

**AMERICA'S TRADITION OF REWARDING TALENT:
THE CASE FOR AN IMMIGRANT ENTREPRENEUR VISA**

BY STUART ANDERSON

EXECUTIVE SUMMARY

Startup businesses are the lifeblood of the U.S. economy, introducing new ideas and innovations, and bringing competition that can improve productivity, aid consumers and provide new opportunities for both investors and workers. However, U.S. immigration policy does not look kindly on foreign nationals who seek to create businesses in America. In fact, in a practical sense, it may be easier to stay in the United States illegally and start a business than to start a business and gain legal temporary status and permanent residence (green card) as the owner of that business.

Current policy is unfortunate, since American history is fueled by the story of entrepreneurs. "The history of the United States lies in entrepreneurial ambition," notes the Babson Entrepreneur Experience Lab. Individual entrepreneurs have influenced how Americans communicate from the time of the telegraph up to the modern-day advent of mobile phones. In addition to developing new technology, entrepreneurs have helped introduce new methods of operating businesses that later became common practice.

Today, it is possible to gain a green card by investing \$500,000 or more in an existing project but it is difficult to obtain even a temporary visa, never mind permanent residence, by starting a business that will employ U.S. workers. Simply put, current U.S. immigration law does not conform to the reality of how most businesses begin in America. The average entrepreneur starts his or her company with only about \$31,000, according to the Kauffman Foundation.

A number of bills have been introduced that would establish entrepreneur visas. To the extent those or other legislative measures place less emphasis on the amount of capital a foreign national invests and more on the talent the new business owner brings it would fit within the best traditions of American history and entrepreneurship. It is less important the exact formulation Congress decides upon for creating an immigrant entrepreneur visa than that policymakers move forward on the concept itself. The status quo of rewarding cash but not talent is a rejection of America's heritage as a nation of immigrants and a nation of entrepreneurs.

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NO VISA FOR IMMIGRANT ENTREPRENEURS

While in graduate school Alex Mehr and three friends went to see an immigration attorney. The three young men, all international students at the University of Maryland, had placed second in the school's entrepreneur workshop and had already developed a working prototype for their business software. But the young men discovered that U.S. immigration law made it exceedingly difficult for foreign nationals to obtain even a temporary visa to stay and work in America as entrepreneurs. They received straightforward advice from an immigration attorney: "I think you guys should stop doing this and get a job."¹ The students broke up the company and went their separate ways.

By the good fortune of winning the Diversity Visa Lottery, Alex Mehr, born in Iran, was able to obtain a green card to stay in the United States. But it was only many years later that he combined with his friend Shayan Zadeh to create a company that became Zoosk. A romantic social network with approximately 15 million active users each month, Zoosk today employs over 100 people and continues to grow, having attracted \$40 million in venture capital.² Winning the Diversity Visa Lottery is a long shot and the U.S. economy, which needs startup companies, shouldn't have to depend on entrepreneurial immigrants "winning the lottery" to be able to stay in America.

Nothing can be more American than starting a business. And few things would make more sense as economic policy than to encourage entrepreneurship. Startup businesses are the lifeblood of the U.S. economy, introducing new ideas and innovations, and bringing competition that can improve productivity, aid consumers and provide new opportunities for both investors and workers. Establishing a visa for immigrant entrepreneurs represents good policy and would conform to America's historical experience with immigrants and entrepreneurship.

IMMIGRANT ENTREPRENEURS AND AMERICAN HISTORY

American history is fueled by the story of entrepreneurs. "The history of the United States lies in entrepreneurial ambition," notes the Babson Entrepreneur Experience Lab. "The first colonies established in the New World sought to take advantage of new access to raw materials, agricultural lands and trade routes. More importantly, immigration to America offered the chance to escape class and persecution and to create opportunities for oneself; it was seen as the 'land of opportunity.' In particular, economic growth and entrepreneurial opportunities were found in owning land, various mercantile activities and exploration. Although ownership and other rights remained largely controlled by powerful interests in England and Europe, a great variety of enterprising individuals were able to take advantage of newfound freedoms to start new ventures, create new markets and exploit new opportunities in America. Whether as landed farmers, explorers, merchants, ship captains or colonial

¹ See Stuart Anderson, *Immigrant Founders and Top Personnel in the Top 50 Venture-Backed Companies*, National Foundation for American Policy, December 2011.

