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News & Types: Immigration Monthly Updates

ビジネス移民法ニュース（2026年9月号）が発行されました。

9/30/2026

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Practices: 移民法

MONEY, MONEY, MONEY --- RENEWAL OF $100,000 H-1B ENTRY FEE & POTENTIAL NEW $103,265 H-1B FEE

On September 18, 2026, the Administration extended Presidential Proclamation 10973, *Restriction on Entry of Certain Nonimmigrant H-1B Workers*, for an additional year. Although Administration has been enjoined by a court from continuing to implement this proclamation since July, the Administration still released the extension of the proclamation. The restriction will remain in effect through September 21, 2027.

The proclamation primarily affects individuals outside the United States who need to obtain an H-1B visa at a U.S. consulate or use an approved H-1B petition to seek admission to the United States.

The restrictions do not apply to H-1B workers who are:

- Changing status to H-1B while already in the United States;
- Transferring to a new H-1B employer; or
- Extending existing H-1B status.

However, if U.S. Citizenship and Immigration Services (USCIS) ultimately determines that an individual cannot complete the requested change of status, transfer, or extension in the United States and instead must apply for an H-1B visa abroad, the entry restrictions may apply at that time.

Employers may overcome the restriction by paying a $100,000 government fee or by obtaining a determination from USCIS that the employee's work serves the national interest and does not pose a threat to the security or welfare of the United States.

Administration-Reported Results

In announcing the extension, the Administration cited some indicators that it views as evidence that the policy has reduced reliance on the H-1B program:

- More than 700 H-1B petitions were approved after payment of the $100,000 fee.
- New H-1B visa applications at U.S. consulates reportedly declined by 97% between FY 2025 and FY 2027.

- H-1B quota registrations submitted by large IT outsourcing companies reportedly declined by 92%, from 24,946 registrations to 2,055 registrations for FY 2027.
- The percentage of H-1B quota registrations filed under the U.S. Master's Cap increased from 45.1% to 66.1%.
- Approximately 46.3% of FY 2027 quota registrations involved positions classified at Level III or Level IV wage levels, suggesting an increase in higher-paid positions (according to the Administration).

The Administration has argued that these changes demonstrate greater use of the H-1B program for highly skilled and higher-paid workers.

Despite the significant reduction in H-1B filings, broader labor market data has not shown dramatic changes for recent college graduates. Between September 2025 and June 2026:

- The unemployment rate for recent college graduates declined only slightly, from 5.8% to 5.7%.
- The underemployment rate of college graduates increased from 41.8% to 42.0%.

As a result, debate continues regarding whether the restrictions have produced meaningful benefits for U.S. workers while balancing employers' needs for specialized talent.

Employer Takeaway

Employers sponsoring H-1B workers should continue to pay close attention to where a case will be processed. While most change-of-status, transfer, and extension cases remain unaffected, any situation that requires visa issuance or admission from abroad may trigger the $100,000 entry fee requirement. Advance planning remains critical, particularly for employees who anticipate international travel or may need consular processing to activate H-1B status.

Additional information on this topic is contained in the Masuda Funai September 22, 2025 Client Alert and October 21, 2025 Client Advisory.

AS EMPLOYERS CONTINUE TO NAVIGATE THE EXISTING $100,000 H-1B ENTRY FEE, USCIS IS NOW PROPOSING AN ADDITIONAL H-1B FEE OF $103,265

USCIS has released a proposed regulation that would impose a new $103,265 filing fee (aka "tax") on every H-1B cap-subject petition (petitions filed once selected in the H-1B Lottery). This fee would be charged **in addition to all existing H-1B filing fees**, including the Form I-129 filing fee, Asylum Program Fee, Fraud Prevention and Detection Fee, ACWIA fees, Premium Processing Fee (if used), and any other applicable charges.

The proposed fee would not apply to:

- Most cap-exempt H-1B petitions filed by universities, nonprofit research institutions, and government research organizations;
- H-1B transfers (change of employer); or
- H-1B extensions.

The estimated $8.8 billion collected from this fee would be used to support the overall immigration operations of government agencies impacted, directly or indirectly, by the H-1B program including USCIS, Immigration and Custom Enforcement (ICE), Customs and Border Protection (CBP), Department of Labor (DOL), Department of State (DOS), and the Executive Office of Immigration Review (EOIR - the immigration courts).

