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# Fact Sheet

## Information for Employers on the Cap-Gap Extension of Optional Practical Training

If you employ an F-1 nonimmigrant student on post-completion optional practical training (OPT) and that student is the beneficiary of a pending or approved H-1B petition, the student may be able to continue working beyond the expiration date on his or her employment authorization document (EAD).

### The Cap Gap

The word "cap," as used in this Fact Sheet, refers to an annual numerical limitation set by Congress on the H-1B nonimmigrant classification. The cap controls the number of individuals that can be granted H-1B status in a given fiscal year, subject to certain exceptions.<sup>1</sup> The current annual cap on the H-1B classification is 65,000.

In recent years, the number of H-1B petitions filed per year has exceeded the annual cap. Due to demand, the annual cap has been met during the initial filing period, beginning on April 1. All cap-subject petitions filed during this initial filing period indicate a requested start date of October 1 (the start of the government fiscal year). In the past, F-1 students who were the beneficiaries of an H-1B petition often had their F-1 status expire before their H-1B status began on October 1 — a period known as the cap gap. The most common situation occurred when a student's OPT ended in the spring or early summer, and the student's F-1 status expired 60 days after that, leaving a gap of several months before the individual's H-1B status began on October 1.

An F-1 student in a cap-gap situation would, in most cases, have to leave the United States and return at the time the student's H-1B status became effective (at the beginning of the next fiscal year). Depending on when the student's status expired, such circumstances could require the student to remain outside the United States for several months.

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<sup>1</sup> The numerical limitations do not apply to any nonimmigrant issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who is employed (or has received an offer of employment) at an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization. For more information, please see the USCIS Web site ([www.uscis.gov](http://www.uscis.gov)).

## **The Optional Practical Training Interim Final Rule**

On April 8, 2008, the Department of Homeland Security published an Interim Final Rule (IFR) titled, Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students With Pending H-1B Petitions. The changes made by this rule became effective upon publication of the rule.

One provision of the rule applies to F-1 students who are the beneficiaries of a pending or approved H-1B petition that is subject to the annual cap. The IFR automatically extends the F-1 status and, for students in a period of approved post-completion OPT when the H-1B petition is filed, the OPT employment authorization. For further information, see the Student and Exchange Visitor Program's (SEVP) Policy Guidance 0801-01, *Updates to Post-Completion Optional Practical Training*, on [cap gap provisions](#).

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, on page 3. This document serves as proof of continued employment authorization.

The automatic extension of an F-1 student's duration of status and employment authorization is terminated upon the rejection, denial, or revocation of the H-1B petition filed on the F-1 student's behalf.

## **Student Responsibilities**

A student who is eligible for the cap-gap extension must work with a designated school official (DSO) at the student's school to receive an updated Form I-20. If a student is eligible for the cap-gap extension of OPT, 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.

## **Employer Responsibilities**

To assist a student in obtaining an updated Form I-20, you may need to provide the student with an I-797 receipt or approval notice issued by U.S. Citizenship and Immigration Services for the H-1B petition filed on the student's behalf. This receipt notice serves as proof of filing the H-1B petition and may need to be submitted to SEVP in order to update a student's Form I-20 to show eligibility for the cap-gap extension.

## **Further Questions**

Should you have any specific questions that are not addressed in this Fact Sheet, please contact SEVP by e-mail at [sevis.source@dhs.gov](mailto:sevis.source@dhs.gov).