



U.S. Customs and
Border Protection

NOV 3 2010

MEMORANDUM FOR: See Distribution (B)(6), (B)(7)(C)

FROM: *JM* Executive Director Admissibility and Passenger Programs

SUBJECT: Accounting Classification and Cash Register Class Code for the new L-1 Additional Fraud Prevention and Detection Fee

The Office of Field Operations Admissibility and Passenger Programs and the Office of Finance Revenue Division have made the following interim arrangements for the appropriate collection and cash register designation of the new additional L-1 Nonimmigrant Fraud Prevention and Detection Fee for the next four to six months. The affected ports of entry are directed to comply with this temporary collection and reporting procedure until further notice from the Office of Field Operations Admissibility and Passenger Programs.

The appropriate classification for the new additional L-1 Nonimmigrant Fraud Prevention and Detection Fee is to a (B)(7)(E)

(B)(7)(E)

Ports of entry at which L-1 nonimmigrant packets are adjudicated must submit the attached register log by 2:00 p.m. every Friday, listing each new additional L-1 Nonimmigrant Fraud Prevention and Detection Fee collected to (B)(6), (B)(7)(C)

(B)(6), (B)(7)(C)

Please ensure that this memorandum and the attachment are disseminated to all ports of entry within your jurisdiction. Should you have any questions, please contact (B)(6), (B)(7)(C) Program Manager, Admissibility and Passenger Programs at (B)(6), (B)(7)(C)

Attachment

Distribution: Director, Field Operations, Boston Field Office
Director, Field Operations, Buffalo Field Office
Director, Field Operations, Detroit Field Office
Director, Field Operations, Seattle Field Office
Director, Pre-Clearance Operations

New L-1 Nonimmigrant Fraud Prevention/Detection Filing Fee weekly Register

POE Name: _____ RDDPP: _____

Responsible Port Manager and contact telephone number: _____

Week Start Date: _____ Week end Date: _____

DATE	DESCRIPTION	AMOUNT
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	CBP Form 368 #: _____, or Cash Register Transaction Cluster: _____ Register: _____ Transaction # _____	
	TOTAL	

Submitted by: _____

Reviewed by: _____

The additional filing fee and fraud prevention and detection fee of \$2, 250 must be submitted with the applicable "L-1" nonimmigrant packets by separate check made out to the Department of Homeland Security.

Summary: Total POE "L-1" Packet Fee Collection

\$320	Form I-129 Filing Fee
\$500	Fraud Fee
\$6	Form I-94
<u>\$2, 250</u>	If employer 50+ employees 50% nonimmigrants
\$3,076	

Please ensure that this memorandum and muster are disseminated to all ports of entry within your jurisdiction. Should you have any questions or require additional information, please contact (B)(6), (B)(7)(C) Program Manager, Admissibility and Passenger Programs at (B)(6), (B)(7)(C)

Attachment

Distribution: Director, Field Operations, Boston Field Office
Director, Field Operations, Buffalo Field Office
Director, Field Operations, Detroit Field Office
Director, Field Operations, Seattle Field Office
Director, Pre-Clearance Operations

October 15, 2010

MEMORANDUM FOR: See Distribution

FROM: Executive Director /s/ (B)(6), (B)(7)(C) for
Admissibility and Passenger Programs

SUBJECT: Emergency Supplemental Appropriation for Border
Security Act-Mandatory Collection of Additional "H-1B" and "L"
Petition Filing Fees

President Obama recently signed the Emergency Supplemental Appropriation for Border Security Act (Act) into law. The law offsets certain border security costs and allocates funding to provide for various operations of the Department of Homeland Security (DHS).

The Act immediately increased the worker visa filing fee and the fraud prevention and detection fee which are submitted together with applications for L-1 and H-1B nonimmigrant visas. Specifically the Act increased the filing fee and fraud prevention and detection fee for L-1 visas by \$2,250 for all employers/petitioners that employ 50 or more employees in the U.S. **and** at least 50 percent of their employees are non-immigrant foreign workers. The Act also immediately increases filing fees and fraud prevention and detection fees for H-1B visas by \$2,000 for applicants that employ 50 or more employees in the U.S. **and** at least 50 percent of their employees are non-immigrant foreign workers. The increased fees will remain in place until September 30, 2014.

