

OPT FREQUENTLY ASKED QUESTIONS

What is OPT?

OPT stands for “Optional Practical Training.” It is a form of work authorization granted to foreign students who are in the U.S. in temporary F-1 (“student visa”) status. Students granted OPT work authorization may work for any U.S. employer, so long as the opportunity offered to the student by the employer is related to the student’s field of academic study. OPT is granted for 12 months initially, and may be extended for a total of up to 36 months for students graduating in STEM fields (Science, Technology, Engineering or Mathematics), provided the students are working for employers enrolled in the government’s E-Verify program, the employer has developed a training plan for the student, and certain other conditions are met.

What evidence must the student have to show that they have valid OPT work authorization?

Except in certain limited circumstances, the student must have a valid EAD (employment authorization document) to work pursuant to OPT.

When can a student apply for OPT work authorization?

Students may apply for and obtain OPT work authorization after they have completed one year of academic study in the U.S. Most students obtain “post-completion” OPT (after graduation), which must be applied for up to 90 days before and 60 days following graduation. Some students also apply for “pre-completion” OPT which allows them to work prior to graduation, during school breaks.

Can a student with OPT work indefinitely in the U.S.?

No. OPT is initially limited to 12 months. Graduates of STEM fields may obtain a 24-month extension following the initial 12 months of OPT, provided the employer enrolls in the government’s E-Verify program, implements a STEM OPT Training Program designed to ensure that the training is fulfilling the purpose of the OPT program, and certain other conditions are met.

Is it possible to switch a student working pursuant to OPT to H-1B status?

If the student working pursuant to OPT qualifies for H-1B status, it may be possible to switch the student to H-1B status before he/she reaches the end of his/her OPT work authorization period. However, given the very high demand and limited supply of new H-1Bs, the U.S. Citizenship and Immigration Services (USCIS) often conducts a lottery to select new H-1Bs for the following fiscal year. This lottery usually takes place in the first week of April, which is the earliest that new H-1B petitions can be filed for the following fiscal year. It cannot be taken for granted that a student with OPT work authorization will be selected in the lottery, or that the student will be able to obtain H-1B work authorization before their OPT expires. If the student has graduated from a U.S. school with an advanced degree (Master’s or higher) they will generally have a much higher chance of being selected in the lottery. Having a STEM OPT extension will also provide more opportunities to ‘play’ the lottery, without subjecting the student to a gap in work authorization. The STEM OPT extension will allow the student to work pursuant to OPT work authorization for 24 additional months, during which time the employer may file additional H-1B petitions on the student’s behalf, if the first petition is not selected in the lottery.

What is “H-1B Cap Filing Season”?

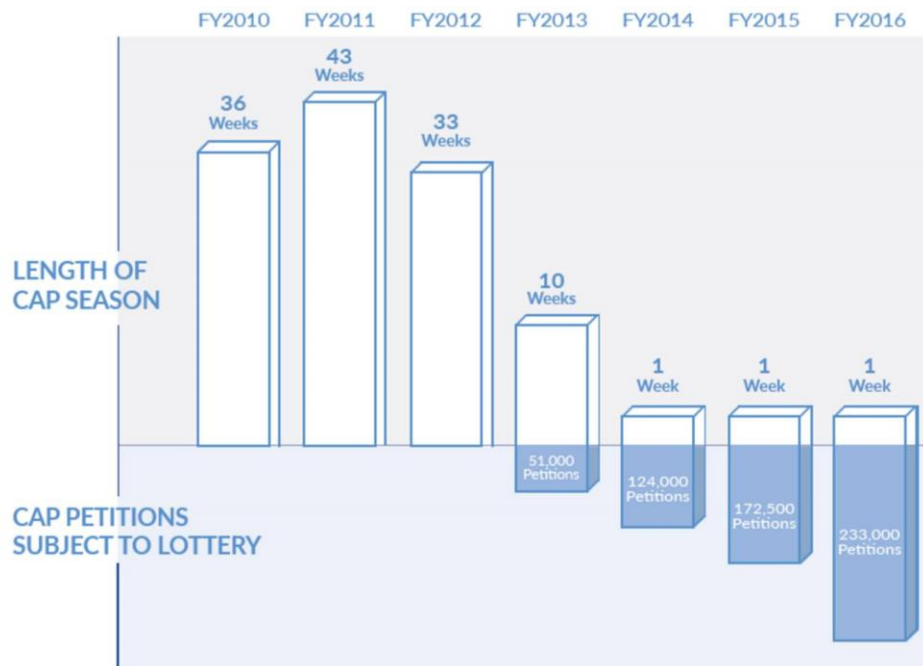
“H-1B Cap Filing Season” is the “season” each year when employers are eligible to file new H-1B petitions that are subject to the annual quota, or “cap”. The season starts on April 1st – 6 months before the start of the following fiscal year which begins on October 1st. The length of the season depends on how long it takes for available H-1B numbers to run out (see chart below). Where there is high demand for skilled workers in a particular year, the season is shorter. By regulation, even if the quota is exceeded on the first day that employers are eligible to file, i.e., April 1st, the season will last 5 business days starting from that date that the quota is reached. As explained below, USCIS holds a lottery to select which petitions received during that 5-day period will be accepted for processing.

