PRACTICE RESOURCES

Practice Alert: Guidance on the $100,000 H-1B Proclamation Fee

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On October 20, 2025, USCIS provided additional information about the September 19, 2025 Presidential Proclamation for the $100,000 H-1B fee.

This update to the USCIS.gov website represents the most detailed information provided to date and has been summarized below. Several important questions remain.

What Has Been Confirmed?

- The fee will be required for any petition filed after 12:01 am EDT on September 21, 2025, so long the following criteria are met:
  - Beneficiary is currently outside of the United States **AND** does not have a valid H 1B visa;
  - Consular notification was the "requested action" selected on the submitted I-129; **OR**
  - USCIS approves the petition but denies the change or extension of status, or the beneficiary departs the U.S. while the petition is pending.
- The fee **will not** be required in the following circumstances:
  - Any petitions filed before 12:01 AM EDT on September 21, 2025;
  - Petitions in which a COS, EOS or amendment is the requested action **and the request is granted**;
  - Visa applications pursuant to H-1B petitions that have been approved as a COS/EOS/Amendment; **OR**
  - Admissions pursuant to a new visa issued based on an approved COS/EOS/Amendment petition or pursuant to a "current valid H-1B visa."

    (See discussion below regarding ambiguity surrounding scope of exception conferred by a "current valid H-1B visa")

Paying the $100,000 Fee

- Petitioners must submit the required $100,000 payment using pay.gov prior to filing, following the instructions on pay.gov at the following link: https://www.pay.gov/public/form/start/1772005176
- The passport information entered into the payment form for the intended beneficiary must match the passport information the beneficiary presents at admission according to the payment form.
- Petitions subject to the fee will be denied if submitted without proof of payment from pay.gov or evidence of a national interest exception. Members have begun to report receiving RFEs requesting payment of the Proclamation fee as a condition of eligibility.
- The fee will be refunded to the petitioner if the petition is denied according to the online payment form.
- Questions about the payment portal itself can be directed to H1BVisaRRP@hq.dhs.gov.

National Interest Exceptions

- Requests for a national interest exception along with supporting evidence must be emailed to H1BExceptions@hq.dhs.gov and are granted by Secretary of DHS in the "extraordinarily rare circumstances" where the Secretary determines that:
  - A particular beneficiary's presence in the United States as an H-1B worker is in the national interest;
  - No "American" is available to fill the role;
  - Requiring the petitioning employer to make the payment on the foreign national's behalf would significantly undermine the interests of the United States; **AND**
  - Beneficiary does not pose a threat to the Security or welfare of the United States.
- No guidance or comments have been made as to what would be required to make this showing (e.g., whether a labor market test, high local unemployment, scarcity of available workers in particular industry or occupation overall, etc. is necessary to show lack of available "American" workers).

What Don’t We Know?

- Whether a valid H-1B visa also exempts any subsequent petitions filed during the validity of that visa after September 21, 2025 (e.g., petitions filed during the visa’s validity for new employment with the same or future employers and approved for consular notification).
- USCIS guidelines only discuss exceptions for a “particular alien” and do not address whether company-wide or industry-wide national interest exceptions will be available or how such waivers might be obtained, despite President Trump’s comments suggesting that industry or occupation-level exceptions might be possible.
- Whether USCIS will publish any anticipated timeframes for the issuance of an NIE and/or whether there will be an expedite procedure in the event of a business emergency or RFE.
- Who is reviewing NIE exemption requests and the training they have received for such review.

AILA encourages members to report trends here: AILA's USCIS Operations Committee or reports@aila.org