year period.

The two year bar will be in effect regardless of whether the scholar is in the program for a few months or the full five years. Whenever the program ends and the SEVIS record becomes "inactive" the scholar's program ends and the five year time period is closed. The scholar must wait two years before beginning a new program as a Professor or Research Scholar. Any unused time from the five year period can not be saved and used later.

For example:

A visiting Professor or Research Scholar completes a 9 month program in the J-1 Professor or Research Scholar category, with program dates September 1, 2007 to June 1, 2008. On June 2, 2008 the scholar's SEVIS record status changes from Active to Inactive. The scholar returns home during the 30 day grace period.

Although the scholar participated only for 9 months he/she cannot access the remaining 4 years and 3 months of eligibility due to an inactive SEVIS record. The scholar must wait until June 2, 2010 before another 5 year J-1 Professor or Research Scholar program can begin.

In this scenario the scholar is subject to the two year bar of "repeat participation" and would not be able to return to the U.S. for two years from the previous program end date.

Am I Subject to the Two Year "Repeat Participation" Bar?

The J-1 Exchange Visitor in the Professor or Research Scholar categories including J-2 dependent of a Professor or Research Scholar ends on or after November 18, 2006 is subject to the two year bar. The bar applies if the scholar had any active record in the

research scholar or professor (or J-2 dependent) categories in the 24 month period even if that program was less than 6 months.

The bar does not require the scholar to be physically outside of the U.S. It only requires that the person not be in J-1 Research Scholar or Professor program status for two years before becoming eligible for another 5-year period of program eligibility in J Research Scholar or Professor category.

The J-1 Exchange Visitors in the short-term scholar or student categories are not subject to the two year bar.

What are the options related to the two year “Repeat Participation” bar?

If you are subject to the two year bar, you will not be able to return to the U.S. as a J-1 Professor or Research Scholar for a two year period. However, you may be able to return in a different J category or a different visa type. You may also be able to extend your current J status for a longer period of time. It is important to discuss your options with the ISS staff if you have plans to return to the U.S. for future research or teaching opportunities under the J Exchange Visitor Program.

Two Year Home Country Residency Requirement (212e)

Some J Exchange Visitors are subject to a two year home country residence requirement. The two-year home country residency requirement is different from the two year bar on “repeat participation”. Exchange Visitors in any J category may be subject to the home country residency requirement (212e).

Any J-1 scholar or J-2 dependents subject to the requirement must return to and reside in their home country for an aggregate two-year period after completing their J program. The home country residency (212e) requirement does not prevent the scholar from returning to the U.S. in a status other than H-1b, L-1 or Permanent Resident.

J-1 Exchange Visitor may be subject to the two year home country residency requirement if:

- The scholar receives financial support from U.S government, home country government, international organizations or through program sponsors (e.g. Fulbright), or the scholar's home country government has included the scholar's area of expertise on a “Skills List”. The “Skills List” is published by the U.S. Department of State.

http://www.travel.state.gov/visa/temp/types/types_4514.html

Twelve – Month (One Year) Bar

If an individual was present in the U.S. in any J category including J-2 in the 12-month period before the proposed new program start date the prospective scholar may be subject to the 12 month bar.

The three exceptions are:

- If the individual is transferring to a new program sponsor under the transfer procedures of 22 C.F.R.62.42.
- If the individual was a short-term scholar the 12 month bar does not apply.
- If the individual's presence in the US as a J-1 or J-2 status during the 12 month period is less than 6 months the 12 month bar does not apply.

