

## **Alert** | Immigration & Compliance



September 2025

### **The New \$100,000 H-1B Filing Fee: Employer Considerations**

On Sept. 19, 2025, President Trump signed a [Presidential Proclamation](#) introducing a mandatory \$100,000.00 one-time fee for all “new” H-1B petitions filed on or after Sept. 21, 2025. This represents a significant increase to H-1B filing costs and may substantially affect employers’ immigration strategies and budgets. The fee is effective for 12 months, until Sept. 21, 2026 (unless extended).

**Key Takeaway:** Petitions submitted prior to Sept. 21, 2025, are unaffected by this fee increase. The practical impact may vary significantly between cap-subject and cap-exempt employers due to regulatory timing restrictions and uncertainty over petition classifications.

**Critical Implementation Gap:** While the fee is now in effect, employers currently have no guidance on how to make the \$100,000 payment.

**Cap-exempt employers** (universities, nonprofits, research organizations) who file “new” petitions after Sept. 21, 2025, including both change of status and consular notification petitions, will need to either pay the \$100,000 fee or argue they meet national interest exception criteria.

## IMMEDIATE ACTION REQUIRED

### *A. For Employers with Pending H-1B Filings*

Petitions filed before Sept. 21, 2025, are not subject to any additional fees and are unaffected by this proclamation. However, all “new” petitions filed on or after Sept. 21, 2025, must include the \$100,000 fee unless exempted.

U.S. Citizenship and Immigration Services (USCIS) has officially confirmed that renewal petitions are exempt from the fee. However, the status of change of employer and amendment petitions, which employers must file every time there is a substantial change in the H-1B worker’s job duties or work conditions, or if the worker moves to another employer, respectively, remains unclear, as it depends on whether these are classified as exempt “renewals” or fee-subject “new” petitions.

The FY2026 H-1B lottery impacts employers, as all participants will be subject to the new fee unless they obtain a national interest exception from Department of Homeland Security (DHS).

### *B. Understanding the Practical Scope*

Due to regulatory timing restrictions, cap-subject employers cannot file new H-1B petitions, either consular or change of status petitions, outside of annual lottery seasons. The next opportunity for such filings is the FY2026 cap season, with registration occurring in March 2026 and petition filing from April through July 2026.

This timing limitation creates a potentially narrow scope for the fee’s impact on cap-subject employers. If USCIS deems amendments and change of employer petitions “renewals,” then for cap-subject employers, the fee would only impact annual cap lottery petitions rather than ongoing H-1B activity.

**Budget Planning Approach:** Given the potential for limited scope, employers may wish to focus on running H-1B lottery budget analysis rather than immediately overhauling entire immigration budgets. The impact may be concentrated primarily on annual cap petitions instead of day-to-day H-1B operations. However, broader immigration budget revisions may be needed pending clarification of how USCIS defines “renewal” versus “new” petitions.

### *C. Critical Implementation Issue*

**Payment of Fee:** While the \$100,000 fee is now in effect, employers currently have no official guidance on payment methods, processing procedures, or verification requirements. This creates immediate practical challenges for any employer needing to file “new” H-1B petitions after Sept. 21, 2025. Employers may wish to assess which positions justify the increased cost and consider alternative visa categories where appropriate.

## KEY PROVISIONS

### *Scope and Applicability*

- Applies to “**new**” **H-1B petitions** filed Sept. 21, 2025, or later.
- **Uncertain scope:** Amendment and change of employer petitions may be classified as exempt “renewals” or fee-subject “new” petitions.

- Current H-1B visa holders can continue to use their visas for international travel.
- **Cap-subject timing restriction:** Due to regulatory limitations, cap-subject employers cannot file new change of status petitions outside annual lottery seasons (the next opportunity to file “new” cap-subject petitions will be under the FY2026 cap: registration March 2026, filing April-July 2026).

#### *Fee Structure*

- **Amount:** \$100,000.00 per “new” petition (one-time fee).
- **Payer:** H-1B employer/petitioner.
- **Payment:** Must accompany or supplement the petition.
- **Verification:** Required by Department of State (DOS) and DHS/USCIS.

#### *Duration*

- Effective for **12 months**, until Sept. 21, 2026.
- May be extended beyond initial period.

