

## ENHANCING SMALL BUSINESS RESEARCH AND INNOVATION ACT OF 2009

JUNE 26, 2009.—Ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business,  
submitted the following

## REPORT

[To accompany H.R. 2965]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2965) to amend the Small Business Act with respect to the Small Business Innovation Research Program and the Small Business Technology Transfer Program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Enhancing Small Business Research and Innovation Act of 2009”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—PROGRAM EXTENSION AND VENTURE CAPITAL OPERATING COMPANY INVOLVEMENT**

Sec. 101. Extension of termination dates.

Sec. 102. Ensuring that innovative small businesses with substantial investment from venture capital operating companies are able to participate in the SBIR and STTR programs.

**TITLE II—COMMERCIALIZATION ACTIVITIES AND RESEARCH TOPICS DESERVING SPECIAL CONSIDERATION**

Sec. 201. Focus on commercialization.

Sec. 202. Inclusion of energy-related research topics and rare disease-related research topics as deserving “special consideration” as SBIR research topics.

Sec. 203. Nanotechnology-related research topics.

Sec. 204. Clarifying the definition of “Phase Three”.

Sec. 205. Agency research goals.

Sec. 206. Commercialization programs.

**TITLE III—RURAL DEVELOPMENT AND OUTREACH**

Sec. 301. Outreach and support activities.

Sec. 302. Rural preference.

Sec. 303. Obtaining SBIR applicant’s consent to release contact information to economic development organizations.

Sec. 304. Increased partnerships between SBIR awardees and prime contractors, venture capital investment companies, and larger businesses.

**TITLE IV—SBIR AND STTR ENHANCEMENT**

Sec. 401. Increased number of research topic solicitations annually and shortened period for final decisions on applications.

Sec. 402. Agencies should fund vital R&D projects with the potential for commercialization.

Sec. 403. Federal agency engagement with SBIR awardees that have been awarded multiple Phase One awards but have not been awarded Phase Two awards.

Sec. 404. Funding for administrative, oversight, and contract processing costs.

Sec. 405. Comptroller general audit of how Federal agencies calculate extramural research budgets.

Sec. 406. Agency databases to support program evaluation.

Sec. 407. Agency databases to support technology utilization.

Sec. 408. Interagency Policy Committee.

Sec. 409. National Research Council SBIR Study.

Sec. 410. Express authority to “fast-track” Phase Two awards for promising Phase One research.

Sec. 411. Increased SBIR and STTR award levels.

Sec. 412. Express authority for an agency to award sequential Phase Two awards for SBIR-funded projects.

Sec. 413. First phase required.

Sec. 414. Involvement of Chief Counsel for Advocacy.

**TITLE I—PROGRAM EXTENSION AND VENTURE CAPITAL OPERATING COMPANY INVOLVEMENT****SEC. 101. EXTENSION OF TERMINATION DATES.**

(a) **SBIR.**—Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended by striking “2008” and inserting “2011”.

(b) **STTR.**—Section 9(n)(1)(A) of the Small Business Act (15 U.S.C. 638(n)(1)(A)) is amended by striking “2009” and inserting “2011”.

**SEC. 102. ENSURING THAT INNOVATIVE SMALL BUSINESSES WITH SUBSTANTIAL INVESTMENT FROM VENTURE CAPITAL OPERATING COMPANIES ARE ABLE TO PARTICIPATE IN THE SBIR AND STTR PROGRAMS.**

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by adding at