



April 21, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

The Honorable Charles Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20525

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Leaders Schumer and McConnell, Speaker Pelosi, and Leader McCarthy,

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write to provide the perspective of the American startup ecosystem regarding the conference process reconciling the *U.S. Innovation and Competition Act (USICA)* and the *America COMPETES Act (America COMPETES)*. We applaud policymakers for prioritizing technology, innovation, and human capital as the cornerstones of economic growth and competitiveness and believe this has the potential to be the most impactful technology bill passed this century. The timing for this effort is particularly urgent as we must maintain our leadership in innovative entrepreneurship if we are to win the race for superiority in frontier technology areas with national security and economic development implications, a contest critical to national success in the 21st century.

We urge negotiators to maintain new company formation as a key objective in any final package. We often use the term ecosystem to describe the process of developing technological concepts into viable products and services, and for good reason. To have a societally beneficial impact, a successful technology must pass through a long and difficult continuum from the lab to the marketplace where any of a range of technical, business, regulatory, or other challenges can shutter the project.

As we will discuss in detail below, we support several technology commercialization programs in the Senate-passed *USICA* that would be established under the National Science Foundation's (NSF) new Directorate of Technology and Innovation and applaud the bill's authors for specifically identifying new company formation as a key priority for these programs. And we are encouraged by

the prioritization of entrepreneurship and new company formation in the Regional Technology Hubs program included in both bills.

We also strongly support inclusion of a Startup Visa in the final package to enable foreign-born entrepreneurs to start new, high-growth companies in the United States. In addition, we have serious concerns about a provision in *America COMPETES* that would negatively impact American startups.

Venture Capital's Role in Technology Commercialization

Commercializing frontier technologies is a high-risk and long-term commitment demanding expertise in a range of fields, including science, engineering, business management, and finance. Research suggests that the results of far less than half of academic medical technology studies can be confirmed in industrial settings.¹ Even should the science hold up under more rigorous industrial standards, there are still a host of other challenges that will cause many VC-backed companies commercializing technology to ultimately fail. These include market shifts, challenges with scaling, or competition with incumbents.

The VC model is uniquely suited to financing technology commercialization due to its longer time horizons and equity-based financial model. Venture capitalists create partnerships with institutional investors to combine the capital held by pension funds, endowments, foundations and others with their talent and expertise to make high-risk, long-term equity investments into innovative young companies. Venture capital has the longest asset holding periods of any investment class. The standard VC partnership agreement lasts for ten years with extensions that in practice mean the partnerships generally run even longer.

The nature of the frontier technology commercialization process typically requires substantial amounts of capital to finance high-risk research projects for long time horizons with little to no revenues or collateral. These factors make equity investment far more prominent in financing breakthrough innovation than debt instruments. VC-backed companies are also able to attract some of the best technological talent in the world through widespread use of equity compensation. By sharing ownership of the company with their workforces, these companies draw motivated workers willing to bet on themselves.

VC-backed companies are generally nascent entities that use equity investment provided by VC funds to conduct research, expand workforces, build out new facilities, and focus on growth activities that create long-term value. A recent survey of VC-backed companies by NVCA showed that “four out of five respondents spend at least 70 percent of their budgets on two activities, wages and compensation and research and development (R&D).”² The survey also found that nearly one in five VC-backed companies spend at least 85 percent of their budget on R&D.

In addition to patient working capital, VCs work alongside their portfolio companies to mentor the executive teams, offer strategic advice (often from seats on the company's board), and serve as critical resources bridging the divide between the lab and market. A VC's participation often serves as

¹ *Raise Standards for Preclinical Cancer Research*, available at <https://www.nature.com/articles/483531a#Tab1>

² *Venture Capital at Work*, NVCA, available at [Venture Capital Investment at Work - National Venture Capital Association - NVCA](http://www.nvca.org/Venture-Capital-Investment-at-Work-National-Venture-Capital-Association-NVCA)

a conduit to further growth capital opportunities and resources needed to scale, a key factor for expanding innovation opportunity to new regions and building local ecosystems.

In some instances, VCs will even work directly with universities to license technologies, re-run experiments, pull complementary technologies together, recruit the founding team, and essentially build the company from scratch. An illustration of this model is the founding of vaccine maker Moderna. Journalist Dan Primack of Axios observed of the company's founding: "Moderna wasn't just a VC-backed startup. It was a VC-created startup, inside an incubator program run by Cambridge, Mass.-based Flagship Pioneering. It didn't even have a name for the initial nine months of its life, just a project number."³ This is exemplary of the power of venture capital and the central importance of the equity investment model to frontier technology.

