

“Cap Gap” Relief for OPT – H-1B Transitions

What Are the H-1B “Cap” and “Cap Gap”?

The number of people who can obtain the H-1B status is regulated by a numerical limit, or “cap”, each fiscal year.

- April 1 marks the opening of the H-1B cap filing season, when U.S. Citizenship and Immigration Services (USCIS) begins accepting petitions for H-1Bs for the coming fiscal year.
- The federal fiscal year runs from October 1 to September 30.

NOTE: *Institutions of higher education or their affiliated or related nonprofit entities, as well as nonprofit and government research organizations, are exempt from the H-1B cap. They can file H-1B petitions any time of the year and are not subject to the numerical limit. Cap-exempt employers may plan in advance to avoid any gap between OPT and the H-1B status begin date. Since they are exempt from the cap, the information below does not apply.*

If a person's H-1B is subject to the cap, and if that person's OPT expires before September 30, the time in between the EAD expiration and October 1 is called the “cap gap.”

What Are “Cap Gap” Extensions and Who is Eligible?

If you meet all of the following eligibility criteria, you may be entitled to an extension of F-1 status and employment eligibility to cover the “cap gap” period:

1. You have properly maintained F-1 status
2. Your employment is subject to the H-1B cap
3. Your employer filed an H-1B petition for “Change of Status” (not “Consular Notification”) on or after April 1
4. Your EAD expires between April 1 and September 30
5. The H-1B petition was filed before your EAD expired

If your registration is selected in the lottery, this does not mean that you are eligible for the Cap Gap extension. Your sponsor should receive an I-797 notice of your selection, but they still need to file the H-1B petition in a timely manner in order for you to be eligible for the Cap Gap extension.

The cap-gap extension of status and work authorization ends on October 1, when the H-1B status begins. The automatic extension of status also applies to your F-2 dependents.

NOTE: *If conditions 1-4 above are true but the H-1B petition was filed in the 60-day grace period following the end of your OPT, you are not eligible for the “cap gap” extension of employment eligibility. You may still be eligible to remain in the United States until October 1 if the H-1B petition is approved. Consult the immigration attorney for your employer for information about this scenario.*

Additional information can be found at [Extension of Post-Completion Optional Practical Training \(OPT\) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations Questions and Answers](#) [1], and [H-1B Fiscal Year \(FY\) 2021 Cap Season](#) [2].

When and How Should I Request a “Cap Gap I-20 Reprint”?

If you meet eligibility criteria 1-5 above, the cap gap extension of F-1 status and employment eligibility is automatic. Individuals with a receipted H-1B petition are eligible for an automatic extension of F-1 status and any authorized OPT until September 30. The H-1B petition receipt is not the same as the registration selection receipt.

- You do not have to apply for a cap gap extension.
- USCIS informs SEVIS of the H-1B application and SEVIS updates your I-20 record with a note about the extension of F-1 status and employment eligibility.

After the H-1B Receipt Notice comes and before your EAD expires, you may request an I-20 reprint showing the cap gap information.

- Your employer will probably want to review it and save a copy in your employment records.
- You may also need the updated I-20 for other purposes, like getting a new driver's license.

Generally you should wait to request the Cap Gap I-20 Reprint until you have the H-1B Receipt Notice (not the selection receipt).

- If you have not received the H-1B Receipt Notice yet, let your employer know that you need a copy as soon as it arrives. When you get the Receipt Notice, you can request a Cap Gap I-20 Reprint.

Before requesting the Cap Gap I-20 Reprint, please check your [OPT Employer Record](#) [3] and update with any changes, as necessary.

To request your Cap Gap I-20 Reprint, proceed to the [Cap Gap I-20 Reprint Request Form](#) [4].

How Long Will It Take to Get a “Cap Gap I-20 Reprint”?

Remember, the International Center is simply reprinting the I-20 for you. If USCIS and SEVIS have made the proper updates, processing time is the same as for any other reprint (5-10 business days).

NOTE: *Unfortunately, sometimes USCIS and/or SEVIS fail to make the proper updates to a student's SEVIS record. In this case, it may become necessary for an International Student/Scholar Advisor (ISSA) to intervene on your behalf by filing a “data fix” ticket with SEVIS Help Desk. The Help Desk must process the data fix before the International Center can produce your Cap Gap I-20 Reprint; their processing time can range from weeks to months. If a data fix is necessary, the ISSA who receives your reprint request will inform you and maintain communication with you.*

Reporting Requirements During Cap-Gap Extension Period

Students who remain in the U.S. under the “Cap Gap” regulation remain in F-1 status and must continue to report:

- address changes through [Wolverine Access](#) [5]
- employment information to the IC through the [OPT Employment Information](#) [6] web form

What if the H-1B Petition is Not Approved?

If your H-1B petition is denied, withdrawn, revoked, rejected, is not selected, or if the change of status request is denied or withdrawn even if the H-1B petition is approved for consular processing, the “cap gap” extension of employment eligibility will immediately terminate.

- Typically, you will have 60 days (from notification of the above circumstances) to depart the U.S.
- If, however, the denial is because of a status violation, there is no grace period.

Can I Travel Internationally During the “Cap Gap” Period?

After an H-1B petition with Change of Status is filed, consult your employer's immigration attorney about all international travel, whether or not your EAD is expired.

If your EAD is expired, you will not be able to re-enter the U.S. in F-1 status.

You may consult your employer's attorney about whether and when you may be eligible to re-enter the U.S. in H-1B status.

Source URL: <https://internationalcenter.umich.edu/students/f1-students/cap-gap>

Links

[1] <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/extension-post-completion-optional-practical-training-opt-and-f-1-status-eligible-students-under-h-1b-cap-gap-regulations>

[2] <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2021-cap-season>

[3] <https://internationalcenter.umich.edu/students/f1-students/on-opt#report>

[4] <https://internationalcenter.umich.edu/resources/forms/cap-gap-i20-request>

[5] <http://wolverineaccess.umich.edu/>

[6] <https://internationalcenter.umich.edu/resources/forms/opt-employment-form>