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8 CFR Parts 103, 212, and 274a  
International Entrepreneur Rule; Proposed Rule

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 103, 212, and 274a

[CIS No. 2572–15; DHS Docket No. USCIS–2015–0006]

RIN 1615–AC04

#### International Entrepreneur Rule

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to amend its regulations implementing the Secretary of Homeland Security's discretionary parole authority to increase and enhance entrepreneurship, innovation, and job creation in the United States. The proposed rule would add new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities whose entry into the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid business growth and job creation. Such potential would be indicated by, among other things, the receipt of significant capital investment from U.S. investors with established records of successful investments, or obtaining significant awards or grants from certain Federal, State or local government entities. If granted, parole would provide a temporary initial stay of up to 2 years (which may be extended by up to an additional 3 years) to facilitate the applicant's ability to oversee and grow his or her start-up entity in the United States. A subsequent request for re-parole would be considered only when the entrepreneur and his or her start-up entity continues to provide a significant public benefit as evidenced by substantial increases in capital investment, revenue, or job creation. DHS believes that a regulatory process for seeking and granting parole in this business-creation context—including by establishing criteria for evaluating individual parole applications on a case-by-case basis—is important given the complexities involved in such adjudications and the need for guidance regarding the general criteria for eligibility by the start-up entrepreneurs, entities, and investors involved.

**DATES:** Written comments must be received on or before October 17, 2016.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS–2015–0006, by any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *Email:* You may submit comments directly to U.S. Citizenship and Immigration Services (USCIS) by email at [uscisfrcomment@dhs.gov](mailto:uscisfrcomment@dhs.gov). Please include DHS docket number USCIS–2015–0006 in the subject line of the message.

- *Mail:* You may submit comments directly to USCIS by mail by sending correspondence to Samantha Deshombres, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2015–0006 in your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.

- *Hand Delivery/Courier:* You may submit comments directly to USCIS through hand delivery to: Samantha Deshombres, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone (202) 272–8377. To ensure proper handling, please reference DHS Docket No. USCIS–2015–0006 in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Steven Viger, Adjudications Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Suite 1100, Washington, DC 20529–2140; Telephone (202) 272–8377.

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#### I. Public Participation

DHS invites comments, data, and information from all interested parties, including advocacy groups, nongovernmental organizations, community-based organizations, entrepreneurs, investors, other entities in the entrepreneurial ecosystem of the United States, and legal representatives who specialize in immigration law on any and all aspects of this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authorities that support such recommended change. DHS is generally seeking comments on:

A. Proposed filing requirements and procedures;

B. Proposed definitions and criteria for evaluating parole applications,

including investment, award, revenue, job creation, and alternative criteria;

C. Proposed conditions, including limits on the number of entrepreneur parolees per start-up entity and time limits on parole periods;

D. Proposed provisions establishing employment authorization for entrepreneurs incident to parole;

E. Proposed provisions regarding termination of parole; and

F. Proposed opportunity to request re-parole, length of period for re-parole, and limitation on number of re-parole opportunities.

DHS also invites comments on the economic analysis supporting this rule and the proposed new parole request form for entrepreneurs.

*Instructions:* All submissions must include the agency name and the DHS Docket No. USCIS-2015-0006 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

## II. Executive Summary

### A. Purpose of the Regulatory Action

Section 212(d)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(5), grants the Secretary of Homeland Security the discretionary authority to parole individuals into the United States, on a case-by-case basis, for urgent humanitarian reasons or significant public benefit. DHS proposes to amend its regulations implementing this authority to increase and enhance entrepreneurship, innovation, and job creation in the United States. As described in more detail below, the proposed rule would establish general criteria for the use of parole with respect to entrepreneurs of start-up entities whose entry into the United States would provide a significant public

benefit through the substantial and demonstrated potential for rapid growth and job creation. In all cases, whether to parole a particular individual under this rule would be a discretionary determination that would be made on a case-by-case basis.

Given the complexities involved in adjudicating applications in this context and the need for guidance regarding the criteria for exercising parole in this area, DHS has decided to establish by regulation the criteria for the case-by-case evaluation of parole applications filed by entrepreneurs of start-up entities. By including such criteria in regulation, as well as establishing application requirements that are specifically tailored to capture the necessary information for processing parole requests on this basis, DHS expects to facilitate the use of parole in this area.

As discussed, the proposed rule would establish criteria for seeking and obtaining parole based on the creation of a start-up entity in the United States. DHS proposes that to be considered for parole under this rule, an applicant would need to demonstrate that his or her parole would provide a significant public benefit because he or she is the entrepreneur of a new start-up entity in the United States that has significant potential for rapid growth and job creation. DHS proposes that such potential would be indicated by, among other things, the receipt of (1) significant capital financing from U.S. investors with established records of successful investments or (2) significant awards or grants from certain Federal, State or local government entities. DHS also proposes alternative criteria for applicants who partially meet the proposed thresholds for capital financing or government awards or grants and who can provide additional reliable and compelling evidence of their entities' significant potential for rapid growth and job creation. An applicant would qualify for further consideration by showing that he or she has a substantial ownership interest in such an entity, has an active and central role in the entity's operations, and would substantially further the entity's ability to engage in research and development or otherwise conduct and grow its business in the United States. The grant of parole is intended to facilitate the applicant's ability to oversee and grow the start-up entity.

DHS believes that this proposal would encourage foreign entrepreneurs to create and develop start-up entities with high growth potential in the United States, which are expected to facilitate research and development in the

country, create jobs for U.S. workers, and otherwise benefit the U.S. economy through increased business activity, innovation and dynamism. Particularly in light of the complex considerations involved in entrepreneur-based parole requests, DHS also believes that this proposal will provide a transparent framework by which DHS will exercise its discretion to adjudicate such requests on a case-by-case basis under section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5).

### B. Legal Authority

The Secretary of Homeland Security's authority for the proposed regulatory amendments can be found in various provisions of the immigration laws. Section 402(4) of the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 202(4), provides the Secretary the authority to administer and enforce the immigration and nationality laws. Sections 103(a)(1) and (3) of the INA, 8 U.S.C. 1103(a)(1), (3), expressly authorize the Secretary to establish rules and regulations governing parole. Section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5), vests in the Secretary the discretionary authority to grant parole for urgent humanitarian reasons or significant public benefit to applicants for admission on a case-by-case basis.<sup>1</sup> Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), recognizes the Secretary's general authority to extend employment authorization to noncitizens in the United States. And section 101(b)(1)(F) of the HSA, 6 U.S.C. 111(b)(1)(F), establishes as a primary mission of DHS the duty to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland."

### C. Summary of Proposed Amendments

DHS is proposing to add a new section 8 CFR 212.19 to provide guidance with respect to the use of parole for entrepreneurs of start-up entities based upon significant public

<sup>1</sup> In sections 402 and 451 of the HSA, Congress transferred from the Attorney General to the Secretary of Homeland Security the general authority to enforce and administer the immigration laws, including those pertaining to parole. In accordance with section 1517 of title XV of the HSA, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS "shall be deemed to refer to the Secretary" of Homeland Security. See 6 U.S.C. 557 (codifying the HSA, tit. XV, section 1517). Authorities and functions of DHS to administer and enforce the immigration laws are appropriately delegated to DHS employees and others in accordance with section 102(b)(1) of the HSA, 6 U.S.C. 112(b)(1); section 103(a) of the INA, 8 U.S.C. 1103(a); and 8 CFR 2.1.

benefit. An individual seeking to operate and grow his or her start-up entity in the United States would generally need to demonstrate the following to be considered for a discretionary grant of parole under this proposed rule:

1. *Formation of New Start-Up Entity.* The applicant has recently formed a new entity in the United States that has lawfully done business since its creation and has substantial potential for rapid growth and job creation. DHS proposes that an entity may be generally considered recently formed if it was created within the 3 years preceding the date of the filing of the initial parole application.

2. *Applicant is an Entrepreneur.* The applicant is an entrepreneur of the start-up entity who is well-positioned to advance the entity's business. DHS proposes that an applicant may generally meet this standard by providing evidence that he or she: (1) Possesses a significant (at least 15 percent) ownership interest in the entity at the time of adjudication of the initial grant of parole; and (2) has an active and central role in the operations and future growth of the entity, such that his or her knowledge, skills, or experience would substantially assist the entity in conducting and growing its business in the United States. Such an applicant cannot be a mere investor.

3. *Significant U.S. Capital Investment or Government Funding.* The applicant can further validate, through reliable supporting evidence, the entity's substantial potential for rapid growth and job creation. DHS proposes that an applicant may be able to satisfy this criterion in one of several ways:

a. *Investments from established U.S. investors.* The applicant may show that the entity has received significant investment of capital from certain qualified U.S. investors with established records of successful investments. DHS proposes that an applicant would generally be able to meet this standard by demonstrating that the start-up entity has received investments of capital totaling \$345,000 or more from established U.S. investors (such as venture capital firms, angel investors, or start-up accelerators) with a history of substantial investment in successful start-up entities.

b. *Government grants.* The applicant may show that the start-up entity has received significant awards or grants from Federal, State or local government entities with expertise in economic development, research and development, and/or job creation. DHS proposes that an applicant would generally be able to meet this standard by demonstrating that the start-up entity has received monetary awards or grants totaling \$100,000 or more from government entities that typically provide such funding to U.S. businesses for economic, research and development, or job creation purposes.

c. *Alternative criteria.* DHS further proposes alternative criteria under which an applicant who partially meets one or more of the above sub-criteria related to capital investment or government funding may be considered for parole under this rule if he or she provides additional reliable and

compelling evidence that his or her entry would provide a significant public benefit to the United States. Such evidence would need to serve as a compelling validation of the entity's substantial potential for rapid growth and job creation.

DHS proposes that an applicant who meets the above criteria (and his or her spouse and minor, unmarried children, if any) generally may be considered under this rule for a discretionary grant of parole lasting up to 2 years based on the significant public benefit that would be provided by the applicant's (or family's) parole into the United States. An applicant would be required to file a new application specifically tailored for entrepreneurs to demonstrate eligibility for parole based upon significant public benefit under this rule, along with proposed fees. Applicants would also be required to appear for collection of biometric information. DHS further proposes that no more than three entrepreneurs may receive parole with respect to any one qualifying entity.

USCIS adjudicators would be required to consider the totality of the evidence, including evidence obtained by USCIS through background checks and other means, to determine whether the applicant has satisfied the above criteria, whether the specific applicant's parole would provide a significant public benefit, and whether negative factors exist that warrant denial of parole as a matter of discretion. To grant parole, adjudicators would be required to conclude, based on the totality of the circumstances, that both: (1) The applicant's parole would provide a significant public benefit, and (2) the applicant merits a grant of parole as a matter of discretion.

DHS further proposes that if parole is granted, the entrepreneur would be authorized for employment incident to the grant of parole, but only with respect to the entrepreneur's start-up entity. The entrepreneur's spouse and children, if any, would not be authorized for employment incident to the grant of parole, but the entrepreneur's spouse, if paroled into the United States pursuant to 8 CFR 212.19, would be permitted to apply for employment authorization consistent with proposed 8 CFR 274a.12(c)(34). DHS retains the right to revoke any such grant of parole at any time as a matter of discretion or if the Department determines that parole no longer provides a significant public benefit, such as when the entity has ceased operations in the United States or DHS believes that the application involves fraud or misrepresentation.

As noted, the purpose of the proposed parole process is to provide qualified entrepreneurs of high-potential start-up entities in the United States with the improved ability to conduct research and development and expand the entities' operations in the United States so that our nation's economy may benefit from such development and expansion, including through increased capital expenditures, innovation and job creation. DHS proposes to allow individuals granted parole under this rule to be considered for re-parole for an additional period of up to 3 years if, and only if, they can demonstrate that their entities have shown signs of significant growth since the initial grant of parole and such entities continue to have substantial potential for rapid growth and job creation. As proposed, an applicant under this rule would generally need to demonstrate the following to be considered for a discretionary grant of an additional period of parole:

1. *Continuation of Start-Up Entity.* The entity continues to be a start-up entity as defined by the proposed rule. For purposes of seeking re-parole, an applicant would be able to meet this standard by showing that the entity: (a) Has been lawfully operating in the United States during the period of parole; and (b) continues to have substantial potential for rapid growth and job creation.

2. *Applicant Continues to Be an Entrepreneur.* The applicant continues to be an entrepreneur of the start-up entity who is well-positioned to advance the entity's business. DHS proposes that an applicant may generally meet this standard by providing evidence that he or she: (a) Continues to possess a significant (at least 10 percent) ownership interest in the entity; and (b) continues to have an active and central role in the operations and future growth of the entity, such that his or her knowledge, skills, or experience would substantially assist the entity in conducting and continuing to grow its business in the United States. This reduced ownership amount takes into account the need of some successful start-up entities to raise additional venture capital financing by selling ownership interest during their initial years of operation.

3. *Significant U.S. Investment/Revenue/Job Creation.* The applicant can further validate, through reliable supporting evidence, the start-up entity's continued potential for rapid growth and job creation. DHS proposes that an applicant would be able to satisfy this criterion in one of several ways:

a. *Investments from established U.S. investors.* The applicant may show that during the initial period of parole the start-up entity received additional substantial investments of capital, including through qualified investments from U.S. investors with established records of successful investments; significant awards or grants from government entities that regularly provide such funding to start-up entities; or

a combination of both. DHS proposes that an applicant would generally be expected to demonstrate that the entity received at least \$500,000 in additional qualifying funding during the initial parole period. As noted previously, any private investments must be made by qualified U.S. investors (such as venture capital firms, angel investors, or start-up accelerators) with a history of substantial investment in successful start-up entities. Government awards or grants must be from Federal, State or local government entities with expertise in economic development, research and development, and/or job creation.

b. *Revenue generation.* The applicant may show that the start-up entity has generated substantial and rapidly increasing revenue in the United States during the initial parole period. DHS proposes that an applicant would generally be expected to demonstrate that the entity reached at least \$500,000 in annual revenue, with average annualized revenue growth of at least 20 percent, during the initial parole period.

c. *Job creation.* The applicant may show that the start-up entity has demonstrated substantial job creation in the United States during the initial parole period. DHS proposes that an applicant would generally be expected to demonstrate that the entity created at least 10 full-time jobs for U.S. workers during the initial parole period.

d. *Alternative criteria.* As with initial parole, DHS further proposes alternative criteria under which an applicant who partially meets one or more of the above sub-criteria related to capital investment, revenue generation, or job creation may be considered for re-parole under this rule if he or she provides additional reliable and compelling evidence that his or her parole would continue to provide a significant public benefit. As discussed above, such evidence would need to serve as a compelling validation of the entity's substantial potential for rapid growth and job creation.

DHS proposes that an applicant who generally meets the above criteria may be considered for one additional grant of parole to work with the same start-up entity based on the significant public benefit that would be served by his or her continued parole in the United States, if the applicant also merits a favorable exercise of discretion. If granted, re-parole may be for up to 3 years, for a total maximum period of 5 years for parole under 8 CFR 212.19. No more than three entrepreneurs (and their spouses and children) may receive such additional periods of parole with respect to any one qualifying entity.

As with initial parole applications, USCIS adjudicators would be required to consider the totality of the evidence, including evidence obtained by USCIS through verification methods, to determine whether the applicant has satisfied the above criteria and whether his or her continued parole would provide a significant public benefit. To re-parole, adjudicators would be

required to conclude, based on the totality of the circumstances, both: (1) That the applicant's continued parole would provide a significant public benefit, and (2) that the applicant continues to merit parole as a matter of discretion. If re-paroled, DHS retains the right to revoke parole at any time as a matter of discretion or if the Department determines that parole no longer provides a significant public benefit, such as when the entity has ceased operations in the United States or DHS believes that the applicant committed fraud or made material misrepresentations.

Finally, DHS is proposing conforming changes to the employment authorization regulations at 8 CFR 274a.12(b) and (c), the employment eligibility verification regulations at 8 CFR 274a.2(b), and fee regulations at 8 CFR 103.7(b)(i). The proposed rule would amend 8 CFR 274a.12(b) by: (1) Adding entrepreneur parolees to the classes of aliens authorized for employment incident to their immigration status or parole, and (2) providing for temporary employment authorization for those applying for re-parole. The proposed rule would amend 8 CFR 274a.12(c) by extending eligibility for employment authorization to the spouse of an entrepreneur paroled into the United States under 8 CFR 212.19. The proposed rule would amend 8 CFR 274a.2(b) by designating the entrepreneur's foreign passport and Arrival/Departure Record (Form I-94) indicating entrepreneur parole as acceptable evidence for employment eligibility verification (Form I-9) purposes.<sup>2</sup> Finally, the proposed rule would amend 8 CFR 103.7(b)(i) by including the fee for the new proposed application form.

#### D. Costs and Benefits

DHS does not anticipate that this rule, if finalized, would generate significant costs and burdens to private or public entities. Costs of the rule would stem from filing fees and opportunity costs associated with applying for parole, and the requirement that the entrepreneur alert DHS to any material changes.

DHS estimates that 2,940 entrepreneurs could be eligible for parole annually. Each applicant for parole would face a total filing cost—including the application form fee, biometric filing fee, travel costs, and associated opportunity costs—of \$1,480, resulting in a total cost of \$4,349,827

<sup>2</sup> Additionally, DHS is also proposing a technical change to this section to add the Department of State (DOS) Consular Report of Birth Abroad (Form FS-240, or successor form) to the "List C" column of acceptable documents for Form I-9 purposes.

(undiscounted) for the first full year the rule could take effect and any subsequent year. Additionally, dependent family members (spouses and children) seeking parole with the principal applicant would be required to file an Application for Travel Document (Form I-131) and submit biographical information and biometrics. DHS estimates approximately 3,234 dependent spouses and children could seek parole based on the base estimate of 2,940 principal applicants. Each spouse and child 14 years of age and older seeking parole would face a total cost of \$550 per applicant, for a total aggregate cost of \$1,779,604.<sup>3</sup> Additionally, spouses who apply for work authorization via a Form I-765 application would incur a total additional cost of \$416.20 each. Based on the same number of entrepreneurs, the estimated 2,940 spouses<sup>4</sup> would incur total costs of \$1,223,630 (undiscounted). The total cost of the rule to include direct filing costs and monetized non-filing costs is estimated to be \$7,353,061 annually.

DHS anticipates that establishing a parole process for those entrepreneurs who stand to provide a significant public benefit would advance the U.S. economy by enhancing innovation, generating capital investments, and creating jobs. DHS does not expect significant negative consequences or labor market impacts from this rule; indeed, DHS believes this proposal would encourage entrepreneurs to pursue business opportunities in the United States rather than abroad, which can be expected to generate significant scientific, research and development, and technological impacts that could create new products and produce positive spillover effects to other businesses and sectors. The impacts stand to benefit the economy by supporting and strengthening high-growth, job-creating businesses in the United States.

### III. Background

#### A. Discretionary Parole Authority

The Secretary of Homeland Security has discretionary authority to grant temporary parole "under conditions as he may prescribe only on a case-by-case

<sup>3</sup> For parole requests for children under the age of 14, only the filing fee will be required, as they do not appear for biometric collection. Applicants under the age of 14 and over the age of 79 are not required to be fingerprinted. However, they may still be required to attend a biometrics appointment in order to have their photograph and signature captured.

<sup>4</sup> DHS used a simple one-to-one mapping of entrepreneurs to spouses to obtain 1,813 spouses, the same number as entrepreneur parolees.

basis for urgent humanitarian reasons or significant public benefit [to] any individual applying for admission to the United States.” INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).<sup>5</sup> The Secretary’s parole authority is expansive. Congress did not define the phrase “urgent humanitarian reasons or significant public benefit,” entrusting interpretation and application of those standards to the Secretary. Aside from requiring case-by-case determinations, Congress limited the parole authority by prohibiting its use with respect to two classes of applicants for admissions: (1) Aliens who are refugees (unless the Secretary determines that parole is required for a particular alien for compelling reasons in the public interest), *see* INA section 212(d)(5)(B), 8 U.S.C. 1182(d)(5)(B); and (2) alien crewmen during certain labor disputes, *see* INA section 214(f)(2)(A), 8 U.S.C. 1184(f)(2)(A).

Parole decisions are discretionary determinations and must be made on a case-by-case basis consistent with the INA. DHS may exercise its authority to determine that an individual’s parole into the United States is justified by urgent humanitarian reasons or significant public benefit. Even when one of those standards would be met, DHS may nevertheless deny parole as a matter of discretion based on other factors.<sup>6</sup> In making such discretionary determinations, USCIS considers all relevant information, including any criminal history or other serious adverse factors that would weigh against a favorable exercise of discretion.

Parole is not an admission to the United States. *See* INA section 101(a)(13)(B), 8 U.S.C. 1101(a)(13)(B); 8 CFR 1.2 (“An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”). Parole may also be terminated at any time in DHS’s discretion, consistent with existing regulations; in those cases, the individual is “restored to the status that he or she had at the time of parole.” 8 CFR 212.5(e); *see also* INA section 212(d)(5), 8 U.S.C. 1182(d)(5).

DHS regulations at 8 CFR 212.5 describe DHS’s discretionary parole authority for arriving aliens to the United States (other than detained aliens), including the authority to set

the terms and conditions of parole. Some conditions are described in the regulations, including requiring reasonable assurances that the parolee will appear at all hearings and will depart from the United States when required to do so. *See* 8 CFR 212.5(d).

Each of the DHS immigration components—USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE)—has been delegated the authority to parole applicants for admission in accordance with section 212(d)(5) of the INA, 8 U.S.C. 1182(d)(5). *See* 8 CFR 212.5(a). The parole authority is often utilized to permit an alien who is outside the United States to travel to and come into the United States without a visa. USCIS, however, also accepts requests for “advance parole” by aliens who seek authorization to depart the United States and return to the country pursuant to parole in the future.<sup>7</sup> *See* 8 CFR 212.5(f); Application for Travel Document (Form I–131). Advance authorization of parole by USCIS does not guarantee that the alien will be paroled by CBP upon his or her appearance at a port of entry. Rather, with a grant of advance parole, the alien is issued a document authorizing travel (in lieu of a visa) indicating the presumption that CBP will favorably exercise discretion to parole the alien in the future (so long as material circumstances do not change).

Currently, upon an alien’s arrival to the United States with a parole travel document (*e.g.*, a Department of State (DOS) foil, Authorization for Parole of an Alien into the United States (Form I–512L), or an Employment Authorization Document (Form I–766)), a CBP officer at a port of entry inspects the prospective parolee. If parole is authorized, the CBP officer issues an Arrival/Departure Record (Form I–94) documenting the grant of parole and the length of the parolee’s authorized parole period. *See* 8 CFR 235.1(h)(2). Importantly, CBP retains the authority to deny parole to a parole applicant or to modify the length of advance parole authorized by USCIS. *See* 8 CFR 212.5(c).

Because parole does not constitute an admission, individuals may be paroled into the United States even if they are inadmissible. *See* section 212(a) of the INA, 8 U.S.C. 1182(a). Further, parole does not confer any immigration

“status.” *See* section 101(a)(13)(B) of the INA, 8 U.S.C. 1101(a)(13)(B); section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A). Parole does not provide a parolee with temporary nonimmigrant status or lawful permanent resident status. Nor does it provide the parolee with a basis for changing status to that of a nonimmigrant or adjusting status to that of a lawful permanent resident, unless the parolee is otherwise eligible.

Under current regulations, once paroled into the United States, a parolee is eligible to request employment authorization from USCIS by filing an Application for Employment Authorization (Form I–765) with USCIS. *See* 8 CFR 274a.12(c)(11). If employment authorization is granted, USCIS issues the parolee an EAD with an expiration date that is commensurate with the period of parole on the parolee’s Arrival/Departure Record (Form I–94). The parolee may use this EAD to demonstrate identity and employment authorization to an employer for Form I–9 verification purposes as required by section 274A(a) and (b) of the INA, 8 U.S.C. 1324a(a) and (b). Under current regulations, the parolee is not employment authorized by virtue of being paroled, but instead only after receiving a discretionary grant of employment authorization from USCIS based on the Application for Employment Authorization.

Parole may terminate automatically upon the expiration of the authorized parole period or upon the departure of the individual from the United States. *See* 8 CFR 212.5(e)(1). Parole also may be terminated on written notice when DHS determines that the individual no longer warrants parole or through the service of a Notice to Appear (NTA). *See* 8 CFR 212.5(e)(2)(i).

#### B. Historical Uses of Parole

DHS and the former Immigration and Naturalization Service (INS) have long extended parole to individuals for urgent humanitarian reasons or significant public benefit. The authority has been exercised on behalf of individuals on an ad hoc basis, as well as through policy guidance or regulations identifying classes of individuals to be considered for parole through individualized case-by-case adjudications. For example, parole has long been used on an ad hoc basis for individuals with serious medical conditions who need to come into the United States for medical treatment, individuals subject to prosecution or who are required to testify in court, individuals cooperating with law enforcement agencies, volunteers offering assistance in response to

<sup>5</sup> Although section 212(d)(5) continues to refer to the Attorney General, the parole authority now resides exclusively with the Secretary of Homeland Security. *See Matter of Arrabally*, 25 I. & N. Dec. 771, 777 n.5 (BIA 2012).

<sup>6</sup> The denial of parole is not subject to judicial review. *See* INA section 242(a)(2)(B)(ii), 8 U.S.C. 1252(a)(2)(B)(ii).

<sup>7</sup> Aliens who seek parole as entrepreneurs under this rule may need to apply for advance parole if at the time of application they are present in the United States after admission in a nonimmigrant classification, as USCIS is unable to grant parole to aliens who are not “applicants for admission.” *See* INA section 212(d)(5), 8 U.S.C. 1182(d)(5).

natural or other disasters, and foreign officials and other dignitaries who are inadmissible but seek to attend events in the country. Depending on the circumstances, such uses of parole have been justified on “urgent humanitarian” or “significant public benefit” grounds, or both.

Parole has also long been exercised on a case-by-case basis with respect to individuals falling within certain designated parameters, as defined through regulation or policy guidance. Longstanding regulations, for example, provide discretionary criteria and other guidance for the use of parole with respect to arriving aliens detained in the United States. See 8 CFR 212.5. Those regulations provide that parole from immigration custody generally would be “justified” on a case-by-case basis if an individual falls within one of several specific categories, including individuals with serious medical conditions, pregnant women, juveniles, or individuals whose “continued detention is not in the public interest” as determined by certain listed officials. *Id.* Through longstanding policy memoranda or other guidance, DHS and the former INS have also provided instructions on the use of parole for other individuals, including certain vulnerable individuals who have been denied refugee status.

More recently, DHS has provided guidance on the case-by-case exercise of the parole authority through policy memoranda or notices in the **Federal Register**, including, for example, on behalf of certain Cuban nationals, certain individuals seeking to enter the Commonwealth of the Northern Mariana Islands (CNMI), and certain family members of U.S. military personnel:

- In 2007, DHS implemented the Cuban Family Reunification Parole Program to promote safe, legal, and orderly migration as an alternative to maritime crossings from Cuba. This program offers Cuban beneficiaries of approved family-based immigrant visa petitions an opportunity to apply for parole rather than remain in Cuba while awaiting the availability of an immigrant visa number.<sup>8</sup> USCIS implemented the program based on the significant public benefit rationales of “enabling the United States to meet its commitments under the Migration Accords” and “reducing the perceived need for family members left behind in Cuba to make irregular and inherently dangerous attempts to arrive in the United States.”<sup>9</sup>

<sup>8</sup> Cuban Family Reunification Parole Program, 72 FR 65,588 (Nov. 21, 2007); see also Changes to Application Procedures for the Cuban Family Reunification Parole Program, 79 FR 75579 (Dec. 18, 2014).

<sup>9</sup> *Id.*

- In 2009, DHS announced a policy on the use of parole into the CNMI for certain foreign workers, as well as visitors from the Russian Federation and the People’s Republic of China.<sup>10</sup> The parole policy was justified based on the economic benefit such workers and visitors would provide to the U.S. territory.

- In 2013, DHS issued guidance encouraging the use of parole for spouses, children, and parents of active duty members of the U.S. Armed Forces, individuals in the Selected Reserve of the Ready Reserve, and individuals who previously served in the U.S. Armed Forces or the Selected Reserve of the Ready Reserve.<sup>11</sup> The cited benefits included mitigating the adverse effects on Service Members and military preparedness stemming from the stress and anxiety of their immediate family members due to immigration concerns.

