



April 26, 2022

Dear Conferees,

As you set out to negotiate pro-innovation, pro-competition legislation, we hope you will remember and prioritize the nation's high-tech startups and we urge you to remove unrelated legislative proposals that would only make it harder for U.S. startups to compete and succeed. Like many other technology-focused organizations, Engine has been closely following the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act as it progressed through the House and the Senate's United States Innovation and Competition Act (USICA); we commend Congress for their commitment to advancing innovation legislation and supporting entrepreneurship in the U.S. As you work through the conference process, we hope that you will continue to keep the startup ecosystem in mind. While innovators do stand to benefit from consensus legislation, the current proposals include a mixed bag of policies, some of which if adopted would ultimately do more harm than good for U.S. startups.

Invest in Innovation and Technology Ecosystems

Engine is a non-profit that works with government and a community of thousands of high-tech, growth-oriented startups across the nation to support technology entrepreneurship through research, policy analysis, and advocacy. We have repeatedly praised the House and Senate in their goal of investing in technology ecosystems and scientific research.¹ This investment would help to further cement the nation's position at the forefront of innovation, support new discoveries, and provide fuel for novel startups to launch and thrive. In pursuit of consensus legislation, we encourage conferees to advance policies and funding allocations that would help the startup ecosystem thrive—including making the innovation ecosystem more equitable and accessible, identifying barriers for underrepresented innovators, boosting access to STEM education in rural and urban communities, and creating regional technology hubs to support workforce education and entrepreneurship development.

Implement Startup Visas and High-skilled Immigration Reforms

The startup ecosystem would also benefit from critical components of the America COMPETES Act which improve U.S. immigration policy. Establishing visas for startup founders, key startup employees, and their family members—as proposed in the Let Immigrants Kickstart Employment

¹ E.g. The Engine Team, *Startup News Digest* (Jan. 28, 2022), <https://www.engine.is/news/startup-news-digest-012822-rp8b2-p557e-rgwr5-xft3x-whbzb-dc92a-sbcfx-gf3fn-dskn5-6f455-f3xf3-ppmak-b5xk6>.

(LIKE) Act—would help to attract new innovators, lead to the creation of cutting edge companies, fill talent gaps, prioritize security, and maintain a U.S. competitive advantage in technological discovery.² As one of the only industrialized nations without some form of a startup visa, the U.S. is at critical risk of falling behind our competitors at a time when competition for innovative talent is at its highest.³ And lifting the caps for STEM PhD graduates would further support the high-skilled talent pipeline for startups and other technology-focused industries.

Omit the SHOP SAFE Act

Unfortunately, some provisions of the America COMPETES Act would stifle the U.S. startup ecosystem and must be excluded from consensus legislation. The Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce (SHOP SAFE) Act is in direct conflict with the bill's pro-innovation and pro-competition goals.⁴ While Engine agrees with the stated goal of removing unsafe counterfeits from online marketplaces, SHOP SAFE's proposals would have an outsized, negative impact on e-commerce startups without resolving the problems of unsafe counterfeits. The bill would increase the amount of trademark litigation and effectively require all companies with any connection to e-commerce to use filters to screen for potential infringement. This would impose significant costs and risks for startups and erect substantial barriers to entry. Moreover, many existing e-commerce companies would be pushed out of the market due to inability to comply. This would further restrict innovation, competition, and options for the digital entrepreneurs and small businesses who rely on diverse e-commerce offerings to reach customers. Indeed, several members of Congress articulated these concerns and previously committed to fixing SHOP SAFE's flaws before advancing it, confirming that now is not the time to move these problematic proposals forward.⁵

Omit Sec. 61301 Regarding New SEC Disclosures

Also of concern, the House-passed bill contains a provision—Sec. 61301—which could have significant unintended consequences for startups by requiring private companies to submit a number of new disclosures to the Securities and Exchange Commission (SEC). This proposal was introduced late in the process without adequate consideration from policymakers and would require new disclosures for all companies upon raising over \$25 million in a transaction or \$50 million in a 12-month period through Rule 506(b) of Regulation D; Regulation S; or Rule 144A.⁶ As we and others

² Coalition Letter to House and Senate Judiciary Chairs and Ranking Members (Aug. 27, 2021), <https://nvca.org/wp-content/uploads/2021/08/Coalition-Startup-Visa-Congressional-Letter-August-27-2021-1.pdf>.

³ *Id.*

⁴ Issie Lapowsky, *The Ecommerce Killer Lurking in the Competes Act*, Protocol (Jan. 26, 2022), <https://www.protocol.com/newsletters/policy/competes-shopsafe?rebellitem=1#rebellitem1>.

⁵ The Engine Team, *supra* note 1; Joint letter to House and Senate Leadership (March 8, 2022), <https://www.cianet.org/wp-content/uploads/2022/03/2022-03-08-SHOP-SAFE-Joint-Letter.pdf>.

⁶ Coalition Letter to House and Senate Leadership on the Sherman Amendment (Feb. 25, 2022), <https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/62190b2ec72aea06192a7fcd/1645808430345/Sherman+amendment+coalition+letter+-+final.pdf>; TechNet Letter to Conferees (April 13, 2022),

previously noted, this stands to harm some of the nation’s “most innovative companies that are in pursuit of scientific and technological advancement and are therefore sensitive to sharing certain information, do not expose public market investors to risk (e.g. retail investors), and are resource constrained as compared to larger, public companies.”⁷ This provision is harmful for a number of reasons, including its applicability to companies that do not intend to operate in China, despite the purported justification for the language.⁸ And these additional regulatory requirements would create troubling financial barriers for those startups that do not have the resources to navigate additional SEC responsibilities and could further limit startup success and growth, countering the purpose of the consensus legislation.⁹

As you continue to work through the conference process Engine strongly encourages you to omit the SHOP SAFE Act and Sec. 61301 of the America COMPETES Act. Both provisions have received inadequate Congressional consideration and are out of step with the critical goals of boosting American competitiveness. Thank you for your consideration and for your dedicated work on consensus legislation. Startups are an essential component of our innovation economy and we hope that you will keep them top of mind as you continue this process. Engine is happy to serve as a resource wherever we may be of help.

https://www.technet.org/wp-content/uploads/2022/04/TechNet-Letter-to-Confererees-USICA_COMPETES-Conference-Priorities-4.13.22.pdf

⁷ Coalition Letter, *supra* note 6.

⁸ *Id.*

⁹ *Id.*