

**CENTER FOR
STRATEGY
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INSIGHTS**

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October 7, 2025

The Honorable Kristi Noem
Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, D.C. 20528
Via FedEx and Email (Secretary@DHS.gov)

The Honorable Marco Rubio
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520
Via FedEx and Email (Secretary@state.gov)

The Honorable Joseph B. Edlow
Director, U.S. Citizenship and Immigration Services
5900 Capital Gateway Dr.
Camp Springs, MD 20588
Via FedEx and Email (Joseph.B.Edlow@uscis.dhs.gov)

Re: Presidential Proclamation 10973, Restriction on Entry of Certain Nonimmigrant Workers

Dear Secretary Noem, Secretary Rubio, and Director Edlow:

We write to request further guidance on the implementation of Presidential Proclamation 10973, "Restriction on Entry of Certain Nonimmigrant Workers," signed on September 19, 2025 ("Proclamation"). We appreciate the clarifications issued on September 20 and 21 confirming that the \$100,000 fee does not apply retroactively to existing H-1B visa holders. Even after these clarifications, however, significant ambiguity remains, without which the regulated community cannot make informed hiring and investment decisions.

Employers need certainty on five critical points: (1) that the surcharge applies only to new petitions filed on or after September 21, 2025, for beneficiaries outside the United States; (2) that it does not apply to change-of-employer petitions; (3) that it does not apply to change-of-status petitions for

individuals already in the United States; (4) that it does not apply to extensions or amendments; and (5) that it does not apply to visa issuance or reentry, when based on previously approved petitions. Employers are already structuring hiring and investment decisions based on these points, which we believe, for the reasons explained below, align with agency memoranda and FAQs. Prompt and formal confirmation is therefore essential.

The Center for Strategy and Applied Insights at Fragomen

The Center for Strategy and Applied Insights at Fragomen seeks to identify and analyze cross-cutting issues and put forward insights-based strategies that strengthen immigration pathways worldwide. For the reasons discussed below, we urge U.S. Citizenship and Immigration Services, the Department of Homeland Security, and the Department of State to issue clear guidance on the scope of application of the Proclamation.

Background

Section 1(a) of the Proclamation is categorical: “the entry into the United States of” persons performing services in the H-1B classification “is restricted, except for those aliens whose petitions are accompanied or supplemented by a payment of \$100,000.” Section 1(b) directs the Secretary of Homeland Security to restrict decisions on petitions for beneficiaries “currently” outside the United States, absent payment of the surcharge. But nothing in the language of Section 1(b) alters the breadth of Section 1(a). On its face, the Proclamation reads as a sweeping entry bar, applying even to current H-1B visa holders seeking reentry.

Section 2 of the Proclamation addresses compliance and states that the surcharge is applied “prior to filing an H-1B petition” for a beneficiary who is currently “outside the United States.” It directs the Secretary of State to “verify” that payment of the surcharge was made during the petition process if the beneficiary was outside the United States.

Uncertainty about how the Proclamation would apply was compounded at the White House signing event, where the Secretary of Commerce stated that employers would owe “\$100,000 a year” for a “total of six years” applying to “renewals [and] first times” alike. This created the impression of an annual, recurring tax on all H-1Bs. That interpretation was not supported by the Proclamation’s text, and it was inconsistent with agency guidance that followed, but it was widely reported and shaped initial public understanding, contributing to further uncertainty for many U.S. employers.

The following day, agency guidance narrowed the scope significantly.

- White House officials stated on X that the surcharge would be a one-time fee, not annual, that it would not apply to current H-1B holders (including those abroad), and that it applied only to the “petition.”
- U.S. Citizenship and Immigration Services (“USCIS”) confirmed in a September 20, 2025, memorandum (“USCIS Sept. 20 Memorandum”) that “[t]his proclamation only applies prospectively to petitions that have not yet been filed” as of 12:01 AM ET on September 21, 2025, and that it “does not apply to ... the beneficiaries of currently approved petitions,” or to individuals holding “validly issued H-1B nonimmigrant visas.”

