

What is the H1B Cap Gap?

Students applying for an H1 visa often find there is a gap of time between when their OPT ends (June 1st for example) and the H1 that starts on October 1st. The “Cap Gap” regulation was put into place so students would keep their F1 status during this gap period enabling them to remain in the U.S.

Who qualifies for the Cap Gap?

The first day a student on OPT can petition for the H1 visa is April 1st. If a student on OPT properly files a petition for an H1 while in their grace period their F1 status is automatically extended through October 1st or until a rejection is received. If a rejection is received the student receives a two month grace period to make a decision on what to do next. If a student on OPT properly files a petition for an H1 before the OPT authorization on the EAD card expires then the student's F1 status and work status is extended through October 1st or until a rejection is received.

Example 1: John's OPT expired March 25th and he is now in his grace period. He files for his H1 on April 1st. He is able to remain in the U.S. but can not work until October 1 when his H1 begins or until he receives a rejection letter for the H1.

Example 2: Jane's OPT will expire on April 15th. She files for her H1 on April 1st. Since her OPT work authorization did not expire when she petitioned, she can continue in F1 status and continue to work on OPT until October 1 when the H1 begins or until she receives a rejection letter.

How do I apply for the Cap-Gap Extension?

Because there is no guarantee your H-1B case will be selected for review/approval, there are two steps to the cap-gap extension process:

- * To receive a preliminary cap-gap extension until June 1st:
 - o Present a copy (PDF/Fax/paper) of your timely filed H-1B petition Notice of Action.

- * To receive the cap-gap extension I-20 through September 30th:
 - o Present a copy of the “notice of selection” (approval notice) from USCIS when/if your employer receives it.

In both cases, send an email to haines@findlay.edu with “Cap-Gap Extension” in the subject line. Include the following in the email:

- * SEVIS number
- * Name
- * Scan, then attach to the email:
 - o a clear, legible copy of your EAD card
 - o copy of your filed Notice of Action or your approved Notice of Selection
- * Indicate whether you would like to pick up your document or have it mailed to you. If mailed, include your address.

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. However, if a denial is based on a discovered status violation, no such grace period exists and the student must leave the US immediately.

Can I travel during a cap-gap extension period and still return with my OPT I-20 and EAD?

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 Oct. 1st.

What if my OPT expires before April 1st? Will the cap-gap extension extend my OPT?

Although your F-1 status would be extended, your OPT employment period is technically expired, and the cap-gap does not serve to reinstate or retroactively grant employment authorization. You would be required to stop working until Oct. 1st. Also, keep in mind that the 90-day unemployment rule remains in full effect during your automatically extended work authorization (if you qualify for extension of work authorization.)

How long will the Cap-Gap Extension request take?

We will submit the cap-gap request to SEVIS within three (3) business days of the receipt of your email, provided all information above is accurate and complete.

Renew Drivers License During OPT “Cap Gap”

A student on the cap-gap extension should present an updated Form I-20 that shows the extension of stay. If eligible for the cap-gap extension, a student’s SEVIS record should be updated with the extension (either through an interface with a U.S. Citizenship and Immigration Services (USCIS) database or by a DSO) when a cap-subject H-1B petition is filed on the nonimmigrant student’s behalf. Once SEVIS is updated, the DSO can print the updated Form I-20 and provide it to the nonimmigrant. If the nonimmigrant has received an extension of F-1 status and OPT, the updated Form I-20 should contain the following language on page 3:

“F-1 status and employment authorization for this student have been automatically extended to [extension end date]. The student is authorized to remain in the United States and continue employment with an expired employment authorization document. This is pursuant to 8 CFR 214.2(f)(5)(iv) and 8 CFR 274a.12(b)(6)(iv), as updated April 8, 2008, in a rule published in the Federal Register (73 FR 18944). Additional information about the automatic extension can be found on the Student and Exchange Visitor Program Web site at www.ice.gov/sevis.”

The DMV will use the information on page 3 to validate the student’s duration of status through the end of the cap-gap extension. When the student receives the approval notice for the H1-B petition, he or she should return to the DMV to present the Form I-797, Notice of Approval, and request that the DMV extend the driver’s license expiration date for a period of one year. The student must return to the DMV every year to extend his or her license for the period of stay in the United States, unless otherwise stated by the DMV office.