

STARTUP AMERICA LEGISLATIVE AGENDA

“An economy built to last is one where we encourage the talent and ingenuity of every person in this country... It means we should support everyone who’s willing to work, and every risk-taker and entrepreneur who aspires to become the next Steve Jobs... So let’s pass an agenda that helps them succeed... Both parties agree on these ideas. So put them in a bill, and get it on my desk this year.”

President Barack Obama

State of the Union Address, January 24, 2012

The President is sending the attached, detailed *Startup America Legislative Agenda* to Congress to expand tax relief and unlock capital for startups and small businesses that are creating jobs. Most new jobs are created by start-ups and small businesses. Helping these businesses is at the core of the President’s [Blueprint for an America Built to Last](#).

As part of his American Jobs Act plan in September 2011, the President called for reducing regulatory burdens that prevent some small and young businesses from raising capital. He proposed expanding mini-offerings, allowing crowdfunding, and creating an “IPO On-Ramp” consistent with investor protections. He reaffirmed this call to action in December. The *Startup America Legislative Agenda* outlined below builds on these initiatives.

President Obama’s Startup America Legislative Agenda

This Agenda builds on the President’s record of signing into law 17 tax breaks specifically for small businesses and passing measures like Small Business Jobs Act to help growing firms access capital. It can be fully paid for so as to not add a dime to the deficit by a portion of the billions in corporate tax savings the President is proposing in his FY 2013 Budget.

- **Cutting taxes for small businesses:** Building on the 17 small business tax cuts he has already signed into law, the President is proposing to:
 - Expand and make permanent zero capital gains on small business investments
 - Reward job creation with a 10 percent income tax credit on new small business payroll
 - Permanently double the tax deduction for startup expenses from \$5,000 to \$10,000.
 - Extend 100 percent depreciation for qualified property through 2012.

- **Getting capital to growing companies:** To ensure that growing businesses can access the financing they need to innovate, grow and create jobs, the President is proposing to:
 - Raise the limit for “mini-offerings” from \$5 million to \$50 million
 - Create a framework that allows entrepreneurs to raise capital through “crowdfunding.”
 - Create an “IPO on-ramp” that phases in certain securities laws and regulations for smaller, young companies in their first years after going public.
 - Expand the Small Business Investment Company program from \$3 billion to \$4 billion.

- **Relieving the backlog of employment-based immigrant visas:** As put forward in his *Blueprint for Building a 21st Century Immigration System*, the President is proposing to:
 - Eliminate country specific caps for certain immigrant visa categories to attract more high skilled foreign workers including entrepreneurs.

Many of these initiatives have been recommended by the President's Jobs Council and the National Advisory Committee on Innovation and Entrepreneurship, and build on initiatives that were passed in the bipartisan Small Business Jobs Act of 2010.

Congress should take action quickly on the President's Agenda to help ensure that startups and small businesses have the tools they need to grow and succeed. In the wake of the President's call to action in September 2011, there has been substantial bipartisan work in both the House and Senate on measures the President highlighted. This momentum reinforces the opportunity for Congress to come together and pass bipartisan legislation without delay. The Administration looks forward to working with sponsors of similar initiatives including S. 1965 (Warner-Moran), S. 1866 (Coons-Rubio), S. 1544 (Tester-Toomey), S. 1933 (Schumer-Toomey), S. 1970 (Merkley-Bennet), H.R. 2930 (McHenry), H.R. 1070 (Schweikert), as well as with leaders from the Small Business and Entrepreneurship Committees, including Chairwoman Landrieu, Senator Snowe, Chairman Graves and Representative Velazquez.

While urging Congress to act, the President will continue to advance small business and entrepreneurship priorities through the White House Startup America Initiative by taking executive action to improve the environment for new companies to grow, unlocking access to capital, cutting red tape, and accelerating innovation.