² *Ibid.*

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administrators, during this period entrepreneurs were generally small-scale, self-sufficient generalists. Individuals and institutions working during this period set the stage the early United States' unprecedented entrepreneurial culture.”³

Individual entrepreneurs have influenced how Americans communicate from the time of the telegraph up to the modern-day advent of mobile phones. In 1844, Samuel Morse won a federal grant to demonstrate the feasibility of the telegraph, though initially it could only transmit about 1,000 feet. When the federal government showed little interest in expanding the capability of the technology, Morse licensed private companies that within 6 years had built a “comprehensive network between major commercial centers.”⁴ By 1860, the price of building one mile of telegraph line had fallen to one-tenth the cost of Morse’s initial demonstration in 1844.⁵ Eventually cables were even built across the Atlantic Ocean, allowing people on separate continents to communicate in a timely fashion. “The results were predictable,” wrote Gerald Gunderson, author of *An Entrepreneurial History of the United States*, “Merchants extended their operations over a much wider areas as the delays and uncertainty of working in distant markets fell. The telegraph took Americans a long way toward creating a national market by eliminating much of the disadvantage of distance.”⁶

In addition to developing new technology, entrepreneurs have helped introduce new methods of operating businesses that later became common practice. Andrew Carnegie, an immigrant from Scotland, is famous for producing steel. “Carnegie’s challenge in 1870 was to develop an organization that improved efficiency as rapidly as possible,” explained Gunderson. “This turned not so much on inventing technology to produce steel, as on building an organization whose instinctive, primary focus was to reduce costs. Some of Carnegie’s innovations are so widely employed today they have become standard topics in management textbooks. One was the development of profit centers.”⁷

THE ROLE OF IMMIGRANT ENTREPRENEURS

Immigrants have made a profound impact on business and the economy, both as a source of labor and as entrepreneurs. Economist Mark J. Perry points out small business creation is essential to economic growth and job creation, so the more small businesses that start the better, regardless of the place of birth of the founder. “The characteristics of entrepreneurs is irrelevant for economic growth and jobs, and it doesn’t matter if more people from Virginia start businesses than people in Maryland or California, or if more people with blue eyes start businesses compared to people with brown eyes,” said Perry. “Those are all just artificial distinctions, like the

³ <http://businessinnovationfactory.com/interactive/era-analysis/era-analysis.html>.

⁴ Gerald Gunderson, *An Entrepreneurial History of the United States* (Washington, DC: Beard Books, 2005 (reprint)), p. 70.

⁵ *Ibid.*, p. 71.

⁶ *Ibid.*, p. 71.

⁷ *Ibid.*, pp. 105-106.

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artificial distinction between Americans and immigrants." He notes, "Small businesses that directly create new jobs also create or support other jobs indirectly from the spending and consumption, investment and savings from the new workers who spend their earnings."⁸

A body of research has emerged that immigrant entrepreneurs contribute substantially to business development in America. The Small Business Administration (SBA) has concluded, "Immigrants are nearly 30 percent more likely to start a business than are nonimmigrants, and they represent 16.7 percent of all new business owners in the United States." The SBA study found, "Immigrant business owners make significant contributions to business income, generating \$67 billion of the \$577 billion in U.S. business income, as estimated from 2000 U.S. Census data. They generate nearly one-quarter of all business income in California – nearly \$20 billion – and nearly one-fifth of business income in New York, Florida, and New Jersey."⁹

Table 1
Immigrant-Founded Companies on the Fortune 500

Company	Immigrant Founder	Country of Origin
AT&T	Alexander Graham Bell	Scotland
Pfizer	Charles Pfizer, Charles, Erhart	Germany
Kraft Foods	James L. Kraft	Canada
Fluor	John Simon Fluor, Sr.	Switzerland
Kohl's	Maxwell Kohl	Poland
Colgate-Palmolive	William Colgate	England
Sun Microsystems	Vinod Khosla, Andy Bechtolsheim	India, Germany
BJ'S Wholesale Club	Max and Morris Feldberg	Russia
eBay	Pierre Omidyar	France
Google	Sergey Brin	Russia

Source: Partnership for a New American Economy; companies had at least one immigrant founder.

