

Senate Passes Chips-Plus Package, House Passage Imminent

July 27, 2022

In a bipartisan vote of 64-33, the Senate passed legislation earlier today to fund domestic semiconductor manufacturing and boost federal scientific research and development. The bill was supported by 17 Republicans and opposed by just one Democrat.

The package's successful passage marks a dramatic reversal of fortunes for the legislation. Just a few weeks ago, it appeared that the product of the conference committee's work to resolve differences between the Senate-passed U.S. Innovation and Competition Act (USICA)([S. 1260](#)) and the House-passed America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science (COMPETES Act)([H.R. 4521](#)) might be abandoned altogether in favor of the Democrats' effort to enact other domestic priorities by a simple majority vote through a process known as reconciliation. However, when the ambitions of that package were significantly curtailed, Senate Majority Leader Chuck Schumer (D-NY) moved forward with a semiconductor manufacturing bill focused solely on those incentives and not the various other titles under negotiation by the conference committee. A group of Senators led by Todd Young (R-IN) rallied bipartisan support for the addition of a title dedicated to increasing and re-prioritizing federal scientific research and development, which led to its inclusion in the final package now known as "Chips-Plus".

The House is expected to take up the legislation later this week and pass it before adjourning for the August recess. Speaker Nancy Pelosi (D-CA) has [expressed](#) confidence that there are enough votes across both parties for passage, especially after several [senior House Republicans](#) issued statements publicly backing the bill last week. While a newly revived reconciliation deal could undermine House Republican support for the Chips-Plus package, final passage is still expected.

Despite the broad scope that the "Chips-Plus" name implies, the bill still leaves out many provisions that were under negotiation by the conference committee. This client alert provides an overview of what made it into the final bill, how it may differ from the earlier versions and what got left behind.

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What's in It?

Technically, the Chips-Plus package is three acts combined into one larger bill: Division A is the "CHIPS Act of 2022"; Division B is the "Research and Development, Competition and Innovation Act"; and Division C is the "Supreme Court Security Funding Act of 2022". This alert reviews Divisions A and B.

The Creating Helpful Incentives to Produce Semiconductors for America Act (CHIPS Act) of 2022 appropriates over \$52 billion over five years in incentives to develop semiconductor manufacturing capacity in the United States. The funding will be distributed through several programs that were authorized in last year's CHIPS for America Act:

- **DOC Manufacturing Incentives** – The bill includes \$39 billion in financial assistance for building, expanding or modernizing domestic semiconductor facilities and equipment for fabrication, assembly, testing, advanced packaging, research and development, including \$2 billion specifically for mature semiconductors. Within the incentive program, up to \$6 billion may be used for the cost of direct loans and loan guarantees. This program will be administered by the Department of Commerce. The total amount and annual appropriations detailed in the final Chips-Plus package for semiconductor manufacturing incentives are the same as originally included in both the COMPETES Act and USICA. However, the final package adopts eligibility changes for these incentives that allow upstream producers of semiconductor manufacturing equipment and materials to be eligible for this funding in addition to the direct manufacturers. This change was not included in USICA.
- **Guardrails and Oversight** – Division A also includes a new set of guardrails to ensure that entities that receive the semiconductor incentive funding do not use the funding to buy back their own stock, provide shareholders with dividend payments or expand advanced semiconductor manufacturing capabilities in foreign countries of concern like China. The DOC will also be required to ensure that the funding is used to advance opportunity and inclusion activities, a provision **called** for by Sens. Raphael Warnock (D-GA) and Alex Padilla (D-CA) in March 2022. These guardrail and oversight provisions were not included in either the America COMPETES Act or USICA.
- **DOC Research and Development** – The bill includes \$11 billion for various research and development efforts to support the semiconductor ecosystem, including the National Semiconductor Technology Center, the National Advance Packaging Manufacturing Program, the Manufacturing USA Semiconductor Institute and the Microelectronics Metrology Research and Development Program. This funding will also be administered by the Department of Commerce (DOC). This level of funding is roughly the same as included in the original America COMPETES Act and USICA; however, it is \$200 million lower than originally appropriated, which appears to have been reallocated to a separate workforce and education fund.
- **CHIPS for America Workforce and Education Fund** – The bill appropriates \$200 million for the National Science Foundation (NSF) to meet the workforce goals of the CHIPS for America Act. This specific fund was included in neither the America COMPETES Act nor USICA.

