

ARTS REQUIRE TIMELY SERVICE (ARTS) ACT

MARCH 6, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1312]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 1312) to expedite adjudication of employer petitions for aliens
of extraordinary artistic ability, having considered the same, report
favorably thereon with an amendment and recommend that the bill
as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arts Require Timely Service (ARTS) Act”.

SEC. 2. EXPEDITED ADJUDICATION OF EMPLOYER PETITIONS FOR ALIENS OF EXTRAORDINARY ARTISTIC ABILITY.

Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended—

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and

(2) in paragraph (6)(D)—

(A) by striking “(D) Any person” and inserting “(D)(i) Except as provided in clause (ii), any person”; and

(B) by adding at the end the following:

“(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an alien (as described in clauses (ii) and (iii) of section 101(a)(15)(O)), or an alien described in section 101(a)(15)(P) (other than an alien described in section 214(c)(4)(A) (relating to athletes)) not later than 30 days after—

“(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

“(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

“(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in clause (ii) and the petitioner is an arts organization described in paragraph (3), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code for the taxable year preceding the calendar year in which the petition is submitted, or an individual or entity petitioning primarily on behalf of such an organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.”.

PURPOSE AND SUMMARY

H.R. 1312, the “Arts Require Timely Service (ARTS) Act,” amends section 214(c) of the Immigration and Nationality Act to provide premium processing (as described in section 286(u) of the Act) for O or P visa petitions that are not processed within 30 days of filing, if the petitioner is a nonprofit arts organization or is filing on behalf of such an organization.

BACKGROUND AND NEED FOR THE LEGISLATION

By inviting foreign artists to perform, nonprofit arts organizations in the United States offer American audiences the opportunity to experience a variety of artistic talent and encourage a supportive climate for American artists to perform abroad. But nonprofit arts organizations have confronted significant delays and uncertainties in the processing of visa petitions for foreign guest artists in the last several years. These delays not only impact the immediate availability of foreign artists to perform alongside American artists, but also threaten to impede the ability of U.S. artists to perform abroad.

When a nonprofit arts organization invites a foreign performer, an entire symphony, or other performing arts group to perform in the United States, the hosting organization must calendar, advertise, and ticket performances far in advance. All of these arrangements must be made based on the expectation that the organization will successfully obtain a visa for their guest performer.

Increasingly, delays in processing have complicated this process, leading many smaller arts organizations to stop engaging foreign artists altogether because they cannot risk the potential expense of canceling a performance as a result of slow visa processing. Organi-

zations that have persevered are experiencing more frequent situations in which performances involving foreign guest artists must be cancelled because U.S. Citizenship and Immigration Services (USCIS) cannot process visa petitions within a 6-month period before the performance. The risk of cancellation presents problems not only for the organizations bringing in foreign artists, but also for American artists who are slated to work as part of these performances as well as for the support staff employed by the organizations for such performances.

Many nonprofit arts organizations cannot afford the current \$1,000 fee for premium processing, now offered by USCIS, a program that was adopted primarily at the request of for-profit corporations. While premium processing provides 15-calendar-day processing to petitioners paying the additional fee, this is a particularly unreasonable alternative in the context of the O and P categories. Existing statute already requires processing of these visas within 14 days of receipt of a completed petition, although regular visa processing for O and P visas can now take up to 180 days—too long for the performance schedules of arts organizations to accommodate.

Prior to the consideration of H.R. 1312, a bipartisan group of Members urged USCIS to remedy this problem administratively. In October 2003, sixteen members¹ sent a letter to USCIS Director Eduardo Aguirre encouraging him to implement a number of reforms, including reducing processing for O and P petitions filed by or on behalf of nonprofit organizations to 30 days or automatically removing those petitions for premium processing at no additional fee. To date, these reforms have not been made administratively, and USCIS has advised the Committee that it cannot make them without legislative action.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1312.

COMMITTEE CONSIDERATION

On September 25, 2007, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law met in open session and ordered the bill H.R. 1312 favorably reported, by a vote of 7 to 5, a quorum being present. On October 24, 2007 and November 7, 2007, the Committee met in open session and on November 7, 2007, the Committee ordered the bill H.R. 1312 favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 1312.

