

Updated Guidance on Executive Order Restricting Entry of H-1B Employment-Based Nonimmigrants

WRITTEN BY

Robert J. Lee | Yane Park McKenzie

Since the White House issued the executive order titled “[Restriction on Entry of Certain Nonimmigrant Workers](#),” requiring payment of \$100,000 for foreign nationals seeking entry into the U.S. in H-1B status, U.S. Citizenship & Immigration Services (USCIS) has published [guidance](#) on its website to address ongoing ambiguities.

USCIS clarifies that the following categories of H-1B petitions filed September 21, 2025, or later are subject to the payment:

- Petitions filed “on behalf of beneficiaries who are outside the United States and do not have a valid H-1B visa”;
- Petitions requesting “consular notification, port of entry notification, or pre-flight inspection for an alien in the United States”; and
- Petitions requesting a change of status to H-1B, or an amendment to or extension of H-1B stay, where USCIS determines that the beneficiary “is ineligible for a change of status or an amendment or extension of stay (e.g., is not in a valid nonimmigrant visa status or if the alien departs the United States prior to adjudication of a change of status request).”

The guidance further states that the \$100,000 payment does not apply to:

- Any previously issued and currently valid H-1B visas, or any petitions submitted prior to the effective date;
- Petitions filed on or after September 21, 2025, that request a change of status to H-1B or an amendment to or extension of H-1B stay for a beneficiary inside the U.S., if the request is granted. Notably, beneficiaries of these petitions will not be subject to the \$100,000 payment if they subsequently depart the U.S. and apply for a visa based on the approved petition and/or seek to reenter the U.S. on a current H-1B visa.

This guidance clarifies several important questions. First, the payment does not apply to beneficiaries who are currently in the U.S. in any status and seek a change of status to H-1B or an amendment or extension of their current H-1B status, as long as USCIS approves the request. If for some reason USCIS determines that the beneficiary is ineligible for the requested change of status, amendment, or extension, then the \$100,000 payment will be required.

Second, for those beneficiaries who are selected in the H-1B visa lottery in 2026, the \$100,000 payment will not be required as long as the foreign national employee remains in the U.S. when 1) the H-1B petition is filed; 2) the petitioning employer requests a change of the foreign national’s status to H-1B on the requested start date (on or after October 1, 2026); and 3) USCIS approves the request.

Finally, an H-1B petition requesting consular notification, port of entry notification, or pre-flight inspection — whether

the beneficiary is already within the U.S. or abroad — will be subject to this payment.

In issuing this executive order, the administration is asserting the authority established in the Immigration and Nationality Act for the president to prescribe “limitations and exceptions” on foreign nationals entering the U.S. (215(a) and to “impose on the entry of aliens any restrictions he may deem to be appropriate” when the entry of “any aliens or any class of aliens” is “detrimental to the interests of the United States” (212(a)). Litigation, including a lawsuit filed by the U.S. Chamber of Commerce, has challenged this \$100,000 payment and is currently pending.

RELATED INDUSTRIES + PRACTICES

- [Immigration](#)
- [Labor + Employment](#)