

112TH CONGRESS  
2D SESSION

# S. 3217

To jump-start economic recovery through the formation and growth of new businesses, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2012

Mr. MORAN (for himself, Mr. WARNER, Mr. COONS, Mr. RUBIO, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To jump-start economic recovery through the formation and growth of new businesses, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Startup Act 2.0”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Conditional permanent resident status for immigrants with an advanced degree in a STEM field.

Sec. 4. Immigrant entrepreneurs.

- Sec. 5. Elimination of the per-country numerical limitation for employment-based visas.
- Sec. 6. Capital gains tax exemption for startup companies.
- Sec. 7. Research credit for startup companies.
- Sec. 8. Accelerated commercialization of taxpayer-funded research.
- Sec. 9. Economic impact of major Federal agency rules.
- Sec. 10. Biennial State startup business report.
- Sec. 11. New business formation report.
- Sec. 12. Rescission of unspent Federal funds.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Achieving economic recovery will require the  
4 formation and growth of new companies.

5 (2) Between 1980 and 2005, companies less  
6 than 5 years old accounted for nearly all net job cre-  
7 ation in the United States.

8 (3) New firms in the United States create an  
9 average of 3,000,000 jobs per year.

10 (4) To get Americans back to work, entre-  
11 preneurs must be free to innovate, create new com-  
12 panies, and hire employees.

13 **SEC. 3. CONDITIONAL PERMANENT RESIDENT STATUS FOR**  
14 **IMMIGRANTS WITH AN ADVANCED DEGREE**  
15 **IN A STEM FIELD.**

16 (a) IN GENERAL.—Chapter 2 of title II of the Immi-  
17 gration and Nationality Act (8 U.S.C. 1181 et seq.) is  
18 amended by inserting after section 216A the following:

1 **“SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS**  
2 **FOR ALIENS WITH AN ADVANCED DEGREE IN**  
3 **A STEM FIELD.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-  
5 vision of this Act, the Secretary of Homeland Security  
6 may adjust the status of not more than 50,000 aliens who  
7 have earned a master’s degree or a doctorate degree at  
8 an institution of higher education in a STEM field to that  
9 of an alien conditionally admitted for permanent residence  
10 and authorize each alien granted such adjustment of sta-  
11 tus to remain in the United States—

12 “(1) for up to 1 year after the expiration of the  
13 alien’s student visa under section 101(a)(15)(F)(i) if  
14 the alien is diligently searching for an opportunity to  
15 become actively engaged in a STEM field; and

16 “(2) indefinitely if the alien remains actively en-  
17 gaged in a STEM field.

18 “(b) APPLICATION FOR CONDITIONAL PERMANENT  
19 RESIDENT STATUS.—Every alien applying for a condi-  
20 tional permanent resident status under this section shall  
21 submit an application to the Secretary of Homeland Secu-  
22 rity before the expiration of the alien’s student visa in  
23 such form and manner as the Secretary shall prescribe  
24 by regulation.

25 “(c) INELIGIBILITY FOR FEDERAL GOVERNMENT AS-  
26 SISTANCE.—An alien granted conditional permanent resi-

1 dent status under this section shall not be eligible, while  
 2 in such status, for—

3 “(1) any unemployment compensation (as de-  
 4 fined in section 85(b) of the Internal Revenue Code  
 5 of 1986); or

6 “(2) any Federal means-tested public benefit  
 7 (as that term is used in section 403 of the Personal  
 8 Responsibility and Work Opportunity Reconciliation  
 9 Act of 1996 (8 U.S.C. 1613)).

10 “(d) EFFECT ON NATURALIZATION RESIDENCY RE-  
 11 QUIREMENT.—An alien granted conditional permanent  
 12 resident status under this section shall be deemed to have  
 13 been lawfully admitted for permanent residence for pur-  
 14 poses of meeting the 5-year residency requirement set  
 15 forth in section 316(a)(1).

16 “(e) REMOVAL OF CONDITION.—The Secretary of  
 17 Homeland Security shall remove the conditional basis of  
 18 an alien’s conditional permanent resident status under  
 19 this section on the date that is 5 years after the date such  
 20 status was granted if the alien maintained his or her eligi-  
 21 bility for such status during the entire 5-year period.

22 “(f) DEFINITIONS.—In this section:

23 “(1) ACTIVELY ENGAGED IN A STEM FIELD.—  
 24 The term ‘actively engaged in a STEM field’—

25 “(A) means—

1 “(i) gainfully employed in a for-profit  
2 business or nonprofit organization in the  
3 United States in a STEM field;

4 “(ii) teaching 1 or more STEM field  
5 courses at an institution of higher edu-  
6 cation; or

7 “(iii) employed by a Federal, State, or  
8 local government entity; and

9 “(B) includes any period of up to 6  
10 months during which the alien does not meet  
11 the requirement under subparagraph (A) if  
12 such period was immediately preceded by a 1-  
13 year period during which the alien met the re-  
14 quirement under subparagraph (A).

15 “(2) INSTITUTION OF HIGHER EDUCATION.—  
16 The term ‘institution of higher education’ has the  
17 meaning given the term in section 101(a) of the  
18 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

19 “(3) STEM FIELD.—The term ‘STEM field’  
20 means any field of study or occupation included on  
21 the most recent STEM-Designated Degree Program  
22 List published in the Federal Register by the De-  
23 partment of Homeland Security (as described in sec-  
24 tion 214.2(f)(11)(i)(C)(2) of title 8, Code of Federal  
25 Regulations).”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
 2 for the Immigration and Nationality Act (8 U.S.C. 1101  
 3 et seq.) is amended by inserting after the item relating  
 4 to section 216A the following:

“Sec. 216B. Conditional permanent resident status for aliens with an advanced  
 degree in a STEM field.”.