"Immigrants were *more than twice as likely* to start businesses each month in 2010 than were the native-born," according to a Ewing Marion Kauffman Foundation study. "Among immigrants, 620 out of 100,000 people started a business each month, compared with 280 out of 100,000 people among the native-born."¹⁰ As a result, "the immigrant share of new entrepreneurs is 29.5 percent, which is up from 13.4 percent in 1996."¹¹

⁸ Interview with Mark J. Perry.

⁹ Robert W. Fairlie, *Estimating the Contribution of Immigrant Business Owners to the U.S. Economy*, Small Business Administration, Office of Advocacy, November 2008, Executive Summary.

¹⁰ Robert W. Fairlie, *Kauffman Index of Entrepreneurial Activity, 1996-2010*, p. 9. Emphasis added.

¹¹ *Ibid.*, p. 10.

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Immigrants and their children have played a key role in starting important companies in the United States. A study from the Partnership for a New American Economy concluded more than 40 percent of companies currently listed on the Fortune 500 were founded by either immigrants or their children.¹² Table 1 and Table 2 list some of the more than 200 companies in the Fortune 500 started by immigrants or their children. The list includes Alexander Graham Bell, an immigrant from Scotland, the inventor of the telephone credited with founding AT&T, and Thomas Edison, a son of immigrants, who invented the light bulb and started General Electric.

Table 2
Fortune 500 Companies Started by the Children of Immigrants

Company	Founder with Immigrant Parent(s)	Country of Origin
General Electric	Thomas Edison	Canada
Ford Motor	Henry Ford	Ireland
IBM	Herman Hollerith	Germany
Boeing	William E. Boeing	Germany
Home Depot	Bernie Marcus	Russia
United Parcel Service	James Casey	Ireland
Apple	Steve Jobs	Syria
CBS	William S. Paley	Ukraine
Office Depot	Jack Kopkin	Russia
Harley-Davidson	William S. Harley	England

Source: Partnership for a New American Economy; companies had at least one founder who was a child of an immigrant parent or parents.

More recently, research from the National Foundation for American Policy found, "Immigrants have started nearly half of America's top 50 venture-backed companies."¹³ Earlier research from the National Venture Capital Association concluded an immigrant was a founder in 1 in 4, or 25 percent, of publicly traded venture-backed companies created between 1990 and 2005.¹⁴ These impressive numbers for immigrants are despite the fact it is extremely difficult for a company founder to obtain a visa to stay in the United States and America's green card system for skilled immigrants produces long backlogs and years of waiting.

¹² The study can be found here: <http://www.renewoureconomy.org/sites/all/themes/pnae/img/new-american-fortune-500-june-2011.pdf>.

¹³ Stuart Anderson, *Immigrant Founders and Key Personnel in America's 50 Top Venture-Backed Companies*, National Foundation for American Policy, December 2011.

¹⁴ Stuart Anderson and Michaela Platzer, *American-Made* (Arlington, VA: National Venture Capital Association, 2006).

THE ROLE OF STARTUPS IN AN ECONOMY

In recent years, economists have documented that startup businesses are responsible for much of the net increase in employment on an annual basis. A study from the Ewing Marion Kauffman Foundation concludes, "Put simply . . . without startups, there would be no net job growth in the U.S. economy."¹⁵ The paper by the Kauffman Foundation's Tim Kane found, "For comparison, there are an average of 800,000 jobs created at firms in their first full year and 500,000 at firms in their third full year. In a given year, firms in the age group six to ten total 335,000 gross jobs created, for a typical year. That means that *all firms in a latter age group create one-tenth the jobs created by startups*. For example, in 2005, startups created 3.5 million jobs, compared to the 355,000 gross jobs created that year by firms founded in 1995. However, the 1995 firms also lost a gross 422,000 jobs. Indeed, existing firms in all year groups have gross job losses that are larger than gross job gains."¹⁶

