Cap-Gap Extension

Policy

"Cap-gap" has become the common term used to refer to the "gap" in nonimmigrant status that occurs in a change of status, usually from F-1 to H-1B, when the F-1’s current status expires before the requested H-1B start date of employment. For example, an F-1 student with an OPT end date of June 30 will have duration of status for 60 days beyond that, until August 30. The gap between August 30 and October 1 is a "cap-gap." This benefit only applies to those on Post-Completion OPT and STEM Extension. The regulations specify that duration of status (D/S), and any post-completion OPT work authorization, will be automatically extended for an F-1 student who is the beneficiary of a timely-filed H-1B petition requesting change of status and an employment start date of October 1 of the current year or anyone who has received approval of the H-1B.

To qualify for the Cap-Gap:

- The student must be the beneficiary of an H-1B petition filed by the employer that:
  - has been timely filed [USCIS defines "timely filed" as follows: "Timely filed means that the H-1B petition was filed during the H-1B acceptance period 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").
- requests an employment start date of October 1 of the current year
- requests a change of status; and

- The student must not have violated the terms or conditions of his or her F-1 status.
- The cap-gap extension of status and work authorization officially commences on the date the I-129 petition and fee are received by USCIS, not the date that the receipt notice was issued.
- If a student is not in authorized OPT on the eligibility date, he or she is not eligible for an extension of employment authorization. If the student was still in his or her 60-day grace period, the student is eligible for an extension of status, but not of work authorization.
- The automatic extension terminates when USCIS rejects, denies, or revokes the H-1B petition. However, the student would have a grace period after the termination during which s/he 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.
- The 90-day limit on unemployment continues to apply to students with employment authorization while on a cap-gap extension.
- Students on cap-gap extensions must continue to report all changes of name and address, and interruptions of employment, just like other students on OPT.

**Procedure**

A properly filed H-1B petition should automatically trigger the student's SEVIS record to show that a petition has been filed and thus extend the student's current OPT and status as necessary; however, students should always discuss this with a DSO as soon as they are aware that an H-1B petition is filed on their behalf. The DSO may have to request an extension in SEVIS depending on when the student's current OPT ends.

1. The student should email the ISSS Office with proof of his or her H-1B application.
2. The student should submit any documents (petitions, receipts from USCIS, etc.)
3. If the student's I-20 has been automatically updated with the CAP-GAP notation, then the DSO can simply print an updated I-20.
4. If the student's I-20 has not been automatically updated, the DSO will submit a request to SEVIS for a data fix based on documentation of a USCIS receipt from the student.
5. Also, if the student's OPT end date is before the end of July, then he or she should notify a DSO to request an extension if he or she has documentation of a properly filed H-1B petition.
6. After the student's SEVIS record has been updated, the DSO will print a new I-20.
7. The student must continue to keep the Baylor ISSS Office updated on any changes to status, employment, address, etc.