### C. Significant Public Benefit From Attracting Foreign Entrepreneurs to the United States

DHS believes that enabling foreign entrepreneurs to establish and grow their start-up entities in the United States, rather than abroad, would yield a significant public benefit in certain cases. This would be expected to promote entrepreneurship and investment; facilitate research and development and other forms of innovation; support the continued growth of the U.S. economy; and lead to job creation for U.S. workers. To this end, DHS has considered the economic benefits of foreign entrepreneurs.

Evidence indicates that young business ventures, especially new start-up businesses, are important economic drivers and that the U.S. economy significantly benefits from the economic activity generated by entrepreneurs who start and grow new businesses here rather than abroad.<sup>12</sup> Indeed, evidence

<sup>10</sup> See 8 CFR 214.2(w)(1)(v); USCIS, Commonwealth of the Northern Mariana Islands (CNMI) Federalization of Immigration Law (Sept. 22, 2014), available at <http://www.uscis.gov/laws/immigration-commonwealth-northern-mariana-islands-cnmi/commonwealth-northern-mariana-islands-cnmi-federalization-immigration-law>; USCIS, Extending Parole in the CNMI (Jan. 30, 2012), available at <http://www.uscis.gov/laws/immigration-commonwealth-northern-mariana-islands-cnmi/extending-parole-cnmi>.

<sup>11</sup> See USCIS Policy Mem. PM-602-0091, Parole of Spouses, Children and Parents of Active Duty Members of the U. S. Armed Forces, the Selected Reserve of the Ready Reserve, and Former Members of the U.S. Armed Forces or Selected Reserve of the Ready Reserve and the Effect of Parole on Inadmissibility under Immigration and Nationality Act § 212(a)(6)(A)(i) at 2-3 (Nov. 13, 2013), available at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115\\_Parole\\_in\\_Place\\_Memo\\_.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/2013-1115_Parole_in_Place_Memo_.pdf).

<sup>12</sup> See, e.g. Edward L. Glaeser, Sari Pekkala Kerr, and William R. Kerr “Entrepreneurship And Urban Growth: An Empirical Assessment With Historical Mines” (2013). Working Papers 13-15, Center for Economic Studies, U.S. Census Bureau. (Finding that increasing the proportion of startup

suggests that future economic and job growth for nations will hinge heavily on their ability to attract entrepreneurs, including those from abroad.<sup>13</sup> As entrepreneurs have increasing opportunities to establish and operate their start-up entities around the world, the need to create conditions that reduce barriers to entry and attract entrepreneurs has become a priority policy goal for a number of economically advanced and less economically advanced nations.<sup>14</sup> To compete for talented entrepreneurs, these countries have, or are planning to have, processes similar to that proposed in this rule.<sup>15</sup>

employment within a region increases the growth rate of overall employment and wages.); John C. Haltiwanger, Ron S. Jarmin, Javier Miranda, “Who Creates Jobs? Small vs. Large vs. Young” NBER Working Paper No. 16300, August 2010, available at <http://www.nber.org/papers/w16300> (Findings “highlight the important role of business startups and young businesses in U.S. job creation.”); Jose Plehn-Dujowich, “Product Innovations by Young and Small Firms,” Small Business Administration, Research Summary No. 408 available at <http://www.sba.gov/advocacy/7540/621871> (Finding that “innovation is characteristic of both young and small firms”); Tim Kane, “The Importance of Startups in Job Creation and Job Destruction,” July 2010 Kauffman Foundation Research Series: Firm Formation and Economic Growth, available at [http://www.kauffman.org/-/media/kauffman\\_org/research%20reports%20and%20covers/2010/07/firm\\_formation\\_importance\\_of\\_startups.pdf](http://www.kauffman.org/-/media/kauffman_org/research%20reports%20and%20covers/2010/07/firm_formation_importance_of_startups.pdf) (showing the importance of startups for net job growth in the U.S. economy).

<sup>13</sup> Council of Economic Advisers The Economic Effects of Administrative Action on Immigration, 18 (November 2014, updated February 2015), available at [https://www.whitehouse.gov/sites/default/files/docs/economic\\_effects\\_of\\_immigration\\_ea\\_february\\_2015\\_update\\_final\\_v2.pdf](https://www.whitehouse.gov/sites/default/files/docs/economic_effects_of_immigration_ea_february_2015_update_final_v2.pdf) (“A body of academic research conducted over the past ten years has found that high-skilled immigration has positive effects on innovation (as measured by patenting) and on total factor productivity.”); Robert Litan, *Start-Up Slowdown*; Council on Foreign Relation, Jan./Feb. 2015, available at <https://www.foreignaffairs.com/articles/americas/2014-12-15/start-slowdown>; Robert Fairlie, *Kauffman Index of Entrepreneurial Activity, 1996-2011*, Ewing Marion Kauffman Foundation, March 19, 2012, [http://www.kauffman.org/uploadedfiles/kiea\\_2012\\_report.pdf](http://www.kauffman.org/uploadedfiles/kiea_2012_report.pdf) (finding that immigrants were more than twice as likely as Americans to start new businesses in 2011); Madeleine Sumption, “Visas for Entrepreneurs: How Countries Are Seeking Out Immigrant Job Creators,” June 13, 2012 Migration Information Source, Migration Institute, available at <http://www.migrationpolicy.org/article/visas-entrepreneurs-how-countries-are-seeking-out-immigrant-job-creators>.

<sup>14</sup> Robert Litan, “Start-Up Slowdown”; Council on Foreign Relation, Jan./Feb. 2015, available at <https://www.foreignaffairs.com/articles/americas/2014-12-15/start-slowdown>; Madeleine Sumption, “Visas for Entrepreneurs: How Countries Are Seeking Out Immigrant Job Creators,” June 13, 2012 Migration Information Source, Migration Institute, available at <http://www.migrationpolicy.org/article/visas-entrepreneurs-how-countries-are-seeking-out-immigrant-job-creators>.

<sup>15</sup> Canada Start-up Visa, <http://www.cic.gc.ca/english/immigrate/business/start-up/>; UK Tier 1 (Entrepreneur) visa, <https://www.gov.uk/tier-1-entrepreneur/overview>.



Allowing certain qualified entrepreneurs to come to the United States as parolees on a case-by-case basis would produce a significant public benefit through substantial and positive contributions to innovation, economic growth, and job creation. New business ventures, especially start-up businesses, are important economic drivers.<sup>16</sup> A significant percentage of the employment generated by high-tech manufacturers backed by U.S. venture capital investment has come from immigrant-founded companies.<sup>17</sup> A study on the top 50 venture capital-funded start-up companies in the United States showed that 48 percent had at least one immigrant founder.<sup>18</sup>

Innovative foreign-born entrepreneurs are critical forces in the U.S. economy, having founded roughly one-quarter of technology and engineering companies created between 2006 and 2012.<sup>19</sup> As of June 2013, publicly-traded immigrant-founded venture-backed companies had a total market capitalization of \$900 billion.<sup>20</sup> Another study by the National Venture Capital Association found that 40 percent of the immigrant founders in the survey entered the United States as

<sup>16</sup> Tim Kane, "The Importance of Startups in Job Creation and Job Destruction," July 2010 Kauffman Foundation Research Series: Firm Formation and Economic Growth, available at [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2010/07/firm\\_formation\\_importance\\_of\\_startups.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2010/07/firm_formation_importance_of_startups.pdf) (showing the importance of startups for net job growth in the U.S. economy); Edward L. Glaeser, Sari Pekkala Kerr, and William R. Kerr, "Entrepreneurship And Urban Growth: An Empirical Assessment With Historical Mines," Working Papers 13–15, Center for Economic Studies, U.S. Census Bureau, 2013 (finding that increasing the proportion of startup employment within a region increases the growth rate of overall employment and wages.); John C. Haltiwanger, Ron S. Jarmin, Javier Miranda, "Who Creates Jobs? Small vs. Large vs. Young," NBER Working Paper No. 16300, August 2010, available at <http://www.nber.org/papers/w16300> (highlighting "the important role of business startups and young businesses in U.S. job creation").

<sup>17</sup> Stuart Anderson & Michaela Platzer, "American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness," National Venture Capital Association, Nov. 2006, at 11.

<sup>18</sup> Stuart Anderson, "Immigration Founders and Key Personnel in America's 50 Top Venture-Funded Companies," Dec. 2010, available at <http://www.nfap.com/pdf/NFAPPolicyBriefImmigrantFoundersandKeyPersonnelinAmericasTopVentureFundedCompanies.pdf>.

<sup>19</sup> Vivek Wadhwa, AnnaLee Saxenian & F. Daniel Siciliano, "America's New Immigrant Entrepreneurs: Then and Now," Kauffman Foundation, Oct. 2012, at 3, available at <http://www.kauffman.org/what-we-do/research/immigration-and-the-american-economy/americas-new-immigrant-entrepreneurs-then-and-now>.

<sup>20</sup> Stuart Anderson, "American Made 2.0: How Immigrant Entrepreneurs Continue to Contribute to the U.S. Economy," National Venture Capital Association, 2013, at 5, available at <http://nvca.org/research/stats-studies/>.

employment-sponsored immigrants, 38 percent as international students, 13 percent as family-sponsored immigrants, and the rest in other categories.<sup>21</sup> These studies, however, do not reflect the number of entrepreneurs who may have decided to start businesses in other countries because of the difficulty in locating their businesses in the United States due to current immigration policies.<sup>22</sup> The full potential of foreign entrepreneurs to benefit the U.S. economy through, for example, cutting-edge research, revenue generation, and job creation, is thus unknown. That current immigration policies create barriers for foreign entrepreneurs was a primary conclusion of the USCIS Entrepreneurs in Residence (EIR) program,<sup>23</sup> which was launched in 2012 to better understand how entrepreneurs fit within existing immigration classifications and to make policy recommendations based on its findings.

#### D. Proposal for Parole for Entrepreneurs

DHS proposes to exercise its parole authority, on a case-by-case basis, for entrepreneurs of start-up entities whose parole into the United States would provide a significant public benefit through the substantial potential of his or her start-up entity for rapid growth and job creation. Under the proposed rule, such potential would be evidenced by, among other things, the receipt of (1) substantial significant capital financing by U.S. investors with established records of successful investments or (2) significant awards or grants from certain government entities. DHS also proposes alternative criteria for applicants who partially meet the proposed thresholds for capital financing or government awards or grants and who can provide additional reliable and compelling evidence of their entities' significant

<sup>21</sup> Stuart Anderson, "American Made 2.0—How Immigrant Entrepreneurs Continue to Contribute to the U.S. Economy," supra 28.

<sup>22</sup> See, e.g., Vivek Wadhwa, "The Immigrant Exodus" (Philadelphia: Wharton Digital Press) (2012); Amy Grenier, "Majority of U.S. Patents Granted to Foreign Individuals, Immigration Impact," April 11, 2014, available at <http://immigrationimpact.com/2014/04/11/majority-of-u-s-patents-granted-to-foreign-individuals/> (noting difficulties that foreign inventors face in coming to and staying in the United States).

<sup>23</sup> See <http://www.uscis.gov/about-us/entrepreneurs-residence-initiative/entrepreneurs-residence-eir>. For the EIR program, USCIS recruited both start-up experts from the private sector, using DHS's Loaned Executive Program, and internal immigration experts from across the agency. Working within the framework of current immigration law, the team set out with the overarching goal of optimizing existing visa categories used by entrepreneurs to provide pathways that are clear, consistent, and aligned with business realities.

potential for rapid growth and job creation.

If granted, parole would be authorized for up to 2 years to facilitate the entrepreneur's ability to oversee and grow his or her start-up entity in the United States. A subsequent request for re-parole would be considered only if the start-up entity continues to show significant promise of rapid growth and job creation through substantial and demonstrated increases in qualifying funding (whether capital investment or government grants or awards), revenue, or job creation. In all cases, whether to parole a particular individual under this rule would be a discretionary determination that would be made on a case-by-case basis. DHS believes that a regulatory process for seeking and granting parole in this business-creation context—including by establishing criteria for evaluating individual parole applications on a case-by-case basis—is important given the complexities involved in such adjudications and the need for general guidance regarding the relevant factors for eligibility by the start-up entrepreneurs, entities, and investors involved.

#### IV. Proposed Changes

In this rule, DHS is proposing to add a new section 8 CFR 212.19 to its regulations to set forth application procedures and criteria specifically for considering parole requests filed by entrepreneurs of start-up entities. See proposed 8 CFR 212.19. Consistent with this new section, the proposed rule would also: (1) Amend 8 CFR 274a.12(b) to authorize entrepreneur parolees to work for their approved start-up entities in the United States, see proposed 8 CFR 274a.12(b)(37); (2) amend 8 CFR 274a.12(c) to extend eligibility for employment authorization to the spouses of entrepreneur parolees, see proposed 8 CFR 274a.12(c)(34); (3) make a conforming amendment to the employment eligibility verification regulations at 8 CFR 274a.2(b)(v)(A)(5) to allow entrepreneur parolees to use their foreign passports and Arrival/Departure Records (Forms I–94) indicating they have entrepreneur parole as evidence of identity and employment authorization for purposes of meeting the Employment Eligibility Verification (Form I–9) requirements, see proposed 8 CFR 274a.2(b)(v)(A)(5); and (4) amend 8 CFR 103.7(b)(1)(i) to include a fee for the new proposed entrepreneur parole application form, see proposed 8 CFR 103.7(b)(1)(i)(FFF).

##### A. Overview of Parole for Entrepreneurs

At the proposed section 8 CFR 212.19, DHS sets forth the application



requirements and proposed criteria for extending discretionary parole, on a case-by-case basis, to entrepreneurs of start-up entities and their spouses and children. As required by statute, the entrepreneur must demonstrate that his or her parole into the United States would provide a significant public benefit. DHS proposes that an individual may meet that standard under this rule by demonstrating that his or her start-up entity has substantial potential for rapid growth and job creation and that his or her parole would significantly help the entity conduct and grow its business here. *See* proposed new 8 CFR 212.19(b)(2). As described in more detail below, an applicant would generally be able to meet this standard by demonstrating the following:

- The entrepreneur's entity was recently formed (*i.e.*, generally within the 3 years immediately preceding the filing date of the entrepreneur's application for parole) in the United States and has the substantial potential for rapid growth and job creation. *See* proposed 8 CFR 212.19(a)(2).
- The applicant is an entrepreneur in that he or she possesses a substantial ownership interest (*i.e.*, generally 15 percent or more) in the entity and has an active and central role in the entity such that he or she is well-positioned to advance the entity's business. *See* proposed 8 CFR 212.19(a)(1).
- The entity has: (1) Received substantial investment from U.S. investors with established records of successful investments; or (2) received substantial awards or grants from certain Federal, State, or local government entities. *See* proposed 8 CFR 212.19(b)(2)(ii). Alternatively, an applicant who partially meets one or more of these two sub-criteria may be considered for parole if he or she provides additional reliable and compelling evidence that his or her parole would provide a significant public benefit. *See* proposed 8 CFR 212.19(b)(2)(iii).

Under the proposed rule, an applicant would file a new application specifically tailored for entrepreneurs to demonstrate eligibility for parole based upon significant public benefit, along with proposed fees. *See* proposed 8 CFR 212.19(b)(1). Applicants would also be required to appear for collection of biometric information. *See* proposed 8 CFR 212.19(e). To grant parole, USCIS adjudicators would be required to conclude, following an individualized assessment and based on the totality of the circumstances, that both: (1) The applicant's parole would provide a significant public benefit, and (2) the applicant merits a grant of parole as a matter of discretion. *See* proposed 8 CFR 212.19(d)(1).

If a determination is made that parole of the applicant would provide a significant public benefit, DHS may parole the entrepreneur for a period of

up to 2 years, with an opportunity to apply for one additional period of parole of up to 3 years upon showing that parole would continue to provide a significant public benefit. *See* proposed 8 CFR 212.19(d)(2) and (h). DHS further proposes that no more than three principal entrepreneurs may receive parole with respect to any one qualifying entity. *See* proposed 8 CFR 212.19(f).

Following is a detailed discussion of the specific provisions proposed by DHS in this rulemaking.

#### *B. Criteria for Initial Parole Consideration*

To be considered for an initial grant of parole based on significant public benefit under this rule, DHS is proposing that the individual generally meet the following criteria:

##### 1. Recent Formation of a Start-Up Entity

The key criterion under this proposed rule is the formation of a new entity in the United States that has substantial potential to rapidly increase revenue and create jobs for U.S. workers. DHS thus proposes that an applicant for parole under this rule be able to show that his or her start-up entity was recently formed in the United States, has lawfully done business during any period of operation since its date of formation, and has the substantial potential to experience rapid growth and job creation, including through the significant attraction of capital investment or government awards or grants. *See* proposed 8 CFR 212.19(a)(2). An entity that is the basis for a request for parole under this section may be considered "recently formed" if it is a U.S. business entity that was created within the 3 years immediately preceding the filing date of the entrepreneur's application for parole. *Id.*

As a preliminary matter, DHS proposes that a proffered start-up entity must meet the definition of "U.S. business entity" at proposed 8 CFR 212.19(a)(9). The term is defined as any corporation, limited liability company, partnership, or other entity that is organized under Federal law or the laws of any State,<sup>24</sup> and that conducts business in the United States that is not an investment vehicle primarily engaged in the offer, purchase, sale or trading of securities, futures contracts, derivatives or similar instruments. *See* proposed 8 CFR 212.19(a)(9). DHS

believes that this definition appropriately captures the range of start-up entities that are formed in the United States by entrepreneurs and that have the substantial potential for rapid growth and job creation. DHS is proposing to exclude an entity that is an investment vehicle primarily engaged in the offer, purchase, sale or trading of securities, futures contracts, derivatives or similar instruments to ensure that the start-up entities receiving investment capital under this proposed rule are not merely serving as a conduit for reinvestment, but providing or seeking to provide goods or services with the substantial potential for rapid growth and job creation.

As noted above, an entity must be recently formed in the United States to be considered a start-up entity for purposes of this rule. *See* proposed 8 CFR 212.19(a)(2). DHS proposes that an entity that is the basis for seeking parole under this rule may be considered recently formed if it is less than 3 years old at the time of filing the parole application.<sup>25</sup> *Id.* This limitation reflects the Department's intention for parole under this proposed rule to incentivize and support the creation and growth of new businesses in the United States, so that the country may benefit from their potential for rapid growth and job creation. DHS recognizes that the term "start-up" is usually used to refer to entities in early stages of development, including various financing rounds used to raise capital and expand the new business, but "goes beyond a company just getting off the ground."<sup>26</sup> DHS believes that limiting the definition of "start-up" in this proposed rule to entities that are less than 3 years old at the time the parole application is filed is reasonable to ensure that the entrepreneur's entity is the type of new business likely to experience rapid growth and job creation, while still allowing a reasonable amount of time for the entrepreneur to form the business, obtain qualifying levels of investor financing (which may occur in several rounds) or government grants or awards, and still meet the definition of a "start-up entity" under this rule.

<sup>25</sup> With respect to certain proposed definitions at 8 CFR 212.19(a)(3) and (a)(5), which discuss other entities that receive grants, awards, or investments, an entity may be considered recently formed if it was created within the 3 years immediately preceding the receipt of a relevant grant, award, or investment. *See* proposed 8 CFR 212.19(a)(2).

<sup>26</sup> U.S. Small Business Administration, *Startups & High Growth Businesses*, available at <https://www.sba.gov/content/startups-high-growth-businesses> ("In the world of business, the word 'startup' goes beyond a company just getting off the ground.").

<sup>24</sup> "State" is a defined term at INA section 101(a)(36). In addition to the 50 States, the term "includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands."

DHS further proposes to consider parole under this rule only where it is demonstrated that the start-up entity has been operating lawfully in the United States since its formation. See proposed 8 CFR 212.19(a)(2). This limitation is intended to protect the integrity of this new parole process. Part of the parole determination would therefore include a review by DHS of the start-up entity's activities from the time of its formation in the United States.

Finally, DHS proposes that the start-up entity must be of a type that has the substantial potential to experience rapid growth and job creation, including through the significant attraction of capital investment or government awards or grants. This factor is intended to capture the types of start-up entities that are most likely to provide a significant public benefit, while excluding entities without such potential—such as small businesses with limited growth potential created by entrepreneurs for the sole or primary purpose of providing income to the entrepreneurs and their families.<sup>27</sup> Because this latter type of business is less likely to experience rapid growth and job creation, DHS believes it is unlikely that the entrepreneur of such a business would be able to meet the significant public benefit requirement for a grant of parole.

DHS anticipates that an applicant seeking parole under this rule would be able to meet the above criteria by providing various types of evidence. As part of the application process, an applicant would generally be expected to submit supporting documentation concerning the entity's business and its substantial potential for rapid growth and job creation (as well as the entrepreneur's day-to-day role in the business). See proposed 8 CFR 212.19(b)(2)(ii)(A). In addition to meeting the capital investment or government funding criteria discussed further below, such additional documentation may include:

- Evidence of capital investments from qualified investors, or government awards or grants, other than those relied on to satisfy the requirements of 8 CFR 212.19(b)(2)(ii)(B);
- letters from relevant government entities, qualified investors, or established business associations with knowledge of the entity's research, products or services and/or the applicant's knowledge, skills or experience that would advance the entity's business;
- newspaper articles or other similar evidence that the applicant or entity has received significant attention or recognition;

- evidence that the applicant or entity has been recently invited to participate in, is currently participating in, or has graduated from one or more established and reputable start-up accelerators;
- evidence of significant revenue generation and growth in revenue;
- patent awards or other documents indicating that the entity or applicant is focused on developing new technologies or cutting-edge research;
- evidence that the applicant has played an active and central role in the success of prior start-up entities;
- degrees or other documentation indicating that the applicant has knowledge, skills, or experience that would significantly advance the entity's business;
- payroll, bookkeeping, salary, or bank records or other documents related to jobs created prior to filing the request for parole; and
- any other relevant, probative, and credible evidence indicating the entity's potential for growth and/or the applicant's ability to advance the entity's business in the United States.

DHS believes that such evidence would assist USCIS officers in determining whether an entity has substantial potential for rapid growth and job creation and, ultimately, whether an applicant has met the required standard for parole and merits a favorable exercise of discretion.

DHS welcomes public comment on the proposed definitions of the terms "start-up entity" and "U.S. business entity," as well as the requirement that the entity be formed within the 3 years preceding a request for parole. DHS also welcomes comments on the types of evidence that may be considered when determining whether such provisions have been met, including alternative suggestions on how applicants may be able to demonstrate eligibility.

## 2. Applicant Is an Entrepreneur Who Is Well-Positioned To Advance the Entity's Business

DHS is proposing that to be considered for parole under this rule, an applicant must be an entrepreneur who is well-positioned to advance his or her start-up entity's business. Specifically, DHS proposes that an applicant be able to demonstrate that he or she is an "entrepreneur" as defined at 8 CFR 212.19(a)(1). This definition would require the applicant to show that he or she both: (1) Possesses a substantial ownership interest in the start-up entity, and (2) has a central and active role in the operations of that entity, such that his or her knowledge, skills, or experience will substantially assist the entity with the growth and success of its business. See proposed 8 CFR 212.19(a)(1). The definition further provides that for purposes of this rule,

an individual may be considered to possess a substantial ownership interest if he or she possesses at least a 15 percent ownership stake in the start-up entity at the time of adjudication of the initial grant of parole (and maintains at least a 10 percent ownership stake in the start-up entity at all times during the parole period, including any period of re-parole). *Id.*

DHS believes these criteria are appropriate, as active ownership and participation provide stronger justifications for parole based on significant public benefit than investment alone. To establish that parole would serve a significant public benefit, DHS believes that the applicant should be central to the entity's business and well-positioned to actively assist in the growth of that business, such that his or her presence would help the entity provide related benefits in the United States, including by conducting research and development, increasing revenue, or creating jobs. DHS thus adopts the common meaning of the term "entrepreneur," which embodies the concept of active, material participation by an individual in the operations and growth of a new business entity. See Black's Law Dictionary (9th ed. 2009) (defining "entrepreneur" as "[o]ne who initiates and assumes the financial risks of a new enterprise and who usually undertakes its management"). Whether an applicant has an "active and central role" will be determined based on the totality of the evidence provided.

The ownership criterion proposed by DHS in this rule is also essential for connecting the individual to the start-up entity providing the significant public benefit. DHS has determined that a minimum 15 percent ownership interest is a reasonable threshold for seeking parole under this rule. DHS recognizes that entrepreneurs may possess larger equity stakes in the start-up entity at the time of formation or during initial seed rounds of financing (often ranging from 50–100 percent).<sup>28</sup> This equity stake, however, may be diluted significantly during financing rounds, or by the provision of equity compensation to key

<sup>28</sup> "Venture Capital." Encyclopedia of Small Business, 2007. Retrieved September 22, 2015 from Encyclopedia.com: <http://www.encyclopedia.com/doc/1G2-2687200596.html> ("The percentage of equity ownership required by a venture capital firm can range from 10 percent to 80 percent, depending on the amount of capital provided and the anticipated return. But most venture capital organizations want to secure equity in the 30–50 percent range so that the small business owners still have an incentive to grow the business. Since venture capital is in effect an investment in a small business' management team, the venture capitalists usually want to leave management with some control.").

<sup>27</sup> Erik Hurst & Benjamin Wild Pugsley, "What Do Small Businesses Do?" (Aug. 2011), available at [http://www.brookings.edu/~media/files/programs/es/bpea/2011\\_fall\\_bpea\\_papers/2011\\_fall\\_bpea\\_conference\\_hurst.pdf](http://www.brookings.edu/~media/files/programs/es/bpea/2011_fall_bpea_papers/2011_fall_bpea_conference_hurst.pdf).

personnel within the entity. DHS further recognizes that start-up entities are not limited to one entrepreneur, and that there may be instances when a team of entrepreneurs will form the start-up entity. The specific equity stake by the entrepreneur in the start-up entity will therefore vary based on the particular facts and circumstances of each case. DHS thus believes establishing a minimum 15 percent threshold with respect to ownership adequately accounts for the possibility of equity dilution for the reasons described above, while ensuring that the individual continues to have a substantial ownership interest in, and assumes more than a nominal financial risk related to, the entity.

DHS anticipates that an applicant would be able to demonstrate sufficient satisfaction of the above criteria by providing various forms of evidence. With respect to ownership, DHS anticipates that an applicant would be able to provide copies of legal or financial documents—such as formation and organizational documents, equity certificates, equity ledgers, ownership schedules, or capitalization tables—indicating the applicant's ownership interest in the start-up entity. With respect to the applicant's role within the entity, DHS expects that an applicant would provide supporting documentation of his or her role within the entity, as well as the knowledge and experience that is central to the entity's business. Such supporting documentation may include:

- Letters from relevant government agencies, qualified investors, or established business associations with an understanding of the applicant's knowledge, skills or experience that would advance the entity's business;
- newspaper articles or other similar evidence that the applicant has received significant attention and recognition;
- evidence that the applicant or entity has been recently invited to participate in, is currently participating in, or has graduated from one or more established and reputable start-up accelerators;
- evidence that the applicant has played an active and central role in the success of prior start-up entities;
- degrees or other documentation indicating that the applicant has knowledge, skills, or experience that would significantly advance the entity's business; and
- any other relevant, probative, and credible evidence indicating the applicant's ability to advance the entity's business in the United States.

DHS welcomes public comments on all aspects of these standards, including the definition of the term "entrepreneur." DHS also welcomes comment on the types of evidence that may be

considered when determining whether an applicant is an entrepreneur, including alternative suggestions on how applicants may be able to demonstrate eligibility.

### 3. Capital Investment or Government Funding Criteria

DHS is also proposing that an individual who seeks parole under this rule must validate the entity's substantial potential for rapid growth and job creation by providing additional reliable evidence of such potential. DHS is proposing that this requirement may generally be satisfied by demonstrating that the entity has: (1) Received substantial investment of capital from U.S. investors with established records of successful investments; or (2) received substantial awards or grants for purposes of economic development, research and development, or job creation from Federal, State, or local government entities that regularly provide such awards or grants to U.S. businesses. *See* proposed 8 CFR 212.19(b)(2)(ii)(B). DHS further proposes alternative criteria under which an applicant who partially meets one or more of these two criteria may be considered for parole under this rule if he or she provides additional reliable and compelling evidence that his or her parole would provide a significant public benefit. *See* proposed 8 CFR 212.19(b)(2)(iii).