- Customs and Border Protection (“CBP”) guidance (“CBP Sept. 20 Guidance”) indicated that the monetary requirement applied to “employers submitting petitions on behalf of aliens outside the United States for new H-1B petitions only,” emphasizing that it “does not impact aliens who are the beneficiaries of currently approved petitions” or “aliens in possession of validly issued H-1B non-immigrant visas.”
- The Department of State (“DOS”) then issued a Visa News notice and FAQ on September 21, 2025 (DOS Sept. 21 FAQ), explaining that the Proclamation “[r]equires a \$100,000 payment to accompany any new H-1B visa petitions submitted after 12:01 a.m. eastern daylight time on September 21, 2025,” that it is a “one-time fee on submission of a new H-1B petition” and “[d]oes not change any payments or fees required to be submitted in connection with any H-1B renewals,” and finally that holders of current H-1B visas may continue to travel in and out of the United States without being affected.

The divergence between the Proclamation’s text, the Secretary of Commerce’s public description, and the agencies’ implementing guidance has left employers uncertain about their obligations and the scope of the measure. These differences directly affect how employers structure offers, how current visa holders plan travel, and how courts may interpret the measure.

Situations Where the \$100,000 Surcharge Applies

Employers understand that the surcharge applies only to new H-1B petitions filed on or after September 21, 2025, where the beneficiary is outside the United States at the time of filing and will seek entry in H-1B status. This is reflected consistently across the agencies’ various guidance documents. CBP Sept. 20 Guidance indicates that USCIS and DOS have been instructed to implement the fee “for employers submitting petitions on behalf of aliens outside the United States for new H-1B petitions only,” capturing both the prospective trigger and the geographic limitation to beneficiaries abroad. The USCIS Sept. 20 Memorandum confirms that “this [Proclamation] applies to H-1B employment-based petitions filed after 12:01 AM ET on September 21, 2025,” making clear the effective-time threshold for new petition filings. The DOS Sept. 21 FAQ aligns with both, explaining that the Proclamation “[r]equires a \$100,000 payment to accompany any new H-1B visa petitions submitted after 12:01 a.m. eastern daylight time on September 21, 2025” and that it requires a “one-time fee on submission of a new H-1B petition” and is not applicable to “renewals.”

These statements—CBP’s statement that implementation is limited to beneficiaries outside the United States for new H-1B petitions only, USCIS applying the Proclamation to petitions filed after 12:01 a.m. ET on September 21, 2025, and DOS describing a one-time, non-annual fee—together define the only category in which the surcharge applies.

Situations Where the \$100,000 Surcharge Does Not Apply

Though they do not say so specifically, agency memoranda and FAQs, when pieced together, also seem clear that there are several common situations where the surcharge does not apply. These points about scope of application are essential for employers and workers to understand with certainty, as they address common petition types and hiring and travel scenarios in which uncertainty would create wide-ranging and unnecessary disruption.

Change-of-employer petitions

Although a change-of-employer petition involves a new Form I-129 filing, the agencies' "one-time fee" and "new petitions filed after 12:01 a.m. ET on September 21" framing—combined with CBP's beneficiaries-abroad limitation—indicates that a subsequent change-of-employer petition for an individual already in H-1B status is not within scope of the Proclamation. The DOS Sept. 21 FAQ characterizes the payment as "a one-time fee on submission of a new H-1B petition," which—read together with the USCIS prospective trigger and CBP's outside-U.S. limitation—excludes later portability filings for those already in H-1B status.

Change-of-status petitions filed for individuals already in the United States

These petitions seem clearly to be outside the scope of the Proclamation because the agencies have limited the surcharge to beneficiaries who are abroad when the petition is filed. CBP's Sept. 20 Guidance is explicit that implementation is confined to "petitions on behalf of aliens outside the United States for new H-1B petitions only." In addition, USCIS's Sept. 20 Memorandum underscores the prospective nature of the measure and confirms continued validity of H-1B status for those already covered by existing approvals or valid visas, reinforcing that in-country changes of status are not within the scope of the Proclamation.