STARTUP AMERICA LEGISLATIVE AGENDA

DETAILED PRIORITIES

I. SMALL BUSINESS TAX BREAKS

A. EXPAND AND MAKE PERMANENT ZERO CAPITAL GAINS ON SMALL BUSINESS INVESTMENTS.

The President is proposing to make permanent a tax cut he put forward and signed into law in 2010 that eliminates taxes on capital gains in key investments in small businesses. The President also proposes that this tax cut would be expanded by eliminating its status as an AMT preference item and by increasing the “rollover” period for qualified investments, making the tax cut available to more investors.

B. CREATE AN INCENTIVE FOR SMALL BUSINESSES TO ADD NEW JOBS THIS YEAR.

The President is proposing a new tax credit for 2012 that would provide tax relief to small businesses and help them grow and hire. This would provide a 10 percent income tax credit on new payroll—through either hiring or increased wages—added in 2012. The amount of the credit would be capped at \$500,000 to focus the benefits of this tax credit on America’s small businesses.

C. DOUBLE THE DEDUCTION FOR ENTREPRENEURS’ START-UP EXPENSES.

Building on a temporary proposal in the Small Business Jobs Act, the President is proposing to permanently double the amount of start-up expenses entrepreneurs can deduct from their taxes from \$5,000 to \$10,000 (with the phase-out threshold increased from \$50,000 to \$60,000 in expenditures), offering an immediate incentive for investing in starting up a new small business.

D. EXTEND 100-PERCENT DEPRECIATION DEDUCTION FOR CERTAIN PROPERTY.

Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, additional first-year depreciation was increased to 100 percent of the adjusted basis of qualified property acquired and placed in service after September 8, 2010, and before January 1, 2012 (with an extension of the placed-in-service deadline to January 1, 2013, for certain longer-lived and transportation property). Corporations are allowed to claim additional AMT credits in lieu of claiming the additional depreciation. The Administration proposes to extend 100-percent first-year depreciation for one year, effective for qualified property acquired and placed in service before January 1, 2013 (January 1, 2014 for certain longer-lived and transportation property). The Administration also proposes to continue the corporate election to claim additional AMT credits in lieu of the additional depreciation for property placed in service in 2012 regardless of prior-year elections of this provision.

II. SMALL BUSINESS ACCESS TO CAPITAL

A. EXPAND MINI-OFFERINGS (REGULATION A).

The President is calling to raise the offering limit under Regulation A from \$5 million to \$50 million, with strong investor protections including audited financial statements and transparent electronic offering statements. These changes are consistent with the intent of Regulation A to facilitate small company offerings through simplified filing requirements with the Securities and Exchange Commission (SEC).

- Raise the offering limit from \$5 million to \$50 million.
- Continue to allow simplified SEC filing procedures for issuers while ensuring transparency to investors.
- Allow the SEC to require appropriate investor protections, including annual audited financial statements.
- In order to better understand the interactive effects of federal and state regulation on these offerings, the Government Accountability Office (GAO) should conduct a study that the SEC can use to address issues of duplication and cost.

B. ENABLE SMALL INVESTMENTS THROUGH CROWDFUNDING.

The President is calling for a national framework that allows entrepreneurs and small businesses to raise capital through “crowdfunding” – relatively small investments from many individuals through regulated online platforms. In order to create an efficient and transparent marketplace, businesses should be allowed to raise up to \$1 million per year through crowdfunding offerings and should be required to provide financial and other disclosures to investors. At the same time, an individual investor’s exposure should be limited based on income and ability to take on financial risk. Importantly, the SEC should provide appropriate oversight for the funding portals that host crowdfunding offerings.

- Allow businesses to raise up to \$1 million each year through crowdfunding offerings.
- Require businesses seeking to raise capital through crowdfunding to provide accurate basic disclosures to platforms and investors about their business and financial condition, as well as the targeted amount, price, use of proceeds and rights related to the securities being offered, and to be accountable for the accuracy of this information.
- Base an individual’s annual aggregate crowdfunding investment limits on due consideration of that investor’s ability to take on financial risk, including indicators such as income and net worth, with a limit of no more than \$10,000 or 10% of annual income.
- Ensure that crowdfunding investments do not unintentionally trigger public reporting requirements based on a threshold number of shareholders.
- Require all crowdfunding offerings to be conducted through registered platforms or portals.

