

# Global Immigration alert

October 2025

## United States

### USCIS releases clarifying details on the \$100,000 payment requirement for certain H-1B petitions

#### Executive summary

On 20 October 2025, U.S. Citizenship and Immigration Services (USCIS) released clarifying guidance on the \$100,000 payment requirement for certain H-1B petitions, following the presidential proclamation introducing the new payment issued on 19 September 2025.

Per this guidance, the payment applies to H-1B petitions filed after 21 September 2025 for foreign nationals outside the United States who do not hold a valid H-1B visa, as well as petitions requesting consular processing, port of entry notification, or pre-flight inspection submitted on behalf of foreign nationals already in the United States. USCIS will also require the payment if an H-1B petition is filed requesting a change of status, amendment, or extension of stay but USCIS determines the change, amendment, or extension cannot or will not be granted, or if a foreign national departs the U.S. before adjudication of a change of status request because such departure has the effect of abandoning that request but still permits approval of the underlying H-1B petition.

#### Background and analysis

On 19 September 2025, President Donald J. Trump signed a proclamation, "Restriction on Entry of Certain Nonimmigrant Workers." The proclamation, which went into effect at 12:01 am on 21 September, prohibits entry of H-1B workers to the United States unless their H-1B petitions are "accompanied or supplemented by a payment of \$100,000" with certain exceptions. The proclamation cites the Immigration and Nationality Act (INA) section 212(f), which provides the president with a broad authority to restrict entry of foreign nationals to the United States.

The 20 October guidance provided by USCIS confirms that an employer will be required to pay the \$100,000 prior to filing:

- H-1B petitions for a foreign national who is outside the United States who does not hold a valid H-1B visa;
- H-1B petitions requesting consular notification, port of entry notification, or pre-flight inspection filed on behalf of foreign nationals inside the United States; and
- H-1B petitions where a change of status, amendment, or extension of stay is denied due to ineligibility or the foreign national has departed the United States before adjudication of a change of status request.

If the payment applies, then employers must pay the \$100,000 prior to filing an H-1B petition, following the instructions on [pay.gov](https://www.pay.gov/public/form/start/1772005176) at the following link: <https://www.pay.gov/public/form/start/1772005176>. The petition submitted to USCIS must include proof of payment or documentation of an approved exception from the Secretary of Homeland Security. Petitions subject to the payment that are filed without this documentation will be denied.

USCIS has also provided the criteria and process to request an exception to the \$100,000 payment. Exceptions to the payment requirement may be granted by the Secretary of Homeland Security, but only in "extraordinarily rare" cases according to USCIS. To qualify, the petitioning employer must demonstrate that:

- The foreign national's presence in the United States is in the national interest;
- No American worker is available to fill the role;

- The worker does not pose a threat to U.S. security or welfare; *and*
- Requiring the payment would “significantly undermine” U.S. interests.

Employers who believe their case meets this “high threshold” are directed to submit a request with supporting documentation to [H1BExceptions@hq.dhs.gov](mailto:H1BExceptions@hq.dhs.gov).

#### What this means

The payment requirement does not apply to foreign nationals in possession of a valid H-1B visa, H-1B petitions filed before the effective date, or approved petitions for foreign nationals in the United States who are granted a change of status, amendment, or extension. USCIS has also confirmed that current H-1B visa holders may continue to travel in and out of the United States without being subject to the payment.

As anticipated, the proclamation and new payment requirement are already the subject of litigation; two federal lawsuits have been filed against the Secretary of Homeland Security with the most recent filed by the U.S. Chamber of Commerce, America’s largest business organization, seeking injunctive relief that would block the application of the \$100,000 payment.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

EY | Building a better working world

**EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.**

**Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.**

**EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.**

**All in to shape the future with confidence.**

Follow us on X @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

#### About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit [EYLaw.ca](https://EYLaw.ca).

#### About Mehlman Jacobs LLP

Mehlman Jacobs LLP specializes in immigration law and provides legal and strategic advice to employers and their employees on all stages in the immigration process. Providing boutique, customized experience, the firm aims to provide transparency to an often complex and uncertain environment. Mehlman Jacobs, a California Limited Liability Partnership, limited to the practice of immigration law, is a member of Ernst & Young Global Limited and is independently owned and operated by US licensed lawyers.

© 2025 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 008605-25GbI

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact us or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

#### EY Law LLP

**Batia Stein, Partner**  
+1 416 943 3593  
[batia.j.stein@ca.ey.com](mailto:batia.j.stein@ca.ey.com)

**Marwah Serag, Partner**  
+1 416 943 2944  
[marwah.serag@ca.ey.com](mailto:marwah.serag@ca.ey.com)

**Melanie Bradshaw, Partner**  
+1 416 943 5411  
[melanie.bradshaw@ca.ey.com](mailto:melanie.bradshaw@ca.ey.com)

**Mehlman Jacobs LLP**  
**Sharon Mehlman, Partner**  
+1 858 404 9350  
[sharon.mehlman@mehlmanjacobs.com](mailto:sharon.mehlman@mehlmanjacobs.com)

**Dilnaz A. Saleem, Partner**  
+1 713 750 1068  
[dilnaz.saleem@mehlmanjacobs.com](mailto:dilnaz.saleem@mehlmanjacobs.com)

**Author: Manal Khan, Manager, Associate Attorney**  
+1 416 941 1884  
[manal.khan@ca.ey.com](mailto:manal.khan@ca.ey.com)

**Roxanne Israel, Partner**  
+1 403 206 5086  
[roxanne.n.israel@ca.ey.com](mailto:roxanne.n.israel@ca.ey.com)

**Sheila Snyder, Partner**  
+1 604 899 3515  
[sheila.snyder@ca.ey.com](mailto:sheila.snyder@ca.ey.com)

**Stephanie Lipstein, Partner**  
+1 514 879 2725  
[stephanie.lipstein@ca.ey.com](mailto:stephanie.lipstein@ca.ey.com)