Extensions or amendments for individuals already in H-1B status before September 21, 2025

The USCIS Sept. 20 Memorandum states that the Proclamation "does not apply to ... the beneficiaries of currently approved petitions, or [to individuals] in possession of validly issued H-1B non-immigrant visas," which by its terms excludes extensions and amendments for those already in status before the effective time. The DOS Sept. 21 FAQ likewise confirms that it does not "[a]pply to previously issued H-1B visas" or "renewals."

Visa issuance or reentry, when based on approved petitions not subject to the surcharge

A final critical point requiring confirmation is that, when a petition that is not subject to the Proclamation has been approved, the surcharge does not become necessary when the beneficiary of that approved petition then reenters the country after traveling outside the United States to collect an H-1B visa. While not specific, the agency guidance taken together can only mean that such a reentry does not trigger the application of the Proclamation. USCIS guidance states that "This [P]roclamation only applies prospectively to petitions that have not yet been filed." CBP's guidance uses that same language, and DOS's FAQs likewise state that the Proclamation applies to "petitions."

The agency guidance is uniform that the Proclamation establishes a petition-triggered fee requirement. It can only follow that (1) where the petition is subject to the Proclamation, then the fee applies, and (2) where the petition is not subject to the Proclamation—for example, because the beneficiary is inside the United States at the time of filing the petition—then the fee does not become applicable after petition approval simply because the beneficiary later leaves the United States to seek a visa and then return, even where those petitions were filed on or after September 21, 2025.

The White House agrees. Its interpretation was correct. In its official statement on X, the White House accurately clarified that the surcharge is “NOT an annual fee” but rather a “one-time fee,” that it would not apply to current H-1B holders (including those abroad), and that it applied “only to the petition.” This clarification properly establishes that the operative event triggering the surcharge is the filing of a new petition that is subject to the Proclamation, not entry into the United States. An entry-based interpretation would produce an untenable result: current H-1B holders reentering the United States after September 21, 2025, would be required to pay the surcharge—a result the White House correctly rejected. CBP’s Sept. 20 Guidance followed that directive by stating that the surcharge applies to “employers submitting petitions on behalf of aliens outside the United States for new H-1B petitions only.”

The Bottom Line

Taken together, and read in the context of the language in Section 2 of the Proclamation, USCIS’s prospective-only trigger, CBP’s geographic limitation to beneficiaries abroad, DOS’s one-time filing characterization, and the consistent statements in the agency guidance that the application of the fee is directed at petitions, the sum of the Proclamation and agency guidance must necessarily mean that these actions fall outside the surcharge’s scope: (1) change-of-employer filings, (2) in-U.S. change-of-status petitions, (3) extensions/amendments, and (4) visa issuance or reentry based on previously approved petitions that are not subject to the Proclamation, even where those petitions were filed on or after September 21, 2025.

Conclusion

Employers are already making binding hiring and investment decisions based on this understanding of the agency guidance. Formal confirmation from USCIS, DHS, and DOS is essential to ensure that workforce planning continues with clarity and confidence. Without such certainty, employers face the risk of overpaying, under-hiring, or shifting talent offshore, undermining U.S. competitiveness in critical industries.

We respectfully urge USCIS, DHS, and DOS to issue formal written guidance confirming that the \$100,000 surcharge applies only to new petitions filed after September 21, 2025, for beneficiaries who are abroad when the petition is filed, and not to change-of-employer petitions, change-of-status petitions for individuals inside the United States, extensions or amendments, or visa issuance and reentry based on previously approved petitions that are not themselves subject to the Proclamation.

Respectfully,

The Center Strategy and Applied Insights at Fragomen



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