#### *National Interest Exceptions*

- DHS may grant case-by-case exceptions deemed necessary for national interest.
- May apply to individual workers, specific employers, or entire industries.
- Potential qualifying sectors include defense, health care, and STEM research.

#### *Additional Directives*

- Department of Labor (DOL) directed to revise prevailing wage levels.
- Agencies must prioritize higher-paid, highly skilled H-1B workers.

### **LEGAL CONSIDERATIONS**

#### *Litigation Risk*

- Legal challenges to the proclamation’s constitutionality and fee-setting authority are expected.
- Possible outcomes include injunctions or policy revisions.
- Employers should monitor legal developments closely.
- **HIGH LEGAL RISK:** Multiple sources indicate legal challenges are expected given the unusual method of implementing such a significant fee increase without the typical rulemaking process.

## **FREQUENTLY ASKED QUESTIONS**

*Updated with Official USCIS Guidance and DOS and White House Clarifications*

### **Q: Are current H-1B workers in the United States affected?**

**A: OFFICIAL:** No. Current H-1B holders are not impacted and can continue to travel freely in and out of the United States without being subject to the fee requirement. The restriction applies only to individuals seeking to enter or re-enter the United States after Sept. 21, 2025 on “new” petitions.

### **Q: Does the new fee apply to H-1B petitions filed before Sept. 21, 2025?**

**A: OFFICIAL:** No. Petitions filed before Sept. 21, 2025, are exempt from the additional fee. This includes the FY2025 lottery winners, and any other petitions submitted before the deadline.

### **Q: Is this a one-time or recurring annual fee?**

**A: OFFICIAL:** The White House press secretary has confirmed this is a one-time fee, not an annual payment. This clarification corrects earlier conflicting statements.

### **Q: Does the fee apply to H-1B renewals and extensions?**

**A: OFFICIAL:** No. USCIS has confirmed the fee does NOT apply to renewal or extension petitions. However, it’s still unclear whether amendments or change of employer petitions are considered “new petitions” or “renewals.” **NOTE:** Under U.S. immigration law, “renewal” strictly refers to obtaining new visa stamps at U.S. consulates abroad, while “extension” refers to extending immigration status through I-129 petitions filed with USCIS. This technical distinction adds confusion to interpreting the proclamation’s scope.

### **Q: Can current H-1B holders travel internationally?**

**A: OFFICIAL:** Yes. USCIS guidance explicitly states that holders of current H-1B visas can continue to travel in and out of the United States without restriction.

### **Q: What about H-1B amendments and change of employer petitions filed after Sept. 21, 2025?**

**A: UNCLEAR STATUS:** Whether these require the \$100,000 fee depends on whether they’re classified as “new petitions” (subject to fee) or “renewals” (exempt). USCIS has not clarified this critical distinction. Until USCIS provides guidance on whether change of employer or amendment petitions filed after Sept. 21, 2025, are considered “new” petitions, it is unknown whether the new fee is required.

### **Q: Does visa stamping abroad trigger the \$100,000 fee?**

**A: NO, if petition filed before deadline:** If a worker traveled abroad for visa stamping based on any petition (extension, change of employer, or initial petition) filed BEFORE Sept. 21, 2025, obtaining the new H-1B visa stamp did NOT trigger the \$100,000 fee. The fee requirement is tied to the petition filing date, not the visa stamping date.

**Q: Does this affect the FY2026 H-1B lottery?**

**A: OFFICIAL:** Yes. USCIS has confirmed that the 2026 lottery will require the \$100,000 payment (unless it grants a national interest exception), as this will be considered a “new” petition. However, only “new” H-1B petitions are subject to the fee – “renewal” petitions are explicitly exempt, and the status of amendments and change of employer petitions remains unclear.

**Q: When and where must the \$100,000 fee be paid?**

**A: MAJOR IMPLEMENTATION GAP:** While the proclamation states the fee must be paid to the U.S. government and accompany or supplement the petition, no official guidance exists on how employers can make this payment. Employers must retain proof of payment, and DOS will verify payment before issuing visas at U.S. consulates abroad, but the exact payment process, methods, verification procedures, and integration with existing USCIS filing systems remain unclear. This creates immediate practical challenges for any employer needing to file “new” H-1B petitions now.