The Kauffman Foundation research makes it clear that encouraging startup companies is good for the economy and job creation in general: "In terms of the life cycle of job growth, policymakers should appreciate the astoundingly large effect of job creation in the first year of a firm's life. In other words, the BDS [Business Dynamics Statistics] indicates that effective policy to promote employment growth must include a central consideration for startup firms."¹⁷

PROBLEMS WITH CURRENT U.S. IMMIGRATION POLICIES

U.S. immigration policy does not look kindly on foreign nationals who seek to create businesses in America. In fact, in a practical sense, it may be easier to stay in the United States illegally and start a business than to start a business and gain legal temporary status and permanent residence (green card) as the owner of that business. The Government Accountability Office (GAO) reported on "cases in which entrepreneurs attempting to establish very early-stage technology start-ups were unable to obtain H-1B or other work visas for themselves and either relocated the project abroad or had to abandon the start-up."¹⁸ Many attorneys and U.S. investors could tell similar stories.

Israeli-born Amit Aharoni graduated Stanford Business School, raised \$1.65 million in venture capital and launched an online booking company for cruises called CruiseWise.com. The business employed 9 Americans and had been named on a list of "20 Hot Silicon Valley Startups You Need to Watch." Despite this, U.S.

¹⁵ Tim Kane, *The Importance of Startups in Job Creation and Job Destruction*, Ewing Marion Kauffman Foundation, July 2010, p. 2.

¹⁶ *Ibid.*, p. 4. Emphasis in original.

¹⁷ *Ibid.*, p. 6.

¹⁸ *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, Government Accountability Office, GAO-11-26, January 2011, p. 23.

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Citizenship and Immigration Services denied his petition to stay and work in the United States, sending him a letter telling him his time in America was over. “[The] letter is practically humiliating. It says you have to leave the country, as if I committed a crime of some sort by creating 9 jobs,” said Amit.

Amit Aharoni discovered that U.S. immigration makes it difficult for a foreign national to stay in America and work in his or her startup company. Amit had one thing going for him. ABC News reported prominently on U.S. Citizenship and Immigration Services denying Amit’s petition. After much negative publicity, the agency reversed course and granted his petition. But few entrepreneurs can rely on receiving national media attention.

U.S. immigration law does not contain a temporary visa or green card (permanent residence) category suitable for the typical foreign-born entrepreneur. For years it has been difficult for someone to receive approval for H-1B status as the founder/CEO of a startup company. A 2010 policy memorandum released by U.S. Citizenship and Immigration Services made it more difficult.¹⁹ While the intention of the memo was primarily to restrict situations where companies leased employees to another company without directing the work of those employees, the memo ended up being much broader in its impact.

The memo, known as the Neufeld memo, focuses on the notion of whether an employer “controls” the employee working on an H-1B visa. In a small policy change announced in August 2011, U.S. Citizenship and Immigration Services announced it would now permit H-1B temporary visas to be issued if an entrepreneur can show a board of directors “controls” him or her.²⁰ Many startups do not have an expansive board and usually the founder is chairman of the board. It is unclear how often the agency would approve an H-1B petition in such circumstances.

Other visa categories are also a problem for entrepreneurs. An entrepreneur can only use an L-1 temporary visa (for intracompany transferees) if the company already has a separate office abroad the foreign national has worked in for at least a year. An E-2 visa for treaty investors also has limitations as an entrepreneur visa. An E-2 is designed as a temporary visa and its holder is assumed to not seek to stay permanently in America. The category is not available to national of all countries. For example, the United States receives the most skilled foreign nationals from China and India, yet nationals of both countries are ineligible for an E-2 visa.

¹⁹ Memorandum to Service Center Directors, “*Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements*,” (January 8, 2010). Additions to Officer’s Field Manual (AFM) Chapter 31.3(g)(15)(AFM Update AD 10-24).