These investment and funding criteria are proposed to serve as reliable indicators of an entity's substantial potential for rapid growth and job creation and, ultimately, of the significant public benefit that a grant of parole would provide in an individual case. Meeting these criteria, however, is intended to supplement—and not supplant—the need to provide other supporting evidence (such as that described in section IV.B.1) establishing that the applicant meets the general criteria for a grant of parole under the proposed rule. Even if an entity meets the investment or funding criteria discussed herein, additional evidence would generally assist USCIS officers in determining whether an applicant has met the required standard for parole and merits a favorable exercise of discretion. Among other things, such supplementary evidence may: provide additional external validation of the start-up entity (*e.g.*, receiving additional funding from a government entity, being accepted into a start-up accelerator, generating significant revenue, or creating jobs); show that the entity works in fields important to economic growth (*e.g.*, creating new technologies or engaging in cutting-edge research); or

demonstrate that the entrepreneur has knowledge, skills, or experience that would substantially advance the entity's business (*e.g.*, successfully leading prior start-up entities, having advanced degrees in the appropriate field, or establishing critical patents). DHS also anticipates that such additional evidence would be available in the majority of cases involving recently formed entities that have substantial potential for growth and that otherwise meet the standards proposed in this rulemaking.

#### a. Substantial Investment From Qualified U.S. Investors

DHS proposes to allow an applicant to demonstrate his or her entity's substantial potential for rapid growth and job creation by showing that the entity has received substantial investment of capital from established U.S. investors (such as venture capital firms, angel investors, or start-up accelerators) with a history of successful investments in start-up entities. *See* proposed 8 CFR 212.19(b)(2)(ii)(B). DHS proposes that investments may generally be considered "substantial" with respect to an initial application for entrepreneur parole if total investments, which can be from one or more qualified U.S. investors, meet or exceed \$345,000. *Id.* DHS further proposes that qualifying investors include only those investors who have a history of making similar or greater investments on a regular basis over the last 5 years and who can demonstrate that at least two of the entities receiving such investments have subsequently experienced significant growth in revenue or job creation. *See* proposed 8 CFR 212.19(a)(5). DHS believes that the investment of a substantial amount of capital by qualified investors in an entrepreneur's start-up entity may serve as a strong indication of an entity's potential to positively impact the U.S. economy and labor force.

DHS is proposing a general qualified investment threshold of \$345,000, which DHS believes is a reasonable minimum investment amount that will serve as a reliable external validation factor by qualified investors.<sup>29</sup> DHS

<sup>29</sup>The \$345,000 figure is rounded from the actual figure \$345,390, which is the 2015 average for all angel investments (the largest source of start-up capital for innovative firms) received by start-up entities. *See* Jeffrey Sohl, "The Angel Investor Market in 2015: A Buyers' Market," Center for Venture Research, May 25, 2015, available at: <https://paulcollege.unh.edu/sites/paulcollege.unh.edu/files/webform/Full%20Year%202015%20Analysis%20Report.pdf>. The rounded \$345,000 figure from 2015 is also very close to the \$342,000 grand mean for the period

reached this figure after analyzing available data on angel investments—the largest source of start-up capital for innovative firms—as well as initial or “seed” round investments from venture capital firms and start-up accelerators.<sup>30</sup> DHS also analyzed other available data on capital amounts used to create new businesses, and consulted with the Small Business Administration (SBA). In determining a minimum investment amount applicable to all qualified investors (e.g., venture capital firms,<sup>31</sup> angel investors,<sup>32</sup> and start-up accelerators<sup>33</sup>), the \$345,000 amount is generally on par with, based on data that DHS reviewed, the combined capital investment typically obtained in

2012–2015, *id.*, and it is corroborated by other sources. For example, according to a report from the business Web site Fundable, which specializes in startup finance, the average angel-financed firm receives approximately \$333,000 in angel capital. This report can be found at: <https://www.fundable.com/learn/resources/guides/investor-guide/types-of-investors>.

<sup>30</sup> DHS is aware that there is a wide range of investment amounts for angel, venture, and accelerator investment applied to startups. For example, DHS analysis of data from SeedDB reveals that some large accelerators provide initial investments of less than \$100,000. DHS analysis reveals that angel investments that are conducted in groups, or that are co-invested with venture or other institutional investors, have ranged from about \$350,000 to \$725,000 since 2013, with an up-trend over the last two years, and several data sources reveal medians of about \$500,000. Seed and startup venture investments are generally over \$1,000,000. DHS believes that the \$345,000 angel average for 2015 is reasonable because it represents nearly a mid-point across the various data and sources DHS has reviewed for such investments, is publicly available from a reputable source, and includes all angel investments. Additional details on the Seed DB accelerators data are found in Section C, “An Alternative Estimate of Entrepreneurs Based on Investment Structures,” in the ensuing “Statutory and Regulatory Requirements” section of this notice. Mean and median figures for venture backed and angel group can be found in the following sources: [http://www.ey.com/Publication/vwLUAssets/Venture\\_Capital\\_Insights\\_4Q14\\_-\\_January\\_2015/\\$FILE/ey-venture-capital-insights-4Q14.pdf](http://www.ey.com/Publication/vwLUAssets/Venture_Capital_Insights_4Q14_-_January_2015/$FILE/ey-venture-capital-insights-4Q14.pdf); <http://www.angelresourceinstitute.org/~media/Files/Halo%20Report%202015%20Annual%20vFinal.pdf>; and <http://www.inc.com/linkedin/tomasz-tunguz/inflation-deflation-startup-fundraising-market-tomasz-tunguz.html>.

<sup>31</sup> Government, semi-government, or private firm that provides startup or growth equity capital and/or loan capital to promising ventures for returns that are higher than market interest rates. See <http://www.businessdictionary.com/definition/venture-capital-firm.html>.

<sup>32</sup> Business “angels” are high net worth individual investors who seek high returns through private investments in start-up companies. See <https://www.sba.gov/content/venture-capital#AngelInvestors>.

<sup>33</sup> Business entities that make seed-stage investments in promising companies in exchange for equity as part of a fixed-term, cohort-based program, including mentorship and educational components, that culminates in a public pitch event or demo day. See <https://www.sba.gov/advocacy/innovation-accelerators-defining-characteristics-among-startup-assistance-organizations>.

early rounds of investment from venture capital firms or angel investors.<sup>34</sup>

DHS is also proposing a requirement that the substantial investment be received within the 365 days immediately preceding the filing of the application for initial parole. In addition to addressing potential fraud concerns, this requirement assists in validating the entity’s substantial potential for rapid growth and job creation and, ultimately, of the significant public benefit that a grant of parole to the entrepreneur would provide. This requirement ensures that a qualified investor or government entity has recently validated (within 365 days) the start-up entity’s potential for rapid growth and job creation. However, DHS recognizes that start-up investment is a rapidly evolving field, and welcomes additional feedback, including data on trends in investment that may be available, as such feedback and data may impact the minimum investment threshold in the Department’s final rule.

As noted above, in order to meet the investment criteria for consideration of parole under this proposed rule, the \$345,000 total investment must be made by one or more qualified U.S. investors. See proposed 8 CFR 212.19(a)(5) and (b)(2)(i)(B)(1). DHS proposes to define “qualified investor” as either an individual or an organization. See proposed 8 CFR 212.19(a)(5). If the investor is an individual, the investor would need to be a U.S. citizen or lawful permanent resident. *Id.* If the investor is an organization, the investor would need to be located in the United States and operate through a legal entity organized under the laws of the United States that is majority owned and controlled, directly or indirectly, by U.S. citizens or lawful permanent residents. *Id.* In either case, such investor could not have been permanently or temporarily enjoined from participating in the offer or sale of a security or in the provision of services as an investment adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent or credit rating agency, barred from association with any entity involved in the offer or sale of securities or provision of such services, or otherwise found to have participated in the offer or sale of securities or provision of such services in violation of law. See proposed 8 CFR 212.19(a)(5).

In addition, DHS proposes to limit qualifying investors to those who have an established record of successful investments in start-up entities. DHS

proposes that such a record would include, during the 5-year period prior to the date of filing of the parole application, 1 or more investments in other start-up entities in at least 3 separate calendar years in exchange for equity or convertible debt comprising a total of no less than \$1,000,000.<sup>35</sup> See proposed 8 CFR 212.19(a)(5)(i). DHS will require monetary commitments, rather than non-monetary commitments such as credit for in-kind value (e.g., credit for services), given the difficulty of valuing such commitments and the potential for fraud and abuse. The applicant would also need to show that, subsequent to such investment by the investor, at least 2 such entities each created at least 5 qualified jobs or achieved at least \$500,000 in revenue with average annualized revenue growth of at least 20 percent. See proposed 8 CFR 212.19(a)(5)(ii).

These criteria are intended to ensure that investors are bona fide, and thus to prevent fraud and protect the integrity of the parole process under this rule. They are also intended to ensure that a qualifying investment serves as a strong and reliable indication of the start-up entity’s substantial potential for rapid growth and job creation. By requiring an investor to have a track record of investing substantial funds in start-up entities that subsequently achieve significant revenue and job creation, these provisions would enhance the Department’s ability to have confidence in the investments made by qualified investors as reliable validation of a start-up entity’s potential. At the same time, the criteria would mitigate potential misuse of the parole process, including by individuals or entities that may claim to be bona fide investors to conceal fraud or other illicit activity. DHS expects that individuals and entities that meet these criteria would include existing and bona fide start-up investors that are known to operate successfully in the business community—including established venture capital firms, angel investors, and start-up accelerators.

Finally, DHS proposes to limit “qualified investments” under this rule to investments of lawfully derived capital in start-up entities through the purchase of equity or convertible debt issued by such entities. See proposed 8 CFR 212.19(a)(4). DHS proposes that a qualified investment would not include an investment from: (1) The entrepreneur him or herself; (2) the

<sup>35</sup> “Venture Capital,” Encyclopedia of Small Business, 2007. Retrieved September 22, 2015 from Encyclopedia.com: <http://www.encyclopedia.com/doc/1G2-2687200596.html> (“Most venture capital firms look for investment opportunities in the \$250,000 to \$2 million range.”)

<sup>34</sup> See note 29.

parents, spouse, brother, sister, son, or daughter of such entrepreneur; or (3) any corporation, limited liability company, partnership, or other entity in which such entrepreneur or the parents, spouse, brother, sister, son, or daughter of such entrepreneur directly or indirectly has any ownership interest. *Id.* DHS is proposing these exclusions to help ensure that the qualified investment was acquired through an arms-length transaction and is a bona fide investment. Any investment that does not meet the definition of “qualified investment” will not count toward the criteria to meet the proposed rule’s minimum investment threshold.

DHS welcomes comments on all aspects of this section, including the proposed investment threshold, any potential alternative amounts for that threshold, and additional data. For comments recommending investment threshold amounts, the Department requests that commenters provide rationales and data, if available, to support their recommendations.

#### b. Substantial Government Awards or Grants

DHS proposes that an applicant may alternatively demonstrate a start-up entity’s substantial potential for rapid growth and job creation by showing that the entity has received significant funding in the form of awards or grants from Federal, State or local government entities. DHS proposes that to satisfy this criterion, the awards or grants generally would need to be made by one or more Federal, State, or local government entities that regularly provide such funding to U.S. businesses for economic development, innovation, research and development, or job creation reasons. DHS proposes to exclude any contractual commitment for goods or services, including any contracts that might appear to be, or could be made to look like, an award or grant. DHS believes this exclusion is reasonable since a contract for goods and services with a Federal, State or local government entity would typically provide a direct benefit to that government entity and not a public benefit, such as encouraging economic development and innovation, that an award or grant would provide as required by this proposed rule. *See* proposed 8 CFR 212.19(a)(3). DHS also proposes that to be considered substantial, such awards or grants generally would need to total \$100,000 or more. *See* proposed 8 CFR 212.19(b)(2)(ii)(B)(2).

In the United States today, a range of Federal, State, and local government entities, including State or local

economic development corporations (EDCs), evaluate U.S. businesses and provide awards or grants when such funding is deemed to be in the public interest.<sup>36</sup> DHS believes that significant funding from such a government entity is a strong indicator of a start-up entity’s substantial potential for rapid growth, including through enhancing innovation, generating revenue, obtaining significant additional investments of capital, and creating jobs. Because such government entities regularly evaluate the potential of U.S. businesses, the choice to provide a significant award or grant to a particular start-up entity is generally a compelling indicator of that start-up’s substantial potential for growth and job creation. Additionally, because government entities are by definition formed to serve the public, the choice by such an entity to fund a particular business generally indicates the government entity’s independent assessment that the business’s operations would provide a significant public benefit. For these reasons, DHS believes it is reasonable to establish a lower threshold amount for government funding in comparison to the previously discussed threshold amount for private investment. DHS proposes a general \$100,000 minimum government funding threshold based on the above and the fact that seed capital awards (“Phase I” awards) from the Small Business Innovation Research (SBIR) program are generally below \$150,000.<sup>37</sup>

<sup>36</sup> *See, e.g.*, U.S. Small Business Administration, <https://www.sbir.gov> (describing Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, which provide early-stage capital for innovative small companies in the United States) and National Institutes of Health, <https://sbir.nih.gov/> (describing healthcare opportunities under SBIR and STTR); U.S. Economic Development Association (EDA), Regional Innovation Strategies Program (RIS), <http://www.eda.gov/oie/ris/> (providing grants to cities and local EDCs, among others, to fund startups); Energy Innovations Small Grant Program, [www.energy.ca.gov/research/innovations](http://www.energy.ca.gov/research/innovations) (providing State grants of up to \$150,000 to small businesses, among others, to research innovative energy concepts); Startup Philadelphia Call for Ideas, <http://www.startupphl.com/startup-phl-call-for-ideas> (partnership between City of Philadelphia and the Philadelphia Industrial Development Corporation to provide \$500,000 to grow the startup and early-stage business economy in Philadelphia).

<sup>37</sup> The Small Business Innovation Research (SBIR) program is coordinated by the Small Business Administration to seed capital for start-up businesses. It is designed to stimulate technological innovation among small private-sector businesses and encourages small businesses to market the SBIR technology in the private sector. It is the largest source of seed capital in the United States for technology driven start-ups, funding between 5,000 and 7,000 projects a year. The “first phase” award is an innovation grant made for initial eligibility and corresponds to the start-up of the commercial business and proof of “concept phase”—the average

DHS welcomes comments on all aspects of this section, including the proposed government funding threshold, any potential alternative amounts for that threshold, and additional data. For comments recommending government funding threshold amounts, the Department requests that commenters provide rationales and data, if available, to support their recommendations.

#### c. Alternative Criteria for Parole Consideration

Additionally, DHS proposes that an applicant who only partially meets one or both of the above investment or government funding sub-criteria for parole under this rule may still be considered for parole under this rule in certain limited circumstances. *See* proposed 8 CFR 212.19(b)(2)(iii). Specifically, DHS would consider parole for such an applicant if the applicant provides additional “reliable and compelling” evidence of the entity’s substantial potential for rapid growth and job creation. *See* proposed 8 CFR 212.19(b)(2)(iii). Importantly, such parole would not be available to applicants who are unable to demonstrate that their start-up entities have received a substantial amount of U.S. capital investment or government funding. Rather, the applicant would need to show as a preliminary matter that his or her entity has received a substantial level of capital investment or government funding, although less than \$345,000 or \$100,000, respectively. The applicant would also need to further validate the entity’s substantial potential for rapid growth and job creation by submitting additional evidence that DHS determines to be both reliable and compelling. DHS proposes that such evidence be reliable and compelling in its own right to overcome the applicant’s inability to fully meet the threshold criteria otherwise required under the proposed rule.

DHS is not proposing to define the specific types of evidence that may be deemed “reliable and compelling” at this time, as the Department seeks to retain flexibility as to the kinds of supporting evidence that may warrant the Secretary’s exercise of discretion in granting parole based on significant public benefit. But DHS believes that to meet the parole standard in this context without meeting the threshold criteria,

award amounts vary by department, but most SBIR Phase I awards are made at or below \$150,000. The Phase I awards are geared towards financing the startup of the private commercial entity and also the innovation and research and development (R&D) that the enterprise undertakes.

such additional evidence would need to be particularly persuasive. In other words, although all applicants for entrepreneur parole would be expected to provide supplementary evidence indicating that their parole would serve a significant public benefit, applicants who only partially meet the threshold criteria mentioned above would need to provide other reliable and compelling evidence to ensure that the totality of the evidence demonstrates that the start-up entity has the substantial potential for rapid growth and job creation.

DHS anticipates that the necessary amount and requisite evidentiary weight of such additional evidence would depend on the degree to which an applicant meets one or both of the threshold sub-criteria related to capital investment or government funding. For example, an applicant whose entity has received \$200,000 in qualifying capital investment would be expected to provide more validating evidence than an applicant whose entity received \$300,000 in such investment. Moreover, DHS may give particular weight to evidence that tends to serve as a strong validation of the entity's substantial potential for rapid growth and job creation. For example, evidence that an entity has been selected to participate in, is participating in, or has graduated from one or more established and reputable start-up accelerators (or incubators) may serve as, depending on the accelerator's success rate and other factors, a strong indicator of the entity's potential. With respect to start-up accelerators, DHS expects to evaluate them on several relevant factors, including years in existence, graduation rates, significant exits by portfolio start-ups, significant investment or fundraising by portfolio start-ups, and valuation of portfolio start-ups.

Ultimately, the USCIS adjudicator would be required to determine whether such additional evidence—in conjunction with the entity's substantial capital investment or government funding, among other factors—is sufficient to establish that the applicant's parole into the United States will provide a significant public benefit (and that the applicant merits a favorable exercise of discretion). This approach is consistent with the discretionary nature of the Secretary's statutory parole authority and the fact that each parole request will be adjudicated, on a case-by-case basis, after considering the particularized facts of each case. DHS invites public comment on the types of reliable and compelling evidence that may warrant a discretionary grant of parole in such cases.

As noted above, DHS also invites public comment on alternatives to the proposed investment amount and government funding thresholds that applicants may use to demonstrate a start-up entity's substantial potential for rapid growth and job creation and that may serve as a principal basis for seeking parole under this rule. Commenters are invited to submit comments on whether significant revenue generation, participation in established and reputable start-up accelerators, or any other significant external validation factor should be included as a principal basis for seeking parole under this rule. DHS specifically invites comment on whether applicants can adequately demonstrate the future substantial potential for rapid growth and job creation through established records of revenue generation, revenue growth, job creation, or any combination of these and other factors. Commenters should recommend threshold levels for obtaining parole under suggested criteria, data to support the recommended alternative thresholds, and the types of reliable evidence that applicants may submit to substantiate their claims. Comments should include any relevant data to substantiate recommendations, if available.

### *C. Application Requirements for Initial Period of Parole*

#### 1. Filing the Application for Entrepreneur Parole (Form I-941)

DHS is proposing to establish new application requirements for entrepreneurs seeking parole under this rule. Prior to appearing before DHS as an applicant for admission requesting parole, entrepreneurs would be required to file with USCIS an Application for Entrepreneur Parole (Form I-941 or successor form), established by this rulemaking, along with supporting documentation. This application is designed to capture information pertaining to the criteria that are specific to parole requests filed under this rule. USCIS would accept Applications for Entrepreneur Parole filed from within the United States or outside the United States. DHS is proposing an application filing fee of \$1200. *See* proposed 8 CFR 103.7(b)(1)(i)(FFF). In addition to filing the application, supporting documentation, and filing fee, applicants would be required to submit a biometric services fee as prescribed by 8 CFR 103.7(b)(1)(i)(C).

#### 2. Requirement To Appear for Submission of Biometric Information

DHS proposes that all individuals filing the Application for Entrepreneur Parole would be required to appear for collection of their biometric information, including fingerprints and photographs. *See* proposed 8 CFR 212.19(e). DHS is proposing a biometric collection requirement so that background checks can be completed for each applicant, and so that any necessary travel documents can be produced. As noted above, applicants would be required to pay the fee for biometric services at the time of filing the Application for Entrepreneur Parole.

As is currently the case for other applicants for parole, the location for the collection of biometric information will depend on whether the applicant filed the application from within the United States or outside the United States. *See* form instructions to Application for Entrepreneur Parole (Form I-941). Applicants applying from within the United States will be required to appear at a USCIS Application Support Center (ASC) for submission of biometrics. Applicants applying from outside the United States may be required to appear at an overseas USCIS office. Applicants who will be receiving their travel documents overseas from a Department of State Consulate (or Embassy) will have their biometrics taken after their parole is authorized, but before their travel document is issued. Under current DHS regulations, DHS may determine that an application has been abandoned and thus should be denied if the applicant fails to appear at the biometrics appointment or otherwise fails to provide required biometric information. *See* 8 CFR 103.2(b)(13)(ii).

#### 3. Income-Related Condition on Parole

Under the process proposed by this rule, DHS would consider granting parole to individuals whose enterprises have the substantial potential for rapid growth and job creation, including through the development of new technologies or the pursuit of cutting-edge research. To further ensure this is the case, and in addition to the high threshold criteria discussed above, DHS is proposing that an individual who is paroled into the United States under this rule must, as a condition of that parole, maintain household income while in the United States that is greater than 400 percent of the Federal poverty line for his or her household size as defined by the Department of Health and Human Services (HHS). *See* proposed 8 CFR 212.19(i). DHS is

further proposing to require the applicant to attest, as part of the Application for Entrepreneur Parole, that he or she will maintain household income at this level as a condition of parole and to provide evidence that he or she satisfied this condition if applying for re-parole. *Id.*

This income threshold is intended to establish that applicants seeking parole under this rule will have sufficient personal economic stability so as to better ensure that they will make significant economic and related contributions to the United States. The income threshold and time limits on parole also mean that individuals eligible for parole under this rule would generally not be eligible for Federal public benefits or premium tax credits under the Health Insurance Marketplace of the Affordable Care Act.<sup>38</sup> Under the proposed rule, DHS would be authorized to terminate parole for any individual who fails to maintain the threshold income level. *See* proposed new 8 CFR 212.19(k)(3)(iv). DHS would request verification of the parolee's household income when the parolee applies for re-parole, if applicable, or subsequent to any material change notification submitted by the parolee to USCIS.

DHS welcomes comment on the proposed income threshold.

#### 4. Adjudication of Applications

When adjudicating the Application for Entrepreneur Parole, DHS is proposing that USCIS will examine whether the entrepreneur has demonstrated, through credible and probative evidence, that he or she warrants a favorable exercise of the Secretary's discretion. *See* proposed new 8 CFR 212.19(d)(1). If the entrepreneur meets the criteria for parole under the proposed rule, and a favorable exercise of discretion is warranted, USCIS may approve the request for parole. *Id.* Moreover, in determining whether an individual applicant's parole would provide a significant public benefit and whether to favorably exercise the Secretary's discretion in that individual case, USCIS will consider and weigh all evidence, including any derogatory evidence or information, such as but not limited to evidence of criminal history or other adverse factors. *Id.*

<sup>38</sup> Although individuals who are granted parole for more than one year become "qualified aliens" for the purpose of applying for such benefits, *see* 8 U.S.C. 1641(b), such individuals must generally be "qualified aliens" for at least 5 years before becoming eligible for those benefits, *see* 8 U.S.C. 1613. Individuals paroled under this rule will thus generally not qualify for such benefits.

If USCIS, in its discretion, determines that the applicant does not warrant a grant of parole under the proposed rule, it may deny the application. *See* proposed 8 CFR 212.19(b) and (c). DHS is also proposing that there would be no right of appeal following a decision to deny entrepreneur parole, just as is the case currently with other parole requests. *See* proposed 8 CFR 212.19(d)(4). DHS is also proposing that applicants be precluded from filing motions to reopen or reconsideration under 8 CFR 103.5(a)(1). *Id.*

DHS, however, proposes to retain its authority and discretion to reopen or reconsider a decision only on its own motion. *See* proposed 8 CFR 212.19(d)(4). For the parole process proposed in this rulemaking, DHS may, in its discretion, reopen a decision and deny or approve parole at any time if DHS finds that the decision was issued in error. If USCIS determines that approval of an Application for Entrepreneur Parole was made in error, parole may be revoked. DHS would follow the requirements of 8 CFR 103.5(a)(5) before reopening a case and denying a parole application.

Because the determination to grant or deny a request for parole is a discretionary determination, the parole process proposed in this rule may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. Parole determinations would continue to be discretionary, case-by-case determinations made by DHS, and parole may be revoked or terminated at any time. Parolees under this proposal would assume sole risk for any and all costs, expenses, opportunity costs, and any other potential liability resulting from a revocation or termination of parole. A grant of parole would in no way create any reliance or due process interest in obtaining or maintaining parole or being able to remain in the United States to continue to direct a start-up entity or for other reasons.

#### 5. Limitation on Number of Entrepreneur Parolees per Start-Up Entity

DHS proposes to limit the number of entrepreneurs who may be granted parole under this rule with the same start-up entity. DHS recognizes that a start-up entity may be developed by more than one entrepreneur. DHS also believes that it would be difficult for a large number of entrepreneurs associated with the same start-up entity to each meet the proposed criteria and

comply with the proposed conditions while ultimately developing a successful business in the United States. DHS therefore believes that imposing a limit on the number of entrepreneurs who may be granted parole based on the same start-up entity is consistent with ensuring that each entrepreneur's parole will provide a significant public benefit. Specifically, DHS is proposing that parole may be granted to no more than 3 entrepreneurs per start-up entity. *See* proposed 8 CFR 212.19(f).

This limitation is intended to strengthen the integrity of the proposed entrepreneur parole process in various ways. Among other things, limiting the number of individuals who may be granted parole under this rule with respect to the same start-up entity will be an additional means of preventing an entity from being used as a means to fraudulently allow individuals to enter the United States. Such a limit, for example, diminishes the incentive to dilute equity in the start-up entity as a means to fraudulently acquire parole for individuals who are not bona fide entrepreneurs. Such a limit will also help ensure that the tangible benefits that may flow from the start-up entity's success in the United States—such as rapid revenue generation and job creation—are more likely to inure to the United States and its workers. Relatedly, DHS is concerned that a higher number of entrepreneurs associated with the same start-up entity may affect the start-up's ability to grow and succeed, and may even result in the startup's failure, thus preventing the goals of the proposed parole process.<sup>39</sup> To facilitate this determination, DHS is proposing to require an applicant to provide information on the application about any other individuals who have applied for or been granted parole based on the same start-up entity.

DHS welcomes comments on the proposed limitation on the number of entrepreneurs who can qualify for parole under this rule with the same start-up entity, including alternative proposals.

#### 6. Authorized Period for Initial Grant of Entrepreneur Parole

DHS proposes that applicants who are granted entrepreneur parole may be

<sup>39</sup> Scaling Startup Genome Report: premature scaling v 1.2 (edited March 2012). Copyright 2011, Startup Genome Report Extra on Premature, Max Marmer, CSO Startup Genome, Bjoern Lasse Herrmann, CEO Startup Genome, Ertan Dogrultan, CTO Startup Genome, Ron Berman, Ph.D. at UC Berkeley (explaining that "hiring too many people too early" in a start-up's development is one of several reasons that most start-ups fail) available at [https://s3.amazonaws.com/startupcompass-public/StartupGenomeReport2\\_Why\\_Startups\\_Fail\\_v2.pdf](https://s3.amazonaws.com/startupcompass-public/StartupGenomeReport2_Why_Startups_Fail_v2.pdf).



authorized for an initial parole period of up to 2 years. See proposed new 8 CFR 212.19(d)(2). DHS has determined that entrepreneurs paroled under this rule may need up to a 2-year period of parole initially to allow them sufficient time to develop their start-up entity, which would be at an early stage of development, and achieve rapid growth in terms of revenue generation and job creation. DHS further believes that an initial period of parole of up to 2 years, followed by one possible period of re-parole of up to 3 additional years as described below, is consistent with the amount of time successful start-up entities generally require to realize growth potential. An entrepreneur of a start-up entity that is almost 3 years old when the parole application is filed would have the possibility to obtain up to 5 years of parole, which would allow the entity to realize its growth potential by the time it is 8 years old.<sup>40</sup> As proposed, DHS retains the discretion to provide any length of parole to an applicant, including a period shorter than 2 or 3 years where appropriate. Moreover, although USCIS would designate an appropriate initial parole validity period upon approval of the Application for Entrepreneur Parole, CBP would retain the authority to deny parole to an applicant or to modify the length of parole authorized by USCIS upon issuing parole at the port of entry, consistent with CBP's discretion with respect to any advance authorization of parole by USCIS. DHS will issue a multiple entry travel document for individuals granted parole under this rule to permit travel during their parole validity period.

