

Cap Gap Extensions

This information is issued to F-1 International Students at the Illinois Institute of Technology as guidance. This guidance is not immigration regulation and is not intended to create or confer any rights or legal obligations to either F-1 International Students or Employers of F-1 International Students. This document is subject to revisions without warning.

H-1B Cap

The H-1B cap is the congressionally-mandated limit on the number of individuals who may be granted H-1B status during each fiscal year. For FY2011, the cap is 65,000. There are an additional 20,000 H-1Bs available for beneficiaries who have earned a U.S. master's degree or higher. The fiscal year begins on October 1 and ends on September 30.

Not all H-1B beneficiaries are subject to the cap. The following types of H-1B petitions are not subject to the cap and are therefore, not eligible for a cap gap extension:

- Petitions filed on behalf of beneficiaries who will work at institutions of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or governmental research organization
- H-1B beneficiaries seeking to extend status and/or add employers

Cap Gap

A cap gap occurs when an F-1 student's work authorization and/or duration of stay expires in the current fiscal year before they can start their approved H-1B employment in the next fiscal year. This happens in years when the H-1B cap is reached. Because the USCIS will not accept H-1B applications more than 6 months prior to the requested start date, the earliest date that an employer can file an H-1B petition for the following fiscal year is April 1 with a H-1B start date of October 1. Consequently, a gap in employment authorization and/or duration of stay may occur for students in F-1 status. Without cap-gap extensions, such individuals would be required to leave the United States between the end of F-1 status and the beginning of H-1b status.

Cap Gap Extensions

Current regulations allow certain F-1 students with pending or approved H-1B petitions to remain in F-1 status during the period of time where his or her employment authorization and/or duration of stay would otherwise expire and up to the start of their approved H-1B employment period. This is referred to as filling the "cap gap," meaning the regulations provide a way of filling the "gap" between F-1 and H-1B status.

Unemployment Limits

The limits on unemployment continue to apply to students with employment authorization while on a cap gap extension.

Cap Gap Extension Length

Since immigration regulation states that cap gap extensions are terminated if the H-1B petition is rejected, denied, or revoked, the Department of Homeland Security has created a [graduated extension scheme](http://www.nafsa.org/uploadedFiles/opt_policy_guidance_042010.pdf) (http://www.nafsa.org/uploadedFiles/opt_policy_guidance_042010.pdf, see page 30-31), which will grant extensions of OPT and of F-1 status depending on the situation of the underlying H-1B petition.

Rejection, Denial, or Revocation of the H-1B Petition

The cap gap extension automatically terminates when USCIS rejects, denies, or revokes the H-1B petition. However, the student would have a grace period after the termination during which he or she is authorized to remain in the United States for up to 60 days to prepare for departure from the U.S., change degree level, transfer, change status, etc. as long as the student has not otherwise violated status.

Qualifications for Cap Gap Extensions

To qualify for the "H-1B cap-gap extension of status" the student must be the beneficiary of a cap subject H-1B petition that:

- has been timely filed
- requests an employment start date of October 1 of the following fiscal year; and
- requests a change of status

To qualify for the "H-1B cap-gap extension of status and employment authorization" the student must meet all qualifications listed above and:

- are currently working on a period of post-completion OPT that ends after the date the H1B petition was filed with USCIS

Obtaining Proof of Cap Gap Coverage

Because the cap gap extension is automatic, the updated I-20 is not required for a student to continue working on post-completion OPT and/or to remain in the United States. A newly issued I-20 merely serves as proof of the extension of post-completion OPT employment authorization.

If you or your employer would like to have a new I-20, the International Center can produce this upon request. Fill out the **Cap Gap Extension I-20 Request** form below and submit the form with all supporting documents to the International Center. You may submit your application by fax, mail, or email.

The International Center will print you a new I-20 that provides Cap Gap information on the 3rd page. If you were approved for post-completion OPT that ends after April 1, the end date of your OPT period may be adjusted automatically by the SEVIS system to September 30. If this occurs, your new I-20 will reflect this change on the 3rd page.

You will not receive a new EAD card for the Cap Gap extended period.

Cap Gap Extension I-20 Request

Student Information

Last Name First Name
Student ID (A# or CWID) SEVIS ID
Email: Phone Number:

Indicate how you will collect your new I-20

Please mail the I-20 to me; I will pay for shipping via the IC Ship website: <http://tiny.cc/ICShip>

I will pick-up the I-20

Main Campus

Downtown Campus (open on Thursdays)

I will send someone to pick-up the I-20 for me. Attach Release form below.

H-1B Petition Information

Indicate the status of the petition (check only one):

Filed

Received

Approved

For **Filed** petitions, attach the following:

Statement from the employer that the student is the beneficiary listed on a properly filed H-1B Petition

Proof of delivery to a USCIS Service Center showing the date of receipt

For **Received** petitions, attach the following:

A copy of the receipt (Form I-797)

If you cannot obtain a copy of the receipt, provide the Receipt Number:

For **Approved** petitions, attach the following:

A copy of the approval notice (Form I-797)

If you cannot obtain a copy of the approval notice, provide the Receipt Number:

Application Submission

You may submit your application to our office in person or via fax, mail, or e-mail.

Document Release Authorization

Purpose

In accordance with the **Family Educational Rights and Privacy Act (FERPA)**, the International Center requires authorization from its students and exchange visitors prior to the access and/or release of a student's/Exchange Visitor's education/ immigration records.

I, _____ and _____
First Name Last Name

on _____
(Today's Date)

Release access of my educational/immigration records maintained by the International Center to:

Last Name:

First Name:

This person must show proof of identification to the International Center before we will release your document(s).

Document or Information to be released:

I-20/DS-2019/Other official immigration document

Letter

Immigration Status

Other:

Signature of Student/Exchange Visitor authorizing access

Note: valid for only the request above and each additional request must be accompanied by a new signed document release.