



## NVCA Policy Highlights Prepared for Union Square Ventures

### **Defend Against Harmful Tax Proposals**

#### *Mark to Market*

Senator Wyden, chairman of the Finance Committee, has proposed to tax gains realized by high-income taxpayers on an accrual basis (i.e., regardless of whether the asset is sold), a method called mark-to-market. The proposal would measure gain each year based on market value and thus would include not only realized gains but also unrealized gains. The recognized gain would be added to the basis for measuring future gain. Wyden's proposal would apply this regime to taxpayers with either \$1 billion of assets or \$100 million of earnings over the past three years. Taxpayers would stay in this regime, until they fell to half of both thresholds for three years.

A one-page summary of the Billionaires Income Tax is available [here](#). A section-by-section summary of the bill is available [here](#). Legislative text of the bill is available [here](#).

#### *QSBS*

During the Build Back Better Act legislative process, policymakers included a provision to reduce the Qualified Small Business Stock (QSBS) exclusion from 100% of gains up to \$10M/10X basis to 50%. The QSBS rule has proven effective in promoting investment in startups and early-stage growth companies in regions and communities across the country. QSBS limits capital gains taxes for founders, employees, and investors in qualified small businesses. The QSBS exclusion encourages investment at the earliest stage in a company's life cycle. It enables employee-owners who take higher risks to join an early-stage company to receive commensurate return on that investment of time, expertise, and hard work.

NVCA joined a [coalition letter](#) with 31 innovation and entrepreneurship organizations against the provision curtailing QSBS.

NVCA also supports expanding QSBS. In April 2023, NVCA joined a [coalition letter](#) with a dozen innovation and entrepreneurship organizations in support of the [Small Business Investment Act](#) which would expand access to Section 1202 Qualified Small Business Stock (QSBS).

Among other provisions, the bill would:

- Lower the QSBS holding period from five years to three years with a phased increase in exclusion for gains. The bill allows 50 percent of capital gains to be excluded from the capital gains tax rate after three years, 75 percent of the gains to be excluded after four years, and 100 percent of the gains to be excluded after five years;
- Modify sec. 1202(f) to allow the inclusion of convertible debt in the 1202(a) holding period; and
- Expand QSBS to include S Corps and LLCs.

## **Restore and Expand the R&D Tax Credit**

Sens. Todd Young (R-IN) and Maggie Hassan (D-NH) reintroduced their bipartisan [American Innovation and Jobs Act](#). This legislation would expand the ability of startups to access the value of research and development (R&D) tax credits they generate and once again allow companies to expense the costs of research and development.

We are hopeful that this legislation from a bipartisan pair of innovation champions can find a pathway in a divided Congress. Please see NVCA's [letter of support](#) for the bill here. We are working with a broader coalition of industries impacted by the change to push the legislation.

### *R&D Expensing*

Longstanding tax policy has supported investment in innovation by allowing businesses to fully deduct their R&D expenses in the same year as they are incurred. However, a provision from the 2017 [Tax Cuts and Jobs Act](#) now requires R&D costs to be amortized over five years, forcing some startups and growth companies into taxable positions. This change is creating tax liabilities for growth companies that are spending far more on research than they're realizing in revenue. The American Innovation and Jobs Act would fix this problem by allowing companies to once again fully expense R&D costs.

### *R&D Credit Monetization*

Currently, companies with less than five years in an active trade or business and less than \$5 million in gross receipts can offset up to \$250,000 in payroll taxes and an additional \$250,000 in Medicare payroll taxes with R&D credits. The American Innovation and Jobs Act would increase the amount of payroll taxes that can be offset by eligible companies up to \$750,000 over a period of years. The legislation would also increase the eligibility thresholds to eight years and \$15 million in gross receipts. These provisions will help innovative startups working on some of the most important technologies access the value of their R&D credits, addressing a traditional limitation of the R&D credit's effectiveness.