²⁰ <http://www.dhs.gov/ynews/releases/20110802-napolitano-startup-job-creation-initiatives.shtm>.

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REWARDING TALENT, RATHER THAN CASH, IS THE AMERICAN TRADITION

The closest America has today to an immigrant entrepreneur visa is the EB-5 (employment-based fifth preference) immigrant investor visa. The immigrant investor visa became part of the Immigration and Nationality Act in 1990. To receive such a visa, which awards permanent residence (a green card), an individual must invest either \$1 million or \$500,000 (if in a Regional Center) and create at least 10 jobs. "Approximately 90 to 95 percent of individual Form I-526 petitions filed each year are filed by Alien Investors who are investing in Regional Center-affiliated commercial enterprises," according to U.S. Citizenship and Immigration Services.²¹ While it is clear attracting capital to the United States is positive, EB-5 primarily helps existing projects, rather than facilitates or rewards startup activity.

In addition, Congress and agency regulations have not made it easy for potential immigrant investor visa holders. "The statutory requirements of the EB-5 visa category are onerous," conclude attorneys Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker. "Qualifying a person for EB-5 status is one of the most complicated subspecialties in immigration law. A sophisticated knowledge of corporate, tax, investment, and immigration law are all required."²² This is one reason the EB-5 category has never come close to utilizing fully the 10,000 allocation of immigrant visas available under the statute.

While there is no reason to eliminate the immigrant investor visa category – and, in fact, there is a strong case to be made for streamlining its requirements to making it more accessible to potential investors – it goes against America's tradition to reward cash investments but not entrepreneurial talent in U.S. immigration law. For a long time, the United States favored talent and hard work over cash. An entire genre of literature, the Horatio Alger stories, featured rags to riches heroes. As Tables 1 and 2 illustrate, going back to the 19th century numerous immigrants and the children of immigrants started companies that are still thriving today. The stories of Andrew Carnegie and many of today's immigrants who become successful entrepreneurs illustrate that talent is a better indicator of success than a healthy bank balance.

Stefan Kraemer, a German-born physician who founded EndoGastric Solutions, sees the advantage of an entrepreneur visa that focuses on entrepreneurial talent. "We always want to replenish the talent pool. Putting more emphasis on talent than cash is the right approach," he said. For his part, Kraemer has tried to help other would-be entrepreneurs by forming the Washington Medical Technology Angel Network, which advises and potentially funds entrepreneurs with good ideas in the medical technology field.²³

²¹ "EB-5 Immigrant Investor Program," Stakeholder Meeting, Washington, DC, U.S. Citizenship and Immigration Services, June 16, 2010, p. 12.

²² Stephen Yale-Loehr, Carolyn S. Lee, Nicolai Hinrichsen and Lindsay Schoonmaker, "EB-5 Immigrant Investors," 2009, pp. 1, 17.

²³ Interview with Stefan Kraemer.

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A number of bills in Congress have been introduced that would establish an immigrant entrepreneur visa. The Startup Act (S. 1965), introduced by Senators Jerry Moran (R-KS) and Mark Warner (D-VA), would create a new green card category for entrepreneurs, focusing on highly-skilled foreign nationals with an existing tie to the United States. The bill “creates a new visa for up to 75,000 immigrant entrepreneurs who hold an H-1B visa or have completed graduate level work in a STEM [science, technology, engineering and math] field, and who during the 1-year period after the new visa is issued register at least one new business entity which employs at least two full-time, non-family member employees, and invests or raises capital investments of at least \$100,000,” according to a summary of the legislation provided by the bill’s authors. “If these requirements are satisfied, the entrepreneur would have three additional years to remain in the U.S. and operate his or her business. During the three-year period, the entrepreneur must employ at least five, full-time, non-family members for the business entity. At the end of the three years, a recipient may apply to remove the conditional status.”²⁴