DHS welcomes public comment on the proposed limits on the duration of parole under this rule and any relevant data to support alternative durations of parole.

<sup>40</sup> Estimates based on the Census Bureau Business Dynamics Statistics suggest that on average 55 percent of new firms survived after 3 years, but 80 percent of the firms that survived 3 years also made it through 5 years. Dane Stangler and Jared Konczal "Give me your entrepreneurs, your innovators: Estimating the Employment Impact of a Startup Visa", Ewing Marion Kauffman Foundation (February 2013), available at [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2013/02/startup\\_visa\\_impact\\_final.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2013/02/startup_visa_impact_final.pdf); "CrunchBase Reveals: The Average Successful Startup Raises \$41M, Exits at \$242.9M," Techcrunch.com (Dec. 14, 2013), available at <http://techcrunch.com/2013/12/14/crunchbase-reveals-the-average-successful-startup-raises-41m-exits-at-242-9m/>. See also TruBridge Capitol Partners, *Why the 'Next Billion Dollar Startup' Is not Always the Next IPO*, Forbes, Apr. 15, 2015, available at <http://www.forbes.com/sites/truebridge/2015/04/15/why-next-billion-dollar-startup-not-always-next-ipo/> ("From 2001–2004, the average age of a company at its public exit was 5.4 years. . . . From 2009–2012, the average age was 7.9.").

## 7. Spouses and Minor Children

DHS proposes that the spouse and children<sup>41</sup> of an entrepreneur granted parole under this proposed rule may also be granted parole for the same period as the entrepreneur. See proposed new 8 CFR 212.19(h)(2). To be paroled with (or later join) the entrepreneur, his or her spouse and children would each be required to file an Application for Travel Document (Form I-131) in accordance with the form instructions. Each spouse or child seeking parole must independently establish eligibility for parole based on significant public benefit (or, alternatively, for urgent humanitarian reasons), and that the individual merits a favorable exercise of discretion. In a case in which an entrepreneur has been granted parole based on significant public benefit under this rule, USCIS may consider granting parole to the entrepreneur's spouse and children, if any, to maintain family unity and thereby further encourage the entrepreneur to operate and grow his or her business in the United States. As with the entrepreneur, certain biometric information for each spouse and child must be included on the application, along with a biometric services fee for each dependent. If the spouse and children are in the United States, they would also be required to appear at a USCIS office within the United States. If the applicants are outside the United States, the collection of additional biometric information (fingerprints and photographs) will take place prior to travel document issuance rather than before the parole applications are adjudicated. In such cases, however, USCIS would conduct preliminary background checks on each accompanying or joining family member prior to making its discretionary determination on their parole applications.

DHS is proposing to consider granting parole to the spouses and children of entrepreneur parolees to further the central purpose of the rulemaking—encouraging foreign entrepreneurs to come to and remain in the United States to develop and grow their start-up entities and provide the benefits of such growth to the United States. DHS retains the authority to decide whether to grant parole to such spouses and children on a case-by-case basis and may determine that such individuals do not warrant parole (or re-parole) either because their

<sup>41</sup> The terms "child" and "children" in this proposed rule have the same meaning as they do under section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1) (defining a child as one who is unmarried and under twenty-one years of age).

parole would not be justified on significant public benefit grounds or as a matter of discretion.

## D. Employment Authorization

### 1. Employment Authorization Incident to Parole With a Specific Employer

DHS is proposing that an entrepreneur who is paroled into the United States under this rule would be authorized for employment incident to his or her parole with the start-up entity. See proposed new 8 CFR 212.19(g). Under the proposed rule, the entrepreneur parolee's employment authorization would be limited to the specific start-up entity listed on the Application for Entrepreneur Parole. This limitation is intended to keep the scope of employment authorization within the purposes for which parole was granted. As the purpose of this proposed rule is to encourage foreign entrepreneurs to develop and grow their start-up businesses in the United States—rather than obtain new sources of employment—DHS believes this limitation on employment authorization is a reasonable restriction.

DHS further proposes that such employment authorization be "automatic" upon the grant of parole so that the entrepreneur can pursue his or her parole-related activities with the start-up entity without delay. DHS believes that requiring entrepreneurs to file separate applications for employment authorization and wait for Employment Authorization Documents (EADs, Form I-766) before beginning work<sup>42</sup> would undermine the very basis for extending parole to entrepreneurs—the rapid growth and success of the start-up entity. The delay resulting from the need to apply for and receive EADs (up to 90 days or more) could be detrimental to the success of the start-up entity.

Finally, DHS is proposing several conforming amendments to 8 CFR 274a.12(b), which lists the classes of foreign nationals authorized for employment incident to status with specific employers. DHS proposes to amend the introductory paragraph of this provision, which currently refers only to employment-authorized "nonimmigrants," by adding a reference to parolees under this rule. See revised 8 CFR 274a.12(b). DHS also proposes to add entrepreneur parolees under this rule to the list of classes of individuals authorized only for employment with a specific employer (as opposed to open market employment). See proposed new 8 CFR 274a.12(b)(37). Specifically, the

<sup>42</sup> This is the case with other parolees under existing regulations. See 8 CFR 274a.12(c)(11).

amendment would provide that entrepreneurs paroled under this rule would be employment authorized incident to their parole with their start-up entities, pursuant to proposed new 8 CFR 212.19(g). DHS would also assign a new code of admission for this class: “PE-1.”

## 2. Employment Authorization Eligibility for Spouses

DHS is also proposing to extend eligibility for employment authorization to the accompanying spouses (but not the children) of entrepreneur parolees who have been paroled into the United States. *See* proposed new 8 CFR 212.19(h)(3). Under the proposed rule, such spouses who wish to obtain employment authorization would need to apply for an EAD pursuant to 8 CFR 274a.12(c)(34), consistent with current parole policy that allows parolees to apply for employment authorization. DHS believes that allowing spouses of entrepreneurs to apply for work authorization may alleviate a significant portion of the potential economic burdens that entrepreneurs and their families may face, such as paying for academic expenses for their children, and to ensure that they satisfy the proposed condition on their parole that they maintain household income that is greater than 400 percent of the Federal poverty line, as they grow and develop their start-up entities. Moreover, extending employment authorization to the spouse may further incentivize a foreign entrepreneur to bring a start-up entity to the United States rather than create it in another country.

DHS has proposed not to extend employment authorization to the children of entrepreneurs, as it does not view the employment of these children in the United States as a significant deciding factor for an entrepreneur considering to create and develop start-up entities with high growth potential in the United States. DHS has extended eligibility for employment authorization to minors within the following nonimmigrant categories: Dependents of Taipei Economic and Cultural Representative Office (TECRO) E-1 nonimmigrants; J-2 dependent children of J-1 exchange visitors; dependents of A-1 and A-2 foreign government officials; dependents of G-1, G-3, and G-4 international organization officials; and dependents of NATO officials. But in each of these instances, DHS has extended eligibility for employment authorization to minor children based on particular foreign policy considerations; these underlying considerations are not present in the proposed entrepreneur parole process.

## 3. Documentation for Employment Eligibility Verification (Form I-9)

As with other classes of aliens listed as employment authorized incident to status with a specific employer in 8 CFR 274a.12(b), entrepreneur parolees would not be issued EADs (Forms I-766) as evidence of employment authorization. Instead, DHS would issue Arrival/Departure Records (Forms I-94) with the entrepreneur’s code of admission (“PE-1”), which indicates that the entrepreneur is employment-authorized incident to parole. Because the Arrival/Departure Record would contain this code, the record would be sufficient evidence of employment authorization for Employment Eligibility Verification (Form I-9) purposes.

As with other employers, the start-up entity would be required to verify the employment authorization of its employees, including the entrepreneur paroled under this rule, to comply with employment eligibility verification requirements. DHS is proposing to amend the regulations governing these requirements by adding to the list of documents acceptable by employers for completion of the Form I-9. The proposed rule would add to this list a combination of the entrepreneur’s valid foreign passport and his or her Arrival/Departure Record indicating employment-authorization pursuant to parole. *See* proposed 8 CFR 274a.2(b)(1)(v)(A)(5).

This proposal would ensure that entrepreneur parolees under this rule will have documentation evidencing identity and employment authorization that is acceptable for meeting the Form I-9 requirements immediately upon receiving parole to the United States. Because the document combination described above (foreign passport and Arrival/Departure Record) has been acceptable for Form I-9 purposes since the Employment Eligibility Verification requirements were first established in 1987, employers should readily recognize the document combination as acceptable for such purposes.

Further, DHS is satisfied that this document combination contains sufficient security features, as required by section 274A(b)(1)(B)(ii)(III) of the INA, 8 U.S.C. 1324a(b)(1)(B)(ii)(III). An Arrival/Departure Record issued to an entrepreneur parolee will indicate the validity period for parole and the new code of admission (“PE-1”) that is specific to such parolees. In addition, DHS proposes to automatically extend the employment authorization of an entrepreneur parolee whose parole has expired but who has filed a timely application for re-parole with the same

start-up entity. *See* proposed 8 CFR 274a.12(b)(37). In such cases, employment authorization would be extended for a period not to exceed 240 days beginning on the date of expiration of parole. Extending work authorization in this manner would allow an entrepreneur parolee to continue working without interruption with his or her start-up entity while the application for re-parole is pending.

## 4. Technical Changes

DHS is proposing to revise the existing, general parolee employment eligibility provision at 8 CFR 274a.12(c)(11) to clarify that the employment eligibility of entrepreneur parolees and their spouses under this rule are governed by proposed 8 CFR 274a.12(b)(37) and 8 CFR 274a.12(c)(34) rather than 8 CFR 274a.12(c)(11). In addition, DHS is proposing to update 8 CFR 274a.12(c)(11) to replace outdated references to parole “for emergency reasons” and “reasons deemed strictly in the public interest” with the current statutory standards for parole—“urgent humanitarian reasons” and “significant public benefit.” *See* INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

### E. Material Change Reporting

DHS proposes that, consistent with filing requirements for reporting material changes in other contexts (such as the requirement to submit amended petitions when there are material changes), an entrepreneur who has been granted parole under this rule would be required to immediately report to USCIS any material changes potentially affecting his or her grant of parole. *See* proposed 8 CFR 212.19(j). In cases involving one or more material changes where the entrepreneur will continue to be employed or associated with his or her start-up entity, the entrepreneur must submit a new Application for Entrepreneur Parole with fee (not including any biometric fees) to notify USCIS of the material change(s). Depending on the nature and scope of the material change(s) reported, USCIS may continue to authorize parole or seek to terminate parole. If the entrepreneur will no longer be employed or associated with the start-up entity, or if he or she ceases to possess at least a 10 percent ownership stake in the entity, the entrepreneur must immediately notify USCIS in writing of those changes. Upon receipt of such notification, USCIS would issue an automatic revocation of the entrepreneur’s parole, as well as the parole of any dependents.

For purposes of this rule, DHS proposes the term “material change” to

mean any change in facts that could reasonably affect the outcome of DHS's determination that the entrepreneur provides, or continues to provide, a significant public benefit to the United States. Such changes would include, but are not limited to, the following: Any criminal charge, conviction, plea of no contest, or other judicial determination in a criminal case concerning the entrepreneur or start-up entity; any complaint, settlement, judgment, or other judicial or administrative determination concerning the entrepreneur or start-up entity in a legal or administrative proceeding brought by a government entity; any settlement, judgment, or other legal determination concerning the entrepreneur or start-up entity in a legal proceeding brought by a private individual or organization involving claims for damages exceeding 10 percent of the current assets; a sale or other disposition of all or substantially all of the start-up entity's assets; the liquidation, dissolution or cessation of operations of the start-up entity; the voluntary or involuntary filing of a bankruptcy petition by or against the start-up entity; and any significant change to the entrepreneur's role in or ownership and control of the start-up entity or any other significant ownership and control change in the start-up entity. *See* proposed new 8 CFR 212.19(a)(10) and (j). Failure to timely file or otherwise comply with the material change reporting requirements may result in a denial of subsequent parole applications or revocation of parole according to proposed 8 CFR 212.19(k)(3)(ii).

DHS welcomes public comment on the proposed definition of the term "material change." DHS also welcomes comment on the types of situations that would constitute material changes.

#### F. Re-Parole

DHS proposes that individuals who have been granted entrepreneur parole may be eligible for one additional, successive period of re-parole of up to 3 years with the same start-up entity if such additional period of parole is determined to serve a significant public benefit. *See* proposed 8 CFR 212.19(c) and (f). An individual may thus be paroled into the United States under the proposed rule, pursuant to an initial period of parole and any period of re-parole, for a maximum period of 5 years. *See* proposed 8 CFR 212.19(f). An entrepreneur parolee seeking re-parole should request such re-parole before his or her current period of parole expires. Failure to file a request for re-parole before the expiration of the current parole period will result in an automatic

termination of parole and a loss of employment authorization for the entrepreneur and any derivatives (*i.e.*, spouse and any child(ren)). *See* proposed 8 CFR 212.19(k)(2) and 8 CFR 274.12(b)(37).

As discussed above, DHS believes that a total maximum 5-year period of parole under this rule (an initial period of up to 2 years, plus one possible re-parole period of up to 3 years) is consistent with the amount of time successful start-up entities generally require to realize their growth potential. This would generally allow sufficient time for a successful start-up entity to engage in an initial public offering, or otherwise advance past the generally recognized start-up phase.<sup>43</sup> As also noted above, DHS would retain the discretion to provide any length of parole to an applicant, including a *cumulative* period shorter than 5 years.

DHS welcomes comments regarding the length of parole and re-parole.

#### 1. Criteria for Re-Parole

To be considered for re-parole, an entrepreneur parolee must demonstrate that his or her stay in the United States pursuant to parole would continue to provide a significant public benefit. DHS proposes that an individual may meet this standard by demonstrating that his or her start-up entity continues to demonstrate substantial potential for rapid growth and job creation and that his or her parole would significantly help the entity continue to conduct and grow its business here. *See* proposed 8 CFR 212.19(c)(2). Because, however, the economic activity of a successful start-up entity would likely have changed since commencement of the initial parole period, DHS is proposing certain adjusted and additional criteria for granting re-parole in comparison to the criteria for initially granting parole

<sup>43</sup> Estimates based on the Census Bureau Business Dynamics Statistics suggest that on average 55 percent of new firms survived after 3 years, but 80 percent of the firms that survived 3 years also made it through 5 years. Dane Stangler and Jared Konczal "Give me your entrepreneurs, your innovators: Estimating the Employment Impact of a Startup Visa", Ewing Marion Kauffman Foundation (February 2013), available at [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2013/02/startup\\_visa\\_impact\\_final.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2013/02/startup_visa_impact_final.pdf); "CrunchBase Reveals: The Average Successful Startup Raises \$41M, Exits at \$242.9M," Techcrunch.com (Dec. 14, 2013), available at <http://techcrunch.com/2013/12/14/crunchbase-reveals-the-average-successful-startup-raises-41m-exits-at-242-9m/>. *See also* TruBridge Capitol Partners, *Why the 'Next Billion Dollar Startup' Is not Always the Next IPO*, Forbes, Apr. 15, 2015, available at <http://www.forbes.com/sites/truebridge/2015/04/15/why-next-billion-dollar-startup-not-always-next-ipo/> ("From 2001–2004, the average age of a company at its public exit was 5.4 years . . . . From 2009–2012, the average age was 7.9").

under this proposed rule. As described further below, such changes are intended to ensure that the start-up entity continues to have substantial potential for rapid growth and job creation and, ultimately, that parole of the entrepreneur parolee continues to be justified on significant public benefit grounds.

#### A. Entity Continues To Be a Start-Up Entity

As noted above, the key to meriting parole under this proposed rule is the formation of an entity in the United States with the substantial potential to show rapid growth, including through increased revenue and job creation. DHS thus proposes that an applicant for re-parole show that his or her entity continues to be a "start-up entity" as that term is defined at proposed 8 CFR 212.19(a)(2). *See* proposed 8 CFR 212.19(c)(2)(ii)(A). At the re-parole stage, this would mean showing that the entity: (1) Has continued to lawfully do business during the initial period of parole, and (2) continues to have the substantial potential to experience rapid growth and job creation, including through significant revenue generation or attraction of capital investment.<sup>44</sup> *Id.* As discussed in section IV.B.1, the requirement for the entity to have operated lawfully in the United States during any prior period of parole is intended to ensure lawful conduct and protect the integrity of the proposed parole process under this rule. The requirement that the entity have the substantial potential to experience rapid growth and job creation is intended to capture the types of start-up entities that are most likely to meet the significant public benefit test, while excluding types of entities without such potential.

As with the application for initial parole, DHS anticipates that an applicant for re-parole would be able to meet the above criteria by submitting various forms of evidence. In addition to meeting the investment, revenue, or job creation criteria described further below, an applicant will be expected to provide supplementary evidence of the entity's continued substantial potential for rapid growth and job creation.

#### B. Applicant Continues To Be an Entrepreneur

To ensure that any successive grant of parole would continue to serve a significant public benefit, DHS is proposing that an applicant for re-parole show that he or she continues to meet

<sup>44</sup> The entity would also need to continue to meet the definition of "U.S. business entity" at proposed 8 CFR 212.19(a)(9).

the definition of “entrepreneur” at proposed 8 CFR 212.19(a)(1). *See* proposed 8 CFR 212.19(c)(2)(ii)(A). As discussed previously, this definition would require the applicant for re-parole to show that he or she: (1) Continues to possess a substantial ownership interest in the start-up entity, and (2) continues to serve in a central and active capacity in the entity, such that his or her knowledge, skills, or experience would continue to substantially assist the entity with the growth and success of its business. *See* proposed 8 CFR 212.19(a)(1). For purposes of seeking re-parole, the definition further provides that an individual may be considered to possess a substantial ownership interest if he or she maintains at least a 10 percent ownership stake in the start-up entity at all times during the period of parole and any subsequent period of re-parole. *Id.*

As discussed in section IV.B.2., DHS believes that the definition of “entrepreneur” proposed in this rule is essential to ensuring that granting parole in an individual case would provide a significant public benefit. By requiring an applicant for re-parole to demonstrate that he or she continues to serve in an active and central capacity and continues to have knowledge, skills, or experience integral to the entity’s success, DHS is ensuring that the applicant is directly related to the entity’s ability to benefit the United States, including by conducting research and development, increasing revenue, or creating jobs. Similarly, the ownership standard is also essential for connecting the individual to the start-up entity and ensuring that he or she continues to assume more than a nominal financial risk related to the entity. The reduced 10 percent equity requirement for seeking re-parole (as opposed to the 15 percent requirement for seeking initial parole) takes into account the need of some successful start-up entities to raise additional venture capital financing by selling ownership interest during their initial years of operation.

As also discussed in section IV.B.2., DHS believes that an entrepreneur seeking re-parole would be able to demonstrate sufficient satisfaction of the above criteria by providing various forms of evidence. With respect to ownership, DHS anticipates that an applicant would be able to provide copies of legal or financial documents—such as formation and organizational documents, equity certificates, equity ledgers, ownership schedules, and capitalization tables—indicating the applicant’s ownership interest in the start-up entity. With respect to the

applicant’s role within the entity, DHS expects that an applicant could satisfy the criterion by providing evidence showing that he or she continues to serve in the same capacity as that described in the initial parole application. If the applicant has changed positions within the entity, he or she would need to provide evidence demonstrating that he or she continues to serve in a central and active capacity within the entity and that his or her knowledge, skills, or experience would continue to substantially assist the entity with the growth and success of its business.

#### *C. Investment, Revenue, and Job Creation Criteria for Re-Parole Consideration*

DHS further proposes that, to seek re-parole under this rule, an entrepreneur would need to further validate, through additional reliable evidence, the start-up entity’s continued substantial potential for rapid growth and job creation. DHS is proposing that this requirement may generally be satisfied by demonstrating that the entity has: (1) Received substantial additional qualifying funding, such as awards or grants from qualifying government entities or investments of capital from U.S. investors with established records of successful investment; (2) generated substantial and rapidly increasing revenue in the United States over the prior parole period; or (3) generated a substantial number of qualified jobs for U.S. workers. *See* proposed 8 CFR 212.19(c)(2)(ii)(B). As with applications for initial parole, DHS further proposes that an applicant who partially meets one or more of these criteria for re-parole may be considered for re-parole under this rule if he or she provides additional reliable and compelling evidence that his or her re-parole would provide a significant public benefit.

##### *i. Qualifying Funding From U.S. Investors or Government Entities*

DHS proposes to allow an applicant to demonstrate that a start-up entity continues to have substantial potential for rapid growth and job creation by showing that during the preceding period of parole the entity received additional substantial qualifying funding—through “qualifying investments,” “qualified government grants or awards,” or a combination of both. *See* proposed 8 CFR 212.19(a)(5) and (c)(2)(ii)(B)(1). DHS proposes that such total investments made to the entity during the initial parole period may generally be considered “substantial” with respect to an application for re-parole if they

cumulatively meet or exceed \$500,000. *Id.* As with the application for initial parole, “qualifying investments” must be from established U.S. investors (such as venture capital firms, angel investors, or start-up accelerators) with a history of substantial and successful investments in start-up entities. Such qualifying investors would include only those investors who have a history of making similar or greater investments on a regular basis over the last 5 years and who can demonstrate that at least two of the entities receiving such investments have subsequently experienced significant growth in revenue and job creation. *See* proposed 8 CFR 212.19(a)(5). With respect to “qualified government grants or awards,” the grants or awards generally would need to be made by one or more Federal, State, or local government entities that regularly provide such funding to U.S. businesses for economic development, innovation, research and development, or job creation reasons. *See* proposed 8 CFR 212.19(a)(3).

DHS believes that these investment criteria are reasonable for subsequent grants of parole based on consultation with the SBA, as well as the amounts of investment made in start-up entities during initial rounds of capital investment.<sup>45</sup> DHS believes these standards are important to ensure that the start-up entity is showing signs of success and continues to have substantial potential for rapid growth and job creation.

DHS welcomes comment on all aspects of this section, including the proposed investment threshold for re-parole and any potential alternatives to such thresholds. For comments regarding investment threshold amounts, the Department requests that commenters provide rationales and data, if available, to support their recommendations.

##### *ii. Substantial Revenue Generation*

DHS also proposes to allow an applicant to demonstrate that a start-up entity continues to have substantial potential for rapid growth and job creation by showing that the entity has exhibited rapid growth in terms of revenue generation in the United States during the relevant parole period. DHS proposes that an applicant may generally be able to meet this standard by demonstrating that the entity reached at least \$500,000 in annual revenue, with at least 20 percent average annual revenue growth, during the initial parole period. *See* proposed 8 CFR 212.19(c)(2)(ii)(B)(3). DHS believes that

<sup>45</sup> *See* note 32.

these revenue criteria are reasonable and consistent with the requirement that the entity have the substantial potential for rapid growth and job creation and, ultimately, with the requirement that the entrepreneur's parole provide a significant public benefit to the United States.

Based on consultation with the SBA, DHS believes \$500,000 and 20 percent annual revenue growth would be reasonable criteria for purposes of re-parole. Notably, evaluating revenue generation and growth is industry- and location-specific, and start-up entities may be at different stages of development at the time applicants file their parole requests. DHS considered proposing revenue and growth thresholds that varied by industry and geographic location, but determined that such an approach would be extremely difficult to administer. Instead, DHS decided to propose threshold criteria that would generally apply to start-up entities under this parole process. DHS chose \$500,000 in revenue and 20 percent annual revenue growth as proposed threshold criteria because, after consulting with SBA, DHS determined these criteria: (1) Would be reasonable as applied across start-up entities regardless of industry or location; and (2) would serve as strong indications of an entity's potential for rapid growth and job creation (and that such entity is not, for example, a small business created for the sole or primary purpose to provide income to the owner and his or her family).

DHS's proposed revenue amount is based on analysis of available data<sup>46</sup> showing average revenue over a 3-year period of \$215,000 for all new firms in innovative sectors. Adjusted for inflation, the average revenue of such firms is approximately \$250,000. In analyzing this data, DHS applied a 20 percent growth rate, which is a high

<sup>46</sup> DHS analyzed data found in the Census Bureau's Survey of Business Owner's data (SBO) set, Table SB0700CSCB10, "Statistics for All U.S. Firms by Year the Business Was Originally Established by Industry, Gender, Ethnicity, Race, and Veteran Status for the U.S.: 2007" found at: <http://www.census.gov/econ/sbo/historical.html?2007>. DHS calculated revenue per firm for the 3 years each of 2005, 2006 and 2007, which would account for "new firms" aged 3 or less since the benchmark year was 2007. To account for sectors involved mainly in innovation, DHS attempted to match sectors to those utilized in the volume projections section of the concomitant economic analysis section of the rule's regulatory impact assessment. Of those nine broad sectors, "Waste Services" is not listed separately and hence DHS utilized the other eight sectors. Because the data are arranged with two identifiers of interest, "year established" and "sector," DHS conducted an unweighted average across the 24 data points (8 sectors with 3 years each) to arrive at an average of \$215,000.

growth threshold utilized in economic and business research,<sup>47</sup> to the \$250,000 average revenue for 2 years (the proposed length for initial parole). At a growth rate of 20 percent each year, revenue of \$250,000 would grow to \$360,000 over a 2-year period. DHS proposed \$500,000 as the revenue criterion to take into account the fact that revenue of \$360,000 represents an average for all new firms in innovative sectors and the proposed rule is aimed towards assisting high-growth startups that will provide a significant public benefit. As such, DHS believes it is appropriate to propose an amount that takes into consideration that range of industries and locations in which startups may conduct business, but that exceeds the average revenue for new firms, so that such an amount can serve, in combination with a 20 percent growth rate, as a reliable indicator of a start-up entity's substantial potential for continued growth and job creation. While DHS does not have reliable revenue data that is specific to high-growth startups (the revenue data available to DHS includes all new firms, including non-startups, startups, and high-growth startups), DHS believes that its analysis of available data supports the proposed \$500,000 revenue criteria as a reasonable indicator of the entrepreneur's ability to continue to provide a significant public benefit to the United States.

DHS is proposing *both* a general minimum revenue threshold and a threshold percentage increase in such revenue to account for a range of start-

<sup>47</sup> High-growth firms are defined by the Department of Labor's Bureau of Labor Statistics (BLS) and the Organization for Economic Cooperation (OECD) as those with at least ten employees that grow by at least 20 percent for each of 3 consecutive years based on employment. For a description of the methodology utilized to measure high-growth firms, see OECD, "*OECD-Eurostat Manual on Business Demography Statistics*" (2007), pp. 59–65, available at: <http://www.oecd.org/std/39974460.pdf>. Although the BLS and standard OECD definition applies specifically to employment, both agencies recognize that employment growth may not be a suitable measure in all cases and that valid alternative measures may be utilized. There have been a number of alternatives proposed in various peer-reviewed literature and ongoing research. For purposes of the present rule, discussion of the 20 percent growth rate in revenue, instead of employment specifically, concomitant to that DHS proposes, can be found at: Mogos, S., Davis, A. & Baptista, R. (2015), "Defining High Growth Firms. Sustainable Growth, Volatility, and Survival," Proceedings of DRUID15 Conference. June 2015, available at: [http://druid8.sit.aau.dk/acc\\_papers/rpq1k6cpebbhti9vh29xudqp3juy.pdf](http://druid8.sit.aau.dk/acc_papers/rpq1k6cpebbhti9vh29xudqp3juy.pdf). See also Karl Wennberg, Managing High-Growth Firms: A literature review (2013), OECD: "International Workshop on "Management and Leadership Skills in High-Growth Firms," available at: [http://www.oecd.org/cfe/leed/Wennberg\\_Managing%20a%20HGF.pdf](http://www.oecd.org/cfe/leed/Wennberg_Managing%20a%20HGF.pdf).

up entities that may qualify an entrepreneur for re-parole under this rule based on revenue generation. A \$500,000 minimum revenue threshold at the re-parole stage, for example, would by itself indicate little about a start-up entity that had already been generating such revenue when the application for initial parole was filed. For such an entity, the 20 percent revenue growth threshold would ensure the entity is exhibiting substantial growth and the ability to sustain substantial job creation. As noted above, 20 percent annual revenue growth is the rate used by the Department of Labor's Bureau of Labor Statistics to indicate a high rate of growth among U.S. businesses. At the same time, the 20 percent revenue growth threshold would be insufficient by itself with respect to entities that were at the lower end of the revenue generation scale when the application for initial parole was filed. For example, an entity that was generating only \$250,000 in annual revenue at the time the initial parole application was filed would only require a total increase of \$110,000 in annual revenue over the 2-year parole period to meet the 20 percent revenue growth threshold. For such entities, the \$500,000 annual revenue threshold is intended to ensure rapid growth and the potential to sustain substantial job creation. As with the standards for initial parole, DHS believes that the above standards for re-parole: (1) Would be reasonable among start-up entities regardless of industry or location; and (2) would serve as strong indications of an entity's potential for continued rapid growth and job creation. DHS welcomes comments on the proposed revenue generation and annual revenue growth thresholds for re-parole, including any potential alternatives.