U.S. Citizenship and Immigration Services (USCIS) is directing all U.S. employers/petitioners of H-1B and L-1 nonimmigrants to avoid potential processing delays of their Form I-129 petition packets by including in their packets a written attestation of the total number of employees it has and whether more than 50 percent of their employees are H-1B or L nonimmigrants working in the U.S. Therefore, effective immediately U.S. Customs and Border Protection (CBP) officers who are involved in adjudicating first time "L-1" nonimmigrant packets, must ensure that the petition packets include a written attestation from the employer/petitioner stating whether they have 50 or more employees and whether more than 50 percent of their employees are H-1B or L nonimmigrants working in the U.S. Employer/Petitioners that affirmatively declare that they employ 50 or more employees in the U.S. and at least 50 percent of their employees are H-1B or L nonimmigrants working in the U.S. must submit an additional filing fee and fraud prevention and detection fee of \$2, 250 "in addition" to current fees already being collected for first time "L-1" nonimmigrants processing at POEs - \$320 filing fee already being collected for the Form I-129, \$500 Fraud Fee already being collected and \$6 Form I-94 fee also already being collected.



Questions and Answers

Oct. 7, 2010

USCIS Implements H-1B and L-1 Fee Increase According to P.L. 111-230

Introduction

On August 13, 2010, President Obama signed Public Law 111-230, which contains provisions to increase certain H-1B and L-1 petition fees. The following Questions and Answers provide public guidance concerning the additional fees.

Questions and Answers

Q1. What is Public Law 111-230?

A1. Signed by President Obama on August 13, 2010, Public Law 111-230 requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions.

Q2. When did the fee increase take effect?

A2. The fee increase applies to covered petitions with a postmark date of August 14, 2010 or later. For petitions sent via courier services, the fee applies to filing packets picked up by the courier on August 14, 2010 or later.

Q3. To which petitioners does the new fee apply?

A3. The additional fee applies to H-1B or L-1 petitioners that employ 50 or more employees in the United States with more than 50 percent of their employees in the United States in H-1B, L-1A or L-1B nonimmigrant status.

Q4. To which H-1B petitions does the new fee apply?

A4. H-1B petitioners subject to the new law must submit the fee with any H-1B petition filed:

- To seek initial nonimmigrant status for an alien described in subparagraph (H)(i)(b) of INA section 101(a)(15), or
- To obtain authorization for an alien having that status to change employers.

The new fee does not apply to extension requests filed by the same petitioner for the same employee.

Q5. To which L-1A and L-1B petitions does the new fee apply?

A5. L-1 petitioners subject to the new law must submit the fee with an L-1A or L-1B petition filed:

- To seek initial nonimmigrant status for an alien described in subparagraph (L) of INA section 101(a)(15), or
- To obtain authorization for an alien having that status to change employers.

The new fee does not apply to extension requests filed by the same petitioner for the same employee.

Q6. What is the additional fee for H-1B petitions?

A6. Public Law 111-230 requires an additional fee of \$2,000 for covered H-1B petitions. This fee is in addition to the base processing fee, the existing Fraud Prevention and Detection Fee, and any American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee needed to file a Petition for a Nonimmigrant Worker (Form-129), as well as any premium processing fees.

Q7. What is the additional fee for L-1 petitions?

A7. Public Law 111-230 requires an additional fee of \$2,250 for covered L-1A and L-1B petitions. This fee is in addition to the base processing fee and the existing Fraud Prevention and Detection Fee required for a Petition for a Nonimmigrant Worker (Form-129) (or, in the case of certain visa exempt aliens, the Nonimmigrant Petition Based on Blanket L Petition (Form I-129S) filed with USCIS), as well as any premium processing fees.

Q8. Must the petitioner or the beneficiary pay the additional fee?