The Startup Visa Act of 2011 (S. 565), introduced by Senators John Kerry (D-MA) and Richard Lugar (R-IN), would make an immigrant visa available to a foreign national who raises at least \$100,000 from a “qualified venture capitalist, a qualified super angel investor, or a qualified government entity” and creates five full time jobs in the United States (other than for a spouse, son or daughter), raises \$500,000 in capital investment, or has an unexpired H-1B visa or a graduate degree in a STEM field from a U.S. university and attracts \$20,000 in investment from a qualified investor and creates at least three jobs and generates revenue, or raises capital of, \$100,000 within two years.²⁵

Legislation by Rep. Zoe Lofgren (D-CA), H.R. 2161 (The IDEA Act) contains similar provisions on establishing an immigrant entrepreneur visa to those contained in S. 565 and S. 1965. However, it also contains a section that eschews capital requirements and enables a foreign-born entrepreneur to receive an immigrant visa if he or she creates 10 or more full-time U.S. jobs within two years, without regard to the amount of outside capital raised.²⁶

Legislative measures that place less emphasis on the amount of capital a foreign national invests or raises fit best within the American tradition of entrepreneurship. It also conforms to today’s reality of how businesses get started. The average entrepreneur starts his or her company with only about \$31,000, according to the Kauffman Foundation.²⁷

²⁴ Staff summary of S. 565.

²⁵ Text of S. 565.

²⁶ Text of H.R. 2161.

²⁷ Robert H. Scott, *The Use of Credit Card Debt by New Firms*, The Ewing Marion Kauffman Foundation, August 2009, p. 2; Colleen Debase, Sarah E. Needleman and Emily Maltby, “Start-ups on a Shoestring,” *The Wall Street Journal*, August 16, 2010.

CONCLUSION

While America has achieved great success as a nation of entrepreneurs we should not assume this will continue without improved policies in immigration and other areas. “America is a Start-Up Nation: a living example of the process that Joseph Schumpeter memorably dubbed ‘creative destruction,’” writes author and Senior Editor at *The Atlantic* Richard Florida. “Other nations may create superior products and even build world-dominating industries, but the very essence of America's economic and cultural DNA is its ability to generate ever-new generations of startups, spearheading new technologies and business models, creating and transforming whole industries, powering job generation, and raising living standards. While other nations deepen and expand their existing industries and technologies – Germany turns out more and better cars; Japan and Korea stamp out bigger and higher-definition TVs – America generates startups that forever shift the nation's whole economic structure.”²⁸

But Florida notes innovation and startups are neither automatic nor inevitable. “This system of innovation is based on three key principles: technology, talent, and tolerance,” explains Florida. “A great university like Stanford or MIT is a necessary but in-itself insufficient condition for success. It's the same with venture capital. This system, this social structure of innovation and new firm formation, requires a constant flow of especially talented people – and not just scientists and investors, but entrepreneurs with the vision and skills to follow through, executing and building companies. This can only happen in an environment that's open, meritocratic, and diverse, where it doesn't matter what you look like or where you are from . . .”²⁹

In 2011, government data emerged indicating that startups appeared to be declining in America. In an article titled “The Ranks of Self-Employed Americans are Shrinking,” *USA Today* noted, “In August, 14.5 million people were self-employed, down 2.1 million from the most recent peak in December 2006, according to the Bureau of Labor Statistics data.” In particular, the number of “incorporated” self-employed workers declined and was 726,000 lower than during the same period in August 2008. Case Western University professor Scott Shane considered this “troubling,” particularly since incorporated startup companies are more likely to hire employees than unincorporated businesses.³⁰

Today, it is less important the exact formulation Congress decides upon for creating an immigrant entrepreneur visa than that policymakers move forward on the concept itself. The status quo of rewarding cash but not talent is a rejection of America's heritage as a nation of immigrants and a nation of entrepreneurs.

²⁸ Richard Florida, “How Startups Have Changed the Way America Thinks,” *The Atlantic*, October 18, 2011.

²⁹ *Ibid.*

³⁰ Laura Petreca, “Fewer People Choose to be Self-Employed,” *USA Today*, September 9, 2011.

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Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, former U.S. Senator and Energy Secretary Spencer Abraham, Ohio University economist Richard Vedder, former INS Commissioner James Ziglar and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.