

Carnegie Mellon University

Office of International Education

5000 Forbes Ave, Cyert Hall Suite 101, Pittsburgh, PA 15213
Phone: (412) 268-5231 • Email: oiie@andrew.cmu.edu • Web: www.cmu.edu/oiie

H-1B Cap Gap Extension

What is the H-1B Cap?

The H-1B cap is the limit on the number of H-1B's allowed each fiscal year.* Currently, the cap is 85,000. The fiscal year begins on October 1 when a new batch of the 85,000 H-1B's becomes available. Employers are allowed to file an H-1B petition up to 6 months before the new fiscal year (April 1) so as to join the queue of new applications waiting for the October 1 date.

*The cap does not apply to all H-1B visas. Certain non-profit research positions are unlimited (such as those filed by academic institutions). The cap does not affect Carnegie Mellon University H-1B petitions. **However, cap exempt H petitions are not transferable to the private sector.**

Can my OIE advisor check my SEVIS record for H-1B application updates?

Only your employer can provide accurate, official updates regarding your H-1B application. OIE cannot provide information about your H-1B petition.

What is a Cap-Gap Extension and who is currently eligible?

A [cap-gap extension](#) is a regulatory provision which extends an eligible F-1 student's status to bridge the gap between the end of F-1 status and start of H-1B status, thereby allowing the student to remain in the U.S. during the "gap." The cap-gap extension is available to students who, as of April 1st (the beginning of the H-1B filing season) were either on approved OPT or in their F-1 60-day grace period and have a pending or approved change-of-status H-1B petition with the USCIS starting on October 1st that was filed prior to the expiration of their OPT or 60-day grace period.

Those filing for H-1B via consular processing **DO NOT qualify for the Cap-Gap Extension. You must confirm with your employer if the H-1B will be filed with a request for a change of status or via consular processing.**

You may be eligible for one of two cap-gap extension benefits:

- If the employer filed your H-1B (change-of-status) petition and it is received by USCIS prior to your post-completion OPT expiration date, you qualify for a cap-gap extension of your OPT employment authorization.
- If the employer filed your H-1B (change-of-status) petition and it is received by USCIS after your post-completion OPT expires, *but* during your 60 day grace period following OPT, your F-1 status and permission to remain in the U.S. are extended. **However, you are not eligible to work.**

How do I request a Cap-Gap Extension I-20?

If your H-1B (change-of-status) petition has been filed by your employer and receipted or approved by USCIS, you are eligible for an automatic cap-gap extension I-20 through September 30. If your current Post-Completion OPT or STEM OPT Extension EAD has an end date on or after September 30 you are not eligible for a cap-gap extension I-20 as you already have valid work authorization.

To request the cap-gap extension I-20, submit the Cap Gap I-20 Request e-Form through your [MyOIE Portal account](#). You will need to upload the following documents:

- Copy of current EAD
- Copy of H-1B I-797 Receipt or Approval Notice

OIE will issue a new cap-gap I-20 in approximately 10 business days. You will receive an email once your I-20 is ready. If you are in the 12-month OPT period, be sure you have updated your employer information using the [OPT Reporting Portal](#). If you are on the STEM OPT Extension and have an employer update, make sure to request an updated STEM OPT I-20 through your [MyOIE Portal](#).

Will I get a new EAD for the cap-gap period?

No. USCIS will not issue an EAD for the cap-gap period. Your F-1 Status work permission are automatically extended if you are eligible for the Cap-gap extension of OPT. You may request a new Cap-gap I-20 from OIE to show this extension.

Can I apply for the 24-month STEM OPT extension while I'm within a period of cap-gap extension?

Yes, you can apply for the 24-month STEM OPT extension during the cap-gap extension of OPT. *However*, you must ensure your employer requests the withdrawal of the approved or pending H-1B petition in time for USCIS to officially accept the withdrawal prior to October 1—otherwise, your H-1B Status will begin on October 1 (if filed as a change of status), which ends your F-1 Status and your eligibility for the 24-month STEM OPT extension. If you have a pending H petition, you must consult with your H employer about the withdrawal of the H prior to requesting the 24-month STEM OPT I-20.

What happens if my H-1B is denied after applying for the Cap-Gap Extension?

If the student's H-1B is denied, the student will have the standard 60-day grace period from the date of the rejection notice to depart the U.S., transfer the I-20 to a new program, or apply for a change of status.

Can I travel during a Cap-Gap Extension period and still return with my OPT I-20 and EAD?

U.S. Department of Homeland Security (DHS) has clarified that a student can generally travel abroad and seek reentry to the United States in F-1 status during a period of cap-gap extension if the following three conditions are met:

1. The student's H-1B petition and request for change of status has been approved;
2. The student seeks readmission before his or her H-1B employment begins (normally at the beginning of the fiscal year, i.e., October 1); and
3. The student is otherwise admissible. However, as with any other instance in which an individual seeks admission to the United States, admissibility is determined at the time the individual applies for admission at a port of entry.

*****Please note, traveling outside the U.S. may interfere with the processing of your H-1B petition. You MUST consult with your employer regarding all travel plans before departing the U.S.*****

If you must travel during the extension period and are not able to return on F-1 visa, consult with the attorney that filed the H-1B petition, and be prepared to apply for an H-1B visa outside the U.S. and adjust your return travel plans accordingly. Note: Under H-1B regulations, you may only enter the U.S. up to ten days prior to October 1st.

What if my OPT expires before April 1st? Will the preliminary or automatic Cap-Gap Extension extend my OPT?

Although your F-1 status will have been extended if you were in your 60-day grace period when the petition is filed, your OPT employment authorization period has expired, and the cap-gap does not serve to reinstate or retroactively grant employment authorization. Your legal status to remain in the U.S. in F-1 status is extended, **but you are required to stop working until your H-1B goes into effect on October 1st.**

What do I do if I am eligible for Cap-Gap and OIE discovers that the SEVIS system has not been updated by USCIS to reflect my pending H-1B petition?

If OIE checks your SEVIS record and finds that cap-gap has not automatically been applied to your SEVIS Record by USCIS, we will have to request a data fix from the SEVP Response Center. In these cases, we will have to submit a copy of your EAD card, your H-1B Receipt Notice or your H-1B Approval Notice to SEVP. Processing times to correct records with the SEVP Help Desk can take from a few days to several weeks.

What if my original OPT expires and my Cap-Gap Extension data fix is still pending with SEVIS Response Center?

Your post-completion OPT is automatically extended, whether you apply for the cap-gap extension I-20 or not. Therefore, you are allowed to continue working with your employer while the cap-gap extension data fix is pending. Also, keep in mind that the 90-day unemployment rule remains in effect during your automatically extended work authorization and you must continue to update your [employer information](#).