

Extension of Post Completion Optional Practical Training (OPT) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations

ALERT: Effective May 10, 2016, DHS is amending its F-1 nonimmigrant student visa regulations on optional practical training (OPT) for certain students with degrees in science, technology, engineering, or mathematics (STEM) from U.S. institutions of higher education. Such F-1 students who have elected to pursue 12 months of post-completion OPT in the United States may extend their STEM OPT period by 24 months (STEM OPT extension). Current practice involving Cap-Gap will remain the same. Any F-1 student with a timely filed H-1B petition and request for change of status will be allowed to extend the duration of F-1 status and any current employment authorization until the first day of the new fiscal year. More information on the 2016 STEM OPT rule is available in the [Federal Register notice](#).

The period of time when an F-1 student's status and work authorization expire through the start date of their approved H-1B employment period is known as the "Cap-Gap".

Cap-Gap occurs because an employer may not file, and USCIS may not accept, an H-1B petition submitted more than six months in advance of the date of actual need for the beneficiary's services or training. As a result, the earliest date that an employer can file an H-1B cap-subject petition is April 1, for the following fiscal year, starting October 1. If USCIS approves the H-1B petition and the accompanying change of status request, the earliest date that the student may start the approved H-1B employment is October 1.

Cap-Gap Extensions

Current regulations allow certain students with pending or approved H-1B petitions to remain in F-1 status during the Cap-Gap period. This is referred to as filling the "Cap- Gap," meaning the regulations provide a way of filling the "gap" between the end of F-1 status and the beginning of H-1B status that might otherwise occur if F-1 status is not extended for qualifying students.

Eligibility for an Extension

H-1B petitions that are timely filed on behalf of an eligible F-1 student that request a change of status to H-1B on October 1 qualify for a Cap-Gap extension.

Timely filed means that the H-1B petition (indicating change of status rather than consular processing) was filed during the H-1B acceptance period which begins April 1 while the student's authorized F-1 duration of status (D/S) admission was still in effect (including any period of time during the academic course of study, any authorized periods of post-completion Optional Practical Training (OPT), and the 60-day departure preparation period, commonly known as the "grace period").

Once a timely filing requesting a change of status to H-1B on October 1 has been made, the automatic Cap-Gap extension will begin and will continue until the H-1B petition adjudication process has been completed. If the student's H-1B petition is selected and approved, the student's extension of status will continue through September 30. If the student's H-1B petition

is denied, withdrawn, revoked, or is not selected, the student will have the standard 60-day grace period from the date of the rejection notice or their program end date, whichever is later, to prepare for and depart the United States.

Students are strongly encouraged to stay in close communication with their petitioning employer during the Cap-Gap extension period for status updates on the H-1B petition processing.

Please note: F-1 students who have entered the 60-day grace period are not employment-authorized. If an H-1B cap-subject petition is filed on the behalf of a student who has entered the 60-day grace period, the student will receive the automatic extension of his or her F-1 status, but will not become employment-authorized since the student was not employment-authorized at the time H-1B petition was filed.

Those Not Qualified for an Extension

F-1 students who do not qualify for a Cap-Gap extension, and whose periods of authorized stay expire before October 1, are required to leave the United States, apply for an H-1B visa at a consular post abroad, and then seek readmission to the United States in H-1B status, for the dates reflected on the approved H-1B petition.

Additionally, the Cap-Gap provision applies only to beneficiaries of cap-subject H-1B petitions, not to beneficiaries of [cap-exempt H-1B petitions](#).

Proof of Continuing Status

The cap-gap extension of OPT is automatic for eligible students. A student does not file an application for the extension or receive a new EAD to cover the additional time. The only proof of continued employment authorization currently available to an affected student is an updated Form I-20 showing an extension of OPT, issued to the student by his or her DSO. This document serves as proof of continued employment authorization.

If a student chooses to obtain an updated Form I-20, the student should go to his or her Designated School Official (DSO) with evidence of a timely-filed H-1B petition (indicating a request for change of status rather than for consular processing), such as a copy of the petition and a FedEx, UPS, or USPS Express/certified mail receipt. The student's DSO will issue an updated Form I-20, showing an extension until June 1.

If the H-1B petition is selected for adjudication, the student should return to his or her DSO with a copy of the petitioning employer's Form I-797, Notice of Action, with a valid receipt number, indicating that the petition was filed and accepted. The student's DSO will issue another updated Form I-20, showing an extension until October 1. In such situations, the student can continue to work while the update to his or her Form I-20 is being processed. Because the Cap-Gap extension is automatic, the updated Form I-20 is not required for a student to continue working; it merely serves as proof of the extension of OPT employment authorization.

Denied H-1B Petitions

If an H-1B petition filed on behalf of an F-1 student covered by Cap-Gap is denied, rejected, revoked, or withdrawn, the student will have the standard 60-day grace period (from the date of

the notification of the denial, rejection, revocation, or withdrawal of the petition) to prepare for and depart the United States.