### iii. Job Creation

DHS further proposes to allow an applicant to demonstrate his or her entity's substantial potential for rapid growth and job creation by showing that the entity has exhibited rapid growth in terms of job creation during the relevant parole period. DHS proposes that an applicant may generally be able to meet this standard by demonstrating that the entity created at least 10 qualified jobs with the start-up entity for U.S. workers during the initial parole period. DHS decided to require at least 10 qualified jobs for re-parole based on survey data indicating that the average employment at new businesses in 2011 was 8.7 employees.<sup>48</sup> DHS further believes that

<sup>48</sup> Alicia Robb, Joseph Farhat, "An Overview of the Kauffman Firm Survey", June 2013, p. 4.

this job creation standard is reasonable for demonstrating a start-up entity's recent history of rapid growth and job creation.

Moreover, DHS is proposing a definition for the term "qualified job" to limit the types of jobs that may be used to justify a grant of parole under this rule. See proposed 8 CFR 212.19(a)(6). Under the proposed rule, the term "qualified job" would mean full-time employment, as defined at the proposed 8 CFR 212.19(a)(8), located in the United States with the entrepreneur's start-up entity that has been filled for at least 1 year by one or more qualifying employees. See Proposed 8 CFR 212.19(a)(6). In addition, the term "qualifying employee" would mean a U.S. citizen, a lawful permanent resident, or other immigrant lawfully authorized to be employed in the United States (e.g., an asylee or refugee), who is not an entrepreneur of the relevant start-up entity or the parent, spouse, brother, sister, son, or daughter of such an entrepreneur. See proposed 8 CFR 212.19(a)(7). For job creation to establish eligibility for a grant of parole, DHS believes it is important that the job be filled by an employee who is not closely related to an entrepreneur of the start-up entity. This limitation would mitigate the potential for fraud relating to any claimed job creation and the legitimacy of the business, and it would help to distinguish bona fide start-up entities from small businesses with limited growth potential created for the sole or primary purpose of providing income to the entrepreneurs and their families. DHS believes that merely creating jobs for the entrepreneur and the entrepreneur's family would be unlikely to provide a significant public benefit to the United States and should thus not serve as a basis for parole under this rule.

Additionally, DHS proposes that the term "full-time employment," as referenced in the proposed definition of "qualified job," would mean paid employment of an employee by the entrepreneur's start-up entity in a position that requires a minimum of 35 working hours per week. See proposed 8 CFR 212.19(a)(8). The Department of Labor similarly defines full time employment as requiring 35 or more hours a week.<sup>49</sup> Full-time employment,

however, would not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week. DHS believes that requiring that the employment include full-time remuneration would help to ensure that the entity will provide a significant public benefit to the United States and mitigates the potential for fraud as it relates to any claimed job creation and the legitimacy of the business. See proposed 8 CFR 212.19(a)(8).

#### iv. Alternative Criteria for Re-Parole Consideration

Finally, as with the application for an initial grant of parole, DHS proposes that an applicant who only partially meets one or more of the above sub-criteria related to capital investment, revenue generation, or job creation may be considered for re-parole under this rule in certain limited circumstances. See proposed 8 CFR 212.19(c)(2)(iii). Specifically, DHS may consider another period of parole for such an applicant if he or she provides, in addition to evidence that one or more of the sub-criteria have been partially met, "reliable and compelling" evidence of the entity's continued substantial potential for rapid growth and job creation than would be required if the applicant had fully met one or more of the above sub-criteria. *Id.* Importantly, re-parole would not be available to an applicant who fails to demonstrate any U.S. investment, revenue generation, or job creation. Rather, the applicant would need to show as a preliminary matter that the start-up entity has: (1) Received a substantial level of investment through a combination of qualifying investments and qualified government grants or awards (although less than \$500,000); (2) generated a substantial level of revenue (although less than \$500,000 with at least 20 percent average annual revenue growth); or (3) generated a substantial number of qualified jobs in the United States (although less than 10). The applicant would also need to demonstrate the entity's potential for rapid growth and job creation by submitting additional evidence that DHS determines to be both reliable and compelling. DHS proposes that such evidence be reliable and compelling in its own right to overcome the applicant's inability to fully meet the threshold criteria otherwise required by this rulemaking for re-parole.

As noted previously, DHS is not proposing to define the specific types of evidence that may be deemed "reliable and compelling" at this time, because DHS seeks to retain flexibility as to the

kinds of supporting evidence that may warrant the Secretary's exercise of discretion in granting parole based on significant public benefit. But DHS believes that such evidence would need to be compelling to demonstrate that the entrepreneur's presence here would provide a significant public benefit considering the entity's inability to meet the otherwise applicable threshold criteria for consideration. DHS will ultimately be required to decide whether such evidence—in conjunction with the entity's substantial investment, revenue generation, or job creation—is sufficient to establish that the applicant's presence in the United States will provide a significant public benefit. This approach is consistent with the discretionary nature of the Secretary's statutory parole authority and the fact that each parole request will be adjudicated, on a case-by-case basis, after considering the particularized facts of each case.

DHS invites public comment on the level and types of reliable and compelling evidence that may warrant a discretionary grant of parole in such cases. DHS also invites public comment on alternatives to the proposed funding, revenue generation, and job creation thresholds that applicants may use to demonstrate a start-up entity's continued substantial potential for rapid growth and job creation and that may serve as a principal basis for seeking re-parole under this rule. Commenters should recommend threshold levels for obtaining re-parole under suggested criteria, along with the types of reliable evidence that applicants may submit to substantiate their claims, including any relevant data if available.

#### 2. Application Requirements for Re-Parole

Under the proposed rule, an entrepreneur parolee seeking a period of re-parole would be required to file a request for re-parole with USCIS using the same form as for initial parole, the Application for Entrepreneur Parole (Form I-941, or successor form), and pay the same fees (filing and biometric services fees). See proposed new 8 CFR 212.19(c)(1). The entrepreneur would generally be required to file the request for re-parole before the expiration of the current period of parole. If the entrepreneur is in the United States at the time that USCIS approves the request for re-parole, such approval would also constitute a grant of parole. See proposed new 8 CFR 212.19(d)(3). An entrepreneur present in the United States in a period of parole would not be required to depart and return to the United States in order to request a new

<sup>49</sup>While about 40 percent of firms had employees in 2004, by 2011 about 53 percent of surviving firms had employees. Surviving firms with employees, which are now in their eighth year of operations, increased average employment to 8.7 employees in 2011, up from 7.5 employees in 2010."

<sup>49</sup>Department of Labor Bureau of Labor Statistics, *Glossary* (last modified Feb. 28, 2008), <http://www.bls.gov/bls/glossary.htm#F>.

grant of parole from CBP at a port of entry. Along with the approval notice, USCIS would issue an electronic Arrival/Departure Record (Form I-94) reflecting the new period of parole and the code of admission assigned to entrepreneur parolees. USCIS would also issue the entrepreneur's spouse and children who have filed their own separate requests for parole, if also approved for an additional period of parole, new Arrival/Departure Records reflecting the same period of parole as the entrepreneur, but with the appropriate dependent entrepreneur parolee codes.

The entrepreneur (or spouse or dependent child), if outside the United States upon the approval of the re-parole application, would have to obtain a travel document from USCIS or DOS (e.g., a boarding foil) and appear at a port of entry for CBP to make the final re-parole determination and, if granted, issue new Arrival/Departure Records. Just as with initial parole, entrepreneurs granted re-parole would be authorized to be employed by the start-up entity, incident to their parole under this proposed rule. See proposed 8 CFR 274a.12(b)(37). Such entrepreneurs also would be permitted to use their foreign passport in combination with their Arrival/Departure Record reflecting the new period of parole to demonstrate their identity and employment authorization for purposes of compliance with the Employment Eligibility Verification (Form I-9) requirements. See proposed 8 CFR 274a.2(b)(1)(v)(A)(5); see also proposed revisions to the Form I-9, Lists of Acceptable Documents.

### 3. Ensuring Continuous Employment Authorization

To facilitate maintenance of continuous work authorization and parole, DHS is proposing that an entrepreneur parolee may file a request for re-parole beginning 90 days prior to the expiration date of his or her current period of parole. See proposed Form Instructions for the Application for Entrepreneur Parole (Form I-941). To prevent potential gaps in employment authorization for entrepreneurs seeking re-parole, DHS proposes to extend automatic employment authorization to those entrepreneurs whose current parole period expires while their request for re-parole is pending. See proposed 8 CFR 274a.12(b)(37). DHS is proposing that this automatic employment authorization will extend for 240 days from the date the entrepreneur's initial parole period expires, or until USCIS makes a decision on the re-parole request,

whichever is sooner, when a request for re-parole was timely filed by the entrepreneur. *Id.* This 240-day automatic extension of employment authorization is comparable to the extension currently provided by regulation to most nonimmigrants authorized for employment incident to status with a specific employer who have filed a request for an extension of stay with the same employer. See 8 CFR 274a.12(b)(20). DHS believes that a 240-day period of automatic employment authorization is equally appropriate for entrepreneur parolees and is a sufficient period of time to ensure that the entrepreneur does not experience gaps in employment authorization on account of the adjudication process. The 240-day period takes into account the complex and time-consuming adjudication required for re-parole, as well as the required biometric services appointment, which may require up to 90 days for scheduling.

### G. Termination of Parole

DHS is proposing provisions governing termination of parole under this rule in cases where DHS believes such termination is appropriate, including circumstances indicating that continued parole would no longer provide a significant public benefit, pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A). Consistent with DHS's parole authority, under this proposed rule DHS may, in its discretion, terminate parole granted under 8 CFR 212.19 at any time and without prior notice or opportunity to respond. Alternatively, DHS may, in its discretion, provide the entrepreneur notice and an opportunity to respond prior to terminating his or her parole under 8 CFR 212.19. In addition to the general grounds for termination of parole described at 8 CFR 212.5(e),<sup>50</sup> DHS is proposing the following grounds for termination of entrepreneur parole:

#### 1. Automatic termination

DHS believes that certain circumstances warrant automatic termination of parole. In this rule, DHS proposes that parole will automatically terminate if: (a) The period of parole expires, unless the individual timely files a non-frivolous application for re-parole; or (b) USCIS receives written notice from the entrepreneur that he or

<sup>50</sup> The termination provisions in current parole regulations provide for termination on written notice in situations where the justification for granting parole has ended or, in the opinion of an authorized officer, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. See 8 CFR 212.5(e)(2)(i).

she will no longer be employed by the start-up entity or ceases to possess at least a 10 percent ownership stake in the start-up entity in accordance with 8 CFR 212.19(j). See proposed 8 CFR 212.19(k)(2). Additionally, the parole of the spouse or child of the entrepreneur will be automatically terminated without notice if the parole of the entrepreneur has been terminated. *Id.* If a spouse whose parole is terminated also has employment authorization, the employment authorization is automatically revoked.

#### 2. Termination on Notice

Even though DHS has the discretion to terminate parole without prior notice, USCIS will generally attempt to provide the entrepreneur or his or her spouse or children, as applicable, written notice of its intent to terminate parole if USCIS believes that: (a) The facts or information contained in the request for parole were not true and accurate; (b) the alien failed to timely file or otherwise comply with the material change reporting requirements in this section; (c) the entrepreneur is no longer employed in a central and active role by the start-up entity or ceases to possess at least a 10 percent ownership stake in the start-up entity; (d) the alien otherwise violated the terms and conditions of parole; or (e) parole was erroneously granted. See proposed 8 CFR 212.19(k)(3). The decision to provide notice and an opportunity to respond prior to termination of parole under 8 CFR 212.19 will be made in the discretion of DHS on a case-by-case basis.

In cases where USCIS provides written notice and an opportunity to respond, through a notice of intent to terminate, DHS is proposing to provide a period of up to 30 days for the alien's written rebuttal. See proposed 8 CFR 212.19(k)(4). The notice of intent to terminate would generally identify the grounds for termination of the parole and the alien may submit additional evidence in support of his or her rebuttal, when applicable. *Id.* Providing a rebuttal period of up to 30 days is generally consistent with rebuttal periods applicable to other immigration petitions and applications (e.g., I-129 or I-140). If DHS nevertheless decides to terminate parole, the entrepreneur and/or his or her spouse and children are restored to the status that he or she had at the time of parole, such as being applicants for admission. See 8 CFR 212.5(e)(2)(i). Consistent with current parole procedures, DHS does not propose a right to appeal a decision regarding termination of parole on notice. *Id.*



If a charging document is served on the alien, the charging document will constitute written notice of termination of parole (if parole has not already been terminated), unless otherwise specified. *Id.*

In the event of a violation of one or more terms and conditions of parole solely by the spouse or a child of the entrepreneur, parole may be terminated for the violator (*i.e.*, spouse or child) without affecting the entrepreneur's parole. If a spouse whose parole is terminated also has employment authorization, the employment authorization will be revoked. 8 CFR 274a.14(b)(1)(i).

The entrepreneur and any dependents granted parole under this program will be required to depart the United States when their parole periods have expired or have otherwise been terminated, unless such individuals are otherwise eligible to lawfully remain in the United States. At any time prior to reaching the 5-year limit for parole under this proposed rule, such individuals may apply for any immigrant or nonimmigrant classification for which they may be eligible (such as classification as an O-1 nonimmigrant or lawful permanent residency through employer sponsorship). If such individuals are approved for a nonimmigrant or employment-based immigrant visa classification, they would generally be required to depart the United States and apply for a visa with DOS. As noted above, because parole is not considered an admission to the United States, parolees are unable to apply to adjust or change their status in the United States under many immigrant or nonimmigrant visa classifications.

#### H. Automatic Adjustment of Investment and Revenue Amount Requirements

DHS proposes that the investment and revenue amounts specified at proposed 8 CFR 212.19(a)(5), (b)(2)(ii) and (c)(2)(ii) will be automatically adjusted every 3 years by the Consumer Price Index for All Urban Consumers (CPI-U).<sup>51</sup> USCIS will provide notice in the **Federal Register** and on its Web site at [www.uscis.gov](http://www.uscis.gov) prior to the beginning of the fiscal year in which the change would take effect. Investment and revenue amounts adjusted by the CPI-U will apply to all applications filed on or after the beginning of that fiscal year. DHS believes that automatically adjusting the minimum dollar amounts

by the CPI-U every 3 years will maintain investment and revenue requirements at an appropriate level in relation to future economic conditions. DHS believes adjusting the minimum dollar amounts every 3 years will be more manageable operationally for DHS and less burdensome to applicants than adjustments at more frequent intervals. See proposed 8 CFR 212.19(l).

#### I. Technical Change

DHS is proposing a technical change to 8 CFR 274a.2(b)(1)(v)(C) to add the Department of State (DOS) Form FS-240 Consular Report of Birth Abroad, or successor form, to the list of acceptable documents under the "list C" column of Form I-9, Employment Verification Eligibility. Since 2011, Form FS-240 has been exclusively issued by DOS as evidence of a U.S. citizen's birth abroad and acquisition of U.S. citizenship at birth, as well as used to replace a lost, stolen, or damaged Form FS-545 Certification of Birth Abroad or Form DS-1350 Certification of Report of Birth. This technical change will formally recognize the Form FS-240, or successor form, as an acceptable document to establish employment authorization for Form I-9 purposes.

### V. Statutory and Regulatory Requirements

#### A. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of \$100 million in 1995 adjusted for inflation to 2015 levels by the Consumer Price Index for All Urban Consumers (CPI-U) is \$155 million.

This rule does not exceed the \$100 million expenditure in any one year when adjusted for inflation (\$155 million in 2015 dollars), and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and DHS has not prepared a statement under the Act.

#### B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States companies to compete with foreign-based companies in domestic and export markets.

#### C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

#### 1. Summary

The proposed rule is intended to add new regulatory provisions guiding the use of parole with respect to individual foreign entrepreneurs of start-up entities whose entry into the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid growth and job creation. Such potential would be indicated by, among other things, the receipt of significant capital financing from U.S. investors with established records of successful investments, or obtaining significant awards or grants from certain Federal, State or local government entities. The regulatory amendments would provide the general criteria for considering requests for parole submitted by such entrepreneurs.

DHS assesses that the rule, if finalized, will reduce a barrier to entry for new innovative research and entrepreneurial activity in the U.S. economy. The full potential of foreign entrepreneurs to benefit the U.S. economy is presently limited since many foreign entrepreneurs who seek to enter the United States and manage their own start-up entities do not qualify under existing nonimmigrant and

<sup>51</sup> The CPI-U produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. See <http://www.bls.gov/cpi/>.

immigrant classifications.<sup>52</sup> If this rule were finalized, some new innovative entrepreneurs will be able to pursue their entrepreneurial endeavors in the United States and contribute to the U.S. economy. In the absence of the rule, these innovative entrepreneurs might be delayed or discouraged altogether in bringing innovation and job creation to the United States.

Based on review of data on startup entities, foreign ownership trends, and Federal research grants, DHS expects that approximately 2,940 entrepreneurs, sourced to 2,105 new firms with investment capital and about 835 new firms with Federal research grants could be eligible for this parole program annually. This estimate assumes that each new firm is started by one person despite the possibility of up to three owners being associated with each startup. DHS has not estimated the potential for increased demand for parole among foreign nationals who may obtain substantial investment from U.S. investors and otherwise qualify for entrepreneur parole, because changes in the global market for entrepreneurs, or other exogenous factors, could affect the eligible population. Therefore, these volume projections should be interpreted as a reasonable estimate of the eligible population based on past conditions extrapolated forward. Eligible foreign nationals who wish to apply for parole as an entrepreneur would incur the following costs: A filing fee for the Application for Entrepreneur Parole (Form I-941) in the amount of \$1,200 to cover the processing costs for the proposed application; a fee of \$85 for biometrics submission; and the opportunity costs of time associated with completing the proposed application and biometrics collection. After monetizing the expected opportunity costs and combining them with the filing fees, an eligible foreign national applying for parole as an entrepreneur would face a total cost of \$1,480. Any subsequent renewals of the parole period would result in the same previously discussed costs. Filings to notify USCIS of material changes to the entrepreneur's parole, when required,

would result in similar costs; specifically, in certain instances the entrepreneur would be required to submit to USCIS a new form I-941 to notify USCIS of material changes to their parole and would thus bear the direct filing cost and concomitant opportunity cost. However, because the \$85 biometrics fee would not be required with such filings, these costs will be slightly lower than those associated with the initial parole request and any request for re-parole.

Dependent spouses and children who seek parole to accompany or join the principal applicant by filing a Form I-131, Application for Travel Document, would be required to submit biographical information and biometrics as well. Based on a principal applicant population of 2,940 entrepreneurs, DHS assumes a total of 3,234 spouses and children would be seeking parole and submitting biometrics. Each dependent would incur a filing fee of \$360, a biometric processing fee of \$85 (if 14 years of age and over) and the opportunity costs associated with biometrics collection. After monetizing the expected opportunity costs associated with providing biographical information to USCIS and submitting biometrics and combining it with the biometrics processing fee, each dependent applicant would face a total cost of \$550. DHS is also proposing to allow the spouse of an entrepreneur paroled under this proposed rule to apply for work authorization. Using a one-to-one mapping of principal filers to spouses, the total population of spouses expected to apply for work authorization is 2,940, which is an upper bound estimate. To obtain work authorization, the entrepreneur's spouse would be required to file Form I-765, Application for Employment Authorization, incurring a \$380 filing fee and the opportunity costs of time associated with completing the application. After monetizing the expected opportunity costs and combining it with the filing fees, an eligible spouse would face a total additional cost of \$416 (rounded). DHS does not anticipate that this rule, if finalized, would generate significant costs and burdens to private or public entities. While applicants may face a number of costs linked to their business or research endeavors, these costs would be driven by the business and innovative activity that the entrepreneur is engaged in and many other exogenous factors, not the rule itself or any processes related to the rule. Thorough review of academic, business, and policy research does not indicate that

significant expected costs or negative consequences linked to drawing in foreign entrepreneurs are likely to occur. As such, DHS expects that the negative consequences, if any, would be greatly exceeded by the positive effects of this rule.

In each case where an entrepreneur would be granted parole under this rule, DHS would have made a determination that parole would yield a significant public benefit and that the person requesting parole merits a favorable exercise of discretion. Consistent with those decisions, the rule would be expected to produce broad economic benefits through the creation of new business ventures that otherwise would not be formed in the United States. These businesses are likely to create significant additional innovation, productivity, and job creation. It is reasonable to conclude that investment and research spending on new firms associated with this proposed rule will directly and indirectly benefit the U.S. economy and create jobs for American workers. In addition, innovation and research and development (R&D) spending are likely to generate new patents and new technologies, further enhancing innovation. Some portion of the foreign entrepreneurs likely to be attracted to this parole process may develop high growth and high impact firms that can be expected to contribute disproportionately to job creation. In summary, DHS anticipates that this proposed rule would produce positive effects that would greatly exceed any negative consequences.

Using an estimate of 2,940 annual applications for significant public benefit entrepreneur parole developed in the ensuing volume projections section of this analysis (these estimates focus only on principal initial filers, not entrepreneurs who might be eligible for a re-parole period of up to three years, or their spouses), DHS anticipates the total cost of this rule for principal filers who face a total per applicant cost of \$1,480 to be \$4,349,827 (undiscounted) annually for any given year. Dependent spouses and children who must submit Form I-131 and biometrics would face a per-applicant cost of \$550, for a total cost of \$1,779,604 (undiscounted). Dependent spouses who apply for employment authorization would face a per applicant cost of \$416, which DHS projects would total \$1,123,630 (undiscounted). Adding together the costs for the principal filers and family members—including filing costs, costs of submitting biometrics, and monetized opportunity costs—yields a total cost of this rule for the first year, 2017 and subsequently 2018, of \$7,353,061

<sup>52</sup> Nina Roberts, *For foreign tech entrepreneurs, getting a visa to work in the US is a struggle*, The Guardian, Sept. 14, 2014, available at <http://www.theguardian.com/business/2014/sep/14/foreign-tech-entrepreneurs-visa-us-struggle>; Amy Grenier, *Majority of U.S. Patents Granted to Foreign Individuals*, April 11, 2014, available at <http://immigrationimpact.com/2014/04/11/majority-of-u-s-patents-granted-to-foreign-individuals/> ("Because of the limitations of the H-1B visa program, and the lack of a dedicated immigrant visa for entrepreneurs or innovators, foreign inventors struggle with inadequate visa options that often prevent them from obtaining permanent residency.")

(undiscounted). The total annual cost of the rule of \$7,353,061 can be expected for each subsequent year in the ten-year period. The total ten-year undiscounted cost is \$73,530,611.

## 2. Background and Purpose of the Proposed Rule

As described more fully in preceding sections of the preamble, Section 212(d)(5) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(d)(5), grants the Secretary of Homeland Security the discretionary authority to parole individuals into the United States, on a case-by-case basis, for urgent humanitarian reasons or significant public benefit. DHS proposes to amend its regulations implementing this authority to increase and enhance entrepreneurship, research and development and other forms of innovation, and job creation in the United States. The proposed rule would establish general criteria for the use of parole with respect to individual entrepreneurs of start-up entities whose entry into the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid growth and job creation.

The purpose of the proposed rule is to attract talented entrepreneurs to the United States who might otherwise choose to pursue such innovative activities abroad, or otherwise be significantly delayed, given the barriers they presently face. In addition to the intangible benefits associated with entrepreneurial innovation, and more tangible but difficult to measure benefits associated with new products, business networks, and possible production efficiencies that such activities are likely to generate, entrepreneurs have been and remain vital to economic growth and job creation in the United States and have generated a cohort of high-growth firms that have driven a highly disproportionate share of net new job creation.<sup>53</sup>

A body of research documents both the importance of entrepreneurial activity to the U.S. economy and its link to immigration. In this background section, DHS does not attempt to comprehensively summarize this large body of work but instead focuses on specific aspects central to the purpose of

<sup>53</sup> See Richard L. Clayton, Akbar Sadeghi, David M. Talan, and James R. Spletzer, "High-employment-growth firms: defining and counting them," Office of Industry Employment Statistics, Bureau of Labor Statistics (BLS), Monthly Labor Review (June 2013), p. 1–2, available at: <http://www.bls.gov/opub/mlr/2013/article/pdf/clayton.pdf>.

the rule and to its potential impacts.<sup>54</sup> In summary, DHS focuses on the role of new entrepreneurial firms in job creation in the United States, and the role that immigrant entrepreneurs have played in innovation and the high technology sector.

The labor market of the United States is highly dynamic. DHS analysis of data published by the U.S. Department of Labor's Bureau of Labor Statistics (BLS) indicates that between 2004 and 2013, on average about 847,000 firms were "born" each year and 784,000 "died."<sup>55</sup> To illustrate the extent of the labor market churn, since 1980 the private sector has generated about 16.3 million gross jobs annually but an average of only about 1.4 million net jobs annually. In both general business cycle expansions and contractions, large numbers of jobs are created and destroyed, comprising a key dynamic in the forces of creative destruction.<sup>56</sup> Research into the highly dynamic and volatile labor market in the United States has evolved. Earlier focuses on small- and new-firm size as the primary co-determinants of job creation has been reoriented to focus on the role of a relatively small subset of entrepreneurial firms.

This proposed rule focuses on identifying entrepreneurs associated with types of entrepreneurial firms that are more likely to experience high growth, contribute to innovation in the United States, and create jobs in the country. This narrowed focus is critical to ensuring that parole in individual cases is justified by significant public benefit. Research has shown that the average start-up company does not survive long.<sup>57</sup> Most new firms do not

<sup>54</sup> DHS notes that the body of research concerning immigration in general and its impact on the labor market, most notably germane to earnings and employment of domestic workers, is not addressed in the present analysis.

<sup>55</sup> Figures were obtained from the BLS, Business employment Dynamics, Table 8, "Private sector establishment births and deaths, seasonally adjusted." Available at <http://www.bls.gov/news.release/cewbd.t08.htm>. Firm "births" in these data only include new firms and thus exclude new franchises and expansions of existing firms.

<sup>56</sup> See Ryan Decker, John Haltiwanger, Ron Jarmin, and Javier Miranda, "The Role of Entrepreneurship in US Job Creation and Economic Dynamism," Journal of Economic Perspectives—Vol. 28, Number 3 (Summer 2014), pp. 3–24, available at: <http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.28.3.3>.

<sup>57</sup> According to BLS findings, "20 percent of newly created establishments don't survive their first year in business, 32 percent don't survive their first two years, and 50 percent don't survive their first 5 years." See Richard L. Clayton, Akbar Sadeghi, David M. Talan, and James R. Spletzer, "High-employment-growth firms: defining and counting them," Office of Industry Employment Statistics, Bureau of Labor Statistics (BLS), Monthly Labor Review (June 2013), p. 1,

add much net job creation either, as they are not focused on achieving high growth. By some estimates, the vast majority—as much as 95 percent—of all new firms are not substantial job creators or innovators.<sup>58</sup> About 95 percent of new firms start-up with fewer than 20 employees, and about the same percentage ultimately close with fewer than 20 employees, indicating that business turnover is heavily influenced by small firms.<sup>59</sup>

There is significant research, however, demonstrating that a small subset of new firms tends to be highly dynamic and to contribute disproportionately to net job creation. The BLS has highlighted the role of the small subset of high-growth firms that comprise about 2 percent of all firms but have accounted for 35 percent of gross job gains in recent years. "High-growth firms" are defined by the BLS and the Organization for Economic Cooperation (OECD) as those with at least ten employees that grow by at least 20 percent for each of 3 consecutive years based on employment. As of 2012, there were 96,900 high-growth firms in the United States that had created about 4.2 million jobs.<sup>60</sup> A key finding by the BLS is that as high-growth firms age, although they contribute, on average, less and less each year to new jobs, by the time they reach the age of 10 years or more, their size at that point means that the jobs they do add still account for a large share of new jobs. Job creation in the United States for the last several decades has been driven primarily by high-growth firms that tend to be young and new, and by a smaller number of surviving high-growth firms that age for a decade or more.<sup>61</sup>

available at: <http://www.bls.gov/opub/mlr/2013/article/pdf/clayton.pdf>.