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- **CHIPS for America Defense Fund** – As included in both bills under consideration by the bipartisan competition and innovation conference committee, the legislation includes \$2 billion in appropriations for the CHIPS for America Defense Fund so that the Defense Department may carry out the research, development, test and evaluation, workforce development and other requirements unique to the intelligence community.
- **CHIPS for America International Technology Security and Innovation Fund** – To be administered by the Department of State—in consultation with the U.S. Agency for International Development, the Export-Import Bank and the U.S. International Development Finance Corporation—the package includes \$500 million to provide for international information and communications technology security and semiconductor supply chains.
- **Public Wireless Supply Chain Innovation Fund** – The bill includes \$1.5 billion in direct appropriations to be managed by the National Telecommunications and Information Administration for the expansion of open radio access networks, commonly referred to as ORAN. While the House’s America COMPETES Act required construction projects supported by this fund to pay prevailing wages, this requirement was stripped out before its final passage in that chamber and is not included in the final package.
- **Advanced Manufacturing Investment Tax Credit** – Based on the Facilitating American-Built Semiconductors (FABS) Act introduced by Sen. Ron Wyden (D-OR) and Rep. Michael McCaul (R-TX), the package also includes a 25 percent investment tax credit for semiconductor manufacturing facilities expenditures. Only properties opened and operational after December 31, 2022, and for which construction is started prior to January 1, 2027, are eligible for this opportunity. The investment tax credit also includes a “guardrail” provision that would lead the recipient to forfeit the credit if that recipient engages in a significant transaction involving the material expansion of semiconductor manufacturing capacity of the recipient in China or another foreign country of concern. Neither the America COMPETES Act nor USICA included the FABS Act tax credit for semiconductor manufacturing or design, which the Congressional Budget Office expects to cost over \$24 billion.

While the Research and Development, Competition and Innovation Act found in Division B of the package is rooted in the science titles of the America COMPETES Act and USICA, those bills had two different approaches to boosting and re-prioritizing federal support for scientific research and development. The final package takes from both approaches and ultimately authorizes over \$100 billion in funding for science funding at the NSF, National Institute of Standards and Technology (NIST) and DOC, which is \$52 billion above the baseline of authorized funding. Division B represents nearly 900 of the bill’s over 1,000 pages, and below is an overview of only several of the most prominent sections.

- **NSF Directorate** – The Act establishes an NSF Directorate for Technology, Innovation and Partnerships, whose mission is “to advance research and development, technology deployment, and related solutions to address United States societal, national, and geostrategic challenges, for the benefit all Americans.” The bill authorizes \$20 billion over five years for the new Directorate. The directorate would be directed to focus on key technologies, including artificial

intelligence, quantum, and synthetic biology, among others. An earlier iteration of this idea was initially included in the Endless Frontier Act, a bill first introduced last Congress by Sens. Todd Young (R-IN) and Schumer and which served as the bipartisan engine for the overhaul and dramatic increase in funding federal scientific research and development. However, the Directorate was not in the America COMPETES Act. Therefore, the Directorate in the final package more closely resembles the provisions of USICA than COMPETES.

