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USCIS Issues New Guidance on the $100,000 H-1B Fee: What We Now Know (and Still Don't)

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On October 20, 2025, USCIS quietly updated its website with the most detailed guidance to date on the **$100,000 supplemental fee** required under the September 19, 2025 Presidential Proclamation.

- When does the fee apply?
- When it does **not** apply?
- How payment must be made
- EXCEPTIONS: National Interest Exception (NIE) procedures
- Remaining uncertainties

Let's start with what has finally been confirmed.

When the $100,000 Fee Applies

According to USCIS, the fee applies to all petitions filed as of September 21, if **any** of the following conditions are met:

☐ The **beneficiary is outside the United States AND** does **not** have a **valid H-1B visa**;
☐ The petition includes a request for consular notification; **OR**
☐ USCIS approves the petition, but **denies the change or extension of status** request, **or** the beneficiary **departs the U.S.** while the petition is still pending.

In other words, any petition that ultimately is for a new H-1B visa that requires a new visa stamp at a U.S. consulate will typically trigger the $100,000 supplemental fee.

When the Fee Does NOT Apply

Importantly, the fee **will not** be required in the following situations:

☐ Any petition filed **before** 12:01 AM EDT, Sept. 21, 2025;
☐ Petitions requesting **Change of Status (COS)**, **Extension of Status (EOS)**, or an **amendment**, as long as the request is **granted**;
☐ Visa applications based on petitions already approved as COS/EOS/Amendments; **OR**
☐ Admission to the U.S. with a new visa stamp issued based on an approved COS/EOS/Amendment — **or pursuant to a "current valid H-1B visa."**

So far, it appears that if the beneficiary already had an H-1B visa status, the fee probably does not apply, even if a visa is now needed for the first time. But this remains slightly unclear.

National Interest Exceptions (NIE)

Requests for a fee waiver must be emailed to: **H1BExceptions@hq.dhs.gov**

USCIS states that NIEs will be granted only in **“extraordinarily rare circumstances.”**
To qualify, the Secretary of Homeland Security must determine ALL of the following:

1. The beneficiary’s presence in H-1B status is **in the national interest**;
2. **No American worker** is available to fill the role;
3. Requiring the employer to pay the fee would **significantly undermine** U.S. interests; **AND**
4. The beneficiary **does not** pose a threat to U.S. security or welfare.

Notably:

- USCIS has **not** said what evidence is needed to prove “no American available.”
  (Labor market tests? Industry shortage data? Geographic unemployment?)
- USCIS has **not** addressed who evaluates NIE requests or what training they receive.

This creates considerable uncertainty for employers trying to plan ahead but they have indicated that this exception would be used sparingly.

Can entire industries qualify for a National Interest Exception?

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USCIS has stated that National Interest Exceptions (NIEs) apply only to **individual beneficiaries**, meaning exceptions are considered for a *particular alien*, not entire industries or occupations.

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Although President Trump publicly suggested that **industry-wide or occupation-based exceptions** might be available, **no official guidance or policy** has been issued to confirm this.

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USCIS has also **not provided any timelines or procedural details** for how NIE requests will be reviewed or processed, leaving employers uncertain about what to expect.

How to Pay the $100,000 Fee if it applies:

USCIS confirmed that the supplemental fee:

- Must be paid before filing the petition
- Must be paid through pay.gov
  Link: https://www.pay.gov/public/form/start/1772005176
- Requires the employer to enter passport details exactly as they will appear at the beneficiary’s admission

Failure to include proof of payment—or evidence of an approved National Interest Exception—will result in a denial. USCIS has already begun issuing RFEs demanding proof of payment in cases where the fee apparently applies.

If USCIS denies the petition, the fee is refundable, according to the online payment form.

Bottom Line for Employers

- The fee applies to most petitions where a beneficiary will need a new visa stamp
- USCIS expects employers to pay **before filing**
- The government has already started issuing RFEs
- National Interest Exceptions will be rare and highly discretionary

At the same time, critical questions remain unanswered, especially for employers with mobile global workforces, multinational transfers, and workers with valid visas.

Moreover, we anticipate litigation on this issue which may very well overturn this process altogether since the size of this fine is so high that it possibly violates the Administrative Procedure Act.

What Employers Should Do Now:

- Evaluate whether upcoming hires require a new visa stamp
- Consider filing transfers or amendments where possible
- Document labor shortages and national interest arguments early
- Monitor for additional USCIS guidance or litigation

We will continue updating as more information becomes available.

If you need help assessing whether your upcoming H-1B filings trigger the new fee, please contact Alan Pollack at APollack@workvisa.net