

1. What happens if an employer timely files a cap-subject H-1B petition for an F-1 OPT student?

Typically, the student is eligible for the cap-gap extension.

2. What is the “cap-gap extension”?

Cap = The limit on the number of individuals who can gain H-1B status each fiscal year.

Gap = The period between the end date of F-1 OPT or grace period and start date of H-1B.

Cap Gap Extension = Extension of the student’s F-1 status until the start of H-1B status, thus, bridging the gap between the two statuses.

3. Who is eligible for the cap-gap extension?

The cap gap extension is available to students with the following:

If the employer timely files a cap-subject H-1B petition with USCIS, on or after April 1, and requests a change of status to H-1B beginning in October, and the F-1 student is still within OPT period or 60-day grace period when the employer submits the H-1B petition, and **USCIS issued a Notice of Receipt**, the student is eligible for an automatic extension through **September 30th**. If USCIS has **not issued a Notice of Receipt**, the student is eligible for an automatic extension through **June 1st**.

Furthermore, if the student was *in valid OPT work authorization* at the time the petition was filed, then the student has an extension of both *work authorization and legal stay*. If the student was in the *60-day grace period* at the time the petition was filed, then the student has an extension of *legal stay only* (cannot work).

Cap-subject H-1B petitions filed for Consular Processing DO NOT qualify for the cap-gap extension.

4. How should the student obtain the cap-gap extension?

Usually, the student’s F-1 record is updated by Department of Homeland Security. The student should contact their Designated School Official (DSO) to request the cap-gap extension I-20.

5. What happens if the student is not selected under the lottery?

The student will have a 60-day grace period from the end of their F-1 OPT to depart the US, transfer to a new program of study, apply for the STEM OPT extension if eligible, or apply for a change of immigration status.

6. Can the student travel abroad during the cap-gap period and return with the F-1 visa stamp?

We strongly recommend that students DO NOT travel abroad during this period as this travel may invalidate the H-1B change of status petition and the student might not be permitted to re-enter the U.S. without obtaining an H-1B visa at a consular post. The student may only enter the U.S. up to ten days prior to October 1st.

For more information, please visit the Marks Gray Immigration at <http://www.marksgrey.com/practices/immigration/>