

Mobility: immigration alert

October 2021

United States

Presidential Proclamation regarding new United States air travel rules

Executive summary

On 25 October 2021, President Biden issued a Presidential Proclamation (Proclamation) regarding air travel to the United States. In summary, all U.S.-bound air travelers will be subject to universal vaccination and testing requirements, with narrow exceptions for unvaccinated travelers, as of 8 November 2021 at 12:01 a.m. Eastern Time.

Background

In 2020, in response to the COVID-19 pandemic, the Trump Administration issued a series of Presidential Proclamations barring entry of, with some exceptions, foreign nationals who were physically present in China, Iran, the Schengen region, the United Kingdom, Ireland, and Brazil within the 14 days preceding their proposed travel to the U.S. The new Proclamation lifts these country-specific travel bans and announces the easing of travel restrictions along with universal vaccination and testing requirements for admission into the U.S. via air.

Analysis

The U.S. will be moving away from country-by-country restrictions and is adopting an air travel policy that will apply to all individuals entering the U.S., regardless of origin. Prior to boarding a flight to travel to the U.S., all travelers must as of 8 November at 12:01 a.m., show both:

- ▶ Proof of full vaccination status from COVID-19, as defined by the U.S. Centers for Disease Control (CDC).
- ▶ Proof of a negative COVID-19 test taken within 72 hours of departure time for travel to the U.S.

U.S. Citizens and U.S. Lawful Permanent Residents (Green Card holders) who are not fully vaccinated will still be able to fly to the U.S. but must show proof of a negative COVID-19 test taken within 24 hours of departure time.

All other travelers who are not vaccinated will not be able to fly and seek admission to the U.S., except for limited exceptions including:

- ▶ Children who are unable to receive vaccinations due to their age, currently anticipated as under 18 years old per guidance of the CDC.
- ▶ Individuals who participated in clinical trials for COVID-19 vaccination.
- ▶ Individuals who cannot receive COVID-19 vaccination because of a CDC-defined contraindication (i.e., severe or immediate allergic reaction to a component of the COVID-19 vaccine).
- ▶ Individuals who have been granted an exception by the Director of CDC for humanitarian or emergency reasons.
- ▶ Individuals who are seeking entry as a nonimmigrant other than travelers for business or tourism (i.e., B-1/B-2 status) and who are citizens of countries where the availability of COVID-19 vaccination is limited (i.e., where fewer than 10% of the country's total population has been fully vaccinated).
- ▶ Members of U.S. Armed Forces, foreign government officials including UN employees, employees of TECRO or TECO, individuals in NATO classifications, and their legally married spouses and minor children.



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Individuals who qualify for the above exceptions must do all of the following:

- ▶ Show proof of a negative COVID-19 test within 24 hours of departure time.
- ▶ Show proof of arranging a COVID-19 test for after arriving in the U.S.
- ▶ Show proof of arranging self-quarantine or self-isolation after arriving in the U.S.
- ▶ Agree to become fully vaccinated against COVID-19 within 60 days of arriving in the U.S., or as soon as medically appropriate.

Limited exceptions to testing requirements include:

- ▶ Children under two years old.
- ▶ Individuals who have a documented recovery from COVID-19 in the past 90 days.

At this time, accepted vaccines will include Pfizer-BioNTech/Comirnaty, Moderna, Johnson & Johnson/Janssen, AstraZeneca/Oxford, Covishield, Sinopharm/BIBP, and Sinovac.

Full vaccination status is defined as one of the following:

- ▶ Two (2) weeks have passed after the second dose in a 2-dose series, such as Pfizer-BioNTech or Moderna, including any combination of two doses of an approved two-series vaccine (i.e., mixed doses).
- ▶ Two (2) weeks have passed after a single-dose vaccine, such as Johnson & Johnson/Janssen.

What this means

The vaccination requirements are intended to protect against further transmission and spread of COVID-19 in the U.S., along with continued testing and mask-wearing requirements for air travel.

The Proclamation will become effective 12:01 a.m. eastern time on 8 November 2021 and will apply to all persons whose flight will arrive on or after this time. Importantly, we expect that foreign nationals traveling by air from certain countries to the U.S. will no longer require National Interest Exceptions (NIE) in order to be admitted to the U.S.

With the application of universal vaccination and testing requirements for all travelers, the country-specific travel restrictions will be revoked at the same time, including the previous Proclamations regarding travel restrictions for individuals who were physically present in China, the United Kingdom, Ireland, Brazil, the Schengen area, and India during the 14 days prior to entry into the U.S. The requirement to show NIE for travelers who were subject to aforementioned country-specific restriction is anticipated to no longer apply.

All travelers should plan ahead to ensure that they meet the vaccination and testing requirements, as well as other airline and destination requirements as appropriate for public safety. Exceptions to the vaccination requirements are expected to be construed and granted very narrowly.

On 4 November 2021, EY Law will be hosting a webinar on the new guidance for international travel to the U.S. Please contact your EY Law professional on or after 27 October for details on how to join the webinar.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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