H-1B and Cap Gap Frequently Asked Questions

What is an H-1B?
The H-1B status permits temporary employment (up to 6 years) in the U.S. for people who have a minimum of a Bachelor’s degree in the same or a related field as the job offered. The employer must submit a petition to the U.S. Citizenship and Immigration Service (USCIS) for approval of the H-1B position.

What is the H-1B Cap?
The H-1B cap is the limit on the number of H-1Bs 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-1Bs 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. See the USCIS Website for the most current count of H-1B petitions filed.

*The cap does not apply to all H-1B visas. Certain non-profit research positions are unlimited. The cap does not affect H-1B petitions at Carnegie Mellon University. However, cap exempt H petitions are not transferable to the private sector.

Can my OIE advisor check my SEVIS record for H1-B application updates?
Only your employer can provide accurate, official updates regarding your H1-B 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 US during the "gap." The cap-gap extension is available to students who, as of April 1st (the beginning of each fiscal year) were either on approved OPT or in their 60-day grace period and have a pending or approved change-of-status October 1st H-1B petition with the USCIS 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 H1-B will be filed as a change of status or via consular processing.*

You may be eligible for one of two cap-gap extension benefits:
1. 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 an extension of your OPT employment authorization.
2. 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 US are extended but 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 by USCIS, you are eligible for an automatic cap-gap extension I-20 through September 30th. To request this cap-gap extension I-20, send the following to oie@andrew.cmu.edu with "Cap-Gap Extension" in the subject line:
- Your full name
- Your date of birth
- Your academic department at CMU
- If you have F-2 dependents (If you have dependents, how many?)
- Was your H-1B filed as change of status or consular notification?
- Scan and attach to the email:
  - a clear, legible copy of your EAD card
  - a copy of the I-797 Receipt notice from USCIS or USCIS approval notice

Upon receipt of the complete email, OIE will issue the cap-gap I-20 and send you instructions by email on creating a shipping label for the document. The new I-20 will be ready in 5 to 10 business days.
Will I get a new EAD for the cap-gap period?
No. USCIS will not issue an EAD for the cap-gap period. The cap-gap I-20 extends the F-1 stay and work permission until the H-1B takes effect.

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 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 will begin October 1, which cancels your eligibility for the 24-month 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 not selected, the student will have the standard 60-day grace period from the date of the rejection notice to depart the US, 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?
A valid EAD card is required to re-enter during the cap-gap extension period along with a valid passport, F-1 visa, signed I-20, and employer letter. Students with EAD cards that have expired are not eligible to re-enter the US during the cap-gap extension period.

- Please note, traveling outside the US may interfere with the processing of your H-1B petition. You MUST consult with your employer regarding all travel plans before departing the US.
  - If your EAD is expired, you will not be granted entry to the US based on the cap-gap extension. If you must travel during the extension period, be prepared to apply for H-1B visa outside the US and adjust your return travel plans accordingly. Note: Under H-1B regulations, you may only enter the US 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 would be extended if you are 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 the Record by USCIS, then we will have to request a data fix from the SEVIS 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. Processing times to correct records with the SEVIS Help Desk can take a few days to a few weeks.

What if my original OPT expires and my Cap-Gap Extension data fix is still pending with SEVIS Help Desk?
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 immigration and OIE through the SEVP Portal: https://www.cmu.edu/oie/opt-reporting/index.html with any changes in employment or address.