**Twelve and Twenty-Four Month Bars on Repeat Participation for J-1 Exchange Visitor Categories
Research Scholar and Professor
May 24, 2007**

Previous J-1 Exchange Visitor (EV) Status	Length of Stay in the United States in Previous J-1 Visa Status*	Date Exchange Visitor Completed Program**	Can begin or return as Professor or Research Scholar
Any EV (J-1) category <u>other</u> than Professor/ Research Scholar	6 months or less	Any date	Immediately
Any EV (J-1) category <u>other</u> than Professor/ Research Scholar	More than 6 months	Any date	After 12 months from the EV's Program End Date or Effective Date of Completion **
Research Scholar/ Professor (J-1)	6 months or less	Prior to 11/18/2006	Immediately
Research Scholar/ Professor (J-1)	6 months or less	After 11/18/2006	After 24 months from the EV's Program End Date or Effective Date of Completion **
Research Scholar/ Professor (J-1)	More than 6 months	Prior to 11/18/2006	After 12 months from the EV's Program End Date or Effective Date of Completion **
Research Scholar/ Professor (J-1)	Any time (i.e., 1 month, 1 year, etc.)	After 11/18/2006	After 24 months from the EV's Program End Date or Effective Date of Completion **
Spouse/dependent (J-2) of any EV category <u>other</u> than Research Scholar/ Professor (J-1)	6 months or less	Any date	Immediately
Spouse/dependent (J-2) of any EV category <u>other</u> than Research Scholar/ Professor (J-1)	More than 6 months	Any date	After 12 months from the EV's Program End Date or Effective Date of Completion **
Spouse/dependent (J-2) of a Research Scholar/ Professor (J-1)	6 months or less	Prior to 11/18/2006	Immediately
Spouse/dependent (J-2) of a Research Scholar/ Professor (J-1)	More than 6 months	Prior to 11/18/2006	After 12 months from the EV's Program End Date or Effective Date of Completion **
Spouse/dependent (J-2) of a Research Scholar/ Professor (J-1)	Any time (i.e., 1 month, 1 year, etc.)	After 11/18/2006	After 24 months from the EV's Program End Date or Effective Date of Completion **

* The duration of the bars is determined by the actual *length of stay* of the principal J-1 exchange visitor's (EV) most recent participation in an exchange visitor program as a Professor or Research Scholar.

** The Department of State has determined that *completion of program* is defined as EVs who are no longer actively participating in the activities of a Professor or Research Scholar. The status of the SEVIS records for EVs who meet this definition should be listed as either "Inactive" or "Terminated" (as appropriate). Countdown of the bars begins the day after the status of the EV's SEVIS record becomes "Inactive" or "Terminated."

Note 1: The two-year bar on repeat participation (22 CFR 62.20(n)) applies to J-1 Professors and Research Scholar participants "who have completed his or her program."

Note 2: Repeat participation. Exchange participants who have entered the United States under the Exchange Visitor Program as a professor or research scholar, or who have acquired such status while in the United States, and who have *completed his or her program* are not eligible for participation as a professor or research scholar for a period of two years following the end date of such program participation as identified in SEVIS. Refer to 22 CFR 62.20(n) of the May 19, 2005 publication in the *Federal Register*.

Note 3: November 18, 2006 is the effective date of the 5-year program duration for the Professor and Research Scholar categories (as published in the *Federal Register* on May 19, 2005 (22 CFR 62.20; DOCID: FR19MY05-13). The effective date was determined by the implementation of the regulations in SEVIS (Release 5.4). Refer to the Final Rule published in the *Federal Register* by the Department of State dated January 11, 2007.

Note 4: It has been the Department of State's long-standing policy that J-2s are subject to the bars applied to the J-1 exchange visitor (see *Federal Register* dated June 10, 1996, pages 29285-29287). If the J-2 is not subjected, the underlying objective for imposing the bar(s) is defeated in that the J-2 could become a J-1 and the former J-1 would be afforded J-2 derivative status and thus, full employment authorization. This "flip-flop" of status could continue back and forth for years, even decades, at the expense of the program effectiveness and integrity. Accordingly, balancing the various interests of the Department, sponsors and exchange visitors, application of the bar(s) to J-2 spouse and dependents is both reasonable and desirable.