

STUDY OF UNDERREPRESENTED CLASSES CHASING
ENGINEERING AND SCIENCE SUCCESS ACT OF 2018

SEPTEMBER 25, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 6758]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6758) to direct the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in consultation with the Administrator of the Small Business Administration, to study and provide recommendations to promote the participation of women and minorities in entrepreneurship activities and the patent system, to extend by 8 years the Patent and Trademark Office's authority to set the amounts for the fees it charges, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The Amendment

The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018” or the “SUCCESS Act”.

SEC. 2. FINDINGS; SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds the following:

(1) Patents and other forms of intellectual property are important engines of innovation, invention, and economic growth.

(2) Many innovative small businesses, which create over 20 percent of the total number of new jobs created in the United States each year, depend on patent protections to commercialize new technologies.

(3) Universities and their industry partners also rely on patent protections to transfer innovative new technologies from the laboratory or classroom to commercial use.

(4) Recent studies have shown that there is a significant gap in the number of patents applied for and obtained by women and minorities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy.

SEC. 3. REPORT.

(a) STUDY.—The Director, in consultation with the Administrator and any other head of an appropriate agency, shall conduct a study that—

(1) identifies publicly available data on the number of patents annually applied for and obtained by, and the benefits of increasing the number of patents applied for and obtained by women, minorities, and veterans and small businesses owned by women, minorities, and veterans; and

(2) provides legislative recommendations for how to—

(A) promote the participation of women, minorities, and veterans in entrepreneurship activities; and

(B) increase the number of women, minorities, and veterans who apply for and obtain patents.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Committees on the Judiciary and Small Business of the House of Representatives and the Committees on the Judiciary and Small Business and Entrepreneurship of the Senate a report on the results of the study conducted under subsection (a).

SEC. 4. EXTENSION OF FEE-SETTING AUTHORITY.

Section 10(i)(2) of the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 319; 35 U.S.C. 41 note) is amended by striking “7-year” and inserting “15-year”.

SEC. 5. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration.

(2) AGENCY.—The term “agency” means a department, agency, or instrumentality of the United States Government.

(3) DIRECTOR.—The term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Amend the title so as to read:

A bill to direct the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, in consultation with the Administrator of the Small Business Administration, to study and provide recommendations to promote the participation of women and minorities in entrepreneurship activities and the patent system, to extend by 8 years the Pat-

ent and Trademark Office’s authority to set the amounts for the fees it charges, and for other purposes.

Purpose and Summary

H.R. 6758, the “Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act,” is designed to help close the gender and race gap in patenting rates and entrepreneurship in the United States, and increase patenting and entrepreneurship by U.S. veterans. It directs the Director of the U.S. Patent and Trademark Office (PTO), in consultation with the Administrator of the Small Business Administration (SBA), to conduct a study on the number of patents annually applied for and obtained by U.S. women, minorities, and veterans, and requires a report that includes legislative recommendations for how to increase participation in entrepreneurial activities and patenting by U.S. women, minorities, and veterans. This study will be critical in developing policies to help these underrepresented groups further engage in the type of entrepreneurial activities that are the backbone of our American economy. The bill would also amend the Leahy-Smith America Invents Act (“AIA”) to extend by eight more years the authority granted to the PTO to set the amount it charges for each of the services it provides to patent and trademark applicants.

Background and Need for the Legislation

Patents are drivers of innovation and are critical to economic growth. Small businesses contribute over 20 percent of the total number of new jobs created in the United States each year. Many businesses depend on patents to protect the new technologies and innovative products they invent. Without patent protection, companies that invest in developing new technologies that distinguish their products from those of their competitors risk having their competitors copy those innovative features and steal sales and customer goodwill from the inventing company. Absent patent protection, businesses in some industries would have a much harder time securing the funding needed to grow. Small businesses with a single product would likely be driven out of business, if their invention is easily reverse engineered and copied. Securing patent protection is often very important to large companies but is just as important for the health and survival of a small business.

In the United States, women earn almost half of all undergraduate degrees in science and engineering, and 39% of all new PhDs in those fields.¹ But when it comes to patenting their inventions, they trail far behind men. Some estimates suggest that between 20% and 10% of all patent-holders are women.² A 2016 study showed that racial minorities fair even worse.³

We need full participation in our patent system by each American with a great new idea to realize the full potential of the American people. By encouraging every American to invent and inno-

¹Jensen et al., *Why Do Women Inventors Win Fewer Patents?* Yale Insights, Yale School of Management (Apr. 9, 2018), <https://insights.som.yale.edu/insights/why-do-women-inventors-win-fewer-patents>.

²*Id.*; see also, Milli et al., *Equity in Innovation: Women Inventors and Patents*, Institute for Women’s Policy Research, at 7 (Nov. 29, 2016), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/C448%20Equity%20in%20Innovation.pdf>.