The 60-day grace period does not apply to an F-1 student whose accompanying change of status request is denied due to a status violation, misrepresentation, or fraud. In such cases, the F-1 student is ineligible for Cap-Gap extension of status and the 60-day grace period. Similarly, the 60-day grace period and Cap-Gap extension of status does not apply to an F-1 student whose petition was revoked based on a finding of a status violation, fraud or misrepresentation discovered following approval. In both of these instances, students are required to immediately leave the United States.

Travel during Cap-Gap Extension Period

An F-1 student may generally travel abroad and seek readmission to the United States in F-1 status during a Cap-Gap period if:

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. U.S. Customs and Border Protection (CBP) makes such determinations after inspecting the applicant for admission. Students should refer to CBP's website for a list of the appropriate documentary evidence required to confirm eligibility for the relevant classification.

STEM OPT Extensions

F-1 students who receive science, technology, engineering, and mathematics (STEM) degrees included on the [STEM Designated Degree Program List](#), are employed by employers enrolled in and maintain good standing with E-Verify, and who have received an initial grant of post-completion OPT employment authorization related to such a degree, may apply on or after May 10, 2016, for a 24-month extension of such authorization. F-1 students may obtain additional information about STEM OPT extensions on our [Optional Practical Training Extension for STEM Students \(STEM OPT\) page](#) or the [STEM OPT Hub](#).

Students who are eligible for a Cap-Gap extension of post-completion OPT employment and F1-status may apply for a STEM OPT extension during the Cap-Gap extension period.

However, such application may not be made once the Cap-Gap extension period is terminated (if the H-1B petition is rejected, denied, revoked, or withdrawn), and the student has entered the 60-day departure preparation period.

Unemployment Limits

The law allows you to be unemployed during your OPT period for a limited number of days.

If you received...	You may be unemployed for...	For a total of... <i>(during the OPT period)</i>
Initial post-completion OPT only	Up to 90 days	90 days
17-month extension	An additional 30 days	120 days*
24-month extension	An additional 60 days	150 days*

*Effective May 10, 2016, if you are granted an additional 7-month extension in addition to your 17-month STEM-OPT (for a total of 24-month STEM OPT extension) then you may be unemployed for a total of 150-days during the OPT period.

Start Date Issues

If the students' OPT end dates are shortened to September 30, even though their H-1B employment would not begin until a later date, the student should contact their DSO. The DSO may request a data fix in the Student and Exchange Visitor Information System (SEVIS) by contacting the SEVIS helpdesk.

Changes in Employment

Laid Off/Termination from H-1B employer: If the student has an approved H-1B petition and change of status, but is laid off/terminated by the H-1B employer before the effective date, and the student has an unexpired EAD issued for post-completion OPT, the student can retrieve any unused OPT. The student will remain in F-1 status and can continue his or her OPT using the unexpired EAD. The student also needs to make sure that USCIS receives a withdrawal request from the petitioner before the H-1B change of status effective date. This will prevent the student from changing to H-1B status. Once the petition has been revoked or withdrawn, the student must provide his or her DSO with a copy of the USCIS acknowledgement of withdrawal (i.e., the notice of revocation). The DSO may then request a data fix in SEVIS, to prevent the student from being terminated in SEVIS on the H-1B effective date, by contacting the SEVIS helpdesk.

If USCIS does not receive the withdrawal request prior to the H-1B petition change of status effective date, then the student will need to stop working, file [Form I-539, Application to Extend/Change Nonimmigrant Status](#), to request reinstatement, and wait until the reinstatement request is approved, before resuming employment.

Student finds a new H-1B job: The student can continue working with his or her approved EAD while the data fix in SEVIS is pending if the (former) H-1B employer timely withdrew the H-1B petition and the following conditions are true:

- The student finds employment appropriate to his or her OPT;
- The period of OPT is unexpired; and
- The DSO has requested a data fix in SEVIS.

Note: If the student had to file Form I-539 to request reinstatement to F-1 student status, the student may not work or attend classes until the reinstatement is approved.

Pending Request to Change OPT End Date

Working during request: If the H-1B revocation occurs before October 1, the student may continue working past October 1 while the data fix remains pending so long as he or she meets the 3 conditions mentioned above and has not otherwise violated his or her F-1 status.

If the H-1B revocation occurs on or after October 1, the student will need to stop working immediately, apply for reinstatement, and wait until the reinstatement request is approved before resuming employment.

Maintaining Valid F-1 Status: If the H-1B revocation occurs before the H-1B change of status effective date, generally, the student will remain in F-1 status while the data fix is pending. The student would have the standard 60-day grace period to prepare for and depart the United States, unless the H-1B petition was revoked because of fraud or violation of status.

If the H-1B revocation occurs after the H-1B change of status effective date, the student's status will have been changed from F-1 to H-1B. As such, the student will no longer be in valid F-1 status and will either need to apply for reinstatement to F-1 status or immediately depart the United States.