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USCIS Clarifies the New \$100,000 H-1B Fee Proclamation

As we [reported earlier](#), on September 19, 2025, a Presidential Proclamation introduced a \$100,000 government fee for certain new H-1B visa petitions. On Monday, October 20, 2025, U.S. Citizenship and Immigration Services (USCIS) published additional guidance on the implementation of the mandatory \$100,000 fee for new H-1B petitions filed after 12:01 a.m. EDT on September 21, 2025. The guidance clarifies the application of this fee and outlines how a petitioner may qualify for a National Interest Exception (NIE) to the new fee.

When Is the New Fee Required?

The new USCIS guidance clarifies scenarios when a petitioner will be required to pay the \$100,000 fee. As previously understood, the new fee is mandatory for H-1B petitions filed on behalf of an individual who is outside the United States and does not have a valid H-1B visa. The fee is also required for H-1B petitions filed on behalf of an individual who is located inside the United States but elects to apply for an H-1B visa outside the United States at a consulate, port of entry, or pre-flight inspection, or for whom a change of status or extension of stay request is denied. The \$100,000 fee must be paid [online via electronic check](#). Proof of the \$100,000 payment, or evidence of an approved NIE, must be filed with the H-1B petition, or USCIS will deny the petition. This is a one-time charge and not a recurring annual fee as was initially suggested by the Trump administration.

When Is the New Fee Not Required?

The new USCIS guidance clarifies the fee does not apply to any petitions filed on behalf of individuals with previously issued and currently valid H-1B visas or any H-1B petitions submitted prior to September 21, 2025. It does not apply to H-1B petitions that request a change of status, an H-1B amendment, or an extension of stay for

an individual inside the United States that is approved. Beneficiaries of such approved petitions may travel abroad for new H-1B visa stamps without payment of the new fee.

Is It Safe to Travel?

According to USCIS, the proclamation does not prevent current H-1B visa holders from traveling in and out of the United States. Those who are considering travel should, in conjunction with their employers and legal counsel, consider the risks associated with travel outlined in our [previous advisory](#).

How Does a Petitioner Qualify for a NIE?

A significant development announced in the new USCIS guidance is a pathway for requesting a NIE from Homeland Security Secretary Kristi Noem. The secretary may grant a NIE if she determines:

- A particular alien worker's presence in the United States as an H-1B worker is in the national interest;
- No American worker is available to fill the role;
- The alien worker does not pose a threat to the security or welfare of the United States; and
- That requiring the petitioning employer to make the payment on the alien's behalf would significantly undermine the interests of the United States.

USCIS notes that granting a NIE is an "extraordinarily rare circumstance," and the criteria constitute a "high threshold." Petitioners should consult with their legal counsel to determine if a viable argument for a NIE exists.

Is Relief on the Way for Those Subject to the New Fee?

While the new guidance offers some clarifications that will benefit certain groups, petitioners (cap-subject and cap-exempt) who sponsor prospective H-1B visa holders from abroad will continue to feel the full burden of the new fee requirement. Until we know more

about the Department of Homeland Security's handling of NIE requests, the best hope for relief are two lawsuits that have been filed to enjoin implementation of the new fee. They are currently pending in the federal courts. Due to the federal government shutdown, however, these lawsuits appear to be on hold.

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.

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