**Q: Who is responsible for paying the fee?**

**A:** The employer/petitioner is responsible for the fee. It’s unclear whether costs can be passed on to employees.

**Q: How do we apply for a national interest exception?**

**A: STILL UNCLEAR:** There’s no guidance yet on eligibility criteria, application procedures, or required documentation for national interest exceptions that may apply to individual workers, companies, or entire industries. Cap-exempt filing organizations (universities, nonprofit research institutions, government research organizations) may have an argument for an exemption from the new fee under this provision, but we await official guidance on the standards and criteria that will be applied.

**Q: Does this affect cap-exempt employers (universities, nonprofits)?**

**A: CLARIFIED:** Cap-exempt organizations that file new H-1B petitions after Sept. 21, 2025, will be subject to the \$100,000 fee, as the proclamation does not specifically exempt them. However, these organizations may have an argument for national interest exemptions (see previous question for details).

**Q: What constitutes a “renewal” versus a “new” petition?**

**A: PARTIALLY CLARIFIED:** USCIS has confirmed that renewal petitions are exempt from the fee. However, it remains unclear whether amendments and change of employer petitions are considered “new petitions” subject to the fee or “renewals” that are exempt. **CRITICAL IMPLICATION:** Cap-subject petitioners cannot file new change of status H-1B petitions outside of the annual lottery season due to regulatory timing restrictions (the next opportunity for cap-subject employers to file “new” petitions will be under the FY2026 cap: registration March 2026, filing April-July 2026). Therefore, should “renewal” be interpreted broadly to include change of employer petitions and amendment petitions, then for cap-subject employers the fee would only impact annual H-1B cap lottery petitions rather than ongoing H-1B activity. This interpretation would dramatically limit the practical impact of the fee primarily to new entrants through the annual lottery system.

## OUTSTANDING QUESTIONS

*Updated to reflect official clarifications*

Despite official guidance from USCIS and DOS and White House clarifications, several critical aspects remain unclear:

### *Fee Administration (URGENT)*

- **CRITICAL IMPLEMENTATION GAP:** No guidance on payment methods or procedures for the \$100,000 fee.
- Processing timelines and integration with existing USCIS filing systems.
- Exact payment verification procedures at consulates and ports of entry.
- Updated USCIS forms and filing instructions.
- **IMMEDIATE IMPACT:** Employers needing to file “new” petitions after Sept. 21, 2025, currently have no way to comply with the fee requirement.

### *National Interest Exceptions*

- Eligibility criteria and application process.
- Required documentation and approval timelines.
- Industry-specific guidance and qualifying sectors.

### *Petition Classifications (Partially Clarified)*

- **CLARIFIED:** Renewals and extensions are exempt.
- **STILL UNCLEAR:** Treatment of amendments and change of employer petitions filed after Sept. 21, 2025.

### *Implementation Details (CRITICAL GAPS)*

- **URGENT:** How employers will make the \$100,000 payment to the government (no guidance provided).
- Timeline for processing fee payments and verification systems.
- Impact on pending cases and visa stamping abroad.
- Integration with existing USCIS petition filing procedures.

## OFFICIAL GUIDANCE RELEASED

The following agencies have issued implementation guidance:

- **USCIS:** [H-1B FAQ](#) and [Implementation Memo \(PDF\)](#).



- **U.S. Customs and Border Protection (CBP):** [CBP Guidance](#).
- **DOS:** Guidance issued to all consular offices.
- **White House:** Press secretary clarification that fee is one-time, not annual.

## EMPLOYER CONSIDERATIONS

- **Immediate Review:** Assess all pending and planned H-1B cases.
- **Monitor Payment Guidance:** Urgently track for official guidance on how to make the \$100,000 payment, as this critical implementation detail remains undefined.
- **Legal Monitoring:** Track litigation developments that may affect implementation.
- **Documentation:** Maintain detailed records of all filing dates and fee payments.

This GT Alert has been updated to include official guidance from USCIS (Sept. 20, 2025) and DOS, and White House clarifications. Given the ongoing legal uncertainty and evolving implementation details, employers should continue monitoring for updates.

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