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H-1B Proclamation “Restriction on Entry of Certain Nonimmigrant Workers”: What We Do and Don’t Know

On September 19, 2025, President Trump issued a presidential proclamation, “Restriction on Entry of Certain Nonimmigrant Workers,” which announced significant changes to the H-1B non-immigrant visa program. The proclamation mandates a $100,000 fee for new H-1B petitions filed after 12:01 a.m. EDT on September 21, 2025. The stated intent is to prioritize high-skilled and highly paid foreign workers and to prevent misuse of the H-1B program. The proclamation is valid for 12 months unless extended.

The wording and timing of the announcement has led to widespread confusion in the business community and among the thousands of foreign nationals legally present in the United States pursuant to valid H-1B visas. This caused the White House and government agencies to quickly issue explanations that have been less than clear and in some instances contradictory.

Policy Clarifications

In a memo published shortly after President Trump’s proclamation, U.S. Citizenship and Immigration Service (USCIS) stressed that it applies exclusively to ***new*** H-1B petitions filed ***after*** the September 21 effective date. On September 20, U.S. Customs and Border Protection (CBP) posted on X: “President Trump’s updated H-1B visa requirement applies only to new, prospective petitions that have not yet been filed. Petitions submitted prior to September 21, 2025 are not affected.” The U.S. Department of State (DOS) stated, “The Proclamation’s restrictions on visa issuance and entry apply only to aliens seeking visa issuance or entry into the United States based on H-1B petitions filed with USCIS after the Proclamation’s effective date of September 21, 2025, at 12:01 a.m. Eastern Daylight Time (EDT).”

That same day, USCIS issued FAQs about the new rule clarifying that the proclamation:

- Does not apply to any previously issued H-1B visas, or any petitions submitted prior to 12:01 a.m. EDT on September 21, 2025.
- Does not change any payments or fees required to be submitted in connection with any H-1B renewals. The fee is a one-time fee on submission of a new H-1B petition.
- Does not prevent any holder of a current H-1B visa from traveling in and out of the United States.

What We Know

President Trump's proclamation does not impact petitions filed or approved prior to September 21, 2025, or individuals currently in possession of valid H-1B visas. Based on preliminary results, petitions for extension of status for individuals currently in the United States are being accepted by USCIS without mention of the new fee. It is expected that amended petitions and change of employer petitions will be exempt as well.

The most immediate impact of the proclamation is on cap-exempt H-1B petitions for workers at non-profit organizations and institutions of higher education. Absent further clarification or a decision to exempt such filings, cap-exempt H-1B petitions for foreign workers who are currently abroad filed after September 21 are subject to the new fee.

Fee payment will be verified by DOS before visa issuance. However, to date, there is no mechanism or instructions for paying the $100,000 fee.

What We Don't Know

Despite various clarifications, FAQs, and posts on X, there are many unanswered questions, including:

- What constitutes a "new" H-1B petition subject to the rule? Will the administration confirm that amendments, extensions, and changes of employer from within the U.S. are exempt?

- Is this really a "travel ban" that only applies to individuals seeking visa issuance or entry, and thus will not impact individuals who choose to remain in the U.S.?
- How is the fee to be paid?
- Are consulates (DOS) and ports of entry (CBP) being updated with the latest clarifying guidance to avoid improper denials of visas and re-entry?
- Will cap-exempt petitioners, such as universities and non-profit research institutions, be exempted by DHS?
- What is the process for requesting a National Interest Exception (NIE), and which agency will adjudicate such requests?

Recommendations for H-1B Visa Holders

It would be safer for individuals in H-1B status to postpone upcoming optional travel until we obtain more clarity on the full implications of the new H-1B fee. But if they need to travel, there is a continuum of risk, as outlined below, for them to consider in conjunction with their employers and legal counsel.

- **Low risk – NON-ESSENTIAL TRAVEL DISCOURAGED**
  - Employees with current H-1B approvals received prior to September 21 and valid passport visa stamps (thus no visit to a U.S. consulate).
  - Canadian citizens with current H-1B approvals prior to September 21 (thus no visit to a U.S. consulate).
- **Medium risk – AVOID NON-ESSENTIAL TRAVEL**
  - Employees with current H-1B approvals received prior to September 21 who need to visit a U.S. consulate for a new visa stamp during upcoming foreign travel. Not only are these individuals at greater risk due to the proclamation, but there has generally been greater risk of consular delays and denials in the last few months.

    - Employees approved for a change of employer, amendment, or extension after September 21. While these groups appear safe, there remains some uncertainty.

- **High risk – DO NOT TRAVEL OUTSIDE THE U.S.**
    - Employees with "new" H-1B approvals filed or approved after September 21 (e.g. cap-exempt beneficiaries or 2026 lottery candidates)

Key Takeaways and Next Steps

The $100,000 fee proclamation introduces a significant financial and procedural shift in H-1B non-immigrant policy. While current visa holders and previously filed petitions are unaffected, ambiguity surrounding exemptions, travel risks, and the definition of "new" petitions stresses the need for heightened caution. Employers should proactively assess their H-1B workforce, seek legal guidance, and prepare contingency plans for evolving interpretations and enforcement. Additionally, employers may want to consider drafting internal communications with legal counsel to share with their H-1B employees to address any concerns and advise them of the current travel risks.

Frost Brown Todd's immigration team is available to help companies and individuals navigate this complex regulatory landscape and mitigate potential business disruptions. Please reach out to the authors for assistance.