¹The letter to USCIS Director Eduardo Aguirre was signed by Representatives Melissa Hart, Howard Berman, Howard Coble, Adam Schiff, Lamar Smith, Robert Wexler, Chris Cannon, William Delahunt, Randy Forbes, Anthony Weiner, Mike Pence, Tammy Baldwin, Marsha Blackburn, Jerrold Nadler, Steve Chabot, and Sheila Jackson Lee.

1. An amendment offered by Mr. King to limit the application of the premium processing provision of the bill to non-profit organizations with assets and revenue of less than \$1 million. The amendment failed by a vote of 9 to 15.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters			
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson		X	
Ms. Sutton		X	
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin			
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis			
Ms. Wasserman Schultz		X	
Mr. Ellison		X	
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot			
Mr. Lungren		X	
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Total	9	15	

2. An amendment offered by Mr. King to limit the application of the premium processing provision of the bill to non-profit organizations with assets and revenue of less than \$100 million. The amendment failed by a vote of 10 to 17.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson			
Ms. Sutton			
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin			
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.			
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert			
Mr. Jordan	X		
Total	10	17	

3. An amendment offered by Mr. King to limit the application of the premium processing provision of the bill to non-profit organizations with assets and revenue of less than \$1 billion. The amendment failed by a vote of 12 to 18.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Sánchez		X	
Mr. Cohen		X	
Mr. Johnson			
Ms. Sutton		X	
Mr. Gutierrez			
Mr. Sherman		X	
Ms. Baldwin			

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Davis		X	
Ms. Wasserman Schultz			
Mr. Ellison			
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks			
Mr. Gohmert			
Mr. Jordan	X		
Total	12	18	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1312, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 22, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1312, the “Arts Require Timely Service Act.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 1312—Arts Require Timely Service Act.

CBO estimates that implementing H.R. 1312 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending, but CBO estimates that any such effects would not be significant in any year. H.R. 1312 would not affect revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Current law requires the Department of Homeland Security (DHS) to adjudicate petitions for nonimmigrant visas for certain types of artists and entertainers within 2 weeks of receiving a complete application. However, it takes DHS about 8 weeks, on average, to do so. If petitioners pay a \$1,000 fee for premium processing services, the department prioritizes those applications and completes its work within 15 days.

H.R. 1312 would extend the time period for adjudicating petitions for certain types of artists and entertainers from 2 weeks to 30 days. Under the bill, if DHS fails to process petitions filed on behalf of artists and entertainers by certain types of nonprofit arts organizations within 30 days, the department would then have to provide premium processing services for those applicants without charging the \$1,000 fee.

Enacting H.R. 1312 could reduce the collection of premium processing fees from nonprofit arts organizations. DHS does not track the number of nonprofit arts organizations that currently pay the premium processing fee. The decision to pay that fee is based on many variables, including the availability of foreign artists and entertainers to travel to the United States, changes in performance schedules, and other factors. Under H.R. 1312, if organizations decline to pay the premium processing fee when they initially apply, they could wait up to 6 weeks (30 days, plus about 2 weeks for premium processing) for DHS to adjudicate the application. That schedule may take too long for many artists and entertainers, and CBO expects that any loss of premium processing fees under the bill (which would increase direct spending) would not be significant in any year.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1312, as amended, is intended to reduce processing times for O and P visa peti-

tions filed by nonprofit arts organizations to no more than 45 days from filing of a completed petition.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1312 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. This section sets forth the short title of the bill as the “Arts Require Timely Service (ARTS) Act.”

Sec. 2. Expedited Adjudication of Employer Petitions for Aliens of Extraordinary Artistic Ability. This section amends section 214(c)(6)(D) of the Immigration and Nationality Act to require the Secretary of Homeland Security to adjudicate visa petitions filed on behalf of an alien with extraordinary ability in the arts in the O and P categories within 30 days of a completed petition being filed. In the case of a petition filed without meeting the consultation requirement, the petition must be adjudicated within 30 days of submission of a written advisory opinion or comment, or of a letter of no objection, or the expiration of the period in which such a submission would be timely, whichever is earliest. This section also provides that if such a petition is not adjudicated within those 30 days and the petitioner is a nonprofit arts organization, the Secretary must provide the petitioner with premium processing at no additional fee.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * *

(c)(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1)) in any specific case or specific cases shall be determined by the [Attorney General] *Secretary of Homeland Security*, after consultation with

appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the [Attorney General] *Secretary of Homeland Security* shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a non-immigrant. For purposes of this subsection with respect to non-immigrants described in section 101(a)(15)(H)(ii)(a), the term “appropriate agencies of Government” means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

(2)(A) The [Attorney General] *Secretary of Homeland Security* shall provide for a procedure under which an importing employer which meets requirements established by the [Attorney General] *Secretary of Homeland Security* may file a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import such aliens. Such procedure shall permit the expedited processing of visas for admission of aliens covered under such a petition.

* * * * *

(C) The [Attorney General] *Secretary of Homeland Security* shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

* * * * *

(E) In the case of an alien spouse admitted under section 101(a)(15)(L), who is accompanying or following to join a principal alien admitted under such section, the [Attorney General] *Secretary of Homeland Security* shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.

* * * * *

(3) The [Attorney General] *Secretary of Homeland Security* shall approve a petition—

(A) * * *

* * * * *

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the [Attorney General] *Secretary of Homeland Security* shall consider the exigencies and scheduling of the production, and (iv) the [Attorney General] *Secretary of Homeland Security* shall append to the decision any such opinion. The [Attorney General] *Secretary of Homeland Security* shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the

date such a waiver is provided, the [Attorney General] *Secretary of Homeland Security* shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) * * *

(B)(i) * * *

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the [Attorney General] *Secretary of Homeland Security* may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The [Attorney General] *Secretary of Homeland Security* may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

* * * * *

(C) A person may petition the [Attorney General] *Secretary of Homeland Security* for classification of an alien as a nonimmigrant under section 101(a)(15)(P).

(D) The [Attorney General] *Secretary of Homeland Security* shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation in accordance with paragraph (6).

(E) The [Attorney General] *Secretary of Homeland Security* shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States.

* * * * *

(5)(A) * * *

(B) In the case of an alien who is admitted to the United States in nonimmigrant status under section 101(a)(15)(O) or 101(a)(15)(P) and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the [Attorney General] *Secretary of Homeland Security* that the reasonable cost of that transportation will be provided.

(6)(A) * * *

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the [Attorney General] *Secretary of Homeland Security* shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the

alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the **【Attorney General】 Secretary of Homeland Security** shall adjudicate the petition without requiring an advisory opinion.

【(D) Any person】 *(D)(i) Except as provided in clause (ii), any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the 【Attorney General】 Secretary of Homeland Security shall adjudicate such petition in no more than 14 days. The 【Attorney General】 Secretary of Homeland Security may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.*

(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an alien (as described in clauses (ii) and (iii) of section 101(a)(15)(O)), or an alien described in section 101(a)(15)(P) (other than an alien described in section 214(c)(4)(A) (relating to athletes)) not later than 30 days after—

(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in clause (ii) and the petitioner is an arts organization described in paragraph (3), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code for the taxable year preceding the calendar year in which the petition is submitted, or an individual or entity petitioning primarily on behalf of such an organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.

(E)(i) The **【Attorney General】 Secretary of Homeland Security** shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 101(a)(15)(O) or 101(a)(15)(P) to accommodate the exigencies and scheduling of a given production or event.

(ii) The **【Attorney General】 Secretary of Homeland Security** shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 101(a)(15)(O)(i) or 101(a)(15)(P)(i) in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the **【Attorney General】 Secretary of Homeland Security** with a nongovern-

mental entity shall be construed as permitting the [Attorney General] *Secretary of Homeland Security* to delegate any authority under this subsection to such an entity. The [Attorney General] *Secretary of Homeland Security* shall give such weight to advisory opinions provided under this section as the [Attorney General] *Secretary of Homeland Security* determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the [Attorney General] *Secretary of Homeland Security* shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The [Attorney General] *Secretary of Homeland Security* shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 101(a)(15) the following:

(A) * * *

* * * * *

(9)(A) The [Attorney General] *Secretary of Homeland Security* shall impose a fee on an employer (excluding any employer that is a primary or secondary education institution, an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a), a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before a petition under paragraph (1)—

(i) * * *

* * * * *