5 (c) GOVERNMENT ACCOUNTABILITY OFFICE  
 6 STUDY.—

7 (1) IN GENERAL.—Not later than 3 years after  
 8 the date of the enactment of this Act, the Comp-  
 9 troller General of the United States shall submit to  
 10 Congress a report on the alien college graduates  
 11 granted immigrant status under section 216B of the  
 12 Immigration and Nationality Act, as added by sub-  
 13 section (a).

14 (2) CONTENTS.—The report described in para-  
 15 graph (1) shall include—

16 (A) the number of aliens described in para-  
 17 graph (1) who have earned a master’s degree,  
 18 broken down by the number of such degrees in  
 19 science, technology, engineering, and mathe-  
 20 matics;

21 (B) the number of aliens described in  
 22 paragraph (1) who have earned a doctorate de-  
 23 gree, broken down by the number of such de-

1 grees in science, technology, engineering, and  
 2 mathematics;

3 (C) the number of aliens described in para-  
 4 graph (1) who have founded a business in the  
 5 United States in a STEM field;

6 (D) the number of aliens described in  
 7 paragraph (1) who are employed in the United  
 8 States in a STEM field, broken down by em-  
 9 ployment sector (for profit, nonprofit, or gov-  
 10 ernment); and

11 (E) the number of aliens described in para-  
 12 graph (1) who are employed by an institution of  
 13 higher education.

14 (3) DEFINITIONS.—The terms “institution of  
 15 higher education” and “STEM field” have the  
 16 meaning given such terms in section 216B(f) of the  
 17 Immigration and Nationality Act, as added by sub-  
 18 section (a).

19 **SEC. 4. IMMIGRANT ENTREPRENEURS.**

20 (a) **QUALIFIED ALIEN ENTREPRENEURS.**—

21 (1) **ADMISSION AS IMMIGRANTS.**—Chapter 1 of  
 22 title II of the Immigration and Nationality Act (8  
 23 U.S.C. 1151 et seq.) is amended by adding at the  
 24 end the following:

1 **“SEC. 210A. QUALIFIED ALIEN ENTREPRENEURS.**

2 “(a) ADMISSION AS IMMIGRANTS.—The Secretary of  
3 Homeland Security, in accordance with the provisions of  
4 this section and section 216A, may issue a conditional im-  
5 migrant visa to not more than 75,000 qualified alien en-  
6 trepreneurs.

7 “(b) APPLICATION FOR CONDITIONAL PERMANENT  
8 RESIDENT STATUS.—Every alien applying for a condi-  
9 tional immigrant visa under this section shall submit an  
10 application to the Secretary of Homeland Security in such  
11 form and manner as the Secretary shall prescribe by regu-  
12 lation.

13 “(c) REVOCATION.—If, during the 4-year period be-  
14 ginning on the date that an alien is granted a visa under  
15 this section, the Secretary of Homeland Security deter-  
16 mines that such alien is no longer a qualified alien entre-  
17 preneur, the Secretary shall—

18 “(1) revoke such visa; and

19 “(2) notify the alien that the alien—

20 “(A) may voluntarily depart from the  
21 United States in accordance to section 240B; or

22 “(B) will be subject to removal proceedings  
23 under section 240 if the alien does not depart  
24 from the United States not later than 6 months  
25 after receiving such notification.



1       “(d) REMOVAL OF CONDITIONAL BASIS.—The Sec-  
 2       retary of Homeland Security shall remove the conditional  
 3       basis of the status of an alien issued an immigrant visa  
 4       under this section on that date that is 4 years after the  
 5       date on which such visa was issued if such visa was not  
 6       revoked pursuant to subsection (c).

7       “(e) DEFINITIONS.—In this section:

8               “(1) FULL-TIME EMPLOYEE.—The term ‘full-  
 9       time employee’ means a United States citizen or  
 10       legal permanent resident who is paid by the new  
 11       business entity registered by a qualified alien entre-  
 12       preneur at a rate that is comparable to the median  
 13       income of employees in the region.

14              “(2) INSTITUTION OF HIGHER EDUCATION.—  
 15       The term ‘institution of higher education’ has the  
 16       meaning given the term in section 101(a) of the  
 17       Higher Education Act of 1965 (20 U.S.C. 1001(a)).

18              “(3) QUALIFIED ALIEN ENTREPRENEUR.—The  
 19       term ‘qualified alien entrepreneur’ means an alien  
 20       who—

21                      “(A) at the time the alien applies for an  
 22       immigrant visa under this section—

23                              “(i) is lawfully present in the United  
 24       States; and

1 “(ii)(I) holds a nonimmigrant visa  
2 pursuant to section 101(a)(15)(H)(i)(b); or

3 “(II) has completed or will complete a  
4 graduate level degree in a STEM field  
5 from an institution of higher education;

6 “(B) during the 1-year period beginning on  
7 the date the alien is granted a visa under this  
8 section—

9 “(i) registers at least 1 new business  
10 entity in a State;

11 “(ii) employs, at such business entity  
12 in the United States, at least 2 full-time  
13 employees who are not relatives of the  
14 alien; and

15 “(iii) invests, or raises capital invest-  
16 ment of, not less than \$100,000 in such  
17 business entity; and

18 “(C) during the 3-year period beginning on  
19 the last day of the 1-year period described in  
20 paragraph (2), employs, at such business entity  
21 in the United States, an average of at least 5  
22 full-time employees who are not relatives of the  
23 alien.

