H-1B OPT Cap-Gap Extension

What is ‘Cap-Gap’?

The period of time between the end of an F-1 student’s status and their approved H-1B start date is known as the “cap-gap”. For example, an F-1 student whose OPT EAD indicates an end date of June 30 will have August 29 as the final day of their 60 grace period ending. The gap between the end of their grace period and October 1 (start of the H1B) is the “cap-gap.”

Employers who are subject to the cap gap (those subject to the H1B lottery system) may only file an H-1B petition for those selected in the lottery. To be eligible to participate in the lottery, the participant must have been registered by their employer during the preregistration period March 1, noon, through March 20, noon. USCIS will then conduct a random lottery which they intend to complete by March 31. Upon notification that a particular beneficiary has been selected, the employer will be notified of the requirement to file for the H1B. The filing must be done within a 90 window beginning April 1. However, the Cap Gap is only granted to those who qualify and whose requested start date for H1B employment is October 1.

Students should be sure to confirm with their employer that the employer is subject to the cap. If an employer is not subject to the cap (for example, higher education public or non-profit institutions, some non-profits, and nonprofit research and government research entities), the employer has the ability to file for H1-B at any time throughout the year. As a result, its employees are not eligible for the cap gap extension because they will not need this provision. The University of Utah as an employer is exempt from the cap.

What is a ‘Cap-Gap’ Extension?

Current regulations allow students selected in the lottery whose employer has filed a timely H-1B petition to remain in F-1 status during the cap-gap period by extending their F-1 status. This is automatically indicated on the student’s I-20 and is referred to as filling the “cap-gap,” thus the regulations provide a way of filling the “gap” between the end of F-1 status and the beginning of H-1B status including extending work authorization for those who qualify.

Who Qualifies for a Cap-Gap Extension?

You are eligible for a cap-gap extension IF:

1. Upon selection in the lottery your H-1B petition was timely filed by your employer. Timely filed means that the H-1B petition (indicating change of status rather than consular processing) was filed during the H-1B 90 day filing period which begins April 1.
2. Your authorized F-1 duration of status (D/S) admission was still in effect (including any period of time during the academic course of study, any authorized periods of post-completion Optional Practical Training (OPT/STEM extension), and the 60-day departure preparation period, commonly known as the "grace period").
3. Your employer requested a change of status to H-1B to take effect October 1.
Who Qualifies for an Extension of Employment?

You are eligible for an extension of your employment if, at the time of H1B filing, you were in an authorized period of post-completion Optional Practical Training (OPT) including the OPT STEM extension. If you were not, then only your status is extended. F-1 students who have not been approved for OPT or who filed during the end of OPT/STEM OPT 60-day grace period are not employment-authorized. For example, if an H-1B cap-subject petition is filed on the behalf of a student who has entered the 60-day grace period, the student will receive the automatic cap-gap extension of his or her F-1 status, but will not become employment-authorized (since the student was not employment-authorized at the time H-1 petition was filed, there is no employment authorization to be extended).

What happens after my employer files my H-1B request?

Once a timely filing requesting a change of status to H-1B on October 1 has been made, the automatic cap-gap extension to September 30 should occur. If the student’s H-1B petition is denied, withdrawn, or revoked, the student will have the standard 60-day grace period from the date of the rejection notice or their program end date, whichever is later, to prepare for and depart the United States. The 60-day grace period does not apply to an F-1 student whose change of status request is denied due to the discovery of a status violation, misrepresentation, or fraud. The student in this situation is not eligible for the automatic cap-gap extension of status or the 60-day grace period. Similarly, the 60-day grace period and automatic cap-gap extension of status would not apply to the case of a student whose petition was revoked based on a finding of a status violation, fraud or misrepresentation discovered following approval. In both of these instances, the student would be required to leave the United States immediately.

Students are strongly encouraged to stay in close communication with their petitioning employer during the cap-gap extension period for status updates on the H-1B petition process. ISSS is not able to provide updates to H1B status.

Those Not Qualified for an Extension

F-1 students who do not qualify for a cap-gap extension, and whose periods of authorized stay expire before October 1, are required to leave the United States. They can apply for an H-1B visa at a consular post abroad, and then seek readmission to the United States in H-1B status, for the dates reflected on the approved H-1B petition.

Proof of Continuing Status (I-20 request for Cap-Gap)

To obtain proof of continuing status, a student may request a printed copy of their I-20 from ISSS. Students must show evidence of a timely filed H-1B petition (indicating a request for change of status rather than for consular processing), such as a copy of the petition and a FedEx, UPS, or USPS Express/certified mail receipt. ISSS will then issue the cap-gap I-20.
Travel during Cap-Gap Extension Period

A student granted a cap-gap extension who elects to travel outside the United States during the cap-gap extension period may not be able to return in F-1 status. Please refer to your employer’s attorney for counsel before travel! If you travel and it is determined that you no longer qualify for change of status in the US, then you will need to apply for an H-1B visa at a consular post abroad. As the H-1B petition is for an October 1 start date, the student should be prepared to adjust his or her travel plans, accordingly.

Unemployment Limits

The 90-day (or 150-day for STEM OPT) limitation on unemployment during the post-completion OPT authorization continues during the cap-gap extension. Once all 90 (or 150) unemployment days are used, the student MUST be employed or risk termination of their OPT.

STEM OPT Extensions

ISSS encourages students applying for a change of status to maintain current status until the new status begins. F-1 students on Post Completion OPT who are applying for a change of status to H1B may also concurrently apply for the STEM extension if qualified. F-1 students who receive science, technology, engineering, and mathematics (STEM) degrees included on the STEM Designated Degree Program List, are employed by employers enrolled in E-Verify, and who have received an initial grant of post-completion OPT employment authorization related to such a degree, may apply for a 24-month extension of such authorization. F-1 students may obtain additional information about STEM OPT extensions on the Student and Exchange Visitor Program website at www.ice.gov/sevis.

Students who are eligible for a STEM OPT extension must submit their application to USCIS prior to the end date of their approved OPT period listed on their EAD card. They may not apply for STEM OPT during the cap gap period if their OPT authorization has ended.

Changes in Employment

Laid Off/Termination from H-1B employer: If the student has an approved H-1B petition and change of status, but is laid off/terminated by the H-1B employer before the effective date, please immediately schedule an appointment with an ISSS advisor to seek advising on your options; we also advise that you seek advice from a qualified immigration attorney.

FAQs:

Can my ISSS advisor check my SEVIS record for H-1B application update?

No. Only your employer can provide accurate, official updates regarding your H-1B application

Can the cap-gap extension be extended beyond September 30 if my H-1B petition is still pending?

No, the cap-gap extension is only until September 30. If the H-1B petition is still pending beyond October 1, you may remain in the US based on pending change of status petition; however, you must cease all employment until the H-1B is approved.
**Can I apply for the 24-month OPT STEM extension while I am within a period of cap-gap extension?**

Yes, you may apply for the OPT STEM extension as long as you are in a valid period of OPT according to the dates on your Post Completion EAD i.e. your OPT end date on your EAD card cannot have already passed. Should you choose to continue on your 24-month extension rather than H-1B, you must ensure your employer requests the withdrawal of your H-1B petition prior to October 1, otherwise, your H-1B will begin October 1, which will cancel your eligibility for the 24-month extension.