Economic Impact of Venture Capital Activity

Venture-backed companies constitute approximately 50 percent of companies that go public each year, including 40 percent of climate technology companies,⁴ and are responsible for developing around half of new FDA-approved drugs.⁵ Public companies originally built with venture capital financing account for an astounding 92 percent of R&D spending undertaken by all public companies founded within the last fifty years.⁶ Recent research suggests that the U.S. VC industry is "causally responsible for the rise of one-fifth of the current largest 300 US public companies and that three-quarters of the largest US VC-backed companies would not have existed or achieved their current scale without an active VC industry."⁷

In addition to innovation and economic growth, venture capital has a massive impact on the U.S. workforce. New research found that employment at VC-backed companies between 1990 and 2020 grew 960 percent, whereas total private sector employment during that same period grew only 40 percent. These jobs are distributed broadly across the entire U.S. with 62.5 percent of jobs at VC-backed companies located outside the states of California, Massachusetts, and New York.⁸

This data illustrates a fundamental trend in the modern economy: the path to greater economic opportunity for American workers runs through technological progress and long-term investment. America is the global leader in innovation—a critical component in a globally competitive economy—in large part because of venture capital. This is where the modern venture capital model was created and the home of so many innovative companies built in the post-war era. As we can see from regional

³ *The Company Leading the Race to a Coronavirus Vaccine*, available at <https://www.axios.com/moderna-coronavirus-vaccine-trial-78e06a4e-e7ed-42e9-a769-7055030fe3a1.html>

⁴ *Initial Public Offerings: Updated Statistics*; Professor Jay Ritter, University of Florida, available at <https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf>.

⁵ *Trends in Healthcare Investments and Exits 2019*, Silicon Valley Bank, available at <https://www.svb.com/globalassets/library/managedassets/pdfs/healthcare-report-2019-midyear.pdf>

⁶ *The Economic Impact of Venture Capital: Evidence from Public Companies (July 2021)*, Professors Will Gornall and Ilya Strebulaev, available at [The Economic Impact of Venture Capital: Evidence from Public Companies by Will Gornall, Ilya A. Strebulaev :: SSRN](https://www.ssrn.com/sol3/papers.cfm?abstract_id=3911111)

⁷ Id.

⁸ *An Analysis of Employment Dynamics at Venture-Backed Companies Between 1990 and 2020*, NVCA, Venture Forward, and the University of North Carolina Kenan Institute of Private Enterprise (February 2022), available at https://nvca.org/wp-content/uploads/2022/02/Employment-Dynamics-at-Venture-Backed-Companies_FINAL.pdf

and international disparities in venture capital activity, if venture capital does not exist to support an entrepreneurial ecosystem, no other investment class, nor government spending, can fill this gap.

But this leadership should not be taken for granted in the global race for innovation. In fact, the share of global venture capital investment into U.S. companies has dropped from 90 percent from as recently as the 1990s to just 49 percent last year.⁹ In an increasingly competitive world, the United States must prioritize greater scientific discovery and patient capital investment to maintain our leadership edge.

Views on the NSF Technology and Innovation Directorate

Participation of the venture capital industry will determine the success of this program because of its unique role bridging the divide between government research and commercial demand, as well as between science and markets more broadly. While we appreciate the leadership of both chambers in bringing the focus of Congress to a long-term American innovation strategy, we strongly support the NSF Directorate of Technology and Innovation as proposed in *USICA*. We believe the *USICA* proposal is more likely to drive economic growth and societal progress due to its more robust funding levels, statutory prioritization of new company formation, and emphasis on a broader range of the technology development continuum.

USICA provides a renewed commitment to federal basic research investment and offers a range of tools to support the successful transition of technological concepts from labs into innovative products that can succeed in the marketplace. The bill leverages public-private partnerships to provide increased investment in early research, education, training, facilities, and entrepreneurship to support the U.S. leadership position in key advanced technologies.

We agree with the position of many stakeholders in this debate that basic research is critical to the long-term health of the economy, and we believe the *USICA* approach both supports and complements this priority with an additional focus on the development, commercialization, and scale of critical technologies. Ultimately, the societal impact of a technology is determined by its integration into products and processes. We are particularly encouraged that *USICA* makes “*the translation and development of scientific advances in the key technology focus areas into processes and products in the United States*” a key priority for the new directorate. The commercialization and scaling of new technology is the only way to effectively address the climate crisis, harden infrastructure against cyber-attacks, develop new vaccines and cures for disease, or accomplish any of the other laudable goals shared by the authors and supporters of both competitiveness bills.

We are also pleased to see new company formation as a key priority in several of the programs that would be stood up by the directorate under the Senate-passed bill. These include:

- Innovation centers (Section 2102) - *Support the development of scientific, innovation, entrepreneurial, and educational capacity within the region of the university technology center.*
- Test bed program (Section 2108) - *How the applicant will encourage the participation of inventors and entrepreneurs and the development of new businesses.*

⁹ Source: NVCA 2022 Yearbook, Data Provided by Pitchbook.

