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H-1B Program Overhaul: New \$100K Fee and Increased Enforcement

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On September 19, 2025, the Administration issued a Presidential Proclamation imposing new restrictions on H-1B visa holders seeking to enter the United States. Subsequently, additional clarification was provided by USCIS and CBP on September 20, followed by a Department of State H-1B FAQ on September 21. These changes reflect this Administration's stated goal to prevent misuses of the H-1B visa program.

What is Changing?

Under the proclamation, and based on the USCIS, CBP, and DOS clarifications, effective at 12:01 a.m. EDT on September 21, 2025, and continuing through September 21, 2026 (unless extended), any new H-1B petition filed on or after the effective time must be accompanied by a \$100,000 payment. This requirement applies to all new H-1B petition filings, including the FY 2027 H-1B lottery, but does not affect petitions filed or approved before September 21, 2025, previously issued H-1B visas (if visa is required), or "H-1B renewals" in the US. The fee is a one-time payment tied to the submission of a new petition. The federal government is expected to make a recommendation in spring 2026 to extend or renew the \$100,000 payment requirement beyond one year.

USCIS has clarified that H-1B extensions of stay are not subject to the new restrictions. There are, however, remaining uncertainties that are causing confusion. It remains unclear, for example, whether the following types of cases may be subject to the new fee:

- H-1B change of employer or amendment petition would be considered a "new" petition;
- H-1B change of status petitions for individuals who may already be present in the U.S. but in another visa status; and
- Individuals inside the U.S. with a petition filed for them on or after September 21 and who subsequently depart the U.S. to obtain a new visa stamp.

Key Takeaways for Employers:

- New H-1B visa applications require an up-front payment of \$100,000;
- H-1B visas filed or approved before September 21, and future H-1B renewals, should not be affected by the new payment;

- More guidance and new rules are expected in relation to "H-1B renewals" and other terms reflected in the Proclamation; and
- Additional changes to the H-1B, including a wage level-based lottery system, increased enforcement on wage and hour violations, and more onsite visits to assess whether employers and their H-1B employees are complying with the terms and conditions of their visas.

USCIS and DOS have been directed to implement the new payment requirement for employers filing new H-1B petitions for workers abroad and companies should prepare by including the \$100,000 fee in talent management budgets or pursuing other visa sponsorship options. Employers and talent management teams should also be cautious about the H-1B cap lottery and candidates they would include in the lottery for Fiscal Year 2027.

Importantly, the Proclamation does not prevent current H-1B visa holders with valid visas from traveling internationally. However, employers should make sure that employees are proactively communicating about upcoming travels to assess any possible negative impact and issues and consider restricting nonessential international travel for H-1B workers and until further clarification is given.

Future Rules and Guidance Expected

The Proclamation mentions that certain exceptions may be available for individuals or industries where hiring is deemed to be in the national interest and not a threat to U.S. security or welfare, though details remain unclear. This could potentially carve out fields that overlap with national interest waiver standards, but employers should not rely on this until further agency guidance is issued.

The Proclamation directs agencies to initiate new rulemaking expected to significantly raise prevailing wage requirements and prioritize admission of high-skilled, high-paid individuals. For example, a recent proposed regulation seeks to change the H-1B cap lottery process to give greater odds of selection to beneficiaries with the highest wages according to the Department of Labor's four-level prevailing wage system. Proposed changes must follow the federal rulemaking process, including prescribed periods for notice and comment, and then any agency revisions before they are adopted. It is difficult to predict when new rules might be effective.

Department of Labor Wage Enforcement Initiative: Project Firewall

On September 22, 2025, the U.S. Department of Labor announced Project Firewall, a new initiative aimed at investigating employers that use the H-1B program. Potential consequences for violations include repayment of back wages to workers, civil monetary penalties, possible debarment from sponsoring H-1B employees in the future, and in more extreme situations, potential criminal referrals.

To prepare for an expected uptick in investigations and enforcement, as we have started to see this year on I-9 compliance, employers should audit

their current visa-sponsored workforce by reviewing Public Access Files (PAFs), PERM Audit Files, wages, worksites, and job duties. Those responsible for managing H-1Bs programs must be trained on compliance obligations and risks, and companies should establish a clear plan for responding to government inquiries, including designating experienced immigration counsel. Finally, internal communications should emphasize the company's commitment to compliance and non-discrimination.

A Fluid Situation

We anticipate additional changes will be implemented, and our team continues to track updates and monitor guidance from DHS and DOS on how payments will be made, how proof of payment will be documented at ports of entry, and whether any exemptions will apply. We anticipate that heavy H-1B employer users will launch court challenges to the Proclamation and we will continue to provide updates.

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