<sup>58</sup> See Jason Wiens and Chris Jackson, "The Importance of Young Firms for Economic Growth," Ewing Marion Kauffman Foundation (2014), pp. 1–2, available at: [http://www.kauffman.org/-/media/kauffman\\_org/resources/2014/entrepreneurship%20policy%20digest/september%202014/entrepreneurship\\_policy\\_digest\\_september2014.pdf](http://www.kauffman.org/-/media/kauffman_org/resources/2014/entrepreneurship%20policy%20digest/september%202014/entrepreneurship_policy_digest_september2014.pdf). See also Hurst, Erik, and Benjamin Wild Pugsley. 2011. "What Do Small Businesses Do?" Brookings Paper on Economic Activity, no. 2 (2011), pp. 73–142.

<sup>59</sup> See Headd, Brian, "An Analysis of Small Business and Jobs," SBA Office of Advocacy, (2010), p. 6, available at: [https://www.sba.gov/sites/default/files/files/an%20analysis%20of%20small%20business%20and%20jobs\(1\).pdf](https://www.sba.gov/sites/default/files/files/an%20analysis%20of%20small%20business%20and%20jobs(1).pdf).

<sup>60</sup> See R. Clayton et al., (June 2013), supra at N. 46, p. 2–4. For a description of the methodology utilized to measure high growth firms, see OECD, "OECD-Eurostat Manual on Business Demography Statistics" (2007), pp. 59–65, available at: <http://www.oecd.org/std/39974460.pdf>.

<sup>61</sup> For specific detailed information on survival rates and employment creation at various intervals along the HGF life span, see R. Decker et al., (2014), supra at N. 45, pp. 6–24. The BLS and others use

This highly disproportionate, “up or out” dynamism of high-growth firms has been substantiated by many researchers. The SBA reported that about 350,000 “high impact firms”—defined as enterprises whose sales have at least doubled over a 4-year period and which have an employment growth quantifier of 2 or more over the same period—generated almost all net new jobs in the United States between 1994 and 2006.<sup>62</sup> The Kauffman Foundation, a leading institute on research, data collection, and advocacy for entrepreneurial activity, reports that the top-performing one percent of firms generates roughly 40 percent of new job creation, and, the fastest of them all—the “gazelles”—comprising less than one percent of all companies, generated roughly ten percent of new jobs.<sup>63</sup> The same general result has been found internationally; the OECD reports that between three percent and six percent of all firms can be considered high-growth firms but about one percent can be considered the even more impressive performing “gazelles.”<sup>64</sup>

Despite the finding across a large number of studies that small new firms tend to exhibit an “up or out” dynamic in which a small number survive to age five to become high-growth firms or “gazelles,” other key findings that have emerged in the literature suggest that the growth and performance (as indicated by metrics that include labor productivity, profitability, revenue, and research and development intensity) of new firms, even high-growth firms, vary substantially.<sup>65</sup> Models that can sort out

the term “gazelles” to differentiate the fastest growing young HGFs.

<sup>62</sup> See Spencer Tracy, Jr., “*Accelerating Job Creation in America: The Promise of High-Impact Companies*,” SBA Office of Advocacy (2011), pp. 1–4, available at: <https://www.sba.gov/sites/default/files/advocacy/HighImpactReport.pdf>. See also Acs, Zoltan, William Parsons, and Spencer L. Tracy, Jr., “*High-Impact Firms: Gazelles Revisited*,” Study prepared for the SBA, Office of Advocacy (2008), p. 1, available at: <http://www.sba.gov/advo/research/rs328tot.pdf>. The SBA high-impact cohort is about 6.3% of all firms, which is higher than the 2% high-growth category found in the BLS studies. The SBA cohort is larger because the criteria are slightly less restrictive and it includes older firms.

<sup>63</sup> See Dane Stangler, “High-Growth Firms and the Future of the American Economy,” *Kauffman Foundation Research Series: Firm Formation and Economic Growth* (2010), p. 2, available at: [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2010/04/highgrowthfirmsstudy.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2010/04/highgrowthfirmsstudy.pdf).

<sup>64</sup> David B. Audretsch, “*Determinants of High-Growth Entrepreneurship*,” report prepared for the OECD/DBA International Workshop on—High-growth firms: local policies and local determinants, OECD, p. 2–5, available at: [http://www.oecd.org/cfe/lead/Audretsch\\_determinants%20of%20high-growth%20firms.pdf](http://www.oecd.org/cfe/lead/Audretsch_determinants%20of%20high-growth%20firms.pdf).

<sup>65</sup> See R. Decker et al. (2014), *supra* at N. 45, pp. 5–7. See also Davis, Steven J., R. Jason Faberman, John Haltiwanger, Ron Jarmin, and Javier Miranda,

various business characteristics and economic conditions to predict high-growth probabilities are still in nascent stages. Nevertheless, this proposed rule includes threshold criteria for parole consideration meant to identify entrepreneurs associated with the kinds of promising start-up entities that appear more likely to contribute to American innovation, economic development, and job creation. As described in more detail below, businesses started and run by immigrants have propelled these kinds of broadly shared economic benefits for many years.

Broadly speaking, entrepreneurs engage in research and development (R&D) in order to develop and commercialize new products and technologies. Several studies have found that entrepreneurs tend to engage in R&D spending in the first year, tend to attract patents and other forms of intellectual capital, and tend to attract venture capital financing.<sup>66</sup>

Immigrants have been central contributors to business ownership and entrepreneurship in the United States and abroad. According to OECD data, self-employment rates for immigrants are higher than those of the native-born populations in many countries, including in the United States.<sup>67</sup> Based on the most recent data available from the U.S. Census Bureau, 12.9 percent of the United States population was foreign-born. Their rate of self-employment is about 30 percent higher than that of the native-born population (7.7 percent vs. 5.9 percent; n=1.8 million). The Census Bureau’s 2012 Survey of Business Owners showed that 14.4 percent of U.S. firms were owned by at least one person not born a citizen

“*Business Volatility, Job Destruction, and Unemployment*,” *American Economic Journal: Macroeconomics* 2(2) (2010): 259–87. Research and development intensity is typically measured as the ratio of research and development spending to revenue, net income, or overall costs.

<sup>66</sup> See Shah, Sonali K. and Winston Smith, Sheryl and Reedy, E. J., “*Who are User Entrepreneurs? Findings on Innovation, Founder Characteristics, and Firm Characteristics*,” *The Kauffman Firm Survey* (February 2012), pp. 2–5, available at: [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2012/02/whoareuserentrepreneurs.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2012/02/whoareuserentrepreneurs.pdf).

<sup>67</sup> OECD, “*Migrant Entrepreneurship in OECD Countries*,” prepared by Maria Vincenza Desiderio (OECD) and Josep Mestres-Domènech for the Working Party on Migration (2011), pp. 141–144, available at: [http://www.oecd.org/els/mig/Part%20II\\_Entrepreneurs\\_engl.pdf](http://www.oecd.org/els/mig/Part%20II_Entrepreneurs_engl.pdf). This, and many other similar studies and analyses are based on self-employment rates, which are a proxy, but not perfect measure, of business ownership, because some ownership structures such as partnerships, that could involve a foreign-born owner, are generally not considered to be proprietary.

of the United States.<sup>68</sup> In sampling-based studies, the SBA found a higher foreign-born ownership rate, at 16 percent, as did the German-based IZA Institute for the Study of Labor, which put the rate at 18.2 percent.<sup>69</sup>

Many high-growth firms are involved in activities classified in the STEM (science, technology, engineering, and math) fields. The high concentration of immigrant entrepreneurs in these industries has gained much attention. Between 2006 and 2012, one-third of companies financed with venture capital that made an initial public offering had an immigrant founder, a sharp rise from seven percent in 1980. These companies have generated 66,000 jobs and \$17 billion in sales.<sup>70</sup> A survey of entrepreneurs in technology-oriented privately held companies with venture backing also showed about one-third were foreign born, and 61 percent held at least one patent.<sup>71</sup>

Further evidence points to similar findings. Between 1995 and 2005, 25 percent of science and technology focused businesses founded in the United States had a foreign-born chief executive or lead technologist. In 2005, those companies generated \$52 billion in sales revenue and employed 450,000 workers. In Silicon Valley, the share of immigrant-founded start-ups increased to 52 percent by 2005. In 2006, foreign nationals residing in the United States were involved (as inventors or co-inventors) in about 26 percent of patent applications filed that year. Immigrant founders of Silicon Valley firms tend to be highly educated, with 96 percent holding bachelor’s degrees and 74 percent holding advanced degrees, and with 3-quarters of the latter in STEM fields. As of 2010, more than 40 percent of the Fortune 500 companies had been

<sup>68</sup> The categorization of “foreign-born” does not differentiate between lawful permanent residents and naturalized citizens. It also does not provide details of the firm history, implying that some firms owned by persons not born in the United States could have been founded by U.S. citizens and sold to foreign-born persons.

<sup>69</sup> See David M. Hart, Zoltan J. Acs, and Spencer L. Tracy, Jr., “*High-tech Immigrant Entrepreneurship in the United States*,” Report developed under a contract with the Small Business Administration, Office of Advocacy (2009), page 8, available at: [https://www.sba.gov/sites/default/files/advocacy/rs349tot\\_0.pdf](https://www.sba.gov/sites/default/files/advocacy/rs349tot_0.pdf). See also Robert W. Fairlie and Magnus Lofstrom, “*Immigration and Entrepreneurship*,” Institute for the Study of Labor (2013), p. 1, available at: <http://ftp.iza.org/dp7669.pdf>.

<sup>70</sup> This information is found from various sources and found in Stuart Anderson, “*American Made 2.0. How Immigrant Entrepreneurs Continue to Contribute to the United States Economy*,” National Foundation for American Policy, sponsored by the National Venture Capital Association (NVCA) (2013), pp. 3–7.

<sup>71</sup> *Id.* at pp. 2–5.

founded by an immigrant or the child of an immigrant.<sup>72</sup>

To reiterate, high-growth firms tend to be new and young, and one of their primary contributions to the highly dynamic labor market of the United States has been through job creation. High-growth firms tend to innovate and focus on developing new products and services. While no evidence points to immigrant entrepreneurs outperforming native-born entrepreneurs, the relatively intense involvement of immigrant entrepreneurs in successful technology-driven activities suggests substantial economic contributions. While measuring the precise value and impact of innovation is difficult and still at a nascent stage in research, many economists believe innovation creates positive externalities and spillover effects that further drive economic growth.<sup>73</sup>

Notwithstanding the research on the positive effects of high-growth entrepreneurship, there is some evidence of a long-term slowing in start-up dynamism and entrepreneurial activity in the United States; this trend began well over a decade ago, compelling many economists to advocate for policies that attract more entrepreneurs in general.<sup>74</sup> Many business entrepreneurial advocacy centers have also advocated in recent years for the United States to enact a formalized pathway for immigrant entrepreneurs. DHS is aware of one estimate of the potential benefits of a theoretical start-up visa. A Kauffman Foundation study (2013) estimated that, under certain conditions, a start-up visa could create between 500,000 and 1.6 million new jobs after ten years.<sup>75</sup> The potential benefits of attracting immigrant entrepreneurs have not gone unnoticed internationally, as discussed earlier in the preamble. Thirteen of the thirty-four nations who are part of the Organization of Economic Cooperation

and Development (OECD) have enacted special immigration programs for entrepreneurs, although the eligibility criteria vary among them to a significant extent.<sup>76</sup>

3. Population of Entrepreneurs Potentially Eligible

DHS cannot precisely predict the volume of new businesses that would start in the United States due to this rule. DHS has instead examined available data to provide an estimate of the population of individual entrepreneurs who may be eligible to request parole consideration under this proposed rule. Given limits on DHS's information about such entrepreneurs, DHS does not know how many people within the estimated eligible population would actually seek such consideration; as such, the estimates contained in this section represent an upper bound to the size of the eligible population. DHS estimated the population of entrepreneurs potentially eligible for parole under this rule based on two sub-groups: (1) Foreign individuals who seek to come to the United States to start a new business with financial backing from a qualified U.S. investor; and (2) foreign individuals who seek to come to the United States to start a new business as recipients of U.S. funded and awarded research grants and who intend to conduct the concomitant research in the United States. DHS assumes that each member of the eligible population will start a business and proposes that the general criterion for investment from a qualified investor (e.g. venture capital firms, angel investors, accelerators/incubators) be set at \$345,000, while for government grants or awards the general criterion would be \$100,000. Based on these amounts, DHS analyzed various past endeavors for the potential sources of funds. DHS estimates that approximately 2,940 foreign nationals annually could be eligible to apply for parole under this proposed rule. Table 1 summarizes the analysis by source of funds.

TABLE 1—NUMBER OF ENTREPRENEURS POTENTIALLY ELIGIBLE

Sub-group	Annual eligibility
New foreign-owned firms funded with investment capital .....	2,105
New firms funded with U.S. grants or awards that could potentially decide to locate to the United States	835
Total .....	2,940

DHS has no way of predicting with certainty the actual number of foreign nationals who would seek parole under this proposed rule over time, as the size of the eligible population could change significantly. DHS acknowledges that the estimate of individuals applying annually is an approximation based on past foreign ownership and start-up capital amounts. The analysis utilized to estimate the potential eligible population is also based implicitly on assumptions that: (1) The rule, if finalized, will not significantly change the frequency of U.S. funded grant applications from foreign researchers; and (2) that the rule, if finalized, will not significantly affect the market for foreign entrepreneurs and the market for the types of investment structures the rule will involve. Based on these assumptions and the data limitations, DHS projects that for the first full year that the rule would be effective, and for the second year, annual eligibility will be approximately 2,940.<sup>77</sup> The next section provides key data and analytical approaches utilized to arrive at the population estimates. DHS first considers volume estimates based on official U.S. data. The resulting estimates based on official data are those utilized for the cost projections of the proposed rule. Due to particular constraints in the data, DHS follows with an alternative method of volume

<sup>72</sup> Vivek Wadhwa, "Foreign-Born Entrepreneurs: An Underestimated American Resource," Ewing Marion Kauffman Foundation (2008), pp. 2–6, available at: [http://www.kauffman.org/~media/kauffman\\_org/z\\_archive/article/2008/11/wadhwatbook09.pdf](http://www.kauffman.org/~media/kauffman_org/z_archive/article/2008/11/wadhwatbook09.pdf).

<sup>73</sup> See "SMEs, Entrepreneurship and Innovation," OECD (2010), pp 26–28, available at: <http://www.oecd.org/berlin/45493007.pdf>.

<sup>74</sup> See R. Decker et al, (2014), supra at N. 45, p. 16–22.

<sup>75</sup> See Dane Stangler and Jared Konczal, "Give Me Your Entrepreneurs, Your Innovators; Estimating the Employment Impact of a Startup Visa," Ewing Marion Kauffman Foundation, (February 2013), pp. 1–3, available at: [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2013/02/startup\\_visa\\_impact\\_finalsada](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2013/02/startup_visa_impact_finalsada). The estimates are based on a fixed pool of 75,000 startup visas for a 10-year period, in which firm deaths each year cycle some of visa to new entrants.

<sup>76</sup> Most programs have been enacted after 2010. A country list and some descriptive data can be found at Jean-Christophe Dumont, "Investor Visas in OECD Countries," OECD Conference on Global High-Skilled Immigration Policy The national Academies—Board on science, technology and economic policy (2014), available at: [http://sites.nationalacademies.org/cs/groups/pgasite/documents/webpage/pga\\_152202.pdf](http://sites.nationalacademies.org/cs/groups/pgasite/documents/webpage/pga_152202.pdf).

<sup>77</sup> DHS emphasizes that the total is a broad estimate, as the Department has no means to determine the demand for entrepreneurial parole, changes in the eligible population that the rule may cause, time-variant possibilities, and application preferences. These conditions could change, if, for example, some foreign researchers see parole as attractive and apply for federally funded grants that they otherwise might not have in the absence of the rule. In addition, volume estimates should be interpreted to apply to only initial applications, not considerations for re-parole at some future point in time. Lastly, the market for the types of investments involved, such as venture capital, are fluid and becoming more global in scope. DHS has no means to determine how the evolution of these investment markets will affect, or be affected by the proposed rule.

estimation that adds robustness to the official estimate.

## Volume Projections Data and Methodology

### A. Grants

Because U.S.-funded research grants may be a qualifying investment under this rule, DHS obtained publicly available data on federally funded grants for fiscal years 2013–2015.<sup>78</sup> Although numerous agencies within the Federal Government award grants to foreign-born individuals, most are humanitarian or development focused.<sup>79</sup> For this reason DHS parsed the very large data set comprising 1.7 million records to obtain a viable analytical cohort. First, the records were filtered to capture Federal Government agencies that award grants to both United States *and* foreign-born recipients. Secondly, the records were sorted to only include the Federal Government agencies that award grants focused on “projects,” thereby excluding block and assistance grants.<sup>80</sup> The foreign-born cohort used for the eligibility projections excluded grants made to recipients in U.S. territories, as such recipients may be subject to special considerations outside the parole parameters.<sup>81</sup> DHS also excluded grant amounts recorded as negative, zero, and trivial amounts of less than

\$1,000—such values were recorded if grants were rescinded or for some other reason not ultimately funded. On average, 138,447 grants comprised the annual resulting analytical cohort derived from the above filtering procedures. Of that total, a small portion, 2,043 grants, or 1.5 percent, were awarded to foreign-born individuals. Having determined a reasonable eligibility threshold of \$100,000, DHS proceeded to the next step, to determine the potential annual eligible population of grant-sourced researchers. Over the period of analysis, 41 percent of the Federal grants awarded to foreign recipients equaled or surpassed the \$100,000 benchmark, for an average of 835 annually.

### B. Investment Capital

To estimate the number of potential new entrepreneurial start-ups, DHS obtained and analyzed data from the BLS and the Census Bureau. From the BLS Business Employment Dynamics (BED) data suite, DHS obtained the number of private establishments aged 1 year or less for nine broad sectors likely to be involved in innovative activity, in order to focus on entrants.<sup>82</sup> Although a reasonable proxy, the number of establishments aged 1 year or less is not a perfect measure of firm start-ups (births). The chosen metric may overstate births, by including expansions and new franchises of existing businesses. Conversely, it may understate the actual number of start-ups, because some fraction of firms does not survive the first year (the data are tabulated in March of the respective year such that the establishments aged 1 year and less are those that opened within the previous year but remained in business as of March of the following year), and those that opened in the previous year and were still in business but had not reached 2 years of age. DHS utilized the relevant figure for March 2015, because the latter is the most

recent figure reported in the BED dataset.

For each sector, DHS obtained the corresponding share of firms owned by a person “born a citizen of the United States” from the Census Bureau’s Survey of Business Owners data set.<sup>83 84</sup> For brevity, we utilize the term “foreign” here to describe such firms. The foreign share was obtained by dividing the number of foreign-owned private firms in a sector by the total number of reporting firms in the same sector. This share applies to firms that have a least one owner who was not born in the United States but does not differentiate between various types of ownership structures. The figure for new firms obtained from the BLS BED data was multiplied first by the foreign share to generate an estimate of firms per sector started by a person not born in the United States.

Next, DHS attempted to calculate how many of the firms were started with at least \$345,000, the minimum investment threshold that the rule proposes. The SBO data provides ranges of such startup capital amounts but DHS could not conduct a precise estimate because the data does not provide a category bound by the threshold minimum. In fact, the encompassing tranche is very large, from \$249,500 to \$1 million in range. The SBO does not provide actual cohort data or other information from which DHS could evaluate the distribution and, therefore, DHS has no way of ascertaining how many firms in this large range would occupy the \$345,000 to \$1 million

<sup>78</sup>The data were obtained from USASpending.gov: <https://www.usaspending.gov/Pages/Default.aspx>. From the homepage, the data can be accessed from the linked “data download” section. The files were obtained on April 20, 2015.

<sup>79</sup>It is certainly the case that U.S. State governments and other governmental entities issue research grants that foreign recipients could potentially utilize for parole eligibility. However, DHS is not aware of any database that collects and provides such data publicly.

<sup>80</sup>The Federal entities that awarded scientific focused research to foreign recipients were: Agricultural Resource Service, National Institute of Health, Center for Disease Control, Food and Drug Administration, Department of Defense, National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, National Science Foundation. The U.S. Department of State and Agency for International Development (USAID) were excluded from the analysis.

<sup>81</sup>There is a particular way in which the data germane to foreign grants were parsed and analyzed. There are two possible foreign indicators listed for each grant. One is the “principal place” involving the research and the other is the “recipient country.” The incumbent volume projections are based on the latter because this indicator generally implies that the grant was made to a person or institution outside the United States. The former is not used because this indicator could apply to grants awarded to U.S. or foreign persons in order to conduct the ensuing research outside the United States. Implicit in this analysis is that persons awarded U.S. funded grants that are overseas could conduct their research and innovation in the United States, and are not otherwise precluded from doing so, even if the focus of such research is in a foreign country.

<sup>82</sup>The BLS data is found at <http://www.bls.gov/bdm/bdmage.htm>. DHS utilized the “Establishment age and survival BED data for nation by major industry” set and figures from Table 5, “Number of private sector establishments by age,” for the nine major sectors shown in Table 2, above. The BLS does provide figures on firm births that could be used in the present analysis. However, DHS chose establishment age data because it is broken down in a way that corresponds precisely to the innovating sectors, discussed below. The firm birth data is not categorized in the exact same manner. The nine major sectors were chosen to envelope the approximately 430 individual activities that DHS considers to involve “science, technology, engineering, and math” (STEM). The full list based on the 2012 update can be found at: <http://www.ice.gov/sites/default/files/documents/Document/2014/stem-list.pdf>.

<sup>83</sup>The Census SBO data are found at: <http://www.census.gov/data/tables/2012/econ/sbo/2012-sbo-characteristics.html>. The foreign ownership figures per sector are found under “Characteristics of Business owners,” Table SB1200CSB011: “Statistics for Owners of Respondent Firms by Whether the Owner Was Born in the United States by Gender, Ethnicity, Race, and Veteran Status for the U.S.” and the startup capital data are found under Characteristics of Businesses, Table SB1200CSB16: “Statistics for All United States Firms by Total Amount of Capital Used to Start or Acquire the Business by Industry, Gender, Ethnicity, Race, and Veteran Status for the United States: 2007.” The foreign ownership share of firms is provided in the table and thus did not need to be calculated by DHS. The SBO data are part of the 2012 survey for which data was released publicly between February and June 2016.

<sup>84</sup>A possible source of upward bias in the foreign ownership share and hence the estimate of eligible entrepreneurs is that this share does not differentiate between foreign owners who came to the United States to open a business and those who acquired one after being in the United States for some period of time (e.g., lawful permanent residents or naturalized citizens). A general finding among a large literature on this topic is that many foreign-born business owners were driven to start a business by “push” factors in the labor market after arrival in the United States. DHS does not have a means to parse out the ownership rate in a more granular way to account for such differences.

segment. As a result, DHS relied on the share of firms in this tranche and the additional tranches over \$1,000,000 relative to the share of all firms

reporting for the sector, and recognizes that the volume projection is likely larger than is realistic. An additional assumption is that the startup threshold

is the same for businesses with native and foreign-born founders. The relevant data and estimates per sector are shown in Table 3.

TABLE 3—SUMMARY OF ENTREPRENEUR ESTIMATES

Sector	New firms	Foreign share (%)	Start-up threshold (%)	Annual eligible
Agriculture .....	10,182	4.9	2.5	12
Utilities .....	1,204	10.8	5.5	7
Manufacturing .....	29,883	11.0	5.4	178
Information .....	22,855	11.9	2.0	55
Professional Services* .....	165,425	12.8	1.2	248
Management .....	7,334	7.3	20.2	108
Waste Services .....	66,161	16.4	0.9	94
Education .....	15,226	11.9	0.7	13
Health Care .....	210,977	18.0	3.7	1,391
Total .....				2,105

\* Abbreviation for “Professional, Scientific, and Technical Services”.

### C. An Alternative Estimate of Entrepreneurs Based on Investment Structures

DHS recognizes the imperfections in estimating the potential population of eligible entrepreneurs based on extrapolating past conditions of foreign ownership rates and capital thresholds—and specifically, a lack of a demarcation threshold of \$345,000—but this approach provides a reasonable approximation of the upper bound of the eligible population in light of the significant data limitations and the uncertainty involved with estimating future entrepreneurial activity. The main benefit of this method is that it is based on official data; a limitation is that it assumes that the annual crop of firms created are entrepreneurial and the types of firms covered by the parole process in the proposed rule. In practice, some, but not all, will be innovators, even though the present analysis focuses on the sectors of the economy linked to STEM activity (DHS is not aware of any methods or data that can allocate a research-innovation share of firms to each sector). Because the volume projections are derived from information obtained from official sources—the BLS and Census Bureau—DHS retains them for purposes of the costs and volume estimates of the proposed rule. However, DHS believes that an alternative method of estimation will inform readers and strengthen the regulatory analysis, by providing a viable comparison to the official projections. In this alternative approach, DHS focuses on the types of investment structures and ventures likely to be involved in the proposed parole process. Specifically, DHS believes that there will be three primary sources of

investment for innovative firms (excluding research grants, which are not addressed in this alternative estimate): Venture capital firms, angel investors, and business accelerators and incubators (“incubators” for brevity, henceforth).<sup>85</sup> Hence, by analyzing the foreign component of these structures, data permitting, an alternative estimate of entrepreneurs can be obtained for comparison purposes.

As is the case with the official estimates, this alternative method, which focuses on innovative firms and investment types, also suffers from limitations. Foremost, DHS recognizes uncertainty around utilization rates, *i.e.* how many potential entrepreneurs among the estimated eligible population would actually seek parole under the proposed rule. Second, there is potential overlap in these structures; for example, firms under incubation often receive angel financing and some firms receive both angel financing and venture capital. However, since DHS does not have data to separate out such capital infusions, each of the three investment types is treated as distinct.

For venture capital, DHS consulted the National Venture Capital Association (NVCA) 2016 yearbook. This yearbook provides the number of annual seed venture investments. The data reveal that between 2013 and 2015,

<sup>85</sup> DHS is aware that in recent years alternative sources of financing for new and young firms, such as crowdsourcing and merchant cash advances (MCA), to name just two, have become relevant and common in types of industries, and recognizes that such capital could finance the types of foreign established firms that parole under this rule is intended to involve. However, at present, DHS is not aware of sufficient data concerning these new alternative methods to include them in the context of the present analysis.

an average of 169 first sequence seed investments were made, which DHS considers to be new firms financed with venture capital.<sup>86</sup> To estimate the eligible share of these venture capital backed firms, DHS relied on the finding that about one third of venture financed companies involved a foreign born owner or founder.<sup>87</sup> Based on this share, approximately 56 firms and individuals (assuming each firm would have one foreign individual) annually would be eligible for parole (obtained by multiplying the annual average of 169 seed investments by 0.33). This estimate embodies the assumption that all of the seed venture investments are above the investment threshold.<sup>88</sup>

<sup>86</sup> The NVCA yearbook is found at: <http://nvca.org/research/stats-studies/>. The figures utilized are found in Figure 3.23, “First Sequence by Stage of Development (Number of Deals). “First sequence” venture finance typically describes the round that is in the early stage following the start-up round. It is generally the capital investment round linked to producing and selling the firm’s product.

<sup>87</sup> This figure is found in “*American Made 2.0. How Immigrant Entrepreneurs Continue to Contribute to the United States Economy*,” National Foundation for American Policy, sponsored by the National Venture Capital Association (NVCA) (2013), pp. 3–7, available at <http://www.nfap.com/pdf/American%20Made%202.0.Final.pdf>.

