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DHS Proposes $103,265 Fee for Cap-Subject H-1B Petitions

Key Highlights

- DHS has proposed a $103,265 fee for each cap-subject H-1B petition, including petitions filed under the U.S. advanced-degree exemption, but the fee is not currently in effect.
- If finalized as proposed, the fee could substantially increase the cost of sponsoring first-time, cap-subject H-1B workers and may alter H-1B sponsorship decisions, workforce planning and international student hiring.
- Employers that rely on the annual H-1B cap should assess potential impacts on anticipated FY 2028 cases, monitor the rulemaking process and consider submitting comments during the 30-day public comment period.

The Trump administration is taking a second—and substantially different—approach to imposing a six-figure cost on employers seeking H-1B workers.

On Aug. 25, 2026, the Department of Homeland Security (DHS) published a proposed rule that would establish a new **$103,265 fee for each cap-subject H-1B petition ("H-1B lottery applications")**, including petitions filed under the U.S. advanced-degree exemption. The proposed fee would be payable when the H-1B petition is filed and would be **in addition to all other applicable government filing fees and payments**.

The proposal is significant, but employers should keep one important point in mind: **the $103,265 fee is not currently in effect.** DHS must first complete the notice-and-comment rulemaking process and issue a final rule before the fee could become operative.

Who Would Be Subject to the New Fee?

As proposed, the $103,265 fee would apply to **H-1B petitions subject to the annual numerical cap**. In practical terms, the proposal is principally directed at employers filing H-1B petitions for beneficiaries selected through the annual H-1B lottery process.

The proposed fee would **not apply to H-1B petitions that are exempt from the statutory cap.** DHS specifically identifies petitions filed by certain institutions of higher education, nonprofit research organizations and governmental research organizations as

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examples of filings outside the proposed fee requirement.

Likewise, H-1B petitions for workers who have already been counted against the cap ordinarily are not cap-subject merely because the worker changes employers, extends H-1B status or requires an amended petition. The precise application of any final rule, however, will depend on the regulatory text and implementing guidance ultimately adopted by DHS.

Why $103,265?

The size of the proposed fee is unusual not only because of the amount, but also because of what DHS says the money would fund.

According to DHS, the fee would serve as a dedicated revenue mechanism to recover a portion of the federal government's costs of administering the broader lawful immigration system. Those costs include immigration benefit adjudications, fraud detection and national security vetting, technology modernization, immigration court operations, consular visa processing, labor standards enforcement and activities performed by several federal agencies.

DHS estimates that the fee would generate approximately **$8.8 billion annually**, based on an assumed 85,000 cap-subject H-1B petitions.

How Is This Different From the Earlier $100,000 H-1B Fee?

The new proposal follows extensive litigation over the Trump administration's previous effort to impose a **$100,000 payment** on certain H-1B filings.

On June 8, 2026, a federal district court struck down that $100,000 fee, concluding that the administration had exceeded its authority.

The new $103,265 proposal takes a different route. Rather than attempting to impose the charge through a presidential proclamation, DHS is proceeding through **formal notice-and-comment rulemaking** and is grounding the proposed charge in its asserted statutory fee-setting authority.

Whether DHS's different regulatory approach will withstand legal scrutiny will be closely watched.

The Proposal Could Fundamentally Change H-1B Sponsorship Decisions

If finalized in its present form, the **rule would dramatically increase the cost of sponsoring a first-time, cap-subject H-1B worker**.

The $103,265 charge would not replace USCIS's existing H-1B fees. Employers would still be responsible for other applicable filing fees, which can include the Form I-129 filing fee, the American Competitiveness and Workforce Improvement Act fee, the Fraud Prevention and Detection Fee, the Asylum Program Fee and premium processing fees when requested.

For larger employers, the new cost could substantially change workforce planning and H-1B sponsorship policies. For startups, smaller businesses, nonprofits that do not qualify for a cap exemption and other employers with limited immigration budgets, a six-figure fee for a single new H-1B hire could make sponsorship economically impractical.

The proposal also could have particular consequences for international students. F-1 students working pursuant to Optional Practical Training (OPT) frequently rely on the H-1B cap process as a pathway to longer-term employment authorization. A $103,265 petition fee could alter employers' willingness to sponsor those workers following selection in the H-1B cap.

What Employers Should Do Now

Employers that rely on the annual H-1B cap should begin evaluating the potential impact on workforce and immigration planning, particularly for anticipated FY 2028 cap cases. Employers may also wish to consider submitting comments during the rulemaking period, especially where they can provide specific information concerning the economic impact of the proposed fee, effects on recruiting and retention, labor shortages or alternatives DHS should consider.

For now, the most important takeaway is straightforward: **the $103,265 fee is a proposal, not a current filing requirement.** But if DHS finalizes the rule substantially as proposed, it would represent a major change in the economics of H-1B sponsorship and could significantly affect how U.S. employers recruit and retain foreign professional talent. Please reach out to Jeffrey Bell or your Polsinelli attorney with any questions.