24 “(4) STEM FIELD.—The term ‘STEM field’  
25 means any field of study or occupation included on

1 the most recent STEM-Designated Degree Program  
 2 List published in the Federal Register by the De-  
 3 partment of Homeland Security (as described in sec-  
 4 tion 214.2(f)(11)(i)(C)(2) of title 8, Code of Federal  
 5 Regulations).”.

6 (2) TABLE OF CONTENTS AMENDMENT.—The  
 7 table of contents in the first section of the Immigra-  
 8 tion and Nationality Act (8 U.S.C. 1101 et seq.) is  
 9 amended by adding after the item relating to section  
 10 210 the following:

“Sec. 210A. Qualified alien entrepreneurs.”.

11 (b) CONDITIONAL PERMANENT RESIDENT STA-  
 12 TUS.—Section 216A of the Immigration and Nationality  
 13 Act (8 U.S.C. 1186b) is amended—

14 (1) by striking “Attorney General” each place  
 15 such term appears and inserting “Secretary of  
 16 Homeland Security”;

17 (2) in subsection (b)(1)(C), by striking  
 18 “203(b)(5),” and inserting “203(b)(5) or 210A, as  
 19 appropriate,”;

20 (3) in subsection (c)(1), by striking “alien en-  
 21 trepreneur must” each place such term appears and  
 22 inserting “alien entrepreneur shall”;

23 (4) in subsection (d)(1)(B), by striking the pe-  
 24 riod at the end and inserting “or 210A, as appro-  
 25 priate.”; and

1           (5) in subsection (f)(1), by striking the period  
2           at the end and inserting “or 210A.”.

3           (c)   GOVERNMENT   ACCOUNTABILITY   OFFICE  
4 STUDY.—

5           (1) IN GENERAL.—Not later than 3 years after  
6           the date of the enactment of this Act, the Comp-  
7           troller General of the United States shall submit to  
8           Congress a report on the qualified alien entre-  
9           preneurs granted immigrant status under section  
10          210A of the Immigration and Nationality Act, as  
11          added by subsection (a).

12          (2) CONTENTS.—The report described in para-  
13          graph (1) shall include information regarding—

14                (A) the number of qualified alien entre-  
15                preneurs who have received immigrant status  
16                under section 210A of the Immigration and Na-  
17                tionality Act, as added by subsection (a), listed  
18                by country of origin;

19                (B) the localities in which such qualified  
20                alien entrepreneurs have initially settled;

21                (C) whether such qualified alien entre-  
22                preneurs generally remain in the localities in  
23                which they initially settle;

1 (D) the types of commercial enterprises  
 2 that such qualified alien entrepreneurs have es-  
 3 tablished; and

4 (E) the types and number of jobs created  
 5 by such qualified alien entrepreneurs.

6 **SEC. 5. ELIMINATION OF THE PER-COUNTRY NUMERICAL**  
 7 **LIMITATION FOR EMPLOYMENT-BASED**  
 8 **VISAS.**

9 (a) IN GENERAL.—Section 202(a)(2) of the Immi-  
 10 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is  
 11 amended—

12 (1) in the paragraph heading, by striking “AND  
 13 EMPLOYMENT-BASED”;

14 (2) by striking “(3), (4), and (5),” and insert-  
 15 ing “(3) and (4),”;

16 (3) by striking “subsections (a) and (b) of sec-  
 17 tion 203” and inserting “section 203(a)”;

18 (4) by striking “7” and inserting “15”; and

19 (5) by striking “such subsections” and inserting  
 20 “such section”.

21 (b) CONFORMING AMENDMENTS.—Section 202 of the  
 22 Immigration and Nationality Act (8 U.S.C. 1152) is  
 23 amended—

1           (1) in subsection (a)(3), by striking “both sub-  
2       sections (a) and (b) of section 203” and inserting  
3       “section 203(a)”;

4           (2) by striking subsection (a)(5); and

5           (3) by amending subsection (e) to read as fol-  
6       lows:

7       “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

8       If it is determined that the total number of immigrant  
9       visas made available under section 203(a) to natives of  
10      any single foreign state or dependent area will exceed the  
11      numerical limitation specified in subsection (a)(2) in any  
12      fiscal year, in determining the allotment of immigrant visa  
13      numbers to natives under section 203(a), visa numbers  
14      with respect to natives of that state or area shall be allo-  
15      cated (to the extent practicable and otherwise consistent  
16      with this section and section 203) in a manner so that,  
17      except as provided in subsection (a)(4), the proportion of  
18      the visa numbers made available under each of paragraphs  
19      (1) through (4) of section 203(a) is equal to the ratio of  
20      the total number of visas made available under the respec-  
21      tive paragraph to the total number of visas made available  
22      under section 203(a).”.

23       (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the  
24      Chinese Student Protection Act of 1992 (8 U.S.C. 1255  
25      note) is amended—

1           (1) in subsection (a), by striking “subsection  
2           (e))” and inserting “subsection (d))”; and

3           (2) by striking subsection (d) and redesignating  
4           subsection (e) as subsection (d).

5           (d) EFFECTIVE DATE.—The amendments made by  
6           this section shall take effect as if enacted on September  
7           30, 2011, and shall apply to fiscal years beginning with  
8           fiscal year 2012.