- **Regional Tech Hubs** – \$10 billion is authorized for the development of at least 20 regional technology and innovation hub programs to support domestic leadership in sectors critical to national and economic security, to promote regional economic development and resilience, especially within rural and underserved communities, to expand advanced domestic manufacturing, and to address the intersection of emerging technologies and either regional or national challenges. Of the 20 hubs established, one-third must significantly benefit small and rural communities, and one third must benefit states or territories benefiting from the Established Program to Stimulate Competitive Research (ESPCoR) of the NSF. Notably, the final package is closer to the details of the program laid out in USICA, which also authorized \$10 billion for the hubs and required at least 20 such hubs, while the America COMPETES Act was less generous and required fewer hubs.
- **Department of Energy** – The House Committee on Science led on the development of the Department of the Energy Science for the Future Act, which its leaders first introduced in May of 2021 and passed the full House on a bipartisan basis a month later. Its provisions were largely adopted in the America COMPETES Act, but had no counterpart in the Senate-passed USICA. As a result, the final title closely resembles the text included in the COMPETES Act, which will authorize new and existing research initiatives relating to basic energy science, biological and environmental research, advance scientific computing research, fusion energy research, high energy physics and nuclear physics.

What's Out?

Despite the significant amount of spending and new programs that are included in the package, there is arguably even more that was left out since the America COMPETES Act and USICA were each the product of work done by many committees in both chambers.

- **Trade Title** – Arguably the most contentious of all the titles being reviewed by the conference committee, the entire trade title was left out of the final Chips-Plus package. As a result, the currently expired Trade Adjustment Assistance, Miscellaneous Tariff Bill and Generalized System of Preferences programs will have to wait for another legislative opportunity to be revived. In addition, products from China that are subject to additional tariffs under Section 301 that previously benefited from an expired tariff exclusion will continue to face additional tariffs. Further, new proposals to remove de minimis tariff treatment for goods coming from certain countries and screen outbound investments will not become law as part of this proposal.
- **Consumer Protection** – Several bills that sought to crack down on the sale of counterfeit goods online included in the America COMPETES Act and USICA also fell out of the final package:

- **INFORM Consumers Act:** Though the INFORM Consumers Act gained bipartisan support as a standalone bill, its text was only included in the America COMPETES Act. If passed, it would require certain online platforms to verify their high-volume third-party sellers and suspend those sellers from activity on the platform if they fail to comply with the disclosure requirements in the bill. Penalties for the platforms that fail to comply are severe and include enforcement by the Federal Trade Commission (FTC) and state attorneys general.
- **SHOP SAFE Act:** The America COMPETES Act also included language pulled from the SHOP SAFE Act which would make e-commerce platforms with annual sales of \$500,000 or more, or those that received 10 notices identifying counterfeit goods that implicate health and safety, liable for infringement of a registered trademark by a third-party seller of goods if the seller uses a counterfeit mark in connection with selling or advertising goods on the platform. Like the INFORM Consumers Act, its language was not included in the Senate-passed USICA.
- **Country of Origin Labeling Online Act:** Introduced in the 116th Congress, USICA included the key provisions of the Country of Origin Labeling Online Act. This bill would require country-of-origin labeling for a product to be clearly and conspicuously stated in the website’s description of the product and clear disclosure of the country in which the seller of the product is located (and, if applicable, the country in which any parent corporation of such seller is located) in the online product listing.
- **Supply Chain Resiliency Program** – Despite variations included in both the America COMPETES Act and USICA, a federal supply chain resiliency program was not included in the “Chips-Plus” proposal. Language in the America COMPETES Act would have established an Office of Supply Chain Resiliency and Crisis Response at the Department of Commerce to promote U.S. leadership in critical industries and authorized a \$45 billion fund for grants, loans and loan guarantees to support on-shoring or near-shoring of critical industries. While USICA did not authorize an on-shoring or near-shoring fund, it did establish a program to map critical supply chains and identify gaps in those supply chains. Ultimately, neither the \$45 billion fund included in the America COMPETES Act nor the narrower program included in USICA were adopted in the final Chips-Plus package.

The above summary outlines the key components of the Chips-Plus package. The full text of the legislation can be viewed [here](#).

Akin Gump will host a webinar on Wednesday, August 3 at 12:00 p.m. ET to discuss the Chips-Plus legislation. Invitation to follow.

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