

USCIS Issues Clarification on H-1B Proclamation

October 22, 2025 Update on the \$100,000 H-1B Fee

On October 20, 2025, USCIS issued further clarification on the Proclamation on Restriction on Entry of Certain Nonimmigrant Workers that was issued on September 19, 2025.

In a nutshell, who is NOT subject to the \$100,000 fee?

The \$100,000 fee does not apply to:

- Foreign nationals who have a currently valid H-1B visa foil
- Foreign nationals whose H-1B petitions were filed before September 21, 2025
- Foreign nationals who receive an approval of their H-1B petition requesting a Change of Status, Amendment, Extension of Stay, or Change of Employer. Such foreign nationals will not become subject to the fee if they leave the U.S. and apply for a visa foil based on the approved petition.

Petition Type Filed On or After September 21, 2025*	Fee Applies?	Conditions
Consular Notification (incl. port of entry & pre-flight inspection notification)	Yes	Exception: fee does not apply if beneficiary has a valid H-1B visa
Change of Status	No	If change of status is granted (i.e. maintained status and no intervening travel abroad)**
	Yes	If change of status is denied and petition is approved for consular notification
Extension of Stay	No	If extension of stay is granted (i.e. maintained status)**
	Yes	If extension of stay is denied and petition is approved for consular notification

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Petition Type Filed On or After September 21, 2025*	Fee Applies?	Conditions
Amendment	No	If amendment is granted (i.e. maintained status)**
	Yes	If petition is approved for consular notification
Change of Employer	No	If approved as an extension of stay (i.e. maintained status)**
	Yes	If extension of stay is denied and petition is approved for consular notification

* Fee does not apply to petitions filed prior to September 21, 2025.

** Fee does not apply to subsequent travel after approval of petition for change of status, extension of stay, or amendment filed after September 21, 2025.

Note: International travel during pendency of the case and other factors may change the analysis above.

If subject to the fee, payment is made via ACH through <https://www.pay.gov/public/form/start/1772005176>

Based on the October 20th USCIS guidance, what new information do we have now that was unconfirmed before?

We now have confirmation that the Proclamation is much narrower in scope than initially announced. The \$100,000 fee **does not** apply to H-1B petitions that are approved for Change of Status, Amendments, and Extensions of Stay. Although Change of Employer petitions (also known as H-1B Transfers) are not specifically named, we believe that is covered by "Extensions of Stay."

H-1B petitions requesting Consular Notification (including Port of Entry or Pre-flight Inspection petitions) are subject to the \$100,000 fee, **but the fee does not apply if an individual holds a valid H-1B visa stamp.**

H-1B petitions requesting a Change of Status, Amendment, or Extension of Stay where those requests are denied and ultimately approved as Consular Notification (or Port of Entry or Pre-flight Inspection petitions) and thus requiring the foreign national to travel internationally to activate the H-1B, are subject to the \$100,000 fee.

USCIS guidance also limits the National Interest Exception for individuals and not for entire companies or even entire industries.

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What did we know prior to the October 20th guidance?

The Proclamation was broad in scope when it was issued on September 19, 2025 and it appeared based on the plain language in the Proclamation that all H-1B workers entering the United States on or after 12:01 a.m. EST on September 21, 2025 would be subject to a \$100,000 fee. On September 20, 2025, US Citizenship & Immigration Services (USCIS), Customs & Border Protection (CBP), and Department of State (DOS) issued guidance narrowing the scope of the Proclamation to petitions that had not yet been filed before September 21, 2025. The guidance exempted H-1B workers that already possessed validly issued H-1B visa foils, even if they were outside of the United States, and also appeared to exempt H-1B extensions.

The Proclamation provided that national interest exceptions may be granted for individuals, foreign nationals of entire companies, or all foreign nationals within certain industries, if the Department of Homeland Security determined that the hiring of such individuals is in the national interest and does not pose a threat to the security or welfare of the United States.

If subject to the fee, when and how does an employer pay the \$100,000 fee?

An employer filing an H-1B petition for Consular Notification would pay the \$100,000 at the time of filing the H-1B petition with USCIS. Employers would make the payment by ACH wire transfer on <https://www.pay.gov/public/form/start/1772005176><https://www.pay.gov/public/form/start/1772005176>

Can the H-1B employee pay for the \$100,000 fee?