- Academic technology transfer program (Section 2109) - *How the applicant will encourage the training and participation of students and potential entrepreneurs and the transition of research results to practice, including the development of new businesses.*

Views on Regional Technology Hubs

Expanding entrepreneurship activity in more communities and regions of the country is a core priority for NVCA. As noted above, the power of venture capital-financed entrepreneurship has dramatic impacts on job creation, economic growth, and competitiveness. We believe that talent, skill, and initiative can be found in all areas of America and strongly support policy efforts to build the innovation infrastructure necessary to grow emerging technology ecosystems.

The Regional Technology Hub Programs included in *America COMPETES* and *USICA* will establish a range of regional partnerships to diffuse resources and build innovation capacity throughout the country. We view this as a bold attempt to jumpstart nascent technology clusters to drive broader and more inclusive economic development. Too often, policymakers have wasted time and resources seeking to preserve legacy industrial activity. We applaud the vision underpinning the regional technology hubs program and particularly support eligible uses of funds for entrepreneurship-related activities such as entrepreneurship training and development, development and growth of regional businesses, and technology commercialization.

Relatedly, we launched our partner nonprofit organization Venture Forward to promote a strong and inclusive community that will fuel the economy of tomorrow. Venture Forward is focused on shaping a more inclusive future for venture capital by providing programming, education, data and research, and other resources designed to empower nascent entrepreneurs and investors to thrive. To date, Venture Forward has educated over 1,500 aspiring and early-career VCs, including many from historically underrepresented communities, through both virtual and in-person education programs as part of VC University, facilitated approximately 200 roundtable meetings for emerging and underrepresented VC fund managers to meet with experienced investment professionals through the LP Office Hours program, and created a VC mentorship program that has successfully match more than 150 participants. These efforts are all complementary to the Regional Technology Hub program and we are excited to see such a significant investment into our shared goals of expanding innovative entrepreneurship to more areas of the country.

Other Provisions

Support for Startup Visa (Section 80301)

We strongly support creation of a Startup Visa as part of the competitiveness legislation. Included as Sec. 80301 of *America COMPETES* is Rep. Zoe Lofgren's *Let Immigrants Kickstart Employment Act*, which would create a dedicated visa category for foreign-born entrepreneurs who want to start a new company in the U.S. Rep. Lofgren's legislation is supported by a coalition of 19 entrepreneurial organizations and more than three hundred prominent American entrepreneurs.¹⁰

¹⁰ See Letter to the Honorable Nancy Pelosi, the Honorable Kevin McCarthy, the Honorable Chuck Schumer, and the Honorable Mitch McConnell from 341 entrepreneurs in support of the LIKE Act (February 18, 2022), *available at*

Proposals similar to Sec. 80301 have been estimated to create more than 3 million jobs over a decade.¹¹

Foreign-born entrepreneurs have made incredible contributions to the U.S. economy, having created iconic companies like Moderna, Zoom, Tesla, and AT&T. Despite these accomplishments, U.S. immigration law makes it unnecessarily difficult for foreign-born entrepreneurs to launch new companies in our country. There is currently no visa category designed for the entrepreneurial model, causing immigrant entrepreneurs to fit square pegs in round holes and use visa categories that are challenging for startups.¹² All too often, immigrant entrepreneurs are forced to start their companies in other countries because they cannot obtain the needed immigration status in the U.S. This is a massive loss to U.S. competitiveness and workers and comes at a time when countries around the world are working to attract entrepreneurs to build their startup ecosystems.

The United States is one of only a few industrialized nations that does not have a visa category for foreign-born entrepreneurs. More than twenty countries have created a Startup Visa – including China, Canada, Germany, France, New Zealand, Australia, Chile, and the UK. This means the United States is pushing away job creators as other countries are welcoming them.

To address this blind spot, Sec. 80301 creates a Startup Visa for foreign-born entrepreneurs. Sec. 80301 provides rigorous requirements to ensure only the most meritorious entrepreneurs may utilize the Startup Visa. To qualify, the entrepreneur must be a significant equity owner of the company; have attracted considerable outside capital; is active and central to the company; and will ultimately create American jobs. This is a formula for success and pairs perfectly with the new company formation emphasis in *USICA* and *America COMPETES*.

The Startup Visa has earned bipartisan support over the years. The 2013 comprehensive immigration reform that passed the Senate included a Startup Visa.¹³ In recent years, the *Startup Act* from Senators Moran, Warner, Blunt, and Klobuchar has featured a Startup Visa.¹⁴

Creation of a Startup Visa is important for national security and has been endorsed by the National Security Commission on Artificial Intelligence.¹⁵ By welcoming entrepreneurs to our country, policymakers ensure companies are domiciled in the United States and therefore subject to U.S. law. In the absence of a Startup Visa, our immigration laws push company founders to other countries and outside U.S. law in many circumstances. In addition, creating more American companies gives the

https://nvca.org/wp-content/uploads/2022/02/LIKE-Act-Entrepreneur-Coalition-Letter.pdf?mc_cid=e88f54de9a&mc_eid=UNIQID.