A8. The petitioner, not the beneficiary, should pay the additional fee, where it applies.

Q9. How does the petitioner indicate whether it is subject to the new fee?

A9. Until the Petition for Nonimmigrant Worker (Form I-129) and the Nonimmigrant Petition Based on Blanket L Petition (Form I-129S) are revised, USCIS recommends that all H-1B, L-1A, and L-1B petitioners include, as part of the filing packet, the new fee or a statement or other evidence outlining why this new fee does not apply. USCIS requests that petitioners include a notation indicating whether or not the fee is required in bold capital letters at the top of the cover letter. The fee, statement, notation, or other evidence should be provided with each petition submitted. Where the fee or documentation is not submitted with the filing, or where questions remain, USCIS may issue a Request for Evidence to determine whether the additional fee applies to the petition.

Q10. How will USCIS address petitions filed without the new fee or an explanation of why the new fee does not apply?

A10. Where the fee or explanation is not submitted with the petition, or where questions remain, USCIS may issue a Request for Evidence to determine whether the additional fee applies to the petition. Because an RFE will be issued for the fee, rather than a rejection for the omission of the fee, USCIS will maintain the original filing date as the receipt date. Petitioners should wait to respond to the RFE before sending in the additional fee or an explanation of why the new fee does not apply. Once the revised Form I-129 and Form I-129S are in place, USCIS will reject covered petitions submitted without the new fee.

Q11. When will the revised Form I-129 and its instructions be available?

A11. USCIS is revising the Form I-129 and Form I-129S and their accompanying instructions and will release them as soon as possible.

Q12. Does USCIS require the new fee to be written in a separate check?

A12. USCIS recommends that petitioners include the new fee in a separate check. The check should be made payable to the Department of Homeland Security.

Q13. How will USCIS define “employer” for purposes of implementing Public Law 111-230?

A13. To implement Public Law 111-230, USCIS will apply the definition of “employer” found at 8 CFR §214.2(h)(4)(ii), which states:

[A] person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) engages a person to work within the United States;
- (2) has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) has an Internal Revenue Service Tax Identification number.

The use of this definition for purposes of determining the application of this new fee does not extend or authorize its application beyond Public Law 111-230 and the H-1B rules and regulations.

Q14. How will USCIS define “employee” for purposes of implementing Public Law 111-230?

A14. All employees, whether full-time or part-time, will count towards the calculation of whether an employer is subject to the new fee.

Q15. When calculating the percentage of employees in H-1B or L-1 status, will USCIS compare the number of nonimmigrant workers in the petitioner’s workforce to the number of employees in the United States only or to the number of employees worldwide? Will USCIS include employees in L-1 status who remain on foreign payroll?

A15. USCIS will calculate the percentage based on the number of employees in the United States. All employees in the United States, regardless of whether they are paid through a U.S. or foreign payroll, will count toward the calculation.

Q16. Does the new fee apply to derivative beneficiaries?

A16. No. The new fee does not apply to derivatives.

Q17. Does this new fee apply to any other employment-based visa category (e.g., H-2A, H-2B, etc.)?

A17. No. The new fee applies only to certain H-1B, L-1A, and L-1B petitions.

Q18. Does an employee in L-2 status count as an employee for purposes of determining whether or not the employer has more than 50 percent of its employees in an H-1B or L status?

A18. No. Only H-1B, L-1A, and L-1B employees are counted towards the 50% calculation.

Q19. How will USCIS use the revenue from the new fee?

A19. Under Public Law 111-230, USCIS will not retain the money received from the new fee. Instead, USCIS will deposit all revenue from the new fee into the General Fund of the Treasury.

Q20. Will this fee affect processing times, including premium processing requests?

A20. USCIS is working quickly to ensure that processing times are not affected by the implementation of the new law. To avoid RFEs or delays in individual cases, the public is encouraged to include the new fee or a statement or other evidence outlining why this new fee does not apply.

Q21. Where can I find more information about this fee increase and my petition status?

A21. More information can be found on the USCIS website at www.uscis.gov.