9           (e) TRANSITION RULES FOR EMPLOYMENT-BASED  
10          IMMIGRANTS.—

11          (1) IN GENERAL.—Subject to the succeeding  
12          paragraphs of this subsection and notwithstanding  
13          title II of the Immigration and Nationality Act (8  
14          U.S.C. 1151 et seq.), the following rules shall apply:

15                (A) For fiscal year 2012, 15 percent of the  
16                immigrant visas made available under each of  
17                paragraphs (2) and (3) of section 203(b) of  
18                such Act (8 U.S.C. 1153(b)) shall be allotted to  
19                immigrants who are natives of a foreign state  
20                or dependent area that was not one of the two  
21                states with the largest aggregate numbers of  
22                natives obtaining immigrant visas during fiscal  
23                year 2010 under such paragraphs.

24                (B) For fiscal year 2013, 10 percent of the  
25                immigrant visas made available under each of

1 such paragraphs shall be allotted to immigrants  
2 who are natives of a foreign state or dependent  
3 area that was not one of the two states with the  
4 largest aggregate numbers of natives obtaining  
5 immigrant visas during fiscal year 2011 under  
6 such paragraphs.

7 (C) For fiscal year 2014, 10 percent of the  
8 immigrant visas made available under each of  
9 such paragraphs shall be allotted to immigrants  
10 who are natives of a foreign state or dependent  
11 area that was not one of the two states with the  
12 largest aggregate numbers of natives obtaining  
13 immigrant visas during fiscal year 2012 under  
14 such paragraphs.

15 (2) PER-COUNTRY LEVELS.—

16 (A) RESERVED VISAS.—With respect to  
17 the visas reserved under each of subparagraphs  
18 (A) through (C) of paragraph (1), the number  
19 of such visas made available to natives of any  
20 single foreign state or dependent area in the ap-  
21 propriate fiscal year may not exceed 25 percent  
22 (in the case of a single foreign state) or 2 per-  
23 cent (in the case of a dependent area) of the  
24 total number of such visas.



1           (B) UNRESERVED VISAS.—With respect to  
2           the immigrant visas made available under each  
3           of paragraphs (2) and (3) of section 203(b) of  
4           such Act (8 U.S.C. 1153(b)) and not reserved  
5           under paragraph (1), for each of fiscal years  
6           2012, 2013, and 2014, not more than 85 per-  
7           cent shall be allotted to immigrants who are na-  
8           tives of any single foreign state.

9           (3) SPECIAL RULE TO PREVENT UNUSED  
10          VISAS.—If, with respect to fiscal year 2012, 2013, or  
11          2014, the operation of paragraphs (1) and (2) of  
12          this subsection would prevent the total number of  
13          immigrant visas made available under paragraph (2)  
14          or (3) of section 203(b) of such Act (8 U.S.C.  
15          1153(b)) from being issued, such visas may be  
16          issued during the remainder of such fiscal year with-  
17          out regard to paragraphs (1) and (2) of this sub-  
18          section.

19          (4) RULES FOR CHARGEABILITY.—Section  
20          202(b) of the Immigration and Nationality Act (8  
21          U.S.C. 1152(b)) shall apply in determining the for-  
22          eign state to which an alien is chargeable for pur-  
23          poses of this subsection.

1 **SEC. 6. CAPITAL GAINS TAX EXEMPTION FOR STARTUP**  
 2 **COMPANIES.**

3 (a) **PERMANENT FULL EXCLUSION.**—

4 (1) **IN GENERAL.**—Subsection (a) of section  
 5 1202 of the Internal Revenue Code of 1986 is  
 6 amended to read as follows:

7 “(a) **EXCLUSION.**—In the case of a taxpayer other  
 8 than a corporation, gross income shall not include 100  
 9 percent of any gain from the sale or exchange of qualified  
 10 small business stock held for more than 5 years.”.

11 (2) **CONFORMING AMENDMENTS.**—

12 (A) The heading for section 1202 of such  
 13 Code is amended by striking “**PARTIAL**”.

14 (B) The item relating to section 1202 in  
 15 the table of sections for part I of subchapter P  
 16 of chapter 1 of such Code is amended by strik-  
 17 ing “Partial exclusion” and inserting “Exclu-  
 18 sion”.

19 (C) Section 1223(13) of such Code is  
 20 amended by striking “1202(a)(2),”.

21 (b) **REPEAL OF MINIMUM TAX PREFERENCE.**—

22 (1) **IN GENERAL.**—Subsection (a) of section 57  
 23 of the Internal Revenue Code of 1986 is amended by  
 24 striking paragraph (7).

1           (2) TECHNICAL AMENDMENT.—Subclause (II)  
 2           of section 53(d)(1)(B)(ii) of such Code is amended  
 3           by striking “, (5), and (7)” and inserting “and (5)”.

4           (c) REPEAL OF 28 PERCENT CAPITAL GAINS RATE  
 5 ON QUALIFIED SMALL BUSINESS STOCK.—

6           (1) IN GENERAL.—Subparagraph (A) of section  
 7           1(h)(4) of the Internal Revenue Code of 1986 is  
 8           amended to read as follows:

9                     “(A) collectibles gain, over”.

10          (2) CONFORMING AMENDMENTS.—

11                 (A) Section 1(h) of such Code is amended  
 12                 by striking paragraph (7).

13                 (B)(i) Section 1(h) of such Code is amend-  
 14                 ed by redesignating paragraphs (8), (9), (10),  
 15                 (11), (12), and (13) as paragraphs (7), (8), (9),  
 16                 (10), (11), and (12), respectively.

17                 (ii) Sections 163(d)(4)(B), 854(b)(5),  
 18                 857(c)(2)(D) of such Code are each amended  
 19                 by striking “section 1(h)(11)(B)” and inserting  
 20                 “section 1(h)(10)(B)”.