What is the “H-1B Cap Lottery”?

When more H-1B cap-subject petitions are filed than H-1B numbers are available in a given fiscal year, USCIS conducts a random computerized selection process (“the H-1B cap lottery”) to select which petitions will be accepted for processing. If the quota is met within the first 5 business days during which employers are eligible to file cap-subject petitions, i.e. the first 5 business days of April, USCIS processes all H-1B petitions that are received during that 5-day period in lottery.

What are the chances of an F-1 student with OPT being selected in the H-1B lottery?

This depends on a number of factors, including the demand for new ‘cap-subject’ H-1Bs in a particular fiscal year, and whether the student has graduated from a U.S. school with an advanced degree (Master’s or higher). There are 85,000 new H-1Bs available each year. Of these, 20,000 are reserved for students with U.S. advanced degrees. Of the remaining 65,000, nationals of Chile and Singapore get first shot at 6,800 pursuant to Free Trade Agreements with those two countries (as “H-1B1” workers). As a result, in years when the economy is good, and demand for skilled worker is high, the likelihood of being selected in the lottery decreases, particularly for graduates without a U.S. advanced degree. The chart below illustrates how increased demand for H-1Bs has decreased the chances of getting an H-1B over the last few years.



Since 2013 (FY2014) the H-1B Cap Filing Season has lasted only one week (5 business days), and each year since 2013, the number of petitions filed has increased. Consequently, the odds of getting an H-1B last year (FY2016) were only about 30% for persons without a U.S. advanced degree. For persons with a U.S. Master's or higher, the odds were about 60%. By contrast, in 2008 and 2011, the quota was not reached right away, and any H-1B cap petition filed in the first week of April would have been accepted for processing.

What additional requirements must an employer meet to employ students pursuant to STEM OPT extensions?

In order for an employer to employ a student pursuant to an F-1 STEM OPT extension, the employer must meet the following requirements:

- **E-Verify Enrollment.** The employer must be enrolled in the Department of Homeland Security's E-Verify program, which requires the employer to electronically verify all new hire employees' authorization through an automated online system maintained by the government, in addition to completing the I-9 employment verification form. The employer must also comply with additional notice and attestation requirements. See www.uscis.gov/e-verify for more information about the E-Verify program.
- **Completion of STEM OPT Training Plan.** Starting May 10, 2016, the training plan must be completed using [Form I-983](#) and be signed by a person with authority to sign on behalf of the employer. The plan must identify the goals for the training, including specific knowledge, skills, or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer. The plan must also describe a performance evaluation process, and describe methods of oversight and supervision. Additionally, the plan must demonstrate how the training is related to the student's STEM field.
- **Additional Attestations to Safeguard U.S. Workers.** The employer must make additional attestations confirming that (1) it has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity; (2) the student will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity will help the student attain his or her training objectives. These attestations are made on the I-983 training plan form.
- **Additional Reporting Requirements.** The employer must also agree to report the termination of any student employed pursuant to the STEM OPT extension within 5 days of the student's departure.