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2D SESSION

H. R. 5893

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2012

Mr. GRIMM (for himself, Ms. LORETTA SANCHEZ of California, Mr. YODER, Mr. DOLD, Mr. NUNES, Mr. CARNAHAN, and Mr. POLIS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Science, Space, and Technology, Appropriations, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Startup Act 2.0".

(b) TABLE OF CONTENTS.—The table of contents for 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.

SEC. 2. FINDINGS.

Congress makes the following findings:

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

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

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

(4) To get Americans back to work, entrepreneurs must be free to innovate, create new companies, and hire employees.

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

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

"SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS FOR ALIENS WITH AN ADVANCED DEGREE IN A STEM FIELD.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the Secretary of Homeland Security may adjust the status of not more than 50,000 aliens who have earned a master's degree or a doctorate degree at an institution of higher education in a STEM field to that of an alien conditionally admitted for permanent residence and authorize each alien granted such adjustment of status to remain in the United States—

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

"(2) indefinitely if the alien remains actively engaged in a STEM field.

"(b) APPLICATION FOR CONDITIONAL PERMANENT RESIDENT STATUS.—Every alien applying for a conditional permanent resident status under this section shall submit an application to the Secretary of Homeland Security before the expiration of the alien's student visa in such form and manner as the Secretary shall prescribe by regulation.

"(c) INELIGIBILITY FOR FEDERAL GOVERNMENT ASSISTANCE.—An alien granted conditional permanent resi-

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

"(1) any unemployment compensation (as defined in section 85(b) of the Internal Revenue Code of 1986); or

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

"(d) EFFECT ON NATURALIZATION RESIDENCY REQUIREMENT.—An alien granted conditional permanent resident status under this section shall be deemed to have been lawfully admitted for permanent residence for purposes of meeting the 5-year residency requirement set forth in section 316(a)(1).

"(e) REMOVAL OF CONDITION.—The Secretary of Homeland Security shall remove the conditional basis of an alien's conditional permanent resident status under this section on the date that is 5 years after the date such status was granted if the alien maintained his or her eligibility for such status during the entire 5-year period.

"(f) DEFINITIONS.—In this section:

"(1) ACTIVELY ENGAGED IN A STEM FIELD.—The term 'actively engaged in a STEM field'—

"(A) means—

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

"(ii) teaching 1 or more STEM field courses at an institution of higher education; or

"(iii) employed by a Federal, State, or local government entity; and

"(B) includes any period of up to 6 months during which the alien does not meet the requirement under subparagraph (A) if such period was immediately preceded by a 1-year period during which the alien met the requirement under subparagraph (A).

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

"(3) STEM FIELD.—The term 'STEM field' means any field of study or occupation included on the most recent STEM-Designated Degree Program List published in the Federal Register by the Department of Homeland Security (as described in section 214.2(f)(11)(i)(C)(2) of title 8, Code of Federal Regulations).".

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

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

(c) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—

(1) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the alien college graduates granted immigrant status under section 216B of the Immigration and Nationality Act, as added by subsection (a).

(2) CONTENTS.—The report described in paragraph (1) shall include—

(A) the number of aliens described in paragraph (1) who have earned a master's degree, broken down by the number of such degrees in science, technology, engineering, and mathematics;

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

grees in science, technology, engineering, and mathematics;

(C) the number of aliens described in paragraph (1) who have founded a business in the United States in a STEM field;

(D) the number of aliens described in paragraph (1) who are employed in the United States in a STEM field, broken down by employment sector (for profit, nonprofit, or government); and

(E) the number of aliens described in paragraph (1) who are employed by an institution of higher education.

(3) DEFINITIONS.—The terms ''institution of higher education'' and ''STEM field'' have the meaning given such terms in section 216B(f) of the Immigration and Nationality Act, as added by subsection (a).

SEC. 4. IMMIGRANT ENTREPRENEURS.

(a) QUALIFIED ALIEN ENTREPRENEURS.—

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

"SEC. 210A. QUALIFIED ALIEN ENTREPRENEURS.

