

**Center for International Studies**

## **OPT “Cap Gap” Provision for F-1 Students**

### **What is the “cap gap” provision?**

A person who applies for and receives an H-1 visa number for the new fiscal year is not allowed to switch to the H-1 category until that number officially becomes available. All H-1 visas become available on October 1st, the beginning of the government’s fiscal year. This means that an F-1 student pursuing a period of OPT who applies for and receives an H-1 number on April 1st or later is not able to switch to the H-1 category until that new visa number becomes available on October 1st.

In the majority of cases, an F-1 student who graduates in May and starts OPT soon after finds himself/herself in the unenviable position of having a “gap” between the expiration date of the OPT and the beginning date of the new H-1 visa. The “cap gap” provision addresses this problem by granting the F-1 student an automatic extension of employment authorization if an H-1 petition has been filed on his/her behalf.

### **Who is eligible to take advantage of the cap gap?**

This provision is available to those F-1 students on OPT for whom an H-1 petition has been filed.

### **If a petition is filed on my behalf, how long can I continue to work?**

There are several scenarios related to this question:

#### *H-1 petition filed*

Once a petition is filed with the USCIS, an F-1 student’s employment eligibility under OPT is automatically extended to a certain date that is determined on an annual basis by the Department of Homeland Security. This date corresponds with the amount of time that the USCIS anticipates it will take to receive all petitions and, if necessary, conduct the H-1 lottery.

#### *H-1 petition wait-listed*

If an H-1 petition is wait-listed by the USCIS, the OPT employment eligibility will be automatically extended to a date to be determined by the Department of Homeland Security on an annual basis. This, too, is based on how long the agency estimates it will take to process all of the petitions on the wait-list.

### *H-1 petition selected for receipting*

Once an H-1 petition has been accepted and a receipt notice is issued, an F-1 student's OPT employment eligibility is automatically extended until September 30.

Once an H-1 petition has been filed, wait-listed, or receipted, the extension automatically begins on the day after the student's original employment authorization document (EAD) expires. A new card will **not** be issued for the extension.

### **If the petition is denied by the USCIS or withdrawn by the employer, how does this affect the cap gap extension?**

The automatic OPT extension ends 10 days after the date of denial or withdrawal.

### **Am I required to file an application or filing fee in order to receive this OPT extension?**

No, the extension is automatically granted.

### **Will I receive proof that I am entitled to the extension?**

The student should obtain a copy of the H-1 receipt notice or other proof of filing and remain in close contact with the employer's representative that is handling the H-1 petition.

### **Will proof of this extension be indicated on the I-20?**

Yes, the SEVIS System should automatically place a notation on the SEVIS record that will result in an update on page 3 of Form I-20 for a student who has an H-1 petition filed on his/her behalf. If the student has an approved post-completion OPT in SEVIS at the time of the update, the notation will state that both the F-1 status and employment authorization have been extended. If the student does not have an approved post-completion OPT in SEVIS at the time of the update, the notation will state that only the F-1 status has been extended.

Students are encouraged to contact the Center for International Studies to confirm that the H-1 petition notation appears on his/her SEVIS record.

### **Is it safe to travel outside of the U.S. during this cap gap extension?**

There have been conflicting reports about what is and is not permissible in terms of travel during the "cap gap" extension after the original EAD has expired. At present, however, most schools and legal practitioners advise that students who are residing and working in the U.S. pursuant to a "cap gap" extension **do not** travel. Please keep in mind that the earliest a person can enter the U.S. in H-1 status is **10 days prior** to the employment start date listed on the H-1 petition.