**U.S. Department of Homeland Security**
Student and Exchange Visitor Program
Potomac Center North
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Washington, DC 20536

**U.S. Immigration and Customs Enforcement**

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# Fact Sheet

## Supplemental Guidance on the Cap-Gap Extension

This supplemental guidance addresses two significant areas related to the Student and Exchange Visitor Information System's (SEVIS) functionality and interface with other government systems, provides guidance on this issue and describes current workarounds, where available.

This guidance applies only to 2009. The cap gap is determined on an annual basis by demand for H-1B workers. Additional guidance on the cap gap can be found in the Student and Exchange Visitor Program's (SEVP) document titled, *Updates to Post-Completion Optional Practical Training*.

If you have any questions concerning the cap-gap extension or other SEVP guidance issues that are not covered in this supplemental guidance, please contact SEVP via e-mail at sevis.source@dhs.gov. Enter the words, *Attention Policy: Gap Gap*, in the subject line.

## Cap-Gap Extension Functionality

Normally when U.S. Citizenship and Immigration Services (USCIS) enters H-1B petition information into CLAIMS, the information is pushed into SEVIS where student records automatically update with the full cap-gap extension. If time constraints do not allow the process to complete, a designated school official (DSO) can employ the Cap-Gap Extension functionality in SEVIS. (See the document titled, *Release 5.10 Conference Slides – F/M Users,* for additional information on the automatic update.)

The Cap-Gap Extension functionality was developed to allow DSOs to provide interim cap-gap extensions for students whose optional practical training (OPT) or status ends before USCIS has the opportunity to receive the H-1B petition and enter it into CLAIMS. This functionality became available in SEVIS with SEVIS Release 6.0.

SEVIS now allows DSOs to indicate that an F-1 student is the beneficiary of an H-1B petition with a change of status request that has either been:
- Filed and accepted for processing by USCIS; or

- Filed and waitlisted by USCIS.

The Cap-Gap Extension functionality <u>should not</u> be used for all students who are eligible for the cap-gap extension. Rather, it should only be used in cases where a student's status or OPT may end before USCIS can receipt the H-1B petition.

For example: if a student's OPT ends on April 15 (approximately two weeks after the student's employer filed the H-1B petition on his or her behalf), there is a chance that USCIS will not be able to receipt the H-1B petition by April 15. Because the student's employment could end before his or her SEVIS record is updated with the full cap-gap extension, it would be appropriate for the student's DSO to use the Cap-Gap Extension function to provide an initial cap-gap extension through June 2.

When a DSO selects Cap Gap Extension "filed," a student's OPT (or status if the student isn't eligible for OPT during the cap gap) is extended to June 2. For students whose OPT ends before June 2, this is the appropriate action.

However, we have received reports of DSOs using this function for all students who are eligible for the cap gap. This is not appropriate and creates problems in SEVIS and for the students. If a student's OPT ends after June 2 and the DSO uses the "filed" function, the employment end date is changed to June 2. The DSO then has to contact the Help Desk to get the employment end date returned to the correct date.

## Inappropriate Termination/Completion of SEVIS Records

SEVP has received a number of reports stating that SEVIS records are being inappropriately terminated or completed when students are eligible for the cap-gap extension. This is happening due to USCIS interface issues.

USCIS adjudicators enter petition information into a database which interfaces with CLAIMS Mainframe. There is a glitch in the interface between those databases that can prevent petition information, including benefit dates, from reaching the CLAIMS Mainframe. When this happens, CLAIMS Mainframe does not have any benefit dates to send to SEVIS. Consequently, SEVIS sees the change of status but does not have a benefit start date. This leads SEVIS to believe the change of status takes effect immediately and causes a student's record to terminate or complete when it should be updated with the cap-gap extension.

USCIS is aware of the issue and is investigating in order to identify the problem and resolve it. Until the issue is resolved, SEVP has a workaround in place. If a student's record is inappropriately terminated or completed due to an H-1B petition filed on a student's behalf, we request that DSOs contact the SEVIS Help Desk to have the record returned to Active status and add the cap-gap extension.