

April 8, 2022

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

**RE: Provisions in the America COMPETES Act/ USICA Conference**

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker Pelosi, and Minority Leader McCarthy:

As Congress negotiates a final bill based upon the United States Innovation and Competition Act (USICA) and the America Creating Opportunities for Manufacturing, Preeminence in Technology, and Economic Strength (America COMPETES) Act, ETA urges you to take a closer look at the provisions outlined below.

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$21 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

**Collection, Verification, and Disclosure of Information by Online Marketplaces to Inform Consumers (INFORM Consumers) Act**

We welcome Congress' interest in stopping harm to consumers posed by bad actors and those misusing online marketplaces but as written this legislation imposes significant burdens to small businesses and entrepreneurs.

As more Americans utilize online shopping options, e-commerce marketplaces are helping connect consumers with online small businesses and internet enabled entrepreneurs to drive sales domestically and around the globe. This surge of e-commerce businesses has helped the country's economic recovery from the ongoing pandemic, and we cannot afford to stifle economic growth when we need it most.

Specifically, we are concerned with payment processors providing financial information. ETA is concerned that this legislation would require payment processors to provide marketplaces with sensitive financial information on demand to online marketplaces, which may be prohibited by contract, and could increase the risk of fraud.

To alleviate those concerns ETA proposes the following changes to the language:

**PROVISION OF INFORMATION.** —The bank account or payee information required under subclause (I) may be provided by the seller in the following ways:



(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information ~~on demand~~ within a reasonable time frame from such payment processor or other third party if the payment processor or other third party is able to attain consent from the seller.

**As written, ETA opposes the INFORM Consumers Act.**

### **Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce (SHOP SAFE) Act**

While we support the goals of the SHOP SAFE Act - to promote consumer welfare, health, and safety - the bill as-drafted is not tailored to achieve those goals without risking substantial and negative unintended consequences. It marks a fundamental change to how individuals and businesses across the country communicate, engage, and conduct business online, and threatens to undermine free speech, innovation, and consumer choice.

SHOP SAFE represents a seismic shift in law and policy around contributory trademark infringement. Yet, it has not received anything close to sufficient attention and vetting. Among other things, SHOP SAFE would effectively require digital services to monitor their users' posts for potential trademark infringement - creating barriers to entry for smaller services, making it harder for American small businesses to reach their customers, and limiting creative expression by encouraging the over-removal of non-infringing posts. Due to the overbreadth of the bill, consumers could be negatively impacted because smaller services and smaller sellers may cautiously err on the side of removing legitimate listings or even shut down due to compliance burdens. This runs counter to the bill's stated goals of enhancing American competitiveness by severely limiting the opportunities for American small businesses to offer their goods and services to consumers.

This type of proposal should be carefully considered in the Senate with a transparent legislative process that accounts for full stakeholder participation. Since the bill's pervasive flaws remain, they are not the sort of problems that can be resolved in conference and SHOP SAFE should be altogether excluded from the final package. **ETA opposes the SHOP SAFE Act.**

### **Prohibitions or Conditions on Certain Transmittals of Funds**

Under the proposed framework, the Treasury Secretary would be able to employ the Bank Secrecy Act to require certain financial institutions to report information around transactions potentially connected to money laundering, as well as prohibit them from serving account holders with alleged ties to illicit funds.

Currently, the law requires that Treasury engage in a public rulemaking before instituting a prohibition and the Secretary can impose a surveillance special measure through a simple order, but its duration is limited to 120 days and must be accompanied by public rulemaking.

ETA is concerned that the proposed language in the America COMPETES Act would remove all formal controls, time limits, and public notice requirements from the imposition of these measures. It eliminates the notice and comment process, and it allows the Secretary to impose these measures "by order,

regulation, or otherwise as permitted by law” permanently and secretly with no obligation to engage in a public process. **ETA opposes this provision.**

### **Additional Exceptions to Exemptions for De Minimis Treatment Under the Tariff Act of 1930**

Restrictions on the use of de minimis would impose sweeping costs on American businesses and consumers, add new inflationary pressures on the U.S. economy, and exacerbate ongoing supply chain disruptions at U.S. ports.

Eliminating the de minimis exemption, which this bill effectively does, would significantly raise costs, imposing a de facto tax on low-income Americans. As we continue to recover from the pandemic and the recent economic challenges posed by the Omicron variant, as well as navigate a period of accelerating inflation not seen since 2001, the elimination of de minimis would be the wrong policy at the wrong time, as the increased tariffs would be passed on directly to consumers and potentially worsen inflation.

We welcome Congress’ interest in addressing some of the enforcement challenges posed by bad actors and those misusing de minimis, but this proposal will only exacerbate such challenges. Given the clear challenges the Import Security and Fairness Act poses for businesses, consumers, the supply chain, and the U.S. economy, we ask that you take our concerns into consideration and work to remove this harmful legislation from the final bill. **ETA opposes this provision.**

### **SAFE Banking Act as an Amendment**

ETA takes no position on the legalization or decriminalizing cannabis at the state or federal level for medicinal or recreational uses. However, ETA does support legislation, such as the SAFE Banking Act, that would resolve the conflict between state and federal laws to allow financial institutions to serve cannabis related businesses in states where these businesses are legal under state law.

The SAFE Banking Act would solve the conflict between state and federal laws, which forces businesses to operate on a cash-only basis and has created significant legal and compliance concerns for financial institutions that wish to provide banking services to cannabis related businesses in states where it is currently legal. It would also allow legitimate cannabis businesses to access the safety and security of the banking ecosystem in states that have legalized cannabis. **ETA supports the SAFE Banking Act.**

### **Creating Helpful Incentives to Produce Semiconductors for America (CHIPS) Act**

Semiconductor microprocessor chips play an essential role in the payments industry, and we are concerned that an inadequate chip supply could result in significant disruption to electronic commerce across the nation.

Over the last decade, the payments space has seen a clear shift in consumer payment trends from cash and check to the use of payments cards, which comprise debit, credit, and prepaid cards. The Federal Reserve Board reports annually on U.S. payment trends, and in recent years has highlighted the dramatic rise in popularity and reliance on cards for daily purchases by American consumers. For example, in the U.S., credit and debit card spending accounts for nearly 50% of nominal personal consumption expenditures, which represents over two-thirds of U.S. gross domestic product.

Unfortunately, the fast, secure, and convenient card payments on which Americans have come to rely are under threat by the ongoing global supply chain backlog of EMV chips. The ongoing supply chain issue

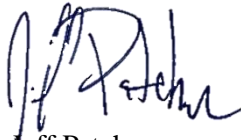


highlights the nation's reliance on foreign manufacturing and very real need to develop a domestic resiliency.

Unlike other industries where replacement of chip supported products is often a consumer choice, replacement of EMV-enabled cards is a necessity for access to the financial system. Billions of transactions occur in the U.S. each year on chip-enabled payment cards using chip-enabled payment terminals. It is imperative that the U.S. develop a domestic chip production capability that can support and insulate industries essential to the success of our economy, such as digital payments, from future unintentional, or intentional, chip supply chain disruptions. **ETA supports the CHIPS Act.**

We look forward to working with you and your staff to address the provisions outlined above. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



Jeff Patchen  
Director of Government Affairs  
Electronic Transactions Association

cc: Senate Finance Committee Conferees  
Senate Commerce, Science, and Transportation Committee Conferees  
Senate Banking, Housing, and Urban Affairs Committee Conferees  
House Ways and Means Committee Conferees  
House Energy and Commerce Committee Conferees  
House Financial Services Committee Conferees