The USCIS guidance is silent on whether the employer must pay. However, until there is further clarification, it would be best for the employer to cover the cost.

Are there any exceptions to the \$100,000 H-1B fee?

Exceptions are described in the USCIS guidance as “extraordinarily rare” and are required to meet the following criteria:

- The H-1B worker's presence in the U.S. is deemed by the U.S. Department of Homeland Security Secretary to be “in the national interest”;
- No American worker is available to fill the role offered to the foreign national;
- The worker does not pose a threat to the security or welfare of the United States; and
- Requiring the employer to make the payment would significantly undermine the interests of the United States.

What is the process for applying for National Interest Exceptions?

If the sponsoring employer believes that the H-1B petition for a specific worker meets the criteria above, the employer may then “seek an exception by sending their request and all supporting evidence to H1BExceptions@hq.dhs.gov for a National Interest Exception (NIE). USCIS has not provided any additional details about how these requests will be processed, how long they will take, or what specific evidence should be provided in the request (e.g. whether the employer should provide results of the worker’s background check to show that the individual does not pose a threat, or whether that would be conducted by the U.S. government). It is our understanding that the NIE request would be submitted prior to filing the H-1B petition and, if granted by the Secretary, such proof would be submitted to USCIS with the H-1B petition.

How does an employer know whether an H-1B petition or worker is subject to the fee?

For most petitions, an employer can confirm whether or not a worker will be subject to the \$100,000 fee based on the criteria in the chart above. In petitions requesting an Amendment, Extension of Stay, or Change of Status, if it is unclear whether USCIS would deem the foreign national to have maintained valid status, the sponsoring employer may find out only upon receiving the decision whether USCIS has approved or denied the Amendment, Extension of Stay, or Change of Status. If USCIS denied those requests to extend/change status and approved the petition for Consular Notification (or Port of Entry or Pre-flight Inspection), it is unclear whether an NIE may then be requested at that time in order to avoid the \$100,000 H-1B fee. We are awaiting agency guidance on this.

Are cap exempt organizations included under the Proclamation?

Currently, USCIS has not provided any exception for cap-exempt organizations. Therefore, at this time, YES, cap-exempt organizations are subject to the Proclamation.

Are H-1B1s for Chileans and Singaporeans included under the Proclamation?

No official guidance has been provided at this time, but the U.S. Embassy in Singapore posted on Facebook: “The recent presidential Proclamation regarding H-1B visas does not apply to the H-1B1 visa for Singaporean citizens. There is no change to the H-1B1 process at this time.”

The U.S. Embassy in Chile makes no specific mention of the Proclamation, but we believe Chilean H-1B1 holders would also be exempt from the \$100,000 fee.

Is this Proclamation being challenged in the courts?

There are two pending lawsuits. The first lawsuit was filed in federal district court in California on October 3, 2025 by a coalition of labor unions, health care providers, schools, and religious organizations that came together to file suit. The second lawsuit was filed in the District of Columbia on October 16, 2025 by the US Chamber of Commerce.

Both lawsuits argue that the Proclamation oversteps the bounds of presidential authority and that the administration violated the Administrative Procedure Act and did not follow the required regulatory process.

What are some resources for further reading?

- Presidential [Proclamation](#) titled “Restriction on Entry of Certain Nonimmigrant Workers” published September 19, 2025
- USCIS [Memo](#) released on September 20, 2025 seeking to clarify the Proclamation
- CBP [Memo](#) also released on September 20, 2025 after USCIS Memo
- FAQ pages released by the [Department of State](#) and [White House](#) on the Proclamation on September 21, 2025
- Updated [H-1B Specialty Occupations](#) page on USCIS website featuring a new section titled “Presidential Proclamation on Restriction on Entry of Certain Nonimmigrant Workers” on October 20, 2025
- Facebook post by the [U.S. Embassy in Singapore](#) stating that “The recent presidential Proclamation regarding H-1B visas does not apply to the H-1B1 visa for Singaporean citizens. There is no change to the H-1B1 process at this time.”

As always, foreign national employees should consult a WR attorney before finalizing any international travel. For case-specific questions and/or further guidance on the \$100,000 H-1B fee that keeps evolving, please contact your WR Immigration attorney.