"(a) ADMISSION AS IMMIGRANTS.—The Secretary of Homeland Security, in accordance with the provisions of this section and section 216A, may issue a conditional immigrant visa to not more than 75,000 qualified alien entrepreneurs.

"(b) APPLICATION FOR CONDITIONAL PERMANENT RESIDENT STATUS.—Every alien applying for a conditional immigrant visa under this section shall submit an application to the Secretary of Homeland Security in such form and manner as the Secretary shall prescribe by regulation.

"(c) REVOCATION.—If, during the 4-year period beginning on the date that an alien is granted a visa under this section, the Secretary of Homeland Security determines that such alien is no longer a qualified alien entrepreneur, the Secretary shall—

"(1) revoke such visa; and

"(2) notify the alien that the alien—

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

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

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

"(e) DEFINITIONS.—In this section:

"(1) FULL-TIME EMPLOYEE.—The term 'full-time employee' means a United States citizen or legal permanent resident who is paid by the new business entity registered by a qualified alien entrepreneur at a rate that is comparable to the median income of employees in the region.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

"(3) QUALIFIED ALIEN ENTREPRENEUR.—The term 'qualified alien entrepreneur' means an alien who—

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

"(i) is lawfully present in the United States; and

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

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

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

"(i) registers at least 1 new business entity in a State;

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

"(iii) invests, or raises capital investment of, not less than $100,000 in such business entity; and

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

"(4) STEM FIELD.—The term 'STEM field' means any field of study or occupation included on

the most recent STEM-Designated Degree Program List published in the Federal Register by the Department of Homeland Security (as described in section 214.2(f)(11)(i)(C)(2) of title 8, Code of Federal Regulations).''.

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

''Sec. 210A. Qualified alien entrepreneurs.''.

(b) CONDITIONAL PERMANENT RESIDENT STATUS.—Section 216A of the Immigration and Nationality Act (8 U.S.C. 1186b) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (b)(1)(C), by striking ''203(b)(5),'' and inserting ''203(b)(5) or 210A, as appropriate,'';

(3) in subsection (c)(1), by striking ''alien entrepreneur must'' each place such term appears and inserting ''alien entrepreneur shall'';

(4) in subsection (d)(1)(B), by striking the period at the end and inserting ''or 210A, as appropriate.''; and

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

(c) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—

(1) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the qualified alien entrepreneurs granted immigrant status under section 210A of the Immigration and Nationality Act, as added by subsection (a).

(2) CONTENTS.—The report described in paragraph (1) shall include information regarding—

(A) the number of qualified alien entrepreneurs who have received immigrant status under section 210A of the Immigration and Nationality Act, as added by subsection (a), listed by country of origin;

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

(C) whether such qualified alien entrepreneurs generally remain in the localities in which they initially settle;

(D) the types of commercial enterprises that such qualified alien entrepreneurs have established; and

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

SEC. 5. ELIMINATION OF THE PER-COUNTRY NUMERICAL LIMITATION FOR EMPLOYMENT-BASED VISAS.

(a) IN GENERAL.—Section 202(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(2)) is amended—

(1) in the paragraph heading, by striking ''AND EMPLOYMENT-BASED'';

(2) by striking ''(3), (4), and (5),'' and inserting ''(3) and (4),'';

(3) by striking ''subsections (a) and (b) of section 203'' and inserting ''section 203(a)'';

(4) by striking ''7'' and inserting ''15''; and

(5) by striking ''such subsections'' and inserting ''such section''.

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

(1) in subsection (a)(3), by striking "both subsections (a) and (b) of section 203" and inserting "section 203(a)";

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

(3) by amending subsection (e) to read as follows:

"(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under section 203(a) to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under section 203(a), visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that, except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a).".

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

(1) in subsection (a), by striking ''subsection (e))'' and inserting ''subsection (d))''; and

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

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

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

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

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

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

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

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

(2) PER-COUNTRY LEVELS.—

(A) RESERVED VISAS.—With respect to the visas reserved under each of subparagraphs (A) through (C) of paragraph (1), the number of such visas made available to natives of any single foreign state or dependent area in the appropriate fiscal year may not exceed 25 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas.