If implemented, the combined government costs associated with certain new H-1B hires could exceed $200,000 when the proposed fee is added to the existing $100,000 entry fee and other filing fees. However, if the USCIS finalizes the regulation, litigation will most likely be filed challenging the legality of this new fee which was not authorized by Congress (unlike other H-1B fees).

UPDATE TO PUBLIC CHARGE REQUIREMENTS FOR IMMIGRANTS

Beginning September 18, 2026, DHS, including USCIS and CBP, will apply a revised public charge framework when evaluating certain individuals seeking admission to the United States or applying for permanent residence.

The public charge determination focuses on whether an individual is likely to become primarily dependent on government assistance to meet basic living needs in the future.

What Has Changed?

Historically, family-based applicants could satisfy public charge concerns through a strong *Affidavit of Support* (Form I-864) from a sponsoring relative. Employment-based applicants rely on a permanent job offer and evidence of ongoing employment.

Under the new rule, USCIS will look at the person's overall ability to support themselves financially rather than relying mainly on a sponsor's financial support.

Officers will consider factors including:

- Age
- Health
- Family status
- Assets and financial resources
- Education
- Job skills
- Work history
- Any other information deemed relevant to the individual's ability to support themselves.

No single factor automatically determines the outcome, although a required Affidavit of Support that is missing or insufficient can be a significant concern.

What Are Means-Tested Public Benefits?

These are government benefits available primarily to people with limited income or financial resources.

Examples may include:

- Food assistance
- Subsidized housing
- Cash assistance programs
- Some government-funded health care programs

USCIS may consider the use of these benefits when reviewing certain immigration applications.

What Benefits Are Not Considered Means-Tested?

The following benefits generally are not considered means-tested because eligibility is based on prior contributions or employment:

- Social Security retirement benefits
- Medicare
- Unemployment insurance benefits

What Factors That May Influence a Public Charge Determination?

Positive factors may include:	Factors that may raise concerns include:
• Stable employment • Marketable skills or higher education • Sufficient income and assets	• Limited work history • Significant reliance on means-tested benefits • Serious health conditions combined with limited resources • Circumstances indicating likely dependence on government assistance

Receipt of public benefits alone does not automatically result in a negative decision. USCIS will consider the totality of the circumstances.

Who Is Affected?

The rule applies to:

- Applications for adjustment of status (Form I-485) received on or after **September 18, 2026**
- Individuals applying for admission to the United States on or after that date.

The rule governs DHS adjudications. Individuals applying for immigrant visas abroad remain subject to separate public charge review by the Department of State (DOS).

What About Pending Applications?

DHS has stated that applications already pending before the effective date will continue to be evaluated under the prior 2022 framework.

In addition, DHS has advised that benefits previously excluded under prior guidance and received before September 18, 2026 will not be considered under the new rule.

Why Does Public Charge Matter?

The public charge ground of inadmissibility has long been part of U.S. immigration law. Applicants for permanent residence must demonstrate that they are likely to be financially self-sufficient and not dependent on government assistance.

In some circumstances, becoming a public charge within five years of admission may also have immigration consequences.

Practical Takeaway

Individuals planning to apply for permanent residence should carefully consider how the receipt of means-tested public benefits may affect their immigration case. Because USCIS will now examine a broader range of financial, health, educational, and employment factors, applicants should be prepared to present evidence demonstrating their ability to support themselves and their families in the United States.

For employers sponsoring foreign nationals, the new framework reinforces the importance of maintaining clear documentation of salary, continued employment, and the long-term viability of the offered position.

CREDIT CHECKS FOR SPONSORS OF FAMILY-BASED GREEN CARD APPLICATIONS

USCIS revised Form I-864, *Affidavit of Support Under Section 213A of the INA*, which must be used for applications filed on and after October 1, 2026. The updated version contains a privacy release authorizing USCIS to obtain consumer-report information when evaluating the sufficiency of an Affidavit of Support. Related Forms I-864A, used by contributing household members, and I-864EZ have likewise been updated.

The change will primarily affect family-based permanent residence (Green Card) cases, since most family-sponsored immigrants must submit a Form I-864 from the sponsoring U.S. citizen or lawful permanent resident.