¹¹ See Startup Visa Proposals and Job Creation, National Foundation for American Policy (March 2016), available at <https://nfap.com/wp-content/uploads/2016/03/NFAP-Policy-Brief-Analysis-of-Startup-Visa-Proposals1.pdf>.

¹² For example, the H-1B visa requires an employer-employee relationship and therefore is generally not helpful for the founders of companies. The O-1A visa for “extraordinary ability” is frustrating for young entrepreneurs who do not have a long track record. And the E-2 visa excludes many countries and requires capital from the entrepreneur’s home country (as opposed to a U.S. investor).

¹³ See Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744; 113th Congress)

¹⁴ See *Startup Act* (S. 328; 116th Congress)

¹⁵ See *Final Report: National Security Commission on Artificial Intelligence* at 180 (March 2021), available at <https://www.nsc.gov/wp-content/uploads/2021/03/Full-Report-Digital-1.pdf>.

Defense Department more options for procuring technology for the warfighter, since procurement from foreign companies is significantly curtailed.

Concerns with Section 61301 of *America COMPETES*

NVCA opposes the amendment to *America COMPETES* included as Section 61301. Sec. 61301 would direct the Securities and Exchange Commission (SEC) to require new disclosures when a company raises over \$25 million in a transaction or \$50 million in a 12-month period through the following exemptions: Rule 506(b) of Regulation D; Regulation S; or Rule 144A. A coalition of entrepreneurial-focused organizations raised significant concerns with Sec. 61301, noting its overbreadth and that “unintended consequences will bring significantly negative impacts to the innovation ecosystem in the United States.”¹⁶

The purported justification for Sec. 61301 is the need for additional information about capital deployed in China. But Sec. 61301 applies even when a company or fund raises capital that has no business whatsoever with China. For example, due to Sec. 61301, a U.S. company that raises more than \$25 million would still be subject to *all* of the requirements of the provision even if it intends to deploy the entirety of that capital outside of China, including in the U.S.

Sec. 61301 puts no guardrails around the level of detail the SEC may require and therefore this information could include sensitive or confidential business information. This poses an existential threat to companies and funds that for a range of justifiable reasons do not want to announce to the world their business strategy. Requiring disclosure of financing events provides an opportunity for incumbents and other competitors to interfere with the growth efforts of challengers seeking to challenge their dominance. Fundraising events are particularly vulnerable times in a company’s lifecycle, as capital is generally running short and without a new infusion of capital the business will have to shut down. By tipping off corporate incumbents about the threat of a nascent competitor, this concept could encourage the rise of manipulative efforts similar to aggressive strategies employed by certain patent assertion entities against startups today, so-called “short and distort” schemes that are wielded against companies in the public markets today, or other tactics that could be used to thwart competition.

Finally, the penalty for failure to file is open-ended and could even threaten a company’s ability to continue raising investment in the private markets, which far exceeds even the most draconian penalties imposed on corporate incumbents. Most VC-backed companies rely on multiple fundraising rounds to finance operation and growth activities, namely hiring and research and development. The need to raise capital is existential to their ability to remain ongoing. By threatening the exemption from registration, Sec. 61301 therefore proposes to penalize a failure to file error with the potential destruction of the company, an outcome which hurts far more than just company management and may be without precedent in terms of proportion to the error.

¹⁶ See Letter to The Honorable Nancy Pelosi, the Honorable Kevin McCarthy, the Honorable Chuck Schumer, and the Honorable Mitch McConnell re Sec. 61301 from National Venture Capital Association; U.S. Chamber of Commerce; American Investment Council; The Real Estate Roundtable; Center for American Entrepreneurship; TechNet; Small Business Investor Alliance; Angel Capital Association; Engine; and Carta.

Conclusion

Our members are excited to see the Congress working across partisan lines to craft a generational investment in our country's future. We are pleased that this legislation will meaningfully increase federal basic research investment and hope that it will also expand technology commercialization activity. The legislation has the potential to improve our nation's long-term economic competitiveness, create new industries and high-quality 21st century jobs, and increase economic growth in communities across the country.

We appreciate your recognition of the venture capital industry's importance in achieving our shared goals of prioritizing the nexus between technological progress and new company formation to advance economic opportunity. We hope these comments are helpful to your efforts and are pleased to continue to offer our support and assistance as you move this important piece of legislation through Congress.

Sincerely,

A handwritten signature in cursive script that reads "Bobby Franklin".

Bobby Franklin
President and CEO

CC: House and Senate Conferees