

USICA Passage Suggests Significant Funding Opportunities Across Range of Industries

by Alex Hontos, Troy M. Keller, Eric Weisenburger, and Cloe Nixon

The United States Innovation and Competition Act (“USICA”) passed the Senate on June 8, 2021. The bill, a rare bipartisan effort, would pour funding into research, design, and manufacturing initiatives in key technological and infrastructure sectors. If ultimately adopted, the USICA will have significant implications and opportunities for organizations ranging from manufacturing and mining to universities/higher education. The bill suggests that Federal grant funding may become a significant revenue source for organizations going forward, particularly for organizations in critical industries or those with significant research and development roles. The bill also tightens domestic preference (Buy American) laws and adds new criminal penalties for grant fraud.

While the pathway to passage by the House and ultimately becoming law is not straightforward, the Act drew enough bipartisan support that ultimate enactment in coming months seems more likely than not. For companies who may be well positioned to participate in these programs, this timeline provides a window to prepare.

This eUpdate provides summaries of the various programs from the perspective of organizations that might find opportunity in these programs and offers some thoughts on preparing to participate in them.

Status of the Legislation

President Biden released a statement almost immediately following the passage of S.1260 applauding the bipartisan legislation and stating optimistically: *“I look forward to working with the House of Representatives on this important bipartisan legislation, and I look forward to signing it into law as soon as possible.”*

However, it is unlikely this bill becomes law any time soon. There are two bills in the House that are counterproposals in many respects, one in the House Science, Space and Technology Committee and another in the House Foreign Affairs Committee, and neither has advanced within their respective committees. Once the House approach is agreed, it seems likely that whatever House bill (or bills) is ultimately passed will need to

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go through a conference process with the Senate. All this takes time.

Summary of Key Programs

The Act is broad and includes a large number of initiatives. We will summarize the key initiatives provided for in the Act that involve stimulus and incentive opportunities relevant for industry. These include: semiconductor manufacturing; expansion of the resources and remit of the National Science Foundation, including for grant-making; enhanced buy American provisions; and increased investment in basic research.

Semiconductor Manufacturing

In an effort to reverse the declining market share of U.S. manufacturers in the highly strategic semiconductor space, this section of the Act provides \$52 billion in funding for semiconductor research, design, and manufacturing initiatives. This would effectively implement the CHIPS for America Act provisions included (and authorized) earlier this year as part of the 2021 National Defense Authorization Act.

The authorized programs under the CHIPS for America Act include new incentive programs within the Department of Commerce, which provide financial assistance to entities constructing, expanding, or modernizing a facility or equipment used for commercial semiconductor fabrication, assembly, testing, advanced packaging, and R&D facilities (FY21 NDAA Sec. 9902 (a), p. 1447).

To further facilitate domestic research, prototyping, and workforce development in the semiconductor industry, the Act creates a National Semiconductor Technology Center, a National Advanced Packaging Manufacturing Program, and additional R&D Programs within the Department of Commerce, which will incorporate private sector and interagency participation. In response to supply chain vulnerabilities in the U.S.

Semiconductor industry that have emerged in recent years, this portion of the Act authorizes \$1.5 billion for the Public Wireless Supply Chain innovation fund and \$500 million for CHIPS for America International Technology Security and Innovation Fund, to support the adoption of a secure semiconductor supply chain. This funding provides additional opportunities for industry to engage with the Federal Government to identify and ameliorate gaps in the supply chain.

Expansion of Resources and Responsibility of the National Science Foundation, Including Grants and Funding

To support research and technology development in key technology focus areas, the Act authorizes \$29 billion to the Directorate of Technology and Innovation at the National Science Foundation ("NSF") from fiscal year 2022 to fiscal year 2026, with \$2.9 billion transferred to existing NSF divisions in order to support basic research collaboration.

As outlined in the Act, the key technology areas of focus include artificial intelligence, machine learning, autonomy, and related devices; high performance computing, semiconductors, and advanced computer hardware and software; quantum information

science and technology; robotics, automation, and advanced manufacturing; natural and anthropogenic disaster prevention or mitigation; advanced communications technology and immersive technology; biotechnology, medical technology, genomics, and synthetic biology; data storage, data management, distributed ledger technologies, and cybersecurity, including biometrics; advanced energy and industrial efficiency technologies, such as batteries and advanced nuclear technologies; and advanced materials science (Sec. 2005).

Within these areas of focus, there are a host of potential funding opportunities available to institutions of higher education, research institutions, nonprofit entities, private sector entities, consortia, and others.

In addition to the support provided to key technology focus areas, the Act includes a number of programs, grants, incentive, and other funding mechanisms to bolster U.S. STEM education and workforce development, research institutions and innovation centers, basic and targeted R&D efforts, key technology focus areas, research and technology development infrastructure (including testbeds), and regional technology transfers, among other things.