## **Advance Regulatory Clarity for Blockchain Technology**

NVCA's Blockchain Working Group has engaged with a range of policymakers on a statutory regulatory regime for the technology. We have hosted working group members in D.C. to discuss the potential of blockchain technology and the need for regulatory clarity and have closely engaged with key policymakers including Representative Tom Emmer (R-MN), House Financial Services Committee Chair, as well as Representatives Bryan Steil (R-WI) and Sean Casten (D-IL).

## **Support Climate Technology Innovation and Scale-up**

The NVCA Climate & Sustainability Working Group has been active in discussions with policymakers about the critical role that entrepreneurs and VC investment plays in the development and commercialization of climate technologies. The group focuses on the regulatory and legislative issues critical to the growth of a new energy economy, and has six

subgroups including energy sources & storage, emissions, transportation & mobility, manufacturing, agriculture and sustainability, and water & recycling.

The WG engaged with policymakers throughout the legislative process around the *Inflation Reduction Act (IRA)* to provide the perspective of VC-backed startups and encourage policymakers to harness the startup ecosystem's unparalleled innovation power. We were pleased that many of our priorities were included in the legislation, including:

- 5-year direct pay for certain credits/tax credit transferability mechanism
- Enhanced 45Q Carbon Capture Credit & lowered minimum scale requirements
- Energy Storage Eligibility for the Investment Tax Credit and manufacturing credits
- Improving and modernizing DOE Technology Commercialization Programs

You can find our full summary and analysis of the IRA tax credits [here](#), and a spreadsheet overview of the credit mechanics [here](#).

NVCA is currently engaged and monitoring implementing regulations from Treasury and IRS around the climate tax credits, as well as other federal agencies around implementation of a range of other programs to ensure startups have access.

### **Create a Startup Visa**

Startups and entrepreneurship in the United States are the foundation for our nation's economic success and global leadership. An integral part of this equation is immigrant entrepreneurs who build and grow their businesses in the U.S. Unfortunately, the outdated immigration system imposes barriers on U.S. competitiveness and puts the country at risk of losing access to the best and brightest talent from around the world. A recent study found that immigrants have started more than half of America's startup companies valued at \$1 billion or more.

NVCA's policy recommendations include:

- Creating a Startup Visa to bring top entrepreneurs to our shores.
- Developing a STEM Visa to attract advanced degree holders.
- Reforming the H-1B program to serve our nation's needs.

NVCA's report, "[Immigrant Entrepreneurs Can Drive Economic Growth in the Pandemic Recovery.](#)" details why America's immigration policy must reform to ensure that talented entrepreneurs create and grow startups in the U.S., rather than overseas.

### **Defend Against Harmful SEC Proposals**

The SEC has proposed a slew of enhanced disclosures from private funds, part of an effort from Chair Gary Gensler to increase transparency in the private markets. One proposal is targeted specifically at Registered Investment Advisors (RIAs) and would require additional information to be reported on the Form PF, including a deadline of one business day for filing reports of certain reporting events. A second series of proposals would apply more broadly and require covered funds to provide LPs with a quarterly statement detailing fund performance, fees, and

expenses, as well as manager compensation. Funds would also be required to undergo annual audits, and to obtain a fairness opinion when seeking to execute a GP-led secondary transaction. There also would be new disclosure requirements related to cybersecurity breaches.

The SEC adopted the [final Private Fund Adviser rule](#) (see separate [fact sheet](#)). NVCA strongly [opposed](#) the initial proposal which sought to place several new prohibitions on private funds, including VCs, and commonly negotiated industry terms. We are concerned, as was noted by the dissenting Commissioners, this rule was adopted without appropriate regard for the substantive and procedural requirements imposed by Congress on SEC rulemakings.

NVCA joined a coalition of asset management associations in filing a lawsuit in the United States Court of Appeals for the Fifth Circuit against SEC to prevent the adoption of the Private Fund Adviser rule, contesting the legality of the rule.

We are concerned these regulatory measures will threaten to stifle innovation, hinder investment, and curtail the growth of the entrepreneurial ecosystem. The coalition members believe this rule will result in increased fees and decreased choice for investors crippling the very engine of economic growth and job creation that venture-backed companies have come to represent. The lawsuit highlights fundamental flaws with the lack of congressional authority, the manner in which it was made final, the lack of cost benefit analysis, along with other deficiencies in its promulgation.

For further details please read the [official complaint](#), [press release](#), [press kit](#), NVCA's reaction to the final rule [here](#), and background information about the original proposal in our April 26, 2022 response [here](#).

### **Protect Startups' Ability to be Acquired**

NVCA is concerned about proposals to restrict acquisitions by larger competitors due to their impact on the venture ecosystem and VC-backed companies. For VC-backed companies there are effectively three outcomes: standalone company (often via initial public offering), M&A, or bankruptcy. Many entrepreneurs and their investors begin the company building process with the hope of creating a standalone, public company. However, in most cases an IPO is not possible, and the preferred exit opportunity becomes an acquisition by another company. Ultimately, more than 10 times as many startups are acquired than complete an IPO (ratio of 836 to 82 in 2019).

These acquisitions contribute to the health of the startup ecosystem, as entrepreneurs who realize liquidity through the sale of their company regularly go on to found new, innovative companies, and often invest in other startups as angel investors or VCs. Furthermore, acquisitions help power the returns of VC funds, thereby allowing VCs to raise new funds and invest in the next generation of entrepreneurs. This "recycling effect" is one of the key drivers of dynamism in our economy.

FTC Chair Lina Khan has refocused the FTC's enforcement efforts around acquisitions of VC-backed startups by large technology companies. In July, the Federal Trade Commission (FTC) and Department of Justice (DOJ) laid out [new guidelines](#) for approving mergers. Consistent with

other counterproductive FTC activities during Chair Khan's tenure, NVCA has a number of concerns about the new guidelines which significantly raise the risk of small company acquisitions being blocked for theoretical reasons that have little underpinning in reality and misrepresent nascent firms that fall well short of having monopoly power as being "dominant."

NVCA drafted a [comment letter](#) highlighting the critical importance of M&A in the startup ecosystem and potential unintended consequences from the FTC and DOJ's proposed sweeping overhaul of longstanding merger enforcement.

In another extremely misguided action under Chair Khan's leadership, the Federal Trade Commission (FTC) has proposed a concerning [overhaul](#) of the Hart-Scott-Rodino (HSR) premerger notification rules. If adopted, these rules would dramatically increase costs, burden and the time required to prepare filings for M&A transactions, even for deals that do not raise substantive antitrust issues, and in some circumstances can even hit growth financings.

The proposed overhaul effectively requires transacting parties to produce documents and information that today are only required if the agencies issue a second request for additional information. Currently, second requests are issued in only about 2% to 3% of all transactions notified. The FTC estimates that adoption of the new rules will increase the time filers need to prepare the form by 12 to 222 additional hours per filing, depending on the complexity of the filing.

NVCA drafted a [comment letter](#) to provide the venture ecosystem's perspective on the harmful impacts of this proposed rulemaking. Taken together with the FTC's other actions to blindly contest mergers, Chair Khan is shaping up as perhaps the most significant adversary to corporate competition and the growth of nascent challengers in government today.

### **CHIPS & Science Act/Tech Commercialization**

NVCA [supported](#) and closely engaged on the CHIPS and Science Act, which President Biden signed into law on August 9, 2022. The legislation marked a resolute investment of multi-billion dollars into American semiconductor research and manufacturing. NVCA detailed the bill's provisions in a member update [here](#).

Its passage propelled the United States's innovation infrastructure by recognizing the significance of new enterprise formation in catalyzing breakthrough technologies. Through this comprehensive approach, the Act elevates competitiveness, and fuels groundbreaking advancements that shape our collective future.

The technology commercialization programs, exemplified by the Technology Innovation and Partnerships Directorate, have significantly contributed to expediting the commercialization of technologies through entrepreneurial endeavors, nurturing nascent companies, and fostering growth.

By amplifying the influence of federal fundamental research, these programs bridge the gap between laboratory innovations and their tangible societal impacts. Notably, this paradigm is

critical in addressing climate-related challenges, where the development and scaling of clean energy technologies play a pivotal role.