

OPT H1B CAP GAP EXTENSION FAQ

F1 students are eligible to stay in the US and OPT work authorization will be extended for a student authorized for OPT, who is the beneficiary of a timely-filed H1B petition being considered in the “lottery” with a requested employment start date of October 1, after fiscal year 2008. The F1 student status and work authorization will automatically terminate upon the rejection, denial, or revocation of the H1B petition filed on the student's behalf.

The date the USCIS Service Center receives a properly filed Form I-129, Petition for a Nonimmigrant Worker, naming the student as a beneficiary of the petition from the prospective employer starts the period of “Cap Gap” F1 extension. The cap gap extension starts when the student’s current period of F1 status ends, regardless of whether the student was in a period of OPT. If the student is in their “grace period” the day the service center receives the I-129, then the extension of status starts on the day after the student’s initial grace period expires.

Can I work during the cap gap extension if my I-129 H1B application was received during my 60 day grace period?

No. In order for a student to have employment authorization during the cap gap extension, the student must be in an approved period of OPT on the date the I-129 application was received.

Do I need to file an application to receive a cap gap extension?

No. The extension is granted at no cost. However, F1 students must provide a copy of the I-797 to the DSO/ International Advisor of any approved, pending, or wait listed I-129 listing them as the beneficiary. It is important to note that although the law automatically grants an extension, the SEVIS record will likely not show the extension. As a result, to ensure that the International Student Advisors can issue you a new I-20 documenting the appropriate “Cap Gap” extension, students must provide a copy of the I-797 to the DSO/ International Advisor of any approved, pending, or wait listed I-129 application listing them as the beneficiary.

Due to the software incompatibilities with SEVIS as a result of the required transfer of electronic information, students will receive “cap gap” I-20 extensions in increments, as the petition goes through the steps of filing, receipting, and adjudication.

- A student whose employer properly filed an H1B petition that is being considered in the “lottery” will have his or her OPT extended to June 2, 2008, and F-1 status extended to August 2, 2008 (petitions with a receipt notice).
- A student whose employer filed a H1B petition that has been wait listed will have his or her OPT extended to July 28, 2008, and F-1 status extended to September 27, 2008 (USCIS will issue a letter to the employer indicating wait list status)
- A student whose employer filed a H1B petition that is approved will have his or her OPT and F-1 status extended to September 30, 2008 (USCIS will issue an approval notice)
- A student whose H-1B petition is withdrawn or denied will have his or her OPT extension terminate 10 days after the date of the withdrawal or denial and their F-1 status extension will end 30 days after that. Termination of the extension will not shorten the student’s 12 month authorized period of OPT, as shown on the student’s employment authorization document or the student’s original period of F-1 status.

How will F1 students know they have a cap gap extension?

Students must remain in contact with the employer that filed the Form I-129 (Petition for an H1B Nonimmigrant Worker) on their behalf and with their DSO. Until USCIS issues receipt notices, only the petitioning employer will know when the application was properly filed or wait listed. The student may obtain evidence from the employer for either of these two events and submit the UAH SEVIS Update form to the DSO to initiate the process to obtain a new I-20 showing the “cap gap” extension.

When USCIS has approved an H-1B petition, the information is supposed to be entered into CLAIMS (the system used by the USCIS Service Centers) and it is used to update SEVIS. However, there are cases where the data from the interface does not properly update SEVIS. For this reason, we suggest that all F1 students submit the SEVIS Update form and documentation of the H1B petition being filed. This will ensure that the DSO has the information necessary to contact immigration and get the SEVIS record updated with the extension.

What do I need to submit to UAH so my DSO can request a SEVIS data fix?

1) The SEVIS Update form and the appropriate documentation listed below:

a. For a properly filed H-1B petition

- i. A statement from the employer that the student is the beneficiary listed on a properly filed H-1B petition
- ii. Proof of delivery to a USCIS Service Center showing the date of receipt

b. For a wait listed H-1B petition

- i. A copy of the wait list letter from USCIS to the employer

c. For a receipted or approved H-1B application

- i. A copy of the receipt (Form I-797) and/or the receipt number

Can I travel outside the United States during a cap gap extension period and return in F-1 status?

Yes, if your EAD will be valid upon your return. If the EAD will expire prior to your return, then you must obtain an H-1B visa to return to the United States to assume H-1B employment.

Do the limits on unemployment time apply to the cap gap extension?

Yes. The 90 day limitation on unemployment continues during the cap gap extension.

What I need to report to my DSO while authorized for a cap gap extension?

As with all students on post-completion OPT, you must report any change of address within 10 days, any legal name change, and interruptions of employment.

Are there restrictions on the type of employment for cap gap OPT?

All OPT employment, including post-completion OPT, must be in a job that is related to the student's degree program. Students must be able to provide evidence showing the relationship of the work to their field of study and that they worked an average of at least 20 hours per week. There are two types of eligible employment (not applicable for STEM extension OPT):

Paid employment. Work may be part time or full time although it is expected that the student pursue full time employment while authorized for OPT.

- Single employer. One employer that pays you (even if your physical location of work changes). This includes employment through an agency.
- Multiple employers. More than one employer (receive separate paychecks from each employer).
- Short-term multiple employers. Students, such as musicians and other performing artists may work for multiple short term employers (gigs). The student should maintain a list of all gigs, the dates and duration. If requested by immigration, students must be prepared to provide evidence showing a list of all gigs.
- Contract Employee/Work for hire. This is also commonly referred to as 1099 employment where an individual performs a service based on a contractual relationship rather than an employment relationship. If requested by immigration, students must be prepared to provide evidence showing the duration of the contract periods and the name and address of the contracting company.
- Self-employed business owner. Students on OPT may start a business and be self-employed. In this situation, the student must work full time. The student must be able to prove that he or she has the proper business licenses and is actively engaged in a business related to the student's degree program.

Unpaid employment. Students may work as volunteers or unpaid interns, where this does not violate any labor laws. The work must be at least 20 hours per week for students on post-completion OPT. These students must be able to provide evidence from the employer that the student worked at least 20 hours per week during the period of employment.