<sup>88</sup> Information from the financial services advisory firm Ernst & Young indicates that the median venture capital round for startups is \$900,000 based on the average for 2013–2014, and the median seed round is \$850,000. Data in a report in Inc. indicates that median venture capital seed round is \$1.05 million based on the period 2013–2015. The information can be found at: [http://www.ey.com/Publication/vwLUAssets/Venture\\_Capital\\_Insights\\_4Q14\\_-\\_January\\_2015/\\$FILE/ey-venture-capital-insights-4Q14.pdf](http://www.ey.com/Publication/vwLUAssets/Venture_Capital_Insights_4Q14_-_January_2015/$FILE/ey-venture-capital-insights-4Q14.pdf) and at <http://www.inc.com/linkedin/tomasz-tunguz/inflation-deflation-startup-fundraising-market-tomasz-tunguz.html>, in order. Although the terms “seed” and “startup” can be convoluted, generally seed rounds preceded startup finance sequentially. Seed

Continued



To obtain an incubator estimate, DHS obtained publicly available information from SeedDB, which provides data on U.S. incubators collected from industry associations and fee-based data providers, including CB Insights and Crunchbase, which are two of the largest data providers for venture capital, angel investors, and accelerators.<sup>89</sup> The data are not collated in a way amenable to conducting a cohesive firm-by-firm or firm-wide analysis, but a DHS review of the available data indicates that the date range of firms included is about 2006–2016 (as of the last DHS data pull on March 20, 2016). The total number of firms is 6,248, yielding an annual average over 11 years of 568. Since all of these firms had to enter incubation at some point in the 11-year period, 568 is a reasonable estimate of the average number of firms entering incubation per year. One of the data suites lists the total number of companies incubated for each incubator and the countries that the companies were located in. Since there is wide variation in the number of companies per incubator, ranging from 1 to over a thousand, DHS grouped the incubators by country and then weighted each one for its share of total companies. The resulting weighted average indicates that one quarter of incubated companies were foreign.<sup>90</sup> Applying the 25 percent foreign share to the annual 568 firms, DHS estimates that about 144 firms could be eligible annually. DHS expects that not all foreign firms that enter incubation will meet the \$345,000 investment threshold, but because DHS will potentially consider other factors for such firms, a threshold rate is not applied to the estimate for purposes of this analysis.

Having estimated 56 venture firms and 144 incubator firms as potentially eligible, DHS next estimated the largest source of startup investment, angel investors. Based on the most recent data from the Center for Venture Research, about 25 percent of angel investments are made at the seed and startup stage. For the 71,000 companies receiving angel financing per year, about 17,750

typically “refers” to capital utilized to found the firm and initialize concept and product development while “startup” generally refers to new capital utilized to support initial production and operations.

<sup>89</sup> The SeedDB information is found at the Web site [is://www.seed-db.com/](http://www.seed-db.com/).

<sup>90</sup> This foreign share found by DHS in the analysis corresponds strongly to a finding in a study of high technology firms that found that 24 percent of such firms were founded by a foreign born person. See “America’s New Immigrant Entrepreneurs,” Vivek Wadhwa, AnnaLee Saxenian, Ben Rissing, and Gary Gereffi, available at: [http://people.ischool.berkeley.edu/~anno/Papers/Americas\\_new\\_immigrant\\_entrepreneurs\\_I.pdf](http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs_I.pdf).

could be considered new, which compares favorably to other, unrelated sources that note that about 16,000 new firms are financed with angel investments per year.<sup>91</sup>

DHS used the 17,750 annual figure for angel backed startups and multiplied that number by the same 25 percent rate for foreign identifiers found in the SeedDB data. DHS is aware that many angel investments are made at low levels and that there is a wide range of such investment amounts. DHS does not have publicly available data in which to analyze a distribution of angel backed firms, and operates under the assumption that the \$345,000 average is also the median, as is the case for a normal distribution. DHS multiplied the resulting foreign cohort by 0.5. The result of these extrapolations yields a figure of 2,151, which is an estimate of the potential population of eligible new firms annually financed by angel investments. By adding the three investment-type estimates together—144 incubator firms, 56 venture-backed firms, and 2,151 angel-backed firms—the resulting sum is 2,351. While uncertainties and limitations of the data involved in the volume estimates have been enunciated in detail, the closeness of this estimate to the 2,105 figure based on the Census and BLS data, adds robustness and confidence to the official estimate utilized in the cost projections.

#### D. Potential Variability in the Volume Projections

This section discusses several potential cohorts involving entrepreneurial activity that is difficult to estimate.

In light of the potential benefits to the U.S. economy and job creation, DHS is proposing this rule to provide a mechanism that, consistent with the requirements of the INA, encourages foreign entrepreneurs described herein to form and create innovative firms in the United States. In 2011, DHS began outreach and stood up the Entrepreneurs in Residence initiative to try to encourage entrepreneurship among foreign nationals.<sup>92</sup> DHS began tracking the number of foreign nationals who indicated interest in starting up an entrepreneurial endeavor at some point during their admission as an H–1B

<sup>91</sup> This figure is reported in, among other sources: [http://www.angelblog.net/Angels\\_Finance\\_27\\_Times\\_More\\_Start-ups\\_Than\\_VCs.html](http://www.angelblog.net/Angels_Finance_27_Times_More_Start-ups_Than_VCs.html) and <http://www.entrepreneurship.org/emed/angel-investing-versus-venture-capital-part-i.aspx>.

<sup>92</sup> Source: USCIS Announces “Entrepreneurs in Residence Initiative” available at: <http://www.uscis.gov/news/public-releases-topic/business-immigration/uscis-announces-entrepreneurs-residence-initiative>. See also <http://www.uscis.gov/eir/visa-guide/entrepreneur-visa-guide>.

nonimmigrant. Over the past four fiscal years (FY 2010–2013), an average of 77 foreign nationals have indicated such interest. In light of the relatively small numbers of foreign nationals who indicated their entrepreneurial intentions, DHS believes that considering parole requests under this rule will promote further innovation and other economic benefits in addition to those created by existing programs and policies used by foreign nationals to pursue high-growth entrepreneurial activity in the United States. If the rule is finalized, there could be some small substitution effects as some portion of this cohort could switch to seeking parole instead of relying on other existing nonimmigrant programs and policies. However, DHS does not believe such substitution would occur on a large scale because the ability to be admitted to the United States as a nonimmigrant offers materially more benefits and protection than parole.

In addition, the proposed rule lists a number of ancillary conditions for eligibility—and conversely a number of conditions that would leave individuals unlikely or unable to be paroled into the United States (or continue to be paroled in the country). Because ancillary conditions can be considered for eligibility, the actual volume may be larger than the estimates herein. Two examples are that under the proposed rule, applicants must maintain household income greater than 400 percent of the poverty line and that the qualifying start-up capital cannot come from family members. The volume estimates presented in this analysis assume all ancillary eligibility conditions are met.

Finally, two potential elements of the eligible population are considered. First, as alluded to in the summary, the volume estimates and ensuing cost estimates assume one individual owner for each new firm; under the proposed rule, DHS would allow up to three individuals per firm to seek parole but does not attempt to estimate how many of the startups could have more than one owner. Second, the volume estimate for grants is based on Federal awards only. DHS will consider eligibility based on State or local grants and awards, including those from State or local Economic Development Corporations (EDCs). Although, unlike in the case of Federal awards, there is not a database capturing State and local grants or the transmission mechanisms through which some Federal grants are distributed to other entities, such as EDCs.

#### 4. Costs

##### A. Principal Filer Costs

The proposed rule would permit certain foreign nationals to apply for a 2-year initial period of parole into the United States provided they meet the proposed eligibility criteria. Those who seek such parole into the United States would face the costs associated with the application, which involve a \$1,200 application fee plus other costs, detailed below. The costs would stem from filing fees and the opportunity costs of time associated with filing the Application for Entrepreneur Parole, Form I-941.

The proposed filing fee for Form I-941 is \$1,200. The fee is set at a level intended to recover the anticipated processing costs to DHS.<sup>93</sup> In addition, DHS is proposing that applicants for parole as an entrepreneur submit biometrics and incur the \$85 biometric services fee. Because entrepreneurs could start firms in any number of occupations, DHS believes it is appropriate to utilize the mean hourly wage for all occupations, which is \$22.71.<sup>94</sup> In order to anticipate the full opportunity cost to petitioners, DHS multiplied the average hourly U.S. wage rate by 1.46 to account for the full cost of employee benefits such as paid leave, insurance, and retirement, for a total of \$33.16 per hour.

DHS estimates that the proposed application would take 1.33 hours to complete. After DHS receives the application and fees, if the applicant is physically present in the United States,

<sup>93</sup> USCIS calculates its fees to recover the full cost of USCIS operations, including meeting national security, customer service, and adjudicative processing goals. As with other fees, USCIS uses Activity Based Costing (ABC) to assign costs to specific benefit requests. This model uses completion rates (actual or estimated depending on whether the benefit type is already being adjudicated) to calculate a proposed fee or fee adjustment for a benefit type. A completion rate reflects an average time an adjudicator spends actually working on a case but does not include "queue" or wait times. Because parole under this proposed rule has not yet been implemented, the completion rate used is based on a 4-hour estimate provided by USCIS' subject matter experts. At this time, USCIS has estimated that 30 additional staff would be required to satisfy the forecasted workload associated with this rule. However, USCIS requires adjudicators to report actual adjudication hours and case completions by benefit type. This reporting will occur after this rule is implemented. Adjudication hours will be divided by the number of completions for the same time period to determine the *actual* average completion rate. This rate will be used in future fee adjustments and will help determine future staffing allocations necessary to handle the projected workload for parole under this proposed rule.

<sup>94</sup> See National Occupational Employment and Wage Estimates United States, May 2014. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics program. Available at [http://www.bls.gov/oes/2014/may/oes\\_nat.htm](http://www.bls.gov/oes/2014/may/oes_nat.htm).

USCIS will send the applicant a notice scheduling him or her to visit a USCIS Application Support Center (ASC) for biometrics collection. Along with the \$85 biometric services fee, the applicant would incur the following costs to comply with the proposed biometrics submission requirement: The opportunity cost of traveling to an ASC, the mileage cost of traveling to an ASC, and the opportunity cost of time for submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles, and that the average time for that trip is 2.5 hours. DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.<sup>95</sup> By applying the \$33.16 hourly time value for applicants to the total biometrics-related time burden, DHS finds that the opportunity cost for a principal applicant to travel to and from an ASC, and to submit biometrics, would total \$121.68.<sup>96</sup> In addition to the opportunity cost of providing biometrics, applicants would experience travel costs related to biometrics collection. The cost of such travel would equal \$28.75 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.575 per mile.<sup>97</sup> DHS assumes that each individual would travel independently to an ASC to submit his or her biometrics, meaning that this rule would impose a time cost on each of these applicants.

DHS estimates that each principal parole applicant would incur the following costs: \$1,285 in filing fees to cover the processing costs for the application and biometrics; \$194.53 after summing the monetized cost of travel to submit biometrics, the total opportunity costs of time of the initial applications, biometrics, and estimated travel costs, resulting in a total cost of \$1,479.53 per application, rounded to \$1,480.<sup>98</sup> If DHS receives 2,940

<sup>95</sup> Foreign nationals who submit their applications from outside the United States would still be required to pay the \$85 biometric processing fee and travel to a USCIS office abroad, if available, or a U.S. embassy or consulate office for biometric processing. Due to data limitations, and to capture general impacts of the rule, DHS has estimated costs of submitting biometrics under the assumption that all applicants are traveling to an ASC in the United States.

<sup>96</sup> Calculation: \$33.16 \* 3.67 hours = \$121.68.

<sup>97</sup> Calculation: 50 miles multiplied by \$0.575 per mile equals \$28.75. See 79 FR 78437 (Dec. 30, 2014) for GSA mileage rate.

<sup>98</sup> Calculation: \$1,285 + 194; \$1,285 is the sum of the direct cost of the \$1,200 filing fee and the \$85

applications from persons eligible to apply, DHS anticipates that such applications would result in annual filing fee transfers of \$3,777,900 (undiscounted), which comprise the application fee and cost of submitting biometrics, and opportunity and other burden costs of \$571,927, for a total annual cost of \$4,349,827. Any subsequent renewal of the parole period or material changes requiring the filing of an amended application would result in costs similar to those previously discussed, with the possible exception of travel costs, since the applicant would not be required to depart the United States and re-enter.

##### B. Dependent Spouses and Children

The proposed rule would require all dependent family members (spouses and children) accompanying or joining the entrepreneur to file a Form I-131, Application for Travel Document, and would require all spouses and children 14 years of age through age 79 to submit biometrics. Those spouses and children would face the costs associated with filing the application and submitting biometrics.

DHS recognizes that many dependent spouses and children do not currently participate in the U.S. labor market, and as a result, are not represented in national average wage calculations. In order to provide a reasonable proxy of time valuation, DHS has to assume some value of time above zero and therefore uses an hourly cost burdened minimum wage rate of \$10.59 to estimate the opportunity cost of time for dependent spouses. The value of \$10.59 per hour represents the Federal minimum wage with an upward adjustment for benefits.<sup>99</sup> The value of \$10.59 per hour is consistent with other DHS rulemakings when estimating time burden costs for those who are not authorized to work.<sup>100</sup>

DHS would require dependents of parole applicants (spouses and children

cost of biometrics. The \$194 (rounded) figure is obtained by adding the cost of travel (\$28.75) plus the total opportunity cost of \$166, the latter of which is the product of the total time burden (5 hours) and the average burdened hourly wage (\$33.16).

<sup>99</sup> U.S. Department of Labor, Wage and Hour Division. The minimum wage in effect as of July 24, 2009. Available at <http://www.dol.gov/dol/topic/wages/minimumwage.htm>. The calculation for total employer costs for employee compensation for dependent spouses and children of principals with an approved Form I-140: \$7.25 per hour \* 1.46 = \$10.59 per hour.

<sup>100</sup> See "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).

of the parole applicant) to file an Application for Travel Document (Form I-131) in order to be scheduled for biometric submission. There is a \$360 filing fee associated with Form I-131, and DHS estimates it will take 3.56 hours to complete each submission. In addition to filing the Form I-131, each dependent spouse and child 14 years of age and over would be required to submit biometric information (fingerprints, photograph, and signature) by attending a biometrics services appointment at a designated USCIS Application Support Center (ASC). The biometrics processing fee is \$85.00 per applicant. In addition to the \$85 biometrics services fee, the applicant would incur the following costs to comply with the biometrics submission requirement: The opportunity and mileage costs of traveling to an ASC, and the opportunity cost of submitting his or her biometrics. While travel times and distances vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles, and that the average time for that trip is 2.5 hours.<sup>101</sup> DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours. In addition to the opportunity cost of providing biometrics, applicants would experience travel costs related to biometrics collection. The cost of such travel would equal \$28.75 per trip, based on the 50-mile roundtrip distance to an ASC and the General Services Administration's (GSA) travel rate of \$0.575 per mile.<sup>102</sup> DHS has assumed that each applicant would travel independently to an ASC to submit his or her biometrics, meaning that this rule would impose a time cost on each of these applicants. DHS also assumed all children were over the age of 14 for the purposes of this analysis and, therefore, this cost estimate may be slightly overestimated.

DHS projects that approximately 3,234 dependents would be required to file a Form I-131 and submit biometrics, based on the estimate of 2,940 principal applicants and using a multiplier for

<sup>101</sup> DHS has estimated travel distances and ensuing travel times at 2.5 hours in prior rulemakings. See, e.g., "Employment Authorization for Certain H-4 Dependent Spouses; Final rule," 80 FR 10284 (25 Feb. 2015); and "Provisional and Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule," 78 FR 536, 572 (3 Jan. 2013).

<sup>102</sup> See U.S. General Services Administration Web site for Privately Owned Vehicle (POV) Mileage Reimbursement Rates, <http://www.gsa.gov/portal/content/100715> (accessed August 8, 2015).

expected family members of 1.1.<sup>103</sup> The total cost for those spouses and children requesting parole under this program includes the filing fee, biometrics processing fee, travel costs associated with biometrics processing, and the opportunity cost of filing the Form I-131 and submitting biometrics. The total time burden is 7.23 hours. At the cost-burdened wage, the total opportunity cost is \$76.53. Adding the \$28.75 cost of travel, the total non-filing cost is estimated to be \$105.78, and the total cost per applicant is \$550. At the projection of 3,234 applicants, the non-filing cost is \$340,474 (undiscounted), and combined with filing costs of \$1,439,130, the total estimated cost for dependents germane to Form I-131 is \$1,779,604.

In addition, DHS proposes to allow unrestricted employment authorization for spouses of entrepreneurs granted parole under this rule. DHS proposes to permit these individuals to apply for employment authorization by filing Form I-765. To estimate the number of potential persons applying for employment authorization, DHS used a simple one-to-one mapping of entrepreneurs to spouses to obtain 1,813 spouses, the same number as entrepreneur parolees.

The current filing fee for Form I-765 is \$380.00. The fee is set at a level to recover the processing costs to DHS. Based on the projection of 2,940 applicants, the total filing cost is \$1,117,200 (undiscounted). DHS estimates the time burden of completing Form I-765 is 3.42 hours.<sup>104</sup> At the cost-burdened wage, the total opportunity cost is \$36.20. At the projection of 2,940 applicants, the non-filing cost is \$106,430 (undiscounted) and combined with filing costs of \$1,117,200, the total

<sup>103</sup> The multiplier of 1.1 was obtained from DHS estimates of the average historical ratio of principal versus dependent recipients of LPR status. DHS studies based on statistics obtained from office of Immigration Statistics reveal that multipliers for the employment preference categories EB-1, EB-2, and EB-3 range from 2.04 to 2.27. DHS believes that 2.1 is a reasonable multiplier for the estimates and utilized this multiplier in regulatory assessments involved in American Competitiveness in the Twenty-First Century Act, (AC21) provisions, specifically: "Retention of EB-1, EB-2, and EB-3 Migrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers" (RIN 1615-AC05), proposed rule. Because the Form I-131 filings relevant to this rule do not apply to principals, only spouses and dependent children, DHS believes it is valid to subtract 1 from the 2.1 multiplier to yield the final multiplier of 1.1.

<sup>104</sup> Source: Paperwork Reduction Act (PRA) Supporting Statement for Form I-765 (OMB control number 1615-0040). The PRA Supporting Statement can be found at Question 13 on [Reginfo.gov](http://www.reginfo.gov) at [http://www.reginfo.gov/public/doc/PRAViewICR?ref\\_nbr=201502-1615-004](http://www.reginfo.gov/public/doc/PRAViewICR?ref_nbr=201502-1615-004).

estimated cost for spouses germane to Form I-765 is \$1,223,630.

In addition to the filing costs, applicants for parole may face other costs associated with their entrepreneurial activities. These could include the administrative costs of starting up a business, applying for grants, obtaining various types of licenses and permits, and pursuing qualified investments. However, these costs apply to the entrepreneurial activity and the business activity that the applicant has chosen to be involved in and are not driven by the parole process or other governmental functions attributable to the rule itself. Hence, DHS does not attempt to estimate, quantify, or monetize such costs.

Lastly, DHS recognizes that some individuals who were lawfully admitted in the United States in certain nonimmigrant classifications may seek parole. They would thus apply for parole and, if approved, exit the United States and request to be paroled into the United States at a port of entry, as parole will not involve any direct change from other nonimmigrant status. Such applicants would bear the travel costs of exit and returning to a port of entry. However, because there are no similar programs for comparison, DHS cannot determine the demand for parole or substitution effects from other classifications and thus cannot estimate, quantify, or monetize such potential travel costs. Finally, because the program allows for re-parole under conditions that DHS has set, entrepreneurs and their spouse and children, if applicable, would likely face filing and opportunity costs associated with applying for re-parole. However, DHS has no means of estimating the share of the potential eligible population that would seek and be eligible for re-parole, hence re-parole conditions are not included in this analysis. In summary, DHS believes that it is possible that there could be some substitution into the proposed parole program from other programs and such applicants and dependents would incur travel and possible other costs related to exit and re-entry.

### C. Potential for Negative U.S. Labor Market Impacts

DHS does not expect the rule to generate significant costs or negative consequences. Extensive review of information relevant to immigrant entrepreneurship indicates that while much about the impact of such entrepreneurship is not known, there is no reason to expect that substantial negative consequences, including adverse impact on domestic workers,

are likely. The possibility that immigrant entrepreneurs may displace (“crowd-out”) native entrepreneurs has been raised by a few researchers. One study indicated that a very small number of native entrepreneurs were possibly displaced by immigrant entrepreneurs.<sup>105</sup> However, because of difficulties in controlling for a large amount of variables related to entrepreneurship, other researchers have noted that this finding only raises the possibility that displacement could not be ruled out completely, but did not actually provide irrefutable evidence that it had occurred.<sup>106</sup> Another study, conducted by the Brookings Institution, did not find displacement but acknowledged that more research and refined control techniques, along with longitudinal data, would need to be studied before ruling out the possibility completely.<sup>107</sup> In any event, the purpose of the proposed parole rule is to foster innovation and entrepreneurial activities in new or very young endeavors, where the literature much more decisively indicates a strong potential of creating new net jobs for U.S. workers, offsetting any potential negative impacts for this group.

DHS recognizes that the potential inclusion of spouses can incur labor market implications and possibly impact U.S. workers. As was noted in previous sections of the regulatory impact analysis, DHS did not attempt to assess or measure the labor market impact of the estimated entrepreneurs potentially eligible for parole because as founders of firms, these persons would not affect the labor market in the same way as other workers. Although spouses could have labor market impacts as new labor market entrants, DHS believes such potential impacts will be negligible. The main reason is that the size of the potential new cohort is very small. As of the end of 2015, there were an estimated 157,130,000 people in the U.S. civilian labor force.<sup>108</sup>

<sup>105</sup> Fairlie, R. W., and B. D. Meyer. “The effect of immigration on native self-employment.” *Journal of Labor Economics* 21:3 (2003): 619–650, available at: <http://people.ucsc.edu/~rfairlie/papers/published/jole%202003%20-%20native%20se.pdf>.

<sup>106</sup> See Magnus Lofstrom, “Immigrants and Entrepreneurship,” Public Policy Institute of California, USA, and IZA, Germany (2014), p. 4, available at: <http://wol.iza.org/articles/immigrants-and-entrepreneurship.pdf>.

<sup>107</sup> See Zoltan J. Acs and David M. Hart, “Immigration and High-Impact, High-Tech Entrepreneurship,” *Brookings*, Issues in Technological Innovation (February 2011), available at <http://www.brookings.edu/research/papers/2011/02/immigration-hart-accs>.

<sup>108</sup> See News Release, United States Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment—2015 Annual Averages, Table 1

Consequently, the estimated “new” available workers in the first year would represent approximately 0.001 percent of the overall U.S. civilian labor force.<sup>109</sup> DHS believes this fraction is too small to have a significant impact on the labor market.

While the figures above apply to the general U.S. labor force, DHS recognizes that concentration of new labor force entrants can impact specific labor markets. DHS believes that any such potential impacts linked to this rule will be insignificant. The NVCA and other sources of information that DHS reviewed indicates that while the area of California known as Silicon Valley has traditionally been, and continues to be, the primary recipient geographically for technology startup capital, other large urban centers on the East Coast and, even more recently, parts of the Mid- and Mountain West have seen increased technology startup activity. To provide just one example of a potential area-specific impact, DHS considered the San Jose-San Francisco-Oakland (CA) Combined Statistical Area (CSA) conjoining the seven Metropolitan Statistical Areas (MSAs) and nine encompassed counties constituting the economic linkages of Silicon Valley. Based on data from the BLS, the population of this CSA is about 8.6 million (as of May 2014) and the employed population (a narrower measure of the labor market than the labor force) about 3.75 million. If the share of new entrants is based on the proportion of venture capital to the area, which is 42 percent, then 2,746 spousal entrants could impact the area.<sup>110</sup> Assuming such entrants gain employment, this cohort represents just 0.02 percent of the employed population of the specific CSA.

“Employment status of the civilian non-institutional population 16 years of age and over by region, division, and state, 2014–15 annual averages” (Mar. 24, 2016), available at <http://www.bls.gov/news.release/pdf/srgune.pdf>.

<sup>109</sup> Source: United States Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistic. Figure applies to seasonally adjusted level for December 2014, available at: <http://data.bls.gov/timeseries/LNS11000000>. Calculation for new worker labor force share: 1813/157,130,000.

<sup>110</sup> The employment figures are provided by the BLS, Occupational Employment Statistics (OES), found at: <http://www.bls.gov/oes/current/oes42100.htm>. The population data is provided by the Census Bureau, which tabulates CSAs: “Combined Statistical Area Totals Dataset: Population and Estimated Components of Change: April 1, 2010 to July 1, 2014” (CSV), 2014 Population Estimates. United States Census Bureau, Population Division. March 2015. The information on the venture capital share for the region is found in the NVCA 2015 yearbook, and is found in figure 8, p. 14. The calculation is as follows:  $(.42 \times 1813) = 761$ , which is then divided by the CSA population of 3,750,000.

#### D. Government Costs

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing services, including administrative costs and services provided without charge to certain applicants and petitioners. See INA section 286(m), 8 U.S.C. 1356(m). DHS has established the fee for the adjudication of proposed Form I–941 based on notional application filing volumes and estimated resource commitments. During the biennial fee review, DHS will examine whether the fee is sufficient to recover the full costs of adjudication, as required by the INA.

#### 5. Benefits

As referenced previously, evidence suggests that innovation-focused startups contribute disproportionately to job creation. The proposed rule would reduce entry barriers, and thus support efforts by foreign entrepreneurs to generate entrepreneurial activity in the United States.

The proposed rule is expected to generate important net benefits to the United States economy. For one, expenditures on research and development by the estimated annual grant-based researchers that DHS has identified that could qualify for entrepreneur parole would generate direct and indirect jobs. In addition, this research-focused spending could potentially generate patents, intellectual property, licensing, and other intangible assets that can be expected to contribute to innovation and technological advances and spill over into other sectors of the overall economy. DHS acknowledges that it is extremely difficult to gauge the actual economic value of such assets and that peer-reviewed research in this area is still nascent. Despite the nascent stage of the research and the difficulty of measuring quantitatively the benefit of innovation driven by new high technology firms, various research indicates that the innovation driven by entrepreneurs contributes directly to economic growth, generates important efficiencies and cost reductions for firms that utilize such innovation, and increases productivities and profitability for firms that benefit indirectly through new products generated by such innovation.

Lastly, DHS believes that a subset of the start-up firms formed by foreign entrepreneurs during the proposed parole period could eventually become high-growth firms that generate high levels of profitability and contribute disproportionately to job creation in the United States.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000. Individuals are not defined as a “small entity” by the RFA.

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act and certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would provide guidance on the use of parole for entrepreneurs who seek it on a voluntary basis. The proposed rule would not mandate that all individuals apply for parole. This proposed rule provides flexibilities and options that do not currently exist for individuals who wish to establish or operate a start-up business in the United States. Importantly, the proposed rule does not require any individuals or businesses, including those created by foreign nationals, to seek parole—either generally or as a specific condition for establishing or operating a business in the United States. Rather, as mentioned previously, this proposed rule is intended to provide an additional flexibility for foreign individuals who are unable to obtain another appropriate nonimmigrant or immigrant classification, in order to facilitate the applicant’s ability to oversee and grow the start-up entity. If any individual believes this rule imposes a significant economic impact, that individual could simply choose to not avail themselves to the requirements of the rule and would then incur no economic impact. As discussed previously, this rule imposes direct filing costs of \$1,285 (which includes the \$1,200 application fee and the \$85 biometrics fee), plus \$194 in time-related opportunity costs for those individuals who do choose to apply for entrepreneur parole. This cost is relatively minor when considering the costs of starting up a new business and the capital necessary to start a business.

Under the general term “entrepreneur,” DHS includes those who desire to form firms with

investment funds from certain U.S. investors. For purposes of the RFA, the regulatory requirements place compliance costs and establish eligibility criteria for the individual requesting consideration for parole under this proposal. DHS believes that the costs of application for parole would burden the individual applicant, and not the entrepreneurial venture (firm). This proposed rule would not alter or change the normal procedure for fundraising or other start-up administrative costs that occur in forming a business entity. Such costs are not direct costs of this rule and could include, but are not limited to, business application fees, legal fees, and licensing that precede significant infusions of investment, the latter of which are primarily utilized for operational and capital expenses in order to produce goods or services.

