

PUBLICATION

Sigh of Relief for Many H-1B Workers and Petitioning Employers: USCIS Issues Clarification on \$100,000 H-1B Fee

Authors: Robert C. Divine, Lydia Mabel Arroyo-Tirado, Robert N. Johnson, Melanie Colvert Walker
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United States Citizenship and Immigration Services (USCIS) has announced that the \$100,000 H-1B fee does not apply to workers already in the U.S., even in some other status such as visitor or student, as long as they are found eligible for approval of change of status or extension of stay and even when they later travel and apply for a visa to return to the United States.

On October 20, 2025, USCIS issued new guidance – **H-1B Specialty Occupations** – on payment and scope of the \$100,000 H-1B fee under the September 19 Presidential Proclamation, **Restriction on Entry of Certain Nonimmigrant Workers**. This new guidance from the agency confirms that the following H-1B petitions filed on or after 12:01 am ET on September 21, 2025 are subject to the \$100,000 fee:

- Beneficiaries who are **outside the United States** and do not have a valid H-1B visa.
- H-1B petitions for beneficiaries **in the United States** that request consular notification, port of entry notification, or pre-flight inspection.
- H-1B petitions for beneficiaries requesting a change of status or amendment or extension of stay and **USCIS determines that the foreign national is ineligible for a change of status or amendment or extension of stay** (e.g., beneficiary is not in a valid nonimmigrant visa status or if the foreign national departs the United States prior to adjudication of a change of status request).

This update is great news for students in F-1 status changing to H-1B status in future H-1B CAP seasons. Specifically, applications filed within the U.S. are exempt from the new \$100,000 fee, providing significant relief for students already in the country. The new guidance further clarifies that the Proclamation does not apply to a petition filed on or after 12:01 am ET on September 21, 2025 in the following circumstances:

- H-1B petition for beneficiaries requesting an amendment, change of status or extension of stay for foreign nationals inside the United States where the foreign national is granted such amendment, change of status, or extension of stay. This would include H-1B change of employer filings for beneficiaries within the U.S.
- Beneficiaries of approved amendment, change of status, or extension petitions who subsequently depart the United States and apply for a visa based on the approved petition and/or seek to reenter the United States on a current H-1B visa.

How and When to Pay the \$100,000 Payment

Petitioners should submit the required \$100,000 payment using pay.gov, following the instructions on the website at the following link: <https://www.pay.gov/public/form/start/1772005176>. Payment must be made prior to filing a petition with USCIS as petitioners must provide proof of payment with the petition filing or evidence of an exception to the \$100,000 fee. **H-1B petitions subject to the fee and filed without evidence of payment (or an explanation of exemption from the fee) will be denied.**

Exceptions Granted by the Secretary of Homeland Security

Exceptions to the \$100,000 payment are granted by the Secretary of Homeland Security in the extraordinarily rare circumstance where the Secretary has determined that a particular foreign national's presence in the United States as an H-1B worker is in the national interest. Petitioners should include evidence of the following when requesting an exception through the designated mailbox at H1BExceptions@hq.dhs.gov:

- No American worker is available to fill the role;
- The H-1B worker does not pose a threat to the security or welfare of the United States; and
- Requiring the petitioning employer to pay the \$100,000 fee on the H-1B workers behalf will significantly undermine the interests of the United States.

Please contact a [Baker Donelson immigration attorney](#) with any questions. Our attorneys are prepared to help employers and employees navigate new or pending cases subject to the Proclamation.