

Carnegie Mellon University

Office of International Education

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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. See the [USCIS Website](#) for the most current H-1B information.

*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, email oi@andrew.cmu.edu.

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 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 not selected, 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?

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 U.S. during the cap-gap extension period.**

*****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 your EAD is expired, you will not be granted entry to the U.S. based on the cap-gap extension. If you must travel during the extension period, 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, 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 from few days to several few 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](#).