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

(3) SPECIAL RULE TO PREVENT UNUSED VISAS.—If, with respect to fiscal year 2012, 2013, or 2014, the operation of paragraphs (1) and (2) of this subsection would prevent the total number of immigrant visas made available under paragraph (2) or (3) of section 203(b) of such Act (8 U.S.C. 1153(b)) from being issued, such visas may be issued during the remainder of such fiscal year without regard to paragraphs (1) and (2) of this subsection.

(4) RULES FOR CHARGEABILITY.—Section 202(b) of the Immigration and Nationality Act (8 U.S.C. 1152(b)) shall apply in determining the foreign state to which an alien is chargeable for purposes of this subsection.

SEC. 6. CAPITAL GAINS TAX EXEMPTION FOR STARTUP COMPANIES.

(a) PERMANENT FULL EXCLUSION.—

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

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

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 1202 of such Code is amended by striking ''**PARTIAL**''.

(B) The item relating to section 1202 in the table of sections for part I of subchapter P of chapter 1 of such Code is amended by striking ''Partial exclusion'' and inserting ''Exclusion''.

(C) Section 1223(13) of such Code is amended by striking ''1202(a)(2),''.

(b) REPEAL OF MINIMUM TAX PREFERENCE.—

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

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

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

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

"(A) collectibles gain, over".

(2) CONFORMING AMENDMENTS.—

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

(B)(i) Section 1(h) of such Code is amended by redesignating paragraphs (8), (9), (10), (11), (12), and (13) as paragraphs (7), (8), (9), (10), (11), and (12), respectively.

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

(iii) The following sections of such Code are each amended by striking "section 1(h)(11)" and inserting "section 1(h)(10)":

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

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

(III) Section 584(c).

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

(V) Section 854(a).

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

(iv) The heading of section 857(c)(2) is amended by striking "1(h)(11)" and inserting "1(h)(10)".

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

SEC. 7. RESEARCH CREDIT FOR STARTUP COMPANIES.

(a) IN GENERAL.—

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

"(i) TREATMENT OF CREDIT TO QUALIFIED SMALL BUSINESSES.—

"(1) IN GENERAL.—For purposes of subsections (b) and (c) of section 6401, the amount of the credit determined under this section which is attributable to a qualified small business shall be treated as a credit allowed under subpart C of part IV of subchapter A for the taxable year (and not under any other subpart). For purposes of section 6425, any amount treated as so allowed shall be

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

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

"(A) $250,000, or

"(B) 20 percent of the W–2 wages (as defined in section 199(b)(2), determined without regard to subparagraphs (B) and (D) thereof) of the qualified small business for the taxable year.

"(3) TEMPORAL LIMITATION.—Paragraph (1) shall not apply with respect to a qualified small business if there has been an overpayment by such qualified small business by reason of paragraph (1) with respect to 5 or more preceding taxable years.

"(4) QUALIFIED SMALL BUSINESS.—For purposes of this subsection the term 'qualified small business' means, with respect to any taxable year, any person if—

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

"(B) such person did not have gross receipts for any period preceding the 5-taxable-year period ending with such taxable year.

"(5) AGGREGATION RULES.—For purposes of determining the limitation under paragraph (2) and determining gross receipts under paragraph (4)(A), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations to prevent the avoidance of the purposes of paragraph (4)(B) through the use of successor companies or other means, and

"(B) regulations to minimize compliance and recordkeeping burdens under this subsection for start-up companies.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (g) of section 41 of the Internal 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 TAXPAYER-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

for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries.

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

(4) RESEARCH OR RESEARCH AND DEVELOPMENT.—The term ''research'' or ''research and development'' means any activity that is—

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

(B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes

and new processes to meet specific requirements.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(b) GRANT PROGRAM AUTHORIZED.—

(1) IN GENERAL.—Each Federal agency that has an extramural budget for research or research and development that is in excess of $100,000,000 for each of fiscal years 2013 through 2017, shall transfer 0.15 percent of such extramural budget for each of such fiscal years to the Secretary to enable the Secretary to carry out a grant program in accordance with this subsection.

