

## Publications

### USCIS Issues Key Guidance on New \$100,000 Fee for H-1B Petitions

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On October 20, 2025, U.S. Citizenship and Immigration Services (USCIS) issued additional guidance clarifying the scope and application of the \$100,000 fee imposed on certain new H-1B visa petitions. This guidance addresses many of the uncertainties that followed President Trump's September 19, 2025, Proclamation. While federal agencies provided some preliminary clarifications in the days after the Proclamation, the latest USCIS guidance offers much-needed details on when the fee applies, who is affected and how exceptions may be granted.

#### Key Updates from the New Guidance

The USCIS has now confirmed that the \$100,000 fee applies to H-1B petitions filed on or after September 21, 2025, only if:

- the beneficiary is outside the United States and does not have a valid H-1B visa; or
- the petition requests or is approved for consular notification.

Notably, the fee does not apply to petitions that request and are approved for the following for beneficiaries already in the United States:

- Extensions of H-1B status;
- Amendments to existing H-1B status;
- Change of status to H-1B; and
- Change of H-1B employer

The USCIS also clarified that beneficiaries in the United States with approved H-1B petitions filed on or after September 21, 2025, will not become subject to the fee if they travel abroad after petition approval. USCIS previously confirmed that departure from the United States does not trigger the fee for those already in H-1B status based on petitions submitted before September 21, 2025.

However, if an extension, amendment or change of status request filed on or after September 21, 2025, is denied and the petition is approved for consular notification, the fee payment will be required. Consular

notification petitions filed on or after September 21, 2025, are also subject to the fee even if the beneficiary was in the United States at the time of filing.

### How to Pay the Fee When It Applies

Payment of the fee must be made via pay.gov before filing the petition and proof of payment must be included with the petition. The USCIS will request the fee payment if a petition requesting an extension, amendment or change of status is approved for consular notification. Otherwise, petitions filed without proof of payment or a DHS-approved exception will be denied. If a petition subject to the fee is denied, the fee will be refunded.

### National Interest Exception

The USCIS outlined the conditions for a national interest exception but notes that it will be granted only in extraordinarily rare circumstances. To qualify, the employer must demonstrate all of the following:

- The foreign national's presence is in the national interest;
- No American worker is available for the role;
- The foreign national does not pose a threat to U.S. security or welfare; and
- Requiring the fee would significantly undermine U.S. interests.

Requests for exceptions must be submitted separately to the Secretary of Homeland Security by email with supporting evidence. Unlike prior national interest exceptions, USCIS did not identify specific industries that would be exempt.

### What to Do

In addition to assessing the impact of the fee on prospective H-1B candidates outside the United States, employers should evaluate whether candidates seeking to change status to H-1B may be required to consular process. While current H-1B visa holders should be able to travel, both employers and employees should anticipate potential delays in consular processing until agency practices are fully established. Employers should continue to monitor agency guidance and legal developments, as further updates and clarifications are expected.

Vorys attorneys are closely tracking the implementation and impact of the Presidential Proclamation and related USCIS guidance. We will provide updates as new information becomes available.