Global Immigration alert

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United States

DHS proposes $103,265 fee for cap-subject H-1B petitions

Executive summary

On 25 August 2026, the Department of Homeland Security published a notice of proposed rulemaking (NPRM) to establish a $103,265 fee for cap-subject H-1B petitions, including those eligible for the advanced degree exemption (known as the Master's cap). DHS will accept comments from the public on the proposed rule until 24 September 2026.

Background and analysis

On 19 September 2025, President Donald J. Trump signed a proclamation, "Restriction on Entry of Certain Nonimmigrant Workers," which prohibited entry of H-1B workers to the United States for a period of 12 months unless their H-1B petitions were "accompanied or supplemented by a payment of $100,000" with certain exceptions. Section 212(f) of the Immigration and Nationality Act (INA), which provides the president with a broad authority to restrict entry of foreign nationals to the United States, was cited as the legal authority supporting the proclamation.

A federal court ultimately vacated the $100,000 payment in June 2026 after concluding that the payment functioned as a tax, which the president does not have the authority to impose, rather than a regulatory fee. The government's appeal of this decision is currently pending. Other legal challenges are ongoing.

By contrast, DHS states in the NPRM that the "new [$103,265] fee is designed, consistent with section 286(m) of the [INA] . . . to recover a portion of the full costs of providing immigration adjudication and naturalization services incurred by multiple Federal agencies . . ." The additional revenue that would be generated through the collection of this fee on H-1B cap-subject petitions selected in the annual lottery would be used to reimburse adjudication and naturalization costs, according to DHS.

Unlike the $100,000 payment required by the proclamation, the NPRM does not suggest that DHS will consider requests for exceptions.

What this means

If the proposed rulemaking is finalized and enacted prior to next year's H-1B cap season, sponsoring employers will be required to pay the $103,265 fee as a "separate, additional" fee when submitting a cap-subject H-1B petition to US Citizenship and Immigration Services. Significantly, the NPRM notes that if the June 2026 order to vacate the $100,000 payment is lifted, DHS would collect that payment consistent with the 19 September 2025 proclamation and "any extension or renewal" of that proclamation.

If finalized, the new proposed $103,265 fee will likely be subject to legal challenges. Employers who submit H-1B cap registrations in the lottery each year are encouraged to submit comments to DHS and to review with immigration counsel how the new fee would impact their programs and hiring strategy for the upcoming cap season.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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