Global Immigration alert

October 2025

United States

USCIS releases clarifying details on the $100,000 payment requirement for certain H-1B petitions

Executive summary

On 20 October 2025, U.S. Citizenship and Immigration Services (USCIS) released clarifying guidance on the $100,000 payment requirement for certain H-1B petitions, following the presidential proclamation introducing the new payment issued on 19 September 2025.

Per this guidance, the payment applies to H-1B petitions filed after 21 September 2025 for foreign nationals outside the United States who do not hold a valid H-1B visa, as well as petitions requesting consular processing, port of entry notification, or pre-flight inspection submitted on behalf of foreign nationals already in the United States. USCIS will also require the payment if an H-1B petition is filed requesting a change of status, amendment, or extension of stay but USCIS determines the change, amendment, or extension cannot or will not be granted, or if a foreign national departs the U.S. before adjudication of a change of status request because such departure has the effect of abandoning that request but still permits approval of the underlying H-1B petition.

Background and analysis

On 19 September 2025, President Donald J. Trump signed a proclamation, "Restriction on Entry of Certain Nonimmigrant Workers." The proclamation, which went into effect at 12:01 am on 21 September, prohibits entry of H-1B workers to the United States unless their H-1B petitions are "accompanied or supplemented by a payment of $100,000" with certain exceptions. The proclamation cites the Immigration and Nationality Act (INA) section 212(f), which provides the president with a broad authority to restrict entry of foreign nationals to the United States.

The 20 October guidance provided by USCIS confirms that an employer will be required to pay the $100,000 prior to filing:

- H-1B petitions for a foreign national who is outside the United States who does not hold a valid H-1B visa;
- H-1B petitions requesting consular notification, port of entry notification, or pre-flight inspection filed on behalf of foreign nationals inside the United States; and
- H-1B petitions where a change of status, amendment, or extension of stay is denied due to ineligibility or the foreign national has departed the United States before adjudication of a change of status request.

If the payment applies, then employers must pay the $100,000 prior to filing an H-1B petition, following the instructions on pay.gov at the following link: https://www.pay.gov/public/form/start/1772005176. The petition submitted to USCIS must include proof of payment or documentation of an approved exception from the Secretary of Homeland Security. Petitions subject to the payment that are filed without this documentation will be denied.

USCIS has also provided the criteria and process to request an exception to the $100,000 payment. Exceptions to the payment requirement may be granted by the Secretary of Homeland Security, but only in "extraordinarily rare" cases according to USCIS. To qualify, the petitioning employer must demonstrate that:

- The foreign national's presence in the United States is in the national interest;
- No American worker is available to fill the role;

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- The worker does not pose a threat to U.S. security or welfare; *and*
- Requiring the payment would "significantly undermine" U.S. interests.

Employers who believe their case meets this "high threshold" are directed to submit a request with supporting documentation to H1BExceptions@hq.dhs.gov.

What this means

The payment requirement does not apply to foreign nationals in possession of a valid H-1B visa, H-1B petitions filed before the effective date, or approved petitions for foreign nationals in the United States who are granted a change of status, amendment, or extension. USCIS has also confirmed that current H-1B visa holders may continue to travel in and out of the United States without being subject to the payment.

As anticipated, the proclamation and new payment requirement are already the subject of litigation; two federal lawsuits have been filed against the Secretary of Homeland Security with the most recent filed by the U.S. Chamber of Commerce, America's largest business organization, seeking injunctive relief that would block the application of the $100,000 payment.

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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