21                 (iii) The following sections of such Code  
 22                 are each amended by striking “section  
 23                 1(h)(11)” and inserting “section 1(h)(10)”:

24                     (I) Section 301(f)(4).

25                     (II) Section 306(a)(1)(D).

1 (III) Section 584(c).

2 (IV) Section 702(a)(5).

3 (V) Section 854(a).

4 (VI) Section 854(b)(2).

5 (iv) The heading of section 857(c)(2) is  
6 amended by striking “1(h)(11)” and inserting  
7 “1(h)(10)”.

8 (d) EFFECTIVE DATE.—The amendments made by  
9 this section apply to stock acquired after December 31,  
10 2012.

11 **SEC. 7. RESEARCH CREDIT FOR STARTUP COMPANIES.**

12 (a) IN GENERAL.—

13 (1) IN GENERAL.—Section 41 of the Internal  
14 Revenue Code of 1986 is amended by adding at the  
15 end the following new subsection:

16 “(i) TREATMENT OF CREDIT TO QUALIFIED SMALL  
17 BUSINESSES.—

18 “(1) IN GENERAL.—For purposes of sub-  
19 sections (b) and (c) of section 6401, the amount of  
20 the credit determined under this section which is at-  
21 tributable to a qualified small business shall be  
22 treated as a credit allowed under subpart C of part  
23 IV of subchapter A for the taxable year (and not  
24 under any other subpart). For purposes of section  
25 6425, any amount treated as so allowed shall be

1 treated as a payment of estimated income tax for  
2 the taxable year.

3 “(2) PER TAXPAYER LIMITATION.—The amount  
4 of overpayment by reason of paragraph (1) for any  
5 qualified small business for any taxable year shall  
6 not exceed the lesser of—

7 “(A) \$250,000, or

8 “(B) 20 percent of the W-2 wages (as de-  
9 fined in section 199(b)(2), determined without  
10 regard to subparagraphs (B) and (D) thereof)  
11 of the qualified small business for the taxable  
12 year.

13 “(3) TEMPORAL LIMITATION.—Paragraph (1)  
14 shall not apply with respect to a qualified small busi-  
15 ness if there has been an overpayment by such quali-  
16 fied small business by reason of paragraph (1) with  
17 respect to 5 or more preceding taxable years.

18 “(4) QUALIFIED SMALL BUSINESS.—For pur-  
19 poses of this subsection the term ‘qualified small  
20 business’ means, with respect to any taxable year,  
21 any person if—

22 “(A) the gross receipts (as determined  
23 under subsection (c)(7)) of such person for the  
24 taxable year is less than \$5,000,000, and

1           “(B) such person did not have gross re-  
 2           ceipts for any period preceding the 5-taxable-  
 3           year period ending with such taxable year.

4           “(5) AGGREGATION RULES.—For purposes of  
 5           determining the limitation under paragraph (2) and  
 6           determining gross receipts under paragraph (4)(A),  
 7           all members of the same controlled group of corpora-  
 8           tions (within the meaning of section 267(f)) and all  
 9           persons under common control (within the meaning  
 10          of section 52(b) but determined by treating an inter-  
 11          est of more than 50 percent as a controlling inter-  
 12          est) shall be treated as 1 person.

13          “(6) REGULATIONS.—The Secretary shall pre-  
 14          scribe such regulations as may be necessary to carry  
 15          out the purposes of this subsection, including—

16               “(A) regulations to prevent the avoidance  
 17               of the purposes of paragraph (4)(B) through  
 18               the use of successor companies or other means,  
 19               and

20               “(B) regulations to minimize compliance  
 21               and recordkeeping burdens under this sub-  
 22               section for start-up companies.”.

23          (2) CONFORMING AMENDMENTS.—

24               (A) Subsection (g) of section 41 of the In-  
 25          ternal Revenue Code of 1986 is amended by

adding at the end the following new sentence:

“This subsection shall not apply with respect to any amount determined under subsection (a) to which subsection (i) applies.”.

(B) Section 1324(b)(2) of title 31, United States Code, is amended by inserting “41(i),” after “36A,”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

**SEC. 8. ACCELERATED COMMERCIALIZATION OF TAX-PAYER-FUNDED RESEARCH.**

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) COUNCIL.—The term “Council” means the Advisory Council on Innovation and Entrepreneurship of the Department of Commerce established pursuant to section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3720(c)).

(2) EXTRAMURAL BUDGET.—The term “extramural budget” means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that

1 for the Department of Energy it shall not include  
2 amounts obligated for atomic energy defense pro-  
3 grams solely for weapons activities or for naval reac-  
4 tor programs, and except that for the Agency for  
5 International Development it shall not include  
6 amounts obligated solely for general institutional  
7 support of international research centers or for  
8 grants to foreign countries.

9 (3) INSTITUTION OF HIGHER EDUCATION.—The  
10 term “institution of higher education” has the  
11 meaning given the term in section 101(a) of the  
12 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

13 (4) RESEARCH OR RESEARCH AND DEVELOP-  
14 MENT.—The term “research” or “research and de-  
15 velopment” means any activity that is—

16 (A) a systematic, intensive study directed  
17 toward greater knowledge or understanding of  
18 the subject studied;

19 (B) a systematic study directed specifically  
20 toward applying new knowledge to meet a rec-  
21 ognized need; or

22 (C) a systematic application of knowledge  
23 toward the production of useful materials, de-  
24 vices, and systems or methods, including design,  
25 development, and improvement of prototypes



1           and new processes to meet specific require-  
2           ments.