Although some reports have characterized the change as a new "credit check" requirement for Green Card applicants, USCIS has not established a minimum credit score for immigration sponsorship. USCIS has also not announced that a credit report will be obtained in every case. Rather, the change gives USCIS another means of verifying the financial circumstances of a person who signs an Affidavit of Support. Existing regulations already require a sponsor to demonstrate sufficient income, generally at least 125% of the applicable Federal Poverty Guidelines, and permit the government to verify information concerning the sponsor's employment, income, and assets.

PROPOSED PERM MODERNIZATION RULE

DOL is moving forward with a significant modernization of the PERM labor certification program, which is the process most employers must complete before sponsoring a foreign national for permanent residence in the EB-2 or EB-3 categories. The forthcoming proposed rule, titled "Modernizing the Labor Market Test and Improving Protections for U.S. Workers in the PERM Immigrant Visa Program," would represent the first comprehensive revision of the PERM regulations since 2004. DOL submitted the proposed rule to the Office of

Information and Regulatory Affairs ("OIRA") on September 14, 2026, but the proposed regulatory text has not yet been made public.

What Is Changing?

- DOL is proposing the first major PERM revision since 2004.
- Recruitment requirements may change.
- Layoff-related obligations may expand.
- Modern online recruiting methods may receive greater emphasis.

Changes in technology and recruiting practices over the past two decades led DOL to identify several areas for potential reform, including minimum recruitment standards, protections for U.S. workers affected by layoffs, nondiscriminatory recruitment and hiring practices, and employer record-retention requirements.

For employers, one of the most significant areas that may be affected is PERM recruitment. The current regulations were designed around recruiting practices from more than 20 years ago and, for professional positions, require a 30-day State Workforce Agency job order, two Sunday newspaper advertisements, and three additional recruitment steps. The DOL's reference to technological advances and changing industry practices suggests that the proposed rule will reconsider how employers advertise PERM positions and potentially place greater emphasis on the online recruiting methods employers use today.

Why Should Employers Pay Attention?

Employers that have undergone reductions in force should pay particularly close attention. Under the current PERM regulations, if an employer has had layoffs in the area of intended employment during the six months before filing a PERM application in the same or a related occupation, the employer generally must notify and consider potentially qualified laid-off U.S. workers for the PERM position. The DOL has expressly identified "strengthening safeguards for U.S. workers impacted by layoffs" as a goal of the new rule, so the proposal could expand or otherwise modify these obligations, although the precise changes will not be known until the proposed regulatory text is made public.

- Future filings may become more complicated.
- Recruitment requirements may increase.
- Layoff-related reviews may expand.

Employer Takeaway

Employers anticipating PERM filings in 2027 should consider initiating cases under the current framework where appropriate, as future recruitment and layoff-related requirements may become more complex once the proposed rule is published and finalized.

MFEM NEWS

Mr. Bob White to Speak at 3 Upcoming Conferences on F/J Students Issues and DOL Enforcement

Mr. Bob White, co-Chair of the Masuda Funai Immigration Group, will be speaking at three upcoming conferences on different topics involving F/J students and the increased DOL immigration enforcement.

On Monday, October 5th, Mr. White will be leading a discussion on the changes in the F/J programs at the NAFSA Region V conference in Grand Rapids, Michigan. Mr. White will be joined by Catherine Lee from the international office of the University of Wisconsin-Eau Claire and Jennifer Taylor from the international office of the University of Wisconsin Madison to discuss what is next with the Elimination of the D/S Regulation, the chaos in the F-1 CPT program and the F/J/H regulatory changes on the horizon.

On Friday, October 9th, Mr. White will be leading a discussion with American Immigration Lawyers Association's (AILA) attorneys Kevin Miner and Lauren McClure and AILA Senior Director of Government Relations, Shev Dalah-Dehini, during the AILA Rome District Chapter (RDC) conference in Morocco. The interesting topic of discussion will be the Administrative Procedures Act (APA) and how it is guiding (or preventing) the implementation of many immigration regulations and policies, including the F/J D/S regulation.

On Friday, October 16th, Mr. White will be leading a discussion with AILA attorneys, Kimberley Best Robidoux and Michele Madera, on DOL's and the U.S. Department of Justice's (DOL) Immigrant and Employee Rights' (IER) recently increased enforcement in employer compliance with the green card PERM program. We will be discussing DOL's pronouncements that the processing of PERM applications of at least 2 companies has been suspended due to their PERM recruitment activities and IER's recent assessment of fines against multiple companies due to their PERM recruitment activities.

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Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.