(2) GRANTS.—

(A) AWARDING OF GRANTS.—

(i) IN GENERAL.—From funds transferred under paragraph (1), the Secretary shall use the criteria developed by the Council to award grants to institutions of higher education, including consortia of institutions of higher education, for initiatives to improve commercialization and transfer of technology.

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

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

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

(iv) COUNCIL REVIEW.—

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

(II) RECOMMENDATIONS.—The Council shall review each application received under subclause (I) and submit recommendations for grant awards to the Secretary, including funding recommendations for each proposal.

(III) PUBLIC RELEASE.—The Council shall publicly release any recommendations made under subclause (II).

(IV) CONSIDERATION OF RECOMMENDATIONS.—In awarding grants under this subsection, the Secretary shall take into consideration the recommendations of the Council under subclause (II).

(B) COMMERCIALIZATION CAPACITY BUILDING GRANTS.—

(i) IN GENERAL.—The Secretary shall award grants to support institutions of higher education pursuing specific innovative initiatives to improve an institution's capacity to commercialize faculty research that can be widely adopted if the research yields measurable results.

(ii) CONTENT OF PROPOSALS.—Grants shall be awarded under this subparagraph to proposals demonstrating the capacity for accelerated commercialization, proof-of-concept proficiency, and translating 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-

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

(5) LIMITATIONS.—

(A) PROJECT MANAGEMENT COSTS.—A grant recipient may use not more than 10 percent of grant funds awarded under this subsection for the purpose of funding project management costs of the grant program.

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

(6) UNSPENT FUNDS.—Any funds transferred to the Secretary under paragraph (1) for a fiscal year that are not expended by the end of such fiscal year may be expended in any subsequent fiscal year through fiscal year 2017. Any funds transferred under paragraph (1) that are remaining at the end of the grant program's authorization under this subsection shall be transferred to the Treasury for deficit reduction.

(c) COUNCIL.—

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

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

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

(i) release the recommendations to the public.

(B) MAJORITY VOTE.—The recommendations submitted by the Council, as described in this paragraph, shall be determined by a majority vote of Council members.

(C) PERFORMANCE METRICS.—The Council shall develop and provide to the Secretary recommendations on performance metrics to be used to evaluate grants awarded under subsection (b).

(3) EVALUATION.—

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

Council shall conduct an evaluation of the effect that the grant program is having on accelerating the commercialization of faculty research.

(B) INCLUSIONS.—The evaluation shall include—

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

(ii) quantitative data related to the effect, if any, that the grant program has had on faculty research commercialization; and

(iii) a description of lessons learned in administering the grant program, and how those lessons could be applied to future efforts to accelerate commercialization of faculty research.

(C) AVAILABILITY.—Upon completion of the evaluation, the evaluation shall be made available on a public website and submitted to Congress. The Secretary shall notify all institutions of higher education when the evaluation is published and how it can be accessed.

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

SEC. 9. ECONOMIC IMPACT OF MAJOR FEDERAL AGENCY RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

''(f) REQUIRED REVIEW BEFORE ISSUANCE OF MAJOR RULES.—

''(1) IN GENERAL.—Before issuing a notice of proposed rulemaking in the Federal Register regarding the issuance of a proposed major rule, the head of the Federal agency or independent regulatory agency seeking to issue the rule shall complete a review that—

''(A) analyzes the problem that the proposed rule intends to address, including—

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

''(ii) any other specific problem, such as the failures of public institutions, that justifies such rule;

"(B) analyzes the expected impact of the proposed rule on the ability of new businesses to form and expand;

"(C) identifies the expected impact of the proposed rule on State, local, and tribal governments, including the availability of resources—

"(i) to carry out the mandates imposed by the rule on such government entities; and

"(ii) to minimize the burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives;

"(D) identifies any conflicting or duplicative regulations;

"(E) determines—

"(i) if existing laws or regulations created, or contributed to, the problem that the new rule is intended to correct; and

"(ii) if the laws or regulations referred to in clause (i) should be modified to more effectively achieve the intended goal of the rule; and

"(F) includes the cost-benefit analysis described in paragraph (2).