3           (5) SECRETARY.—The term “Secretary” means  
4           the Secretary of Commerce.

5           (b) GRANT PROGRAM AUTHORIZED.—

6           (1) IN GENERAL.—Each Federal agency that  
7           has an extramural budget for research or research  
8           and development that is in excess of \$100,000,000  
9           for each of fiscal years 2013 through 2017, shall  
10          transfer 0.15 percent of such extramural budget for  
11          each of such fiscal years to the Secretary to enable  
12          the Secretary to carry out a grant program in ac-  
13          cordance with this subsection.

14          (2) GRANTS.—

15                (A) AWARDING OF GRANTS.—

16                   (i) IN GENERAL.—From funds trans-  
17                   ferred under paragraph (1), the Secretary  
18                   shall use the criteria developed by the  
19                   Council to award grants to institutions of  
20                   higher education, including consortia of in-  
21                   stitutions of higher education, for initia-  
22                   tives to improve commercialization and  
23                   transfer of technology.

24                   (ii) REQUEST FOR PROPOSALS.—Not  
25                   later than 30 days after the Council sub-

1 mits the recommendations for criteria to  
2 the Secretary under subsection (c)(4)(B),  
3 and annually thereafter for each fiscal year  
4 for which the grant program is authorized,  
5 the Secretary shall release a request for  
6 proposals.

7 (iii) APPLICATIONS.—Each institution  
8 of higher education that desires to receive  
9 a grant under this subsection shall submit  
10 an application to the Secretary not later  
11 than 90 days after the Secretary releases  
12 the request for proposals under clause (ii).

13 (iv) COUNCIL REVIEW.—

14 (I) IN GENERAL.—The Secretary  
15 shall submit each application received  
16 under clause (iii) to the Council for  
17 Council review.

18 (II) RECOMMENDATIONS.—The  
19 Council shall review each application  
20 received under subclause (I) and sub-  
21 mit recommendations for grant  
22 awards to the Secretary, including  
23 funding recommendations for each  
24 proposal.

1 (III) PUBLIC RELEASE.—The  
2 Council shall publicly release any rec-  
3 ommendations made under subclause  
4 (II).

5 (IV) CONSIDERATION OF REC-  
6 OMMENDATIONS.—In awarding grants  
7 under this subsection, the Secretary  
8 shall take into consideration the rec-  
9 ommendations of the Council under  
10 subclause (II).

11 (B) COMMERCIALIZATION CAPACITY  
12 BUILDING GRANTS.—

13 (i) IN GENERAL.—The Secretary shall  
14 award grants to support institutions of  
15 higher education pursuing specific innova-  
16 tive initiatives to improve an institution's  
17 capacity to commercialize faculty research  
18 that can be widely adopted if the research  
19 yields measurable results.

20 (ii) CONTENT OF PROPOSALS.—  
21 Grants shall be awarded under this sub-  
22 paragraph to proposals demonstrating the  
23 capacity for accelerated commercialization,  
24 proof-of-concept proficiency, and trans-  
25 lating scientific discoveries and cutting-

edge inventions into technological innovations and new companies. In particular, grant funds shall seek to support innovative approaches to achieving these goals that can be replicated by other institutions of higher education if the innovative approaches are successful.

(C) COMMERCIALIZATION ACCELERATOR GRANTS.—The Secretary shall award grants to support institutions of higher education pursuing initiatives that allow faculty to directly commercialize research in an effort to accelerate research breakthroughs. The Secretary may prioritize those initiatives that have a management structure that encourages collaboration between other institutions of higher education or other entities with demonstrated proficiency in creating and growing new companies based on verifiable metrics.

(3) ASSESSMENT OF SUCCESS.—Grants awarded under this subsection shall use criteria for assessing the success of programs through the establishment of benchmarks.

(4) TERMINATION.—The Secretary shall have the authority to terminate grant funding to an insti-

1       tution of higher education in accordance with the  
2       process and performance metrics recommended by  
3       the Council.

4           (5) LIMITATIONS.—

5               (A) PROJECT MANAGEMENT COSTS.—A  
6       grant recipient may use not more than 10 per-  
7       cent of grant funds awarded under this sub-  
8       section for the purpose of funding project man-  
9       agement costs of the grant program.

10            (B) SUPPLEMENT, NOT SUPPLANT.—An  
11       institution of higher education that receives a  
12       grant under this subsection shall use the grant  
13       funds to supplement, and not supplant, non-  
14       Federal funds that would, in the absence of  
15       such grant funds, be made available for activi-  
16       ties described in this section.

17           (6) UNSPENT FUNDS.—Any funds transferred  
18       to the Secretary under paragraph (1) for a fiscal  
19       year that are not expended by the end of such fiscal  
20       year may be expended in any subsequent fiscal year  
21       through fiscal year 2017. Any funds transferred  
22       under paragraph (1) that are remaining at the end  
23       of the grant program’s authorization under this sub-  
24       section shall be transferred to the Treasury for def-  
25       icit reduction.

1 (c) COUNCIL.—

2 (1) IN GENERAL.—Not later than 120 days  
3 after the date of the enactment of this Act, the  
4 Council shall convene and develop recommendations  
5 for criteria in awarding grants to institutions of  
6 higher education under subsection (b).

7 (2) SUBMISSION TO COMMERCE AND PUBLICLY  
8 RELEASED.—The Council shall—

9 (A) submit the recommendations described  
10 in subparagraph (A) to the Secretary; and

11 (i) release the recommendations to the  
12 public.