³Milli et al., at 5.

vate, the United States can maintain its position as the world's technology leader, and we can secure a brighter economic future for ourselves and our children. To realize our full scientific and economic potential, the SUCCESS Act requires the PTO, in collaboration with the SBA, to provide recommendations to Congress on how to increase the participation of American women, minorities, and veterans in entrepreneurship activities and the patent system.

The PTO plays a critical role in the development of new technologies and the growth of the U.S. economy. The agency runs on fees it collects from patent and trademark applicants. To ensure that the PTO has all of the resources it needs to properly examine patent applications and register trademarks, and undertake such other efforts that are essential to maintaining America's competitiveness, Congress needs to reauthorize the PTO's authority to set its fees.

The SUCCESS Act would extend for eight more years the PTO's authority to set the amounts it charges for the services it provides to patent and trademark applicants. The extension provided for in this bill will give the PTO the ability to conduct long-term planning, but because the authority will sunset unless reauthorized in eight years, the bill will also ensure effective Congressional oversight.

Hearings

The Committee on the Judiciary held no hearings on H.R. 6758; however, on May 22, 2018, the Committee held a PTO oversight hearing at which testimony was received from the Honorable Andrei Iancu, Director of the U.S. Patent and Trademark Office, Undersecretary of Commerce for Intellectual Property. During that hearing, Director Iancu spoke on the need for Congress to pass Section 4 of the bill, "Extension of Fee-Setting Authority," stating that when the PTO sets fees "it is a multi-year process" and that the authority is "a critical factor in managing the agency's budget." Director Iancu stated that this authority "has allowed the agency to efficiently and cautiously adjust user fees as needed to recoup operational costs and drive effective operations."

Committee Consideration

On September 13, 2018, the Committee met in open session and ordered the bill (H.R. 6758) 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 there were no recorded votes during the Committee's consideration of H.R. 6758.

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 Rep-

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 H.R. 6758, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 21, 2018.

Hon. BOB GOODLATTE,
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. 6758, the SUCCESS Act. If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

cc: Honorable Jerrold Nadler,
Ranking Member.

H.R. 6758, the SUCCESS Act

As ordered reported by the House Committee on the Judiciary on
September 13, 2018

H.R. 6758 would extend the authority of the Patent and Trademark Office (PTO) to set and adjust the fees the agency charges to obtain and renew patents and trademarks that offset its operating costs. That authority expired on September 16, 2018. The bill also would direct PTO to conduct a study and report on the number of patent filings applied for and obtained by women, minorities, and veterans and small businesses owned by women, minorities, and veterans. The report would include recommendations on ways to promote participation in entrepreneurship activities and increase patent filings by those groups.

Under the bill, fees could be adjusted for changes in PTO's aggregate costs. CBO has no basis for determining how or whether PTO would adjust its fees in the future. Because any fee adjustments could increase or decrease the total amounts collected, CBO has not estimated any effects on those collections from enacting the bill.

Using information from PTO, CBO estimates that it would cost less than \$500,000 for the agency to complete the study and report. However, under the bill, PTO would be authorized to adjust its fees to offset any change in operating costs; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

Enacting H.R. 6758 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 6758 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6758 would impose a mandate as defined in the Unfunded Mandates Reform Act (UMRA) on both public and private entities by extending the authority of the PTO to set and adjust certain fees. The requirement to pay those fees would be a mandate because the federal government controls the patent and trademark system, and no reasonable alternatives to that system exist. If the PTO increases fees to offset the costs of conducting a study required by the bill, H.R. 6758 would increase the cost of an existing mandate on private and intergovernmental entities required to pay those fees. Using information from PTO, CBO estimates that the annual cost to offset the costs of the PTO would be less than \$500,000. Therefore, the cost for public and private entities to comply with the mandate would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$80 million and \$160 million in 2018, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 6758 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee finds that H.R. 6758 contains no directed rule making within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 6758 will extend the authority for the PTO to set its fees for an additional eight years and requires a report to assess the rates of patenting by women, minorities, and veterans and to provide legislative recommendations on how to encourage patenting rates by these groups.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6758 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

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

Section 1. Short title. Section 1 sets forth the short title of the bill as the “Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act.”

Sec 2. Findings; Sense of Congress. Provides the following findings and sense of Congress regarding the importance of patent protection to small business growth and the impact on job creation.

(a) FINDINGS.—Congress finds the following:

(1) Patents and other forms of intellectual property are important engines of innovation, invention, and economic growth.

(2) Many innovative small businesses, which create over 20 percent of the total number of new jobs created in the United States each year, depend on patent protections to commercialize new technologies.

(3) Universities and their industry partners also rely on patent protections to transfer innovative new technologies from the laboratory or classroom to commercial use.

(4) Recent studies have shown that there is a significant gap in the number of patents applied for and obtained by women and minorities and the number of patents applied for and obtained by individuals from other groups.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States has the responsibility to work with the private sector to close the gap in the number of patents applied for and obtained by women and minorities to harness the maximum innovative potential and continue to promote United States leadership in the global economy.

