

USCIS provides clarification on new \$100,000 H1B visa fee and possible exceptions

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Early this week, U.S. Customs and Immigration Services (USCIS) posted additional information regarding the new \$100,000 fee for H1B visas. On September 19, President Trump issued a proclamation that all new H1B visas would be subject to a \$100,000 fee in an effort to curb alleged fraud in the program and promote hiring of U.S. workers. You can read more about this announcement and the H1B program [here](#). This change understandably caused immense confusion and concern among employers, current H1B holders, and those who saw the program as a pathway to live and work in the U.S., such as foreign nationals currently in the U.S. on student visas.

When is payment required?

The update this week appears to leave a pathway open for foreign nationals currently lawfully in the U.S. who are eligible for change of status from their current status to H1B status. The full update can be found [here](#). The main clarifications from this recent update are quoted below:

The new fee applies to:

- New H-1B petitions filed at or after 12:01 a.m. eastern daylight time on September 21, 2025, on behalf of beneficiaries **who are outside the United States and do not have a valid H1B visa.**
- A petition filed at or after 12:01 a.m. eastern daylight time on September 21, 2025 **that requests consular notification, port of entry notification, or pre-flight inspection for an alien in the United States.**
- A petition filed at or after 12:01 a.m. eastern daylight time on September 21, 2025, **that requests a change of status or amendment or extension of stay and USCIS determines that the alien is ineligible for a change of status or an amendment or extension of stay** (e.g., is not in a valid nonimmigrant visa status or if the alien departs the United States prior to adjudication of a change of status request)

The new fee does not apply to:

- any **previously issued and currently valid H-1B visas**
- **any petitions submitted prior to 12:01 a.m. eastern daylight time on September 21, 2025**
- **a petition** filed at or after 12:01 a.m. eastern daylight time on September 21, 2025, that is **requesting an amendment, change of status, or extension of stay for an alien inside the United States where the alien is granted such amendment, change, or extension**

Additionally, the Proclamation does not prevent any holder of a current H1B visa, or any beneficiary whose petition for change of status, amendment, or extension is approved, from traveling in and out of the United States. Further, a beneficiary of a change of status, amendment, or extension 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 based on the approved petition and/or seeks to reenter the United States on a current H1B visa.

While this new proclamation limits opportunities for those looking to enter the U.S. for the first time, it should alleviate the concerns of those already in the U.S. on an H1B visa or those seeking to change their status from another valid non-immigrant visa to an H1B visa. It also appears to leave open the opportunity for newly admitted foreign nationals on student visas or other visas to eventually change status to H1B without being subject to the \$100,000 fee.

SUMMARY

Early this week, U.S. Customs and Immigration Services (USCIS) posted additional information regarding the new \$100,000 fee for H1B visas. On September 19, President Trump issued a proclamation that all new H1B visas would be subject to a \$100,000 fee in an effort to curb alleged fraud in the program and promote hiring of U.S. ... [Continued](#)

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Notably, petitioners seeking a change of status to H1B, extension of stay of a current H1B, or amendment of an H1B visa that is ultimately denied by USCIS will subsequently be required to pay the \$100,000 fee. Presumably, this is intended to capture circumstances where the beneficiary is required to depart the United States and seek reentry to remain in H1B status due to being in an invalid status at the time of the petition or departing the U.S. prior to the petition being adjudicated. The application of this aspect of the fee remains unclear. This contingency raises the stakes for employers and visa holders to ensure they maintain lawful status at all times, file timely amendments as required by law when job duties materially change for a sponsored employee, and ensure timely filing of extensions of status.

Clarification of exception process to the fee:

In addition to the above, national interest exception to the fee for petitions seeking to sponsor an employee has been established. To qualify for this exception, the Secretary of Homeland Security must determine that:

1. A particular alien worker's presence in the United States as an H-1B worker is in the national interest;
2. No American worker is available to fill the role;
3. The alien worker does not pose a threat to the security or welfare of the United States; and
4. Requiring the petitioning employer to make the payment on the alien's behalf would significantly undermine the interests of the United States.

Employers who believe their prospective employee may meet this criterion must submit an exception request to the Secretary of Homeland Security, along with supporting evidence, to H1BExceptions@hq.dhs.gov. Petitioners must receive confirmation of the exception prior to filing the petition with USCIS and submit confirmation of the approved exception with their petition.

It's not clear how these exceptions will be evaluated or the frequency of approvals that will be granted. The clarification issued by USCIS contains much more restrictive language than originally included in the Proclamation, providing that these exceptions will be granted in an "extraordinarily rare circumstance" and noting that the criteria creates a "high threshold."

When must payment be made?

A sponsor that plans to file a petition subject to the fee must first make payment through an [online portal](#) and submit proof of payment with the petition.

Takeaways for employers and foreign workers

While clarification on the fee process and the exception process were certainly needed, the standards for the exception process leave many questions and concerns. The biggest takeaway for stakeholders from the clarification is that the fee will *not* apply to a beneficiaries eligible for a change of status to H1B, which seemingly leaves open the status for students or recent graduates in F1 status or who may be completing post-completion OPT, or medical professionals currently in J1 or TN status who are eligible for a change of status to an H1B visa. At this time, although much about the exception process remains unknown, it appears that it will only be necessary in two scenarios: where a foreign worker is seeking to enter the U.S. for the first time in H1B status, or where the potential beneficiary is currently in the U.S. and is not eligible for a change of status to H1B, extensions of their H1B status, or amendment of their H1B status.

We will continue to monitor this process for updates and expect guidance to evolve as fee payments and exceptions are submitted for adjudication.

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