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

"(A)(i) an assessment, including the underlying analysis, of benefits anticipated from the proposed rule, such as—

"(I) promoting the efficient functioning of the economy and private markets;

"(II) enhancing health and safety;

"(III) protecting the natural environment; and

"(IV) eliminating or reducing discrimination or bias; and

"(ii) the quantification of the benefits described in clause (i), to the extent feasible;

"(B)(i) an assessment, including the underlying analysis, of costs anticipated from the proposed rule, such as—

"(I) the direct costs to the Federal Government to administer the rule;

"(II) the direct costs to businesses and others to comply with the rule; and

"(III) any adverse effects on the efficient functioning of the economy, private markets (including productivity, employ-

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

"(ii) the quantification of the costs described in clause (i), to the extent feasible; and

"(C)(i) an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the proposed rule, which have been identified by the agency or by the public, including taking reasonably viable nonregulatory actions; and

"(ii) an explanation of why the proposed rule is preferable to the alternatives identified under clause (i).

"(3) REPORT.—Before issuing a notice of proposed rulemaking in the Federal Register regarding the issuance of a proposed major rule, the head of the Federal agency seeking to issue the rule shall—

"(A) submit the results of the review conducted under paragraph (1) to—

"(i) Congress; and

"(ii) the Office of Information and Regulatory Affairs in the Office of Management and Budget; and

"(B) post the results of the review conducted under paragraph (1) on a publicly available website.

"(4) JUDICIAL REVIEW.—Any determinations made, or other actions taken, by an agency or independent regulatory agency under this subsection shall not be subject to judicial review.

"(5) DEFINED TERM.—In this subsection the term 'major rule' has the meaning given the term in section 804.".

SEC. 10. BIENNIAL STATE STARTUP BUSINESS REPORT.

(a) DATA COLLECTION.—The Secretary of Commerce shall regularly compile information from each of the 50 States and the District of Columbia on State laws that affect the formation and growth of new businesses within the State or District.

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

(1) analyzes the economic effect of State and District laws that either encourage or inhibit business formation and growth; and

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

(c) DISTRIBUTION.—The Secretary shall—

(1) submit each report prepared under subsection (b) to Congress; and

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

(d) INCLUSION OF LARGE METROPOLITAN AREAS.—Not later than 90 days after the submission of the first report under this section, the Secretary of Commerce shall submit to Congress a study on the feasibility and advisability of including, in future reports, information about the effect of local laws and ordinances on the formation and growth of new businesses in large metropolitan areas within the United States.

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

SEC. 11. NEW BUSINESS FORMATION REPORT.

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

(b) DATA COLLECTION.—The Secretary shall—

(1) regularly compile information from the Bureau of the Census' business register on new business formation in the United States; and

(2) conduct quarterly surveys of business owners who start a business during the 1-year period ending on the date on which such survey is conducted to gather qualitative information about the factors that influenced their decision to start the business.

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

(d) BENEFITS.—The Secretary shall inform business owners selected to participate in a survey conducted under this section of the benefits they would receive from participating in the survey.

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

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

(1) lists the aggregate number of new businesses formed in the United States;

(2) lists the aggregate number of persons employed by new businesses formed in the United States;

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

(4) summarizes the data collected under subsection (b); and

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

(g) DISTRIBUTION.—The Secretary shall—

(1) submit each report prepared under subsection (f) to Congress; and

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

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

SEC. 12. RESCISSION OF UNSPENT FEDERAL FUNDS.

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

the amendments made by this Act in appropriated discretionary funds are hereby rescinded.

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall determine and identify from which appropriation accounts the rescission under subsection (a) shall apply and the amount of such rescission that shall apply to each such account. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress of the accounts and amounts determined and identified for rescission under the preceding sentence.

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