Sec 3. Report. Obligates the PTO Director, in consultation with the Administrator of the Small Business Administration, to submit a report to the Committees on the Judiciary and Small Business of the House of Representatives and the Committees on the Judiciary and Small Business and Entrepreneurship of the Senate on publicly available data on the number of patents annually applied for and obtained by women, minorities, and veterans; the benefits of increasing patenting by small businesses owned by women, minorities, and veterans; legislative recommendations for how to increase participation in entrepreneurial activities by women, minorities, and veterans; and increase the number of patents applied for by and granted to women, minorities, and veterans.

Sec. 4. Extension of the USPTO’s Fee Setting Authority. This section extends the PTO’s authority to set its own fees, provided for in Section 10(i)(2) of the America Invents Act, by eight years.

Sec. 5 Definitions. This section defines “the Administrator” of the SBA, “the Director” of the PTO, and federal “agency.”

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, and existing law in which no change is proposed is shown in roman):

LEAHY-SMITH AMERICA INVENTS ACT

* * * * *

SEC. 10. FEE SETTING AUTHORITY.

(a) **FEE SETTING.**—

(1) **IN GENERAL.**—The Director may set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.), for any services performed by or materials furnished by, the Office, subject to paragraph (2).

(2) **FEES TO RECOVER COSTS.**—Fees may be set or adjusted under paragraph (1) only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (in the case of patent fees) and trademarks (in the case of trademark fees), including administrative costs of the Office with respect to such patent or trademark fees (as the case may be).

(b) **SMALL AND MICRO ENTITIES.**—The fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent with respect to the application of such fees to any small entity that qualifies for reduced fees under section 41(h)(1) of title 35, United States Code, and shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined in section 123 of that title (as added by subsection (g) of this section).

(c) **REDUCTION OF FEES IN CERTAIN FISCAL YEARS.**—In each fiscal year, the Director—

(1) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in subsection (a); and

(2) after the consultation required under paragraph (1), may reduce such fees.

(d) **ROLE OF THE PUBLIC ADVISORY COMMITTEE.**—The Director shall—

(1) not less than 45 days before publishing any proposed fee under subsection (a) in the Federal Register, submit the proposed fee to the Patent Public Advisory Committee or the Trademark Public Advisory Committee, or both, as appropriate;

(2)(A) provide the relevant advisory committee described in paragraph (1) a 30-day period following the submission of any proposed fee, in which to deliberate, consider, and comment on such proposal;

(B) require that, during that 30-day period, the relevant advisory committee hold a public hearing relating to such proposal; and

(C) assist the relevant advisory committee in carrying out that public hearing, including by offering the use of the resources of the Office to notify and promote the hearing to the public and interested stakeholders;

(3) require the relevant advisory committee to make available to the public a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fee; and

(4) consider and analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting (as the case may be) the fee.

(e) PUBLICATION IN THE FEDERAL REGISTER.—

(1) PUBLICATION AND RATIONALE.—The Director shall—

(A) publish any proposed fee change under this section in the Federal Register;

(B) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change; and

(C) notify, through the Chair and Ranking Member of the Committees on the Judiciary of the Senate and the House of Representatives, the Congress of the proposed change not later than the date on which the proposed change is published under subparagraph (A).

(2) PUBLIC COMMENT PERIOD.—The Director shall, in the publication under paragraph (1), provide the public a period of not less than 45 days in which to submit comments on the proposed change in fees.

(3) PUBLICATION OF FINAL RULE.—The final rule setting or adjusting a fee under this section shall be published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(4) CONGRESSIONAL COMMENT PERIOD.—A fee set or adjusted under subsection (a) may not become effective—

(A) before the end of the 45-day period beginning on the day after the date on which the Director publishes the final rule adjusting or setting the fee under paragraph (3); or

(B) if a law is enacted disapproving such fee.

(5) RULE OF CONSTRUCTION.—Rules prescribed under this section shall not diminish—

(A) the rights of an applicant for a patent under title 35, United States Code, or for a mark under the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(f) RETENTION OF AUTHORITY.—The Director retains the authority under subsection (a) to set or adjust fees only during such period as the Patent and Trademark Office remains an agency within the Department of Commerce.

(g) [Amends other law—omitted]

(h) ELECTRONIC FILING INCENTIVE.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, an additional fee of \$400 shall be established for each application for an original patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director. The fee established by this subsection shall be reduced by 50 percent for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code. All fees paid under this subsection shall be deposited in the Treasury as an offsetting receipt that shall not be available for obligation or expenditure.

(2) EFFECTIVE DATE.—This subsection shall take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act.

(i) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—Except as provided in subsection (h), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) SUNSET.—The authority of the Director to set or adjust any fee under subsection (a) shall terminate upon the expiration of the ~~【7-year】~~ 15-year period beginning on the date of the enactment of this Act.

(3) PRIOR REGULATIONS NOT AFFECTED.—The termination of authority under this subsection shall not affect any regulations issued under this section before the effective date of such termination or any rulemaking proceeding for the issuance of regulations under this section that is pending on such date.

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