It is possible that some of the 2,940 estimated entrepreneurs who could be eligible for parole annually could involve business structures in which the filing fees are paid by a business entity. In the event that small business entities are impacted by this proposed rule because they choose to pay the filing fees on behalf of an individual entrepreneur, DHS believes that the filing cost of \$1,285 per application would be insignificant compared to such entities’ annual gross revenues, potential for revenue, and other economic activity. DHS welcomes public comment on the numbers of small business entities that may be impacted by this rule, the likely compliance costs for these entities, and any potential alternatives that may minimize these compliance costs.

For businesses that may pay the filing costs, the expected impact to such businesses would be small. For businesses that utilize either the minimum threshold of \$100,000 from a Federal grant or \$345,000 in capital investment to source the filing costs, such costs would constitute 1.3 percent and 0.4 percent, respectively, of the total capital amount. These relatively low cost proportions apply to those firms that only obtain the minimum investment amounts. In addition, DHS analyzed the cost impact relative to more typical RFA indices. DHS analysis of Census Bureau data on the smallest firms found that the average revenue based on sales receipts for firms with no paid employees is \$309,000, while the average for firms with one to four paid employees is \$411,000.<sup>111</sup> The filing

<sup>111</sup> The data utilized for the analysis are found in the SBO Table SB1200CSA09, “Statistics for All U.S. Firms With Paid Employees by Industry,

cost relative to these averages is 0.42 percent and 0.31 percent, respectively.

DHS also analyzed the average revenue for new firms. Since the proposed rule defines a new firm as one that is less than three years old, DHS grouped private sector firms for the 2012 survey as those responding that the year of establishment was either 2012, 2011, or 2010. DHS obtained the average revenue per firm and then weighted the average by the yearly proportion of firms. Based on the resulting weighted average of \$162,000, such new firms would face a filing-cost burden of 0.8 percent.<sup>112</sup> DHS notes that there is a large difference between the revenue of new firms with paid employees and those without such employees (*i.e.*, sole proprietors). For the latter, average revenues are about \$34,000, and the cost burden would be 3.8 percent. However, because a central component of this parole program requires a demonstration of significant public benefit in the form of economic activity and job growth, DHS does not anticipate that sole proprietors would be eligible to participate in this program.

In summary, DHS believes that per-applicant costs would be primarily incurred by the individual (which is not covered by the RFA), any direct cost due to this rule would be relatively minor, and these costs would only be borne by those who voluntarily choose to apply for parole under this rule. While the applicant for parole may be the owner of a firm that could be considered small within the definition of small entities established by 5 U.S.C. 601(6), DHS considers the applicants to be individuals at the point in time they are applying for parole, particularly since it is the individual and not the entity that files the application and it is the individual whose parole must serve a significant public benefit under this proposed rule. Furthermore, even if firms do voluntarily decide to incur the compliance costs on behalf of the

Gender, and Employment Size of Firm for the U.S. and States: 2012, 2012 Survey of Business Owners: <http://census.gov/library/publications/2012/econ/2012-sbo.html>. The file location is: [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO\\_2012\\_00CSA09&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSA09&prodType=table). The figures are rounded from \$309,279 and \$410,900, respectively.

<sup>112</sup> The data utilized for the analysis are found in the SBO Table SB1200CSB11, “Statistics for All U.S. Firms by Year the Business Was Originally Established or Self-Employment Activity Begun by Industry, Gender, Ethnicity, Race, and Veteran Status for the U.S.: 2012: 2012 Survey of Business Owners: <http://census.gov/library/publications/2012/econ/2012-sbo.html>. The file location is: [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO\\_2012\\_00CSB11&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSB11&prodType=table). The average revenue figure is rounded from \$162,293.

individual requesting consideration for parole under the proposed criteria, the only compliance costs those businesses would be permitted to incur would be the filing costs for the applications. As indicated previously, based on the comparison metric used, those costs are expected to be insignificant.

Based on the evidence presented in this RFA section and throughout this preamble, DHS certifies that this rule would not have a significant economic impact on a substantial number of small entities.

#### *E. Executive Order 13132*

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *F. Executive Order 12988*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *G. Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. See Public Law 104–13, 109 Stat. 163 (May 22, 1995).

This proposed rule requires that an applicant requesting entrepreneur parole complete an Application for Entrepreneur Parole, Form I–941, and is considered a new information collection that is covered under the PRA. To allow spouses and dependent children of the entrepreneur to remain united as a family, DHS will need to revise the Application for Travel Document, Form I–131, for these dependent family members to request parole.

This proposed rule also requires a revision to Employment Eligibility Verification, Form I–9, which has been previously approved for use by OMB under the PRA. The OMB Control Number for this information collection is 1615–0047. In accordance with new 8 CFR 274a.2(b)(1)(v)(A)(5) DHS is revising the Employment Eligibility Verification, Form I–9, Lists of Acceptable Documents, List A item 5 to replace “nonimmigrant alien” with “individual,” to replace “alien’s

nonimmigrant” with “individual,” and to add “or parole” after “status” in List A item 5.b.(2) allowing an endorsement by DHS indicating such employment-authorized status or parole, as long as the period of endorsement has not yet expired and the employment is not in conflict with the individual’s employment-authorized status or parole.

Lastly, this proposed rule will require minor revisions to the Application for Employment Authorization, Form I–765, to reflect proposed changes that allow spouses of an entrepreneur parolee to request employment authorization.

DHS has submitted these information collection requests to OMB for review and approval under the PRA. Accordingly, DHS is requesting comments on these impacted information collections. See the **ADDRESSES** section above for instructions on how to submit comments to DHS and OMB on the information collection provisions of this rulemaking. Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. When submitting comments on these information collections, your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

#### **Overview of Information Collection, Application for Entrepreneur Parole, Form I–941**

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection will be used by individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and proposed new 8 CFR 212.19. Such individuals are subject to

biometric collection in connection with the filing of the application.

c. *Title of Form/Collection:* Application for Entrepreneur Parole, Form I–941.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–941, U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Applicants requesting entrepreneur parole; Businesses and/or other non-profit entities.

f. *An estimate of the total annual numbers of respondents:* 2,940.

g. *Hours per response:* The estimated hour per response for Form I–941 is 1.33 hours. The estimated hour burden per response for the biometric processing is 1.17 hours.

h. *Total Annual Reporting Burden:* The total estimated annual hour burden associated with this collection is 3,910 hours for the Form I–941 and 3,440 hours for the biometric processing, for a total of 7,350 hours.

#### **Overview of Information Collection, Application for Travel Document Form I–131, OMB Control No. 1615–0013**

a. *Type of information collection:* Revised information collection.

b. *Abstract:* This collection will be used by dependents of individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and proposed new 8 CFR 212.19. Such individuals are subject to biometric collection in connection with the filing of the application.

c. *Title of Form/Collection:* Application for Travel Document Form I–131.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Application for Travel Document Form I–131, U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Dependents of applicants requesting entrepreneur parole.

f. *An estimate of the total annual numbers of respondents:* 594,324; 3,234 additional respondents as a result of this rule.

g. *Hours per response:* The estimated hour per response for Form I–131 Supplement is 1.90 hours. The estimated hour burden per response for the biometric processing is 1.17 hours.

h. *Total Annual Reporting Burden:* 1,372,928; the total estimated additional

annual hour burden associated with this collection is 143,942 hours.

**Overview of Information Collection, Employment Eligibility Verification, Form I-9, OMB Control No. 1615-0047**

a. *Type of information collection:* Revised information collection.

b. *Abstract:* This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

c. *Title of Form/Collection:* Employment Eligibility Verification.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-9, U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Employers, employees, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies.

f. *An estimate of the total annual numbers of respondents:* 78 million employers and 78 million individuals (The total number of responses will be only 78 million responses. Each response involves an employer and an individual who is being hired).

g. *Hours per response:*

- Time Burden for Employees—20 minutes (.33 hours) total;
- Time Burden for Employers—10 minutes (.17 hours) total;
- Time Burden for Recordkeeping—5 minutes (.08 hours) total.

h. *Total Annual Reporting Burden:* Approximately 40,600,000 total annual burden hours.

**Overview of Information Collection, Application for Employment Authorization, Form I-765, OMB Control No. 1615-0040**

a. *Type of information collection:* Revised information collection.

b. *Abstract:* This collection will be used by individuals who file an application for entrepreneur parole under INA section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) and proposed new 8 CFR 212.19. Such individuals are subject to biometric collection in connection with the filing of the application.

This form was developed for individual aliens to request employment

authorization and evidence of that employment authorization. The form is being amended to add a new class of aliens eligible to apply for employment authorization: a spouse of an entrepreneur parolee described as eligible for employment authorization under this rule. Supporting documentation demonstrating eligibility must be filed with the application. The form lists examples of relevant documentation.

c. *Title of Form/Collection:*

Application for Employment Authorization, Form I-765.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-765, U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Spouses of applicants requesting entrepreneur parole.

f. *An estimate of the total annual numbers of respondents:* 1,984,456; 2,940 additional respondents (assuming a 1:1 ratio based on the total estimate of principal applicants for entrepreneur parole).

g. *Hours per response:* The estimated hour per response for Form I-765 is 3.42 hours. The estimated hour burden per response for the biometric processing is 1.17 hours.

h. *Total Annual Reporting Burden:* 8,196,568; the total estimated additional annual hour burden associated with this collection is 11,525 hours.

**List of Subjects**

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements.

*8 CFR Part 212*

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS is proposing to amend chapter I of title 8 of the Code of Federal Regulations as follows:

**PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS**

■ 1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b; 31 U.S.C. 9701; Pub. L. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7 is amended by adding paragraph (b)(1)(i)(FFF) to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(FFF) *Application for Entrepreneur Parole (Form I-941).* For filing an application for parole for entrepreneurs: \$1,200.

**PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

■ 3. The authority citation for part 212 is amended to read as follows:

**Authority:** 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108-458), 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 CFR part 2.

Section 212.1(q) also issued under section 702, Public Law 110-229, 122 Stat. 754, 854.

■ 4. Add § 212.19 to read as follows:

**§ 212.19 Parole for entrepreneurs.**

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Entrepreneur* means an alien who possesses a substantial ownership interest in a start-up entity and has a central and active role in the operations of that entity, such that the alien is well-positioned, due to his or her knowledge, skills, or experience, to substantially assist the entity with the growth and success of its business. For purposes of this section, an alien may be considered to possess a substantial ownership interest if he or she possesses at least a 15 percent ownership interest in the start-up entity at the time of adjudication of the initial grant of parole and maintains at least a 10 percent ownership interest in the start-up entity at all times during the period of parole and any subsequent period of re-parole.

(2) *Start-up entity* means a U.S. business entity that was recently formed, has lawfully done business during any period of operation since its date of formation, and has substantial potential for rapid growth and job



creation. An entity that is the basis for a request for parole under this section may be considered recently formed if it was created within the 3 years immediately preceding the filing date of the alien's initial parole request. For purposes of paragraphs (a)(3) and (a)(5) of this section, an entity may be considered recently formed if it was created within the 3 years immediately preceding the receipt of the relevant grant(s), award(s), or investment(s).

(3) *Qualified government award or grant* means an award or grant for economic development, research and development, or job creation (or other similar monetary award typically given to start-up entities) made by a federal, state, or local government entity that regularly provides such awards or grants to start-up entities. This definition excludes any contractual commitment for goods or services.

(4) *Qualified investment* means an investment made in good faith, and that is not an attempt to circumvent any limitations imposed on investments under this section, of lawfully derived capital in a start-up entity that is a purchase from such entity of equity or convertible debt issued by such entity. Such an investment shall not include an investment, directly or indirectly, from the entrepreneur; the parents, spouse, brother, sister, son, or daughter of such entrepreneur; or any corporation, limited liability company, partnership, or other entity in which such entrepreneur or the parents, spouse, brother, sister, son, or daughter of such entrepreneur directly or indirectly has any ownership interest.

(5) *Qualified investor* means an individual who is a U.S. citizen or lawful permanent resident of the United States, or an organization that is located in the United States and operates through a legal entity organized under the laws of the United States or any state, that is majority owned and controlled, directly and indirectly, by U.S. citizens or lawful permanent residents of the United States, provided such individual or organization regularly makes substantial investments in start-up entities that subsequently exhibit substantial growth in terms of revenue generation or job creation. The term "qualified investor" shall not include an individual or organization that has been permanently or temporarily enjoined from participating in the offer or sale of a security or in the provision of services as an investment adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent or credit rating agency, barred from association with

any entity involved in the offer or sale of securities or provision of such services, or otherwise found to have participated in the offer or sale of securities or provision of such services in violation of law. For purposes of this section, such an individual or organization may be considered a qualified investor if, during the preceding 5 years:

(i) The individual or organization made investments in start-up entities in exchange for equity or convertible debt in at least 3 separate calendar years comprising a total in such 5-year period of no less than \$1,000,000; and

(ii) Subsequent to such investment by such individual or organization, at least 2 such entities each created at least 5 qualified jobs or generated at least \$500,000 in revenue with average annualized revenue growth of at least 20 percent.

(6) *Qualified job* means full-time employment located in the United States that has been filled for at least 1 year by one or more qualifying employees.

(7) *Qualifying employee* means a U.S. citizen, a lawful permanent resident, or other immigrant lawfully authorized to be employed in the United States, who is not an entrepreneur of the relevant start-up entity or the parent, spouse, brother, sister, son, or daughter of such an entrepreneur. This definition shall not include independent contractors.

(8) *Full-time employment* means paid employment in a position that requires a minimum of 35 working hours per week. This definition does not include combinations of part-time positions even if, when combined, such positions meet the hourly requirement per week.

(9) *U.S. business entity* means any corporation, limited liability company, partnership, or other entity that is organized under federal law or the laws of any state, and that conducts business in the United States, that is not an investment vehicle primarily engaged in the offer, purchase, sale or trading of securities, futures contracts, derivatives or similar instruments.

(10) *Material change* means any change in facts that could reasonably affect the outcome of the determination whether the entrepreneur provides, or continues to provide, a significant public benefit to the United States. Such changes include, but are not limited to, the following: Any criminal charge, conviction, plea of no contest, or other judicial determination in a criminal case concerning the entrepreneur or start-up entity; any complaint, settlement, judgment, or other judicial or administrative determination concerning the entrepreneur or start-up

entity in a legal or administrative proceeding brought by a government entity; any settlement, judgment, or other legal determination concerning the entrepreneur or start-up entity in a legal proceeding brought by a private individual or organization other than proceedings primarily involving claims for damages not exceeding 10 percent of the current assets of the entrepreneur or start-up entity; a sale or other disposition of all or substantially all of the start-up entity's assets; the liquidation, dissolution or cessation of operations of the start-up entity; the voluntary or involuntary filing of a bankruptcy petition by or against the start-up entity; and any significant change to the entrepreneur's role in or ownership and control in the start-up entity or any other significant change with respect to ownership and control of the start-up entity.

(b) *Initial parole*—(1) *Filing of initial parole request form*. An alien seeking an initial grant of parole as an entrepreneur of a start-up entity must file an Application for Entrepreneur Parole (Form I-941, or successor form) with USCIS, with the required fees (including biometric services fees), and supporting documentary evidence in accordance with this section and the form instructions, demonstrating eligibility as provided in paragraph (b)(2) of this section.

(2) *Criteria for consideration*. (i) *In general*. An alien may be considered for parole under this section if the alien demonstrates that a grant of parole will provide a significant public benefit to the United States based on his or her role as an entrepreneur of a start-up entity.

(ii) *General criteria*. An alien may meet the standard described in paragraph (b)(2)(i) of this section by providing a detailed description, along with supporting evidence:

(A) Demonstrating that the alien is an entrepreneur as defined in paragraph (a)(1) of this section and that his or her entity is a start-up entity as defined in paragraph (a)(2) of this section; and

(B) Establishing that the alien's entity has:

(1) Received, within 365 days immediately preceding the filing of an application for initial parole, a qualified investment amount of at least \$345,000 from one or more qualified investors; or

(2) Received, within 365 days immediately preceding the filing of an application for initial parole, an amount of at least \$100,000 through one or more qualified government awards or grants.

(iii) *Alternative criteria*. An alien who satisfies the criteria in paragraph (b)(2)(ii)(A) of this section and partially

meets one or both of the criteria in paragraph (b)(2)(ii)(B) of this section may alternatively meet the standard described in paragraph (b)(2)(i) of this section by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.

(c) *Additional periods of parole*—(1) *Filing of re-parole request form.* Prior to the expiration of the initial period of parole, an entrepreneur parolee may request an additional period of parole based on the same start-up entity that formed the basis for his or her initial period of parole granted under this section. To request such parole, an entrepreneur parolee must timely file the Application for Entrepreneur Parole (Form I-941, or successor form) with USCIS, with the required fees (including biometric services fees), and supporting documentation in accordance with the form instructions, demonstrating eligibility as provided in paragraph (c)(2) of this section.

(2) *Criteria for consideration*—(i) *In general.* An alien may be considered for re-parole under this section if the alien demonstrates that a grant of parole will continue to provide a significant public benefit to the United States based on his or her role as an entrepreneur of a start-up entity.

(ii) *General criteria.* An alien may meet the standard described in paragraph (c)(2)(i) by providing a detailed description, along with supporting evidence:

(A) Demonstrating that the alien continues to be an entrepreneur as defined in paragraph (a)(1) of this section and that his or her entity continues to be a start-up entity as defined in paragraph (a)(2) of this section; and

(B) Establishing that the alien's entity has:

(1) Received at least \$500,000 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;

(2) Created at least 10 qualified jobs with the start-up entity during the initial parole period; or

(3) Reached at least \$500,000 in annual revenue and averaged 20 percent in annual revenue growth during the initial parole period.

(iii) *Alternative criteria.* An alien who satisfies the criteria in paragraph (c)(2)(ii)(A) of this section and partially meets one or more of the criteria in paragraph (c)(2)(ii)(B) may alternatively meet the standard described in paragraph (c)(2)(i) of this section by providing other reliable and compelling evidence of the start-up entity's

substantial potential for rapid growth and job creation.

(d) *Discretionary authority; decision; appeals and motions to reopen.*

(1) *Discretionary authority.* DHS may grant parole under this section in its sole discretion on a case-by-case basis if the Department determines, based on the totality of the evidence, that an applicant's presence in the United States will provide a significant public benefit and that he or she otherwise merits a favorable exercise of discretion. In determining whether an alien's presence in the United States will provide a significant public benefit and whether the alien warrants a favorable exercise of discretion, USCIS will consider and weigh all evidence, including any derogatory evidence or information, such as but not limited to, evidence of criminal activity or national security concerns.

(2) *Initial parole.* DHS may grant an initial period of parole based on the start-up entity listed in the request for parole for a period of up to 2 years from the date the request is approved by USCIS. Approval by USCIS of such a request must be obtained before the alien may appear at a port of entry to be granted parole, in lieu of admission.

(3) *Re-parole.* DHS may re-parole an entrepreneur for one additional period of up to 3 years from the date of the expiration of the initial parole period. If the entrepreneur is in the United States at the time that USCIS approves the request for re-parole, such approval shall be considered a grant of re-parole. If the alien is outside the United States at the time that USCIS approves the request for re-parole, the alien must appear at a port of entry to be granted parole, in lieu of admission.

(4) *Appeals and motions to reopen.* There is no appeal from a denial of parole under this section. USCIS will not consider a motion to reopen or reconsider a denial of parole under this section. On its own motion, USCIS may reopen or reconsider a decision to deny the Application for Entrepreneur Parole (Form I-941, or successor form), in accordance with 8 CFR 103.5(a)(5).

(e) *Payment of biometric services fee and collection of biometric information.* An alien seeking parole or re-parole under this section will be required to pay the biometric services fee as prescribed by 8 CFR 103.7(b)(1)(i)(C). An alien seeking an initial grant of parole will be required to submit biometric information. An alien seeking re-parole may be required to submit biometric information.

(f) *Limitations.* No more than three entrepreneurs may be granted parole under this section based on the same

start-up entity. An alien shall not receive more than one initial grant of entrepreneur parole or more than one additional grant of entrepreneur re-parole based on the same start-up entity, for a maximum period of parole of five years.

(g) *Employment authorization.* An entrepreneur who is paroled into the United States pursuant to this section is authorized for employment with the start-up entity incident to the conditions of his or her parole.

(h) *Spouse and children.* (1) The entrepreneur's spouse and children who are seeking parole as derivatives of such entrepreneur must individually file an Application for Travel Document (Form I-131). Such application must also include evidence that the derivative has a qualifying relationship to the entrepreneur and otherwise merits a grant of parole in the exercise of discretion. A biometric services fee is required to be filed with the application. Such spouse or child will be required to appear for collection of biometrics in accordance with the form instructions or upon request.

(2) The spouse and children of an entrepreneur granted parole under this section may be granted parole under this section for no longer than the period of parole granted to such entrepreneur.

(3) The spouse of the entrepreneur parolee, after being paroled into the United States, may be eligible for employment authorization on the basis of parole under this section. To request employment authorization, an eligible spouse paroled into the United States must file an Application for Employment Authorization (Form I-765, or successor form), in accordance with 8 CFR 274a.13 and form instructions. An Application for Employment Authorization must be accompanied by documentary evidence establishing eligibility, including evidence of the spousal relationship.

(4) Notwithstanding 8 CFR 274a.12(c)(11), a child of the entrepreneur parolee may not be authorized for and may not accept employment on the basis of parole under this section.

(i) *Conditions on parole.* As a condition of parole under this section, a parolee must maintain household income that is greater than 400 percent of the federal poverty line for his or her household size as defined by the Department of Health and Human Services. USCIS may impose other such reasonable conditions in its sole discretion with respect to any alien approved for parole under this section, and it may request verification of the

parolee's compliance with any such condition at any time. Violation of any condition of parole may lead to termination of the parole in accordance with paragraph (k) of this section or denial of re-parole.

(j) *Reporting of material changes.* An alien granted parole under this section must immediately report any material change(s) to USCIS. If the entrepreneur will continue to be employed by the start-up entity and maintains at least a 10 percent ownership interest in the start-up entity, the entrepreneur must submit a new Application for Entrepreneur Parole (Form I-941, or successor form) with filing fee (not including any biometrics fees) and supporting documentary evidence to notify USCIS of the material change(s). The entrepreneur parolee must immediately notify USCIS in writing if he or she will no longer be employed by the start-up entity or ceases to possess at least a 10 percent ownership stake in the start-up entity.

(k) *Termination of parole*—(1) *In general.* DHS may, in its discretion, terminate parole granted under this section at any time and without prior notice or opportunity to respond if it determines that the alien's continued parole in the United States no longer provides a significant public benefit. Alternatively DHS may, in its discretion, provide the alien notice and an opportunity to respond prior to terminating the alien's parole under this section.

(2) *Automatic termination.* Parole granted under this section will be automatically terminated without notice at the expiration of the time for which parole was authorized, unless the alien timely files a non-frivolous application for re-parole. Parole granted under this section may be automatically terminated when USCIS receives written notice from the entrepreneur parolee that he or she will no longer be employed by the start-up entity or ceases to possess at least a 10 percent ownership stake in the start-up entity in accordance with paragraph (j) of this section. Additionally, parole of the spouse or child of the entrepreneur will be automatically terminated without notice if the parole of the entrepreneur has been terminated. If parole is terminated, any employment authorization based on that parole is automatically revoked.

(3) *Termination on notice.* USCIS may terminate on notice or provide the entrepreneur or his or her spouse or children, as applicable, written notice of its intent to terminate parole if USCIS believes that:

(i) The facts or information contained in the request for parole were not true and accurate;

(ii) The alien failed to timely file or otherwise comply with the material change reporting requirements in this section;

(iii) The entrepreneur parolee is no longer employed in a central and active role by the start-up entity or ceases to possess at least a 10 percent ownership stake in the start-up entity;

(iv) The alien otherwise violated the terms and conditions of parole; or

(v) Parole was erroneously granted.

(4) *Notice and decision.* A notice of intent to terminate issued under this paragraph should generally identify the grounds for termination of the parole and provide a period of up to 30 days for the alien's written rebuttal. The alien may submit additional evidence in support of his or her rebuttal, when applicable, and USCIS will consider all relevant evidence presented in deciding whether to terminate the alien's parole. Failure to timely respond to a notice of intent to terminate will result in termination of the parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole (if parole has not already been terminated), unless otherwise specified. Any further immigration and removal actions will be conducted in accordance with the Act and this chapter. The decision to terminate parole may not be appealed. USCIS will not consider a motion to reopen or reconsider a decision to terminate parole under this section. On its own motion, USCIS may reopen or reconsider a decision to terminate.

(l) *Increase of investment and revenue amount requirements.* The investment and revenue amounts in this section will be automatically adjusted every 3 years by the Consumer Price Index and posted on the USCIS Web site at [www.uscis.gov](http://www.uscis.gov). Investment and revenue amounts adjusted under this paragraph will apply to all applications filed on or after the beginning of the fiscal year for which the adjustment is made.

#### PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2.

■ 6 Section 274a.2 is amended by:

■ (a) Revising paragraphs (b)(1)(v)(A)(5) and (b)(1)(v)(C)(2);

■ (b) Removing paragraph (b)(1)(v)(C)(3); and

■ (c) Redesignating paragraphs (b)(1)(v)(C)(4) through (8) as paragraphs (b)(1)(v)(C)(3) through (7).

The revision reads as follows:

#### § 274a.2 Verification of identity and employment authorization.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) \* \* \*

(A) \* \* \*

(5) In the case of an individual who is employment-authorized incident to status or parole with a specific employer, a foreign passport with an Arrival/Departure Record, Form I-94 (as defined in 8 CFR 1.4) or Form I-94A, bearing the same name as the passport and containing an endorsement by DHS indicating such employment-authorized status or parole, as long as the period of endorsement has not yet expired and the employment is not in conflict with the individual's employment-authorized status or parole.

\* \* \* \* \*

(C) \* \* \*

(2) Certification or report of birth issued by the Department of State, including Forms FS-545, DS-1350, FS-240, or successor forms;

\* \* \* \* \*

■ 7. Section 274a.12 is amended by:

■ a. Revising paragraph (b) introductory text,

■ b. Adding and reserving new paragraphs (b)(25) through (36);

■ c. Adding a new paragraph (b)(37);

■ d. Revising paragraph (c)(11);

■ e. Adding and reserving new paragraphs (c)(27) through (33);

■ f. Adding a new paragraph (c)(34).

The revisions and additions read as follows:

#### § 274a.12 Classes of aliens authorized to accept employment.

\* \* \* \* \*

(b) *Aliens authorized for employment with a specific employer incident to status or parole.* The following classes of aliens are authorized to be employed in the United States by the specific employer and subject to any restrictions described in the section(s) of this chapter indicated as a condition of their parole, or admission in, or subsequent change to, such classification. An alien in one of these classes is not issued an employment authorization document by DHS:

\* \* \* \* \*

(25)–(36) [Reserved] (37) An alien paroled into the United States as an entrepreneur pursuant to 8 CFR 212.19 for the period of authorized parole. An entrepreneur who has timely filed a non-frivolous application requesting re-

parole with respect to the same start-up entity in accordance with 8 CFR 212.19 prior to the expiration of his or her parole, but whose authorized parole period expires during the pendency of such application, is authorized to continue employment with the same start-up entity for a period not to exceed 240 days beginning on the date of expiration of parole. Such authorization shall be subject to any conditions and limitations on such expired parole. If DHS adjudicates the application prior to the expiration of this 240-day period

and denies the application for re-parole, the employment authorization under this paragraph shall automatically terminate upon notification to the alien of the denial decision.

\* \* \* \* \*

(c) \* \* \*

(11) Except as provided in § 274a.12(b)(37) and (c)(34) and § 212.19(h)(4) of this chapter, an alien paroled into the United States temporarily for urgent humanitarian

reasons or significant public benefit pursuant to section 212(d)(5) of the Act.

\* \* \* \* \*

(27)–(33) [Reserved]

(34) A spouse of an entrepreneur parolee described as eligible for employment authorization in § 212.19(h)(3) of this chapter.

\* \* \* \* \*

**Jeh Charles Johnson,**

*Secretary of Homeland Security.*

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