13 (B) MAJORITY VOTE.—The recommenda-  
14 tions submitted by the Council, as described in  
15 this paragraph, shall be determined by a major-  
16 ity vote of Council members.

17 (C) PERFORMANCE METRICS.—The Coun-  
18 cil shall develop and provide to the Secretary  
19 recommendations on performance metrics to be  
20 used to evaluate grants awarded under sub-  
21 section (b).

22 (3) EVALUATION.—

23 (A) IN GENERAL.—Not later than 180  
24 days before the date that the grant program  
25 authorized under subsection (b) expires, the

1 Council shall conduct an evaluation of the effect  
2 that the grant program is having on accel-  
3 erating the commercialization of faculty re-  
4 search.

5 (B) INCLUSIONS.—The evaluation shall in-  
6 clude—

7 (i) the recommendation of the Council  
8 as to whether the grant program should be  
9 continued or terminated;

10 (ii) quantitative data related to the ef-  
11 fect, if any, that the grant program has  
12 had on faculty research commercialization;  
13 and

14 (iii) a description of lessons learned in  
15 administering the grant program, and how  
16 those lessons could be applied to future ef-  
17 forts to accelerate commercialization of  
18 faculty research.

19 (C) AVAILABILITY.—Upon completion of  
20 the evaluation, the evaluation shall be made  
21 available on a public website and submitted to  
22 Congress. The Secretary shall notify all institu-  
23 tions of higher education when the evaluation is  
24 published and how it can be accessed.

1 (d) CONSTRUCTION.—Nothing in this section may be  
 2 construed to alter, modify, or amend any provision of  
 3 chapter 18 of title 35, United States Code (commonly  
 4 known as the “Bayh-Dole Act”).

5 **SEC. 9. ECONOMIC IMPACT OF MAJOR FEDERAL AGENCY**  
 6 **RULES.**

7 Section 553 of title 5, United States Code, is amend-  
 8 ed by adding at the end the following:

9 “(f) REQUIRED REVIEW BEFORE ISSUANCE OF  
 10 MAJOR RULES.—

11 “(1) IN GENERAL.—Before issuing a notice of  
 12 proposed rulemaking in the Federal Register regard-  
 13 ing the issuance of a proposed major rule, the head  
 14 of the Federal agency or independent regulatory  
 15 agency seeking to issue the rule shall complete a re-  
 16 view that—

17 “(A) analyzes the problem that the pro-  
 18 posed rule intends to address, including—

19 “(i) the specific market failure, such  
 20 as externalities, market power, or lack of  
 21 information, that justifies such rule; or

22 “(ii) any other specific problem, such  
 23 as the failures of public institutions, that  
 24 justifies such rule;



1           “(B) analyzes the expected impact of the  
2           proposed rule on the ability of new businesses  
3           to form and expand;

4           “(C) identifies the expected impact of the  
5           proposed rule on State, local, and tribal govern-  
6           ments, including the availability of resources—

7                   “(i) to carry out the mandates im-  
8                   posed by the rule on such government enti-  
9                   ties; and

10                   “(ii) to minimize the burdens that  
11                   uniquely or significantly affect such gov-  
12                   ernmental entities, consistent with achiev-  
13                   ing regulatory objectives;

14           “(D) identifies any conflicting or duplica-  
15           tive regulations;

16           “(E) determines—

17                   “(i) if existing laws or regulations cre-  
18                   ated, or contributed to, the problem that  
19                   the new rule is intended to correct; and

20                   “(ii) if the laws or regulations re-  
21                   ferred to in clause (i) should be modified  
22                   to more effectively achieve the intended  
23                   goal of the rule; and

24           “(F) includes the cost-benefit analysis de-  
25           scribed in paragraph (2).

1           “(2) COST-BENEFIT ANALYSIS.—A cost-benefit  
2       analysis described in this paragraph shall include—

3           “(A)(i) an assessment, including the un-  
4       derlying analysis, of benefits anticipated from  
5       the proposed rule, such as—

6           “(I) promoting the efficient func-  
7       tioning of the economy and private mar-  
8       kets;

9           “(II) enhancing health and safety;

10          “(III) protecting the natural environ-  
11       ment; and

12          “(IV) eliminating or reducing dis-  
13       crimination or bias; and

14          “(ii) the quantification of the benefits de-  
15       scribed in clause (i), to the extent feasible;

16          “(B)(i) an assessment, including the un-  
17       derlying analysis, of costs anticipated from the  
18       proposed rule, such as—

19          “(I) the direct costs to the Federal  
20       Government to administer the rule;

21          “(II) the direct costs to businesses  
22       and others to comply with the rule; and

23          “(III) any adverse effects on the effi-  
24       cient functioning of the economy, private  
25       markets (including productivity, employ-

1                   ment, and competitiveness), health, safety,  
2                   and the natural environment; and

3                   “(ii) the quantification of the costs de-  
4                   scribed in clause (i), to the extent feasible;

5                   “(C)(i) an assessment, including the un-  
6                   derlying analysis, of costs and benefits of poten-  
7                   tially effective and reasonably feasible alter-  
8                   natives to the proposed rule, which have been  
9                   identified by the agency or by the public, in-  
10                  cluding taking reasonably viable nonregulatory  
11                  actions; and

12                  “(ii) an explanation of why the proposed  
13                  rule is preferable to the alternatives identified  
14                  under clause (i).