- Require platforms engaged in broker-dealer activities to meet the SEC’s broker-dealer standards and be subject to appropriate oversight.
- Allow funding portals that are not engaged in broker-dealer activities to operate under streamlined regulations that are tailored to their activities and maintain investor protections.
- Give the SEC authority to promulgate rules related to this crowdfunding exemption as necessary and require reports to Congress about fraud risk and investor protection.

C. PHASE IN REQUIREMENTS FOR EMERGING GROWTH COMPANIES THROUGH AN “IPO ON-RAMP.”

The President is calling for changes in how our current securities laws and regulations are phased in for smaller, young companies in their first years after going public in an initial public offering (IPO). Without impairing important investor protections, we can phase in the most costly and complex requirements over a short period of time to allow Emerging Growth Companies sufficient time to achieve full compliance. This “IPO On-Ramp” would only apply to companies below a certain size threshold for a limited period of time, and would phase in certain costly financial statement and audit requirements. In addition, companies should be able to explore successful IPO options without disclosing competitive information, through provisions that allow these firms to submit confidential drafts of their registration statements to the SEC and that allow a short period of time when these companies can “test the waters” by communicating with sophisticated investors.

- Create a new category of issuer called “Emerging Growth Companies” under the Securities Act of 1933 and the Securities Exchange Act of 1934. Emerging Growth Company status would last only up to a maximum of five years after the IPO, and only so long as a company (i) has less than \$1 billion in annual revenues, (ii) has publicly issued no more than \$1 billion in aggregate principal amount of debt over any three-year period, and (iii) has a public float of less than \$700 million.
- Emerging Growth Companies should provide with their registration statement two years of audited financial statements, consistent with requirements for smaller reporting companies.
- Emerging Growth Companies should be permitted to defer compliance with Section 404(b) of the Sarbanes-Oxley Act until the conclusion of the “on-ramp” period. In all cases, companies’ CEOs and CFOs must still personally certify that they maintain internal controls over financial reporting and disclosure controls and procedures.
- Emerging Growth Companies should be allowed to phase in their compliance with any auditor rotation requirements.
- Emerging Growth Companies should be permitted to engage in a broader range of pre-filing communications with qualified institutional buyers, allowing these companies to “test the waters” prior to filing a registration statement.

- Emerging Growth Companies should be permitted to submit draft registration statements to the SEC on a confidential basis, for a fee.
- Final registration materials (including all amendments resulting from the SEC review process) should continue to be required to be made publicly available to investors with adequate time for review prior to the IPO.

D. EXPAND THE SMALL BUSINESS INVESTMENT COMPANY (SBIC) PROGRAM.

Working to fill the small business access to capital gap, this Administration has increased the use of existing programs by making sure that they work in smart ways for investors and entrepreneurs. Since 2009, we have grown the SBIC program by more than 50% per year. Last year, we reached a record \$1.8 billion in commitments. We also added new Impact and Innovation initiatives that will help the program expand to new markets. At the same time, statutory caps prevent additional leverage from reaching some of the most successfully managed funds.

- Increase the SBIC Debenture program authorization from \$3 billion to \$4 billion.
- Increase the amount of leverage by licensees under common control from \$225 million to \$350 million, with appropriate safeguards.

III. RELIEVING THE BACKLOG OF IMMIGRANT VISAS

A. ADJUST EXISTING VISA CAPS:

The President is committed to fixing our broken immigration system through comprehensive immigration reform. This includes creating a legal immigration system that meets our diverse economic needs and honors our rich traditions as a nation of immigrants that attracts entrepreneurial immigrants and strengthens the American workforce. In an effort to reduce backlogs in the legal immigration system, the President is calling to:

- Eliminate the per-country caps on employment-based immigrant visas ("green cards")
- Raise the caps on family-based green cards from 7 percent to 15 percent.

These small but meaningful reforms represent a balanced approach to addressing some of the long-standing problems with our broken immigrant visa system. These measures would not increase the total number of available immigrant visas but it would help address some of the longest backlogs that occur because of annual per country caps.