Examples of the funding opportunities authorized include:

- \$9.57 billion from fiscal year 2022 to 2026 for university technology centers and innovation institutes to conduct research relevant to key technology areas of focus (Section 2104)
- \$5.22 billion from fiscal year 2022 to 2026 funding undergraduate and graduate level scholarships, fellowships, traineeships, and postdoctoral awards for STEM education and address the predicted gap in the STEM workforce or STEM workforce needs in future by increasing number of STEM students, particularly within target populations underrepresented in STEM (Section 2106)
- \$10 billion authorized from fiscal year 2022 to 2026 to fund the creation of the Regional Technology Hub Program within the Department of Commerce to support regional economic development in innovation. Technology hubs carry out workforce development activities, business and entrepreneur development activities, technology maturation activities, and infrastructure activities (Section 2401)
- \$2.4 billion for the Manufacturing Extension Partnership from fiscal year 2022 to 2026, the awards under this program may be used to provide worker education, training, development, and entrepreneurship training; improve connectivity between individuals, businesses, and manufacturers within their communities; mitigate vulnerabilities to cyberattacks; offset the cost of cybersecurity projects for small manufacturers; expand advanced technology services to small-medium sized manufacturers; build capabilities across the Manufacturing Extension Partnership for domestic supply chain resiliency and optimization (Section 2403)

Increased Investment in Basic Research

The Act authorizes \$4.35 billion for R&D awards in key technology focus areas from 2022 to 2026.

Awards are made on a competitive basis for research and technology development within key technology areas of focus, including advances that expedite short-term

technology development. Recipients of the funds may include institutions of higher education, research institutions, nonprofit entities, private sector entities, consortia, and others.

Buy American

The USICA also includes a number of provisions that modernize, strengthen, and increase scrutiny of Buy American rules in federal government contracting. Some of these rules codify Executive Orders issued by the Biden administration while others implement entirely new rules. For example, the USICA codifies the “Made in America Office” in the Office of Management and Budget that was originally created by a Biden Executive Order. (Sec. 4123). This Office’s sole purpose is to enforce compliance of domestic preference laws such as the Buy American rules, including creation of BuyAmerican.gov. (Sec. 4131). BuyAmerican.gov will include information on all waivers and exceptions to Buy American laws (which would be granted less frequently under new rules) as well as results of audits to determine errors and violations of those laws—demonstrating the Made in America Office’s commitment to increased scrutiny of agency and contractor adherence to Buy American rules. To further help effectuate new Buy American standards and use BuyAmerican.gov, the USICA plans to standardize how federal agencies comply with, report on, and enforce Buy American rules, which are likely to lead to new reporting requirements for contractors, although those are not yet specified.

In addition to tighter scrutiny, the USICA will heighten Buy American standards. For example, under the proposed rules, future infrastructure projects will only receive federal financial assistance if all of the iron, steel, manufactured products, and construction materials are produced in the US. This also would increase the domestic content requirements to be considered a domestic end product from 50% to 75%. (Sec. 4114).

Finally, a section of the USICA proposes to “Make PPE in America” and instructs the Departments of Homeland Security, Health and Human Services, and Veterans Affairs to enter into Personal Protective Equipment acquisition contracts with American companies that are at least two years long to incentivize investment in American production of PPE and materials and components. (Sec. 4153).

Other

The USICA also proposes a number of other miscellaneous—but important—changes. Most notably, it tightens rules related to reporting of foreign gifts and contracts for higher education institutions. The bill proposes amendments to Section 117 of the Higher Education Act of 1965 to sharply reduce the threshold to require reporting of foreign gifts and contracts received by institutions of higher education from \$250,000 to \$50,000 in any given year. (Sec. 6244). With the exception of during the Trump Administration, the Department of Education seldom enforced Section 117 requirements, but the USICA appears to be a clear sign from Congress that it intends greater enforcement in the future. Similarly, it heightens transparency for foreign gifts and contracts received by individual faculty and staff involved in research and development. Going forward,

institutions of higher education that have more than \$5 million in research and development expenditures in a year will be required to implement policies requiring certain faculty and staff to report gifts and contracts they received from foreign persons and entities; to create a database for that reporting; and to create a plan to identify and manage issues of potential improper information gathering by foreign sources.

Next, the USICA proposes an annual grant program “to finance pilot projects for the development of critical minerals and metals in the United States” with an annual appropriation of \$100 million in the fiscal years 2021 through 2024. (Sec. 2214). While the details of the pilot projects have not yet been established, it appears likely that hundreds of millions of dollars of grants related to rare earth mineral projects will become available over the next few years.

Finally, the USICA proposes to amend Chapter 47 of Title 18, United States Code (on False Statements), by adding a provision on federal grant application fraud. The added provision would make it unlawful for any individual to knowingly:

- (1) Prepare or submit a Federal grant application that fails to disclose the receipt of any outside compensation, including foreign compensation, by an individual;
- (2) Forge, counterfeit, or otherwise falsify a document for the purpose of obtaining a Federal grant; or;
- (3) Prepare, submit, or assist in the preparation or submission of a Federal grant application or document in connection with a Federal grant application that:
 - a. Contains a false statement;
 - b. Contains a material misrepresentation;
 - c. Has no basis in law or fact; or
 - d. Fails to disclose a material fact.

(Sec. 4494). Most notably, this means that a grant application that does not disclose the receipt of outside compensation by an individual will be considered an unlawful application. This is likely to significantly add reporting requirements to Federal grant applications, and will likely require significant changes to internal compliance and reporting functions at organizations—like academic research institutions—that receive grant funding.

Given the likelihood of the bill’s passage, organizations with operations in any of the fields affected by the USICA should begin positioning themselves to apply for grant funding immediately. Dorsey’s attorneys are uniquely positioned to assist with analysis of a firm’s ability to obtain this funding as well as with the applications themselves. Please do not hesitate to reach out for further information.