15                  “(3) REPORT.—Before issuing a notice of pro-  
16                  posed rulemaking in the Federal Register regarding  
17                  the issuance of a proposed major rule, the head of  
18                  the Federal agency seeking to issue the rule shall—

19                         “(A) submit the results of the review con-  
20                         ducted under paragraph (1) to—

21                                 “(i) Congress; and

22                                 “(ii) the Office of Information and  
23                                 Regulatory Affairs in the Office of Man-  
24                                 agement and Budget; and

1           “(B) post the results of the review con-  
 2           ducted under paragraph (1) on a publicly avail-  
 3           able website.

4           “(4) JUDICIAL REVIEW.—Any determinations  
 5           made, or other actions taken, by an agency or inde-  
 6           pendent regulatory agency under this subsection  
 7           shall not be subject to judicial review.

8           “(5) DEFINED TERM.—In this subsection the  
 9           term ‘major rule’ has the meaning given the term in  
 10          section 804.”.

11 **SEC. 10. BIENNIAL STATE STARTUP BUSINESS REPORT.**

12          (a) DATA COLLECTION.—The Secretary of Com-  
 13          merce shall regularly compile information from each of the  
 14          50 States and the District of Columbia on State laws that  
 15          affect the formation and growth of new businesses within  
 16          the State or District.

17          (b) REPORT.—Not later than 18 months after the  
 18          date of the enactment of this Act, and every 2 years there-  
 19          after, the Secretary, using data compiled under subsection  
 20          (a), shall prepare a report that—

21                 (1) analyzes the economic effect of State and  
 22                 District laws that either encourage or inhibit busi-  
 23                 ness formation and growth; and

1           (2) ranks the States and the District based on  
2           the effectiveness with which their laws foster new  
3           business creation and economic growth.

4           (c) DISTRIBUTION.—The Secretary shall—

5           (1) submit each report prepared under sub-  
6           section (b) to Congress; and

7           (2) make each report available to the public on  
8           the Department of Commerce’s website.

9           (d) INCLUSION OF LARGE METROPOLITAN AREAS.—

10          Not later than 90 days after the submission of the first  
11          report under this section, the Secretary of Commerce shall  
12          submit to Congress a study on the feasibility and advis-  
13          ability of including, in future reports, information about  
14          the effect of local laws and ordinances on the formation  
15          and growth of new businesses in large metropolitan areas  
16          within the United States.

17          (e) AUTHORIZATION OF APPROPRIATIONS.—There  
18          are authorized to be appropriated such sums as may be  
19          necessary to carry out this section.

20          **SEC. 11. NEW BUSINESS FORMATION REPORT.**

21          (a) IN GENERAL.—The Secretary of Commerce shall  
22          regularly compile quantitative and qualitative information  
23          on businesses in the United States that are not more than  
24          1 year old.

25          (b) DATA COLLECTION.—The Secretary shall—

1           (1) regularly compile information from the Bu-  
2       reau of the Census' business register on new busi-  
3       ness formation in the United States; and

4           (2) conduct quarterly surveys of business own-  
5       ers who start a business during the 1-year period  
6       ending on the date on which such survey is con-  
7       ducted to gather qualitative information about the  
8       factors that influenced their decision to start the  
9       business.

10       (c) RANDOM SAMPLING.—In conducting surveys  
11   under subsection (b)(2), the Secretary may use random  
12   sampling to identify a group of business owners who are  
13   representative of all the business owners described in sub-  
14   section (b)(2).

15       (d) BENEFITS.—The Secretary shall inform business  
16   owners selected to participate in a survey conducted under  
17   this section of the benefits they would receive from partici-  
18   pating in the survey.

19       (e) VOLUNTARY PARTICIPATION.—Business owners  
20   selected to participate in a survey conducted under this  
21   section may decline to participate without penalty.

22       (f) REPORT.—Not later than 18 months after the  
23   date of the enactment of this Act, and every 3 months  
24   thereafter, the Secretary shall use the data compiled under  
25   subsection (b) to prepare a report that—

1           (1) lists the aggregate number of new busi-  
2           nesses formed in the United States;

3           (2) lists the aggregate number of persons em-  
4           ployed by new businesses formed in the United  
5           States;

6           (3) analyzes the payroll of new businesses  
7           formed in the United States;

8           (4) summarizes the data collected under sub-  
9           section (b); and

10          (5) identifies the most effective means by which  
11          government officials can encourage the formation  
12          and growth of new businesses in the United States.

13          (g) DISTRIBUTION.—The Secretary shall—

14               (1) submit each report prepared under sub-  
15               section (f) to Congress; and

16               (2) make each report available to the public on  
17               the Department of Commerce’s website.

18          (h) AUTHORIZATION OF APPROPRIATIONS.—There  
19          are authorized to be appropriated such sums as may be  
20          necessary to carry out this section.

21          **SEC. 12. RESCISSION OF UNSPENT FEDERAL FUNDS.**

22               (a) IN GENERAL.—Notwithstanding any other provi-  
23               sion of law, of all available unobligated funds for fiscal  
24               year 2012, the amount necessary to carry out this Act and

1 the amendments made by this Act in appropriated discre-  
2 tionary funds are hereby rescinded.

3 (b) IMPLEMENTATION.—The Director of the Office of  
4 Management and Budget shall determine and identify  
5 from which appropriation accounts the rescission under  
6 subsection (a) shall apply and the amount of such rescis-  
7 sion that shall apply to each such account. Not later than  
8 60 days after the date of the enactment of this Act, the  
9 Director of the Office of Management and Budget shall  
10 submit a report to the Secretary of the Treasury and Con-  
11 gress of the accounts and amounts determined and identi-  
12 fied for rescission under the preceding sentence.

○