

H-1B CAP-GAP EXTENSION

The Department of Homeland Security (DHS) regulations specify that duration of status (D/S) and any post-completion OPT work authorization will be extended for an F-1 student who is the beneficiary of a timely-filed H-1B petition, requesting change of status with an employment start date of October 1 (the first day of the following fiscal year).

ELIGIBILITY FOR CAP-GAP EXTENSION

- I-129 Petition for a Nonimmigrant Worker must be **timely filed** for the student by the employer;
- The employer must be subject to H1B CAP (check with your employer or immigration lawyer);
- The employment start date must be October 1st;
- Student must receive a USCIS Receipt/Approval Notice or any other evidence as a proof of I-129 filing;
- Student must not accrue more than ninety (90) days of unemployment during the Post-completion OPT and must maintain their F-1 visa status.

Timely filed: an H-1B petition was filed during the H-1B acceptance period, while the student's authorized 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 OPT, and the 60-day departure preparation period, commonly known as the grace period.

THE LENGTH OF THE CAP GAP EXTENSION

For a student with **active post-completion OPT**, the CAP GAP extension for both employment and F-1 visa status starts the date the student's original OPT expires and ends on **September 30th** unless the H1B petition for the student is rejected, denied or withdrawn. In those cases, the CAP GAP extension will immediately terminate, and the grace period begins.

For a student whose **post-completion OPT expired** prior to the filing date of the H1B petition, the cap gap extension starts at the end of their grace period and ends on **September 30th** unless the H1B petition for the student is rejected, denied, or withdrawn. **However, these students will not have work authorization.**

Due to complexities involved, students will receive cap gap extensions in increments, as the petition goes through the steps of filing, receipting and adjudication.

Please see the table below for the CAP GAP extension dates for FY 2011.

EXTENSION PERIODS FOR FY 2011 FILINGS

If a Student is:	OPT Extension	F-1 visa Status Extension
Beneficiary of a properly filed H1B petition	Extended to June 1st, 2010 (beyond the date announced by USCIS as the likely date for the end of the initial receipting period)	Extended to August 1st, 2010

Beneficiary of wait-listed H1B petition There will not be a waitlist utilized as a part of the FY 2011 H1B Cap filing process.	Extended to XXX XX, XXXX Not Applicable for FY2010	Extended to XXX XX, XXXX Not Applicable for FY2010
Beneficiary of a receipted H1B petition	Extended to September 30 th , 2010	Extended to September 30 th , 2010 The student's record completes on Sep 30 ending the nonimmigrant's F-1 status.
Student's H1B petition is withdrawn or denied	OPT authorization terminates 10 days after the end of the withdrawal or denial.	Grace period ends 60 days after the date of the withdrawal or denial.

HOW TO APPLY

In order to receive an extended I-20 Form from our office, please submit the following to the International Student Services:

- Copy of the USCIS Receipt/Approval Notice (I-797) or any other evidence as a proof that your employer has filed H1B Non-immigrant Petition;
- Proof from your legal representative who filed your H1B Non-Immigrant Petition that your employer is subject to H1B CAP;
- Copies of the following:
 - o passport name page expiration date (passport must be valid);
 - o third page of your current I-20 reflecting 12 months of OPT;
 - o previous EAD (employment cards);

If you are in San Antonio area, come to our office to apply. Our office hours are between the hours of 9:00am and 4:00pm, from Monday through Friday.

If you are currently living and working away from San Antonio, mail your documents to our office and then use the mail service of EShipGlobal to have the packet express mailed back to you. For information on EShipGlobal visit our website: <http://www.utsa.edu/intprograms/Documents/eShipInfo.pdf>

ISS does not accept applications sent by fax.

For all other questions regarding Cap-Gap Extension, please read **"Supplemental Questions & Answers"** on our web-site at: <http://www.utsa.edu/intprograms/> in the **News and Announcements** section or contact our office.