

# The Year Ahead: Twenty-Four Ways Congress and the Biden Administration Can Advance Good Tech Policy in 2021

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## INTRODUCTION

Before the ink was dry on November's ballots, pundits were out in full force proclaiming that once again nothing would get done in Washington. Senate Republicans would block Biden and House Democratic initiatives with an eye to 2022, they said, and Democrats would propose things that would appeal to their liberal base but be dead on arrival in the Senate.

Indeed, it is likely that many Democrats and the Biden administration will make a social policy agenda their top priority—expanding health care, reforming policing, etc. At the same time, with President Trump out of office, some Republicans will look for a return to free-market, supply-side economics. This is a recipe for gridlock.

The prophesy might very well turn out to be true with many hot-button issues, such as immigration, individual taxes, health care, and abortion, for the simple reason that the country is deeply divided on them. But historically things have gotten done in Washington when there has been at least a rough consensus among both parties and many interests, and an area of policy that could follow this latter pattern is technology and innovation policy, especially to help grow the economy. There is a growing interest among Republicans and Democrats in a new form of economic growth policy, largely to support working- and middle-class Americans. And getting things across the finish line next year will be critical, not only to ensure U.S. innovation and economic progress, but to show the American people that Washington still works.

In that context, this policy brief lists 15 things Congress could do and 9 things the Biden administration could do that would support U.S. innovation and competitiveness and would be politically practical, because they would be generally acceptable to both parties and industry would be more or less aligned in support. In other words, if Washington wants to show voters that government is doing something more than simply saying no or being ideologically dug in, then lawmakers and the administration should work to advance a set of actionable technology policy measures that would grow the U.S. economy.

## SIX STEPS FOR CONGRESS ON TECH REGULATION

- 1. Data Privacy.** With California lawmakers passing the California Privacy Rights Act, and other states considering similar proposals, there is growing pressure on Congress to pass comprehensive federal data privacy legislation so organizations that do business across state lines are not subject to multiple and possibly conflicting data protection laws. Congress should pass data privacy legislation that streamlines existing regulations, preempts state laws, establishes basic consumer data rights, and minimizes the negative impact on innovation. Such legislation should protect and promote innovation by minimizing compliance costs and restrictions on data use. It also should address concrete privacy harms, not hypothetical ones, improve transparency requirements, and strengthen oversight and enforcement by providing more resources to the Federal Trade Commission (FTC). Congress should not include data-minimization requirements, universal opt-in rules, purpose-specification requirements, limitations on data retention, a right to deletion, a private right of action, or privacy-by-design requirements.
- 2. Section 230 of the Communications Decency Act.** Section 230 is a foundational law of the Internet that has enabled greater communication, discourse, and innovation online. While many lawmakers want to see the law preserved, others, on both sides of the aisle, have called for Congress to either eliminate or reform the law to address concerns that it facilitates harmful online conduct and allows Internet platforms to behave with impunity. Congress should not eliminate this law, but there are opportunities to make targeted reforms that ensure companies take responsibility for harmful content and conduct, while maintaining Section 230's protections on free speech and innovation. In particular, Congress should add a narrow "good faith" provision to Section 230(c)(1) to give courts more flexibility in interpreting standards for reasonable content moderation practices while also ensuring companies can quickly get courts to dismiss nuisance lawsuits brought against them.
- 3. Telehealth.** The use of telehealth services has increased dramatically in the pandemic, allowing millions of patients to receive care from their homes or other remote locations, but there are still barriers to telehealth becoming a standard part of health care delivery going forward. To enable that, Congress should pass federal telehealth legislation. In particular, this legislation should establish a single, national license for telehealth providers because existing state medical boards often will not allow providers licensed in one state to assist patients in another state. In addition, this legislation should update the statutory authority of the Centers for Medicare & Medicaid Services (CMS) to allow it to provide reimbursement to any beneficiary for any approved telehealth services—current rules restrict CMS from reimbursing patients outside of rural areas or certain types of medical facilities.
- 4. Net neutrality.** While the actual risk of Internet service providers blocking and degrading legal content on the Internet was always extremely low, it is important to have regulatory certainty for both core and edge providers. The regulatory seesaw the United States has been on, with no regulation to onerous Title II telephone-style regulation back to no regulation and now with the election of the Biden

administration, likely more Title II regulation is the opposite of certainty. Congress should end this back and forth once and for all by passing basic legislation that does four things: 1) clarifies that broadband Internet access service is not a “telecommunications service” under Title II of the Communications Act; 2) puts widely agreed upon open Internet protections, including no-blocking, no-throttling, and transparency requirements, on firm legal ground; 3) allows pro-competitive traffic differentiation for applications that require it, while preventing anticompetitive abuses of prioritization; and 4) gives the Federal Communications Commission (FCC) reasonable, but bounded, jurisdiction to enforce open Internet rules.<sup>1</sup>

5. **STEM Immigration.** STEM (science, technology, engineering, and math) immigration is central to helping U.S. innovation and competitiveness.<sup>2</sup> But reform and expansion has floundered because many Democrats want to tie it to broader immigration expansion, and many Republicans oppose that. But both parties generally support STEM immigration. As such, Congress should provide special incentives for immigrants holding STEM graduate degrees, with preference given to those with degrees from U.S. universities, to apply for and receive a green card. At minimum, Congress should eliminate per-country caps on employment-based green cards.
6. **FCC auction authority.** The United States has led the world in allocating valuable radio spectrum by auction, ensuring that it goes to the most economically valuable uses. There has long been strong bipartisan support for this. As such, as the FCC’s auction authority comes up for renewal, Congress should do so, but also create a set-aside of perhaps 10 percent of auction revenues to support 5G rollout in high-cost areas.

## NINE STEPS FOR CONGRESS ON FEDERAL FUNDING

1. **Government IT modernization.** While Republicans generally favor smaller government and Democrats larger government, both sides favor a government that works. COVID-19 not only made it clear how critical electronic access is to government services, but also how far behind the private sector federal, state, and local governments are when it comes to information technology (IT) modernization. With interest rates zero and the need for a national stimulus bill, there is no better time for Congress to appropriate needed funds to modernize governments’ outdated IT systems, which are old, not citizen-friendly, and expensive to maintain. These investments could boost government productivity and efficiency by using technologies such as robotic process automation, chatbots, and data analytics, as well as improve cybersecurity and customer service.
2. **Smart cities.** With the emergence of 5G and the Internet of Things, there are many emerging opportunities for cities to use these and related technologies to improve their economies, city operations, and quality of life. Many other nations have launched ambitious pilot programs to help their cities adopt these technologies and become smart-city world leaders. For the United States to keep pace, Congress should allocate \$2 billion for smart-city funding, with funds available on a competitive basis for up to 10 large cities, 20 medium-sized cities, and 30 small-sized cities to receive grants to invest in smart-city infrastructure.

3. **Broadband adoption.** COVID-19 has made clear that, at least for families with school-age children, broadband and computing devices are now essential. As such, just as Congress put in place initiatives such as school lunch programs for children from low-income families, it should put in place a program to provide low-income families with school-age children subsidies to afford broadband and computing devices, and pay for people's broadband bills.
4. **Rural broadband deployment.** COVID-19 has made clear the importance of broadband. But because of the high cost in deploying networks, some parts of the country, mostly in rural areas, lack broadband availability. As such, there is a growing bipartisan consensus to help expand rural broadband. But to ensure bipartisan support, Congress should pass legislation that: 1) does not tie funding to other goals such as net neutrality; 2) focuses funds on places that do not have access to fixed broadband; 3) bans "overbuilding" (funding additional networks in places with existing broadband infrastructure); and 4) embraces technology neutrality, allowing any kind of fixed broadband to qualify as long as it meets costs and performance targets.
5. **Technology hubs in the "heartland."** The technology sector continues to grow rapidly, driving the nation's innovation and overall economic growth. However, advanced technology companies are increasingly concentrated in only a few very high-cost metro hubs. The result is not only increasing regional inequality and lost opportunity in the heartland, but reduced U.S. competitiveness. It's time for the federal government to take aggressive steps to counter the epidemic of regional division and avoid ceding its innovation lead to China. Congress should establish a major new initiative to select a set of promising metro areas to receive a major package of federal innovation inputs and supports that would help these areas accelerate, transform, and scale up their innovation sectors. This can be modeled on legislation such as the Innovation Acceleration Act of 2020, or the relevant provisions in the Endless Frontier Act.<sup>3</sup>
6. **R&D tax credit.** Economists have shown that the R&D tax credit is an effective tool to spur more research and development (R&D) investment and address key market failures. Unfortunately, the United States ranks 24th in R&D credit generosity out of 34 Organization for Economic Cooperation and Development (OECD) and BRIC nations (Brazil, Russia, India and China), and is poised to fall to 32nd if the current R&D expensing provision expires in 2022.<sup>4</sup> Congress should at least double the R&D rate, remove the expensing sunset provision, and allow expenditures on global standards setting to be included as a qualified expense.
7. **R&D to counter the China challenge.** There is increasing bipartisan agreement that China represents a serious and growing challenge to U.S. technology leadership and national security. And as a response, Congress should significantly increase federal support for R&D targeted at key technologies, as the bipartisan Endless Frontier Act proposes. Whether this or some other act is the legislative vehicle, Congress should significantly increase funding for advanced industry R&D.

8. **CHIPS Act.** Senators John Cornyn (R-TX) and Mark Warner (D-VA) introduced the bipartisan Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act, which was followed by Senators Tom Cotton (R-AR) and Chuck Schumer's (D-NY) introduction of the American Foundries Act (AFA) of 2020. The two pieces of legislation have since been merged, and a consolidated version of the legislation was included in the 2020 National Defense Authorization Act (NDAA). The legislation would expand federal investment in semiconductor research and technology development, introduce incentives to locate semiconductor manufacturing facilities in the United States, and provide expanded tax credits for investment in the sector.<sup>5</sup> Congress should fully fund the semiconductor authorizations in the Act.
9. **Energy RD&D.** There is growing bipartisan support for addressing climate change. But while some Democrats endorse a broad-based "Green New Deal" that includes significant spending and regulation, most Republicans oppose this. However, both parties should support increased funding for clean energy research, development and demonstration (RD&D), in large part because it holds the potential to achieve climate goals without giving up key aspects of the American way of life (driving cars, single-family homes, etc.) or increasing energy costs. To do that, Congress should double the funding for the Department of Energy's Advanced Research Projects Agency-Energy (ARPA-E) and fully fund the 17 clean energy demonstration projects authorized in bipartisan legislation.

## NINE STEPS FOR THE BIDEN ADMINISTRATION

There are a number of steps the Biden administration should take in its first year that would enjoy both bipartisan and broad industry support and spur greater innovation, competitiveness, and growth.

1. **Digital transformation of key government-influenced or operated sectors.** U.S. wage growth has been slow in the last decade, largely because U.S. productivity growth has been slow. To boost productivity growth, more sectors will need to undergo digital transformation. In some sectors, market forces alone can play the key role. But in many sectors that are significantly influenced by government, including health care, transportation, education, and the electrical system, the federal government should be a catalyst to digital transformation. The Biden administration should launch such an effort in the Office of Science and Technology Policy (OSTP).
2. **A new EU-U.S. Privacy Shield.** The European Court of Justice's recent decision in *Schrems II* to invalidate Privacy Shield will affect the thousands of U.S. and EU firms (mainly small and medium-sized ones) that relied on it to transfer data as part of transatlantic trade and innovation. The Biden administration should negotiate a replacement agreement with our EU allies as part of a broader initiative to improve transatlantic cooperation on data protection, data flows, and digital trade.
3. **Pushing back against EU digital service taxes.** Some EU nations have decided they want U.S. technology companies to pay taxes to their governments instead of the U.S. government, through a tax on revenues. These "digital services" taxes are

unprecedented in international taxation and represent a money grab against the U.S. government and U.S. companies. Both Republicans and Democrats have pushed back against these actions and the Biden administration should do the same.<sup>6</sup>

4. **Allied resistance to Chinese innovation mercantilism.** Even if not everyone agreed with the Trump administration's actions regarding Chinese trade practices, there is now strong bipartisan support for pressing China on its mercantilist practices, especially those related to advanced technology industries. The Biden administration should place U.S. advanced technology interests at the front of our China agenda, work with our allies to press China, and where it cannot make multilateral progress, take strong bilateral actions.
5. **WTO reform.** The World Trade Organization (WTO) was not designed to effectively address 21st century protectionism that relies on “behind the border” economic distortions protected by opaque and arbitrary non-rule-of-law systems. This is a main reason why China has run roughshod over WTO rules the last two decades. It is not clear whether the WTO can be effectively reformed, but the Biden administration should at least try, in partnership with our allies.
6. **High-tech exports to China.** When the United States imposes export controls, it imposes a cost on the U.S. economy: lost sales, jobs, and potentially technology leadership. Moreover, the days when the United States dominated many technology sectors and could effectively cut off other countries' access to technology are now mostly gone. As such, the Biden administration should generally limit the use of unilateral export controls to China.<sup>7</sup> To the maximum extent possible, it should pursue multilateral export controls as opposed to unilateral export controls on sensitive technology exports to China.
7. **Strong encryption.**<sup>8</sup> The Biden administration will face pressure from the intelligence and law enforcement community to ban or restrict the use of so called “warrant-proof” encryption in commercial products. This represents an extreme and unjustified measure that would do little to take encryption out of the hands of bad actors, but it would make commercial products less secure for ordinary consumers and businesses and damage U.S. competitiveness. Instead, the administration should support commercial efforts to deploy end-to-end encryption to improve security for all users.<sup>9</sup>
8. **Interagency industry policy analysis teams.** Whatever it is called—industrial strategy, industrial policy, competitiveness policy—the time for an industry approach to economic policy has arrived. The competitiveness threat from China underscores that fact. But to develop effective industrial strategy, the administration needs deep, industry-focused expertise. General expertise about tax policy, exports, training, or research will not cut it. As such, the Biden administration should task the National Economic Council to form between 10 and 20 key industry policy analysis teams in advanced, traded-sector tech industries like semiconductors, aerospace, machine tools and robotics, software, biopharma, and others. These teams should consist of experts at relevant agencies, including the departments of Defense, Energy, and Commerce, and the National Institutes of Health. The groups should develop deep

expertise in each relevant industry, including competitive threats, opportunities, strengths, and weaknesses, and they should receive input from relevant actors, especially firms and industry associations. These teams should in turn advise the administration on any policies that affect the industries, including trade, tax, and regulatory matters.

9. **National AI strategy.** There has been bipartisan support in Congress for the need for the federal government to develop a national artificial intelligence (AI) strategy. As such, the Biden administration should develop one, including identifying areas where agency actions can help drive development and widespread adoption of AI and areas where Congressional legislation is needed.

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## ENDNOTES

1. Doug Brake, “Why We Need Net Neutrality Legislation, and What It Should Look Like” (ITIF, May 2018), <https://itif.org/publications/2018/05/07/why-we-need-net-neutrality-legislation-and-what-it-should-look>.
2. Adams Nager et al., “The Demographics of Innovation in the United States” (ITIF, February 2016), <https://itif.org/publications/2016/02/24/demographics-innovation-united-states>.
3. Sens. Chris Coons and Dick Durbin, “Innovation Centers Acceleration Act of 2020,” fact sheet (accessed December 18, 2020), [https://www.coons.senate.gov/imo/media/doc/FINAL%20Innovation%20Centers%20Acceleration%20Act\\_One%20Pager.pdf](https://www.coons.senate.gov/imo/media/doc/FINAL%20Innovation%20Centers%20Acceleration%20Act_One%20Pager.pdf)
4. John Lester and Jacek Warda, “Enhanced Tax Incentives for R&D Would Make Americans Richer” (ITIF, September 2020), <https://itif.org/publications/2020/09/08/enhanced-tax-incentives-rd-would-make-americans-richer>.
5. Stephen Ezell, “An Allied Approach to Semiconductor Leadership” (ITIF, September 2020), <https://itif.org/publications/2020/09/17/allied-approach-semiconductor-leadership>.
6. Joe Kennedy, “Digital Services Taxes: A Bad Idea Whose Time Should Never Come” (ITIF, May 2019), <https://itif.org/publications/2019/05/13/digital-services-taxes-bad-idea-whose-time-should-never-come>.
7. Robert D. Atkinson, “The Huawei Export Ban: Shooting U.S. Tech Exporters in the Foot,” ITIF *Innovation Files* blog post, January 24, 2020, <https://itif.org/publications/2020/01/24/huawei-export-ban-shooting-us-technology-exporters-foot>.
8. Daniel Castro and Alan McQuinn, “Unlocking Encryption: Information Security and the Rule of Law” (ITIF, March 2016), <https://itif.org/publications/2016/03/14/unlocking-encryption-information-security-and-rule-law>.
9. Daniel Castro, “Why New Calls to Subvert Commercial Encryption Are Unjustified” (ITIF, July 2020), <https://itif.org/publications/2020/07/13/why-new-calls-subvert-commercial-encryption-are-unjustified>.