

USCIS CLARIFICATION ON RESTRICTION ON ENTRY OF CERTAIN NONIMMIGRANTS

This client alert provides updates on our previous guidance related to the September 19, 2025, Presidential Proclamation (the "Proclamation"), *Restriction on Entry of Certain Nonimmigrant Workers*. On October 20, 2025, U.S. Citizenship and Immigration Services ("USCIS") published **updated guidance** on the applicability of the Proclamation. The update clarifies:

1. Who is subject to the \$100,000 payment;
2. Who is NOT subject to the payment;
3. How to pay the new fee; and
4. How to request an exception in the National Interest.

WHO IS SUBJECT TO THE \$100,000 PAYMENT

Any new H-1B petitions filed on or after September 22, 2025^[1], on behalf of beneficiaries who are outside the United States and do not have a valid H-1B visa, will be subject to the fee.

If an H-1B petition is filed on or after September 22, 2025, that requests consular notification, port of entry notification or pre-flight inspection for an alien in the United States, it will be subject to the new fee.

If a petition is filed on or after September 22, 2025, requests a change of status, amendment or extension of stay, and USCIS determines that the alien is ineligible for a change of status; an amendment; or extension of stay (e.g., is not in a valid non-immigrant visa status or if the alien departs the United States prior to adjudication of a change of status request), then the Proclamation will apply, and the payment must be paid according to the instructions provided by USCIS.

WHO IS NOT SUBJECT TO THE NEW FEE

The Proclamation does **not** apply to any previously issued and currently valid H-1B visa stamps, or any petitions submitted prior to 12:01 AM Eastern Daylight Time on September 21, 2025.

In addition, the Proclamation does **not** prevent any holder of a current H-1B visa stamp, or any alien beneficiary following petition approval, from traveling in and out of the United States.

The Proclamation also does **not** apply to a petition filed on or after September 22, 2025, for an alien inside the United States that is requesting (and is approved for):

- An amendment;
- Change of status; or
- Extension of stay.

Further, an alien beneficiary of such petition will not be considered to be subject to the payment if he or she subsequently departs the United States and applies for a visa stamp based on the approved petition and/or seeks to reenter the United States on a current H-1B petition approval.

HOW TO PAY THE \$100,000 PAYMENT

Petitioners should submit the required \$100,000 payment using pay.gov, following the instructions at the following link: www.pay.gov/public/form/start/1772005176.

WHEN TO PAY THE \$100,000 PAYMENT

Payment must be made prior to filing a petition with USCIS. Petitioners must submit proof that the payment has been scheduled from pay.gov or evidence of an exception from the \$100,000 payment from the Secretary of Homeland Security at the time of filing the H-1B

petition.

Petitions subject to the \$100,000 payment that are filed without a copy of the proof of the payment from pay.gov or evidence of an exception from the Secretary of Homeland Security **will be denied**.

NATIONAL INTEREST EXCEPTIONS GRANTED BY THE SECRETARY OF HOMELAND SECURITY

Exceptions to the \$100,000 payment are granted by the Secretary of Homeland Security where the Secretary has determined that:

- A particular alien worker's presence in the United States as an H-1B worker is in the National Interest;
- That no American worker is available to fill the role;
- That the alien worker does not pose a threat to the security or welfare of the United States; and
- That requiring the petitioning employer to make the payment on the alien's behalf would significantly undermine the interests of the United States.

Petitioners and beneficiaries are advised that the Secretary of Homeland Security has set the bar high for the National Interest exception qualification, requiring "extraordinarily rare circumstances."

Petitioners may seek an exception by sending their request and all supporting evidence to H1BExceptions@hq.dhs.gov.

If you have any questions or would like additional information on these topics, please contact:

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[1] Practically speaking, an H-1B petition could not be filed on September 20 or September 21 because those dates fall on Saturday and Sunday, respectively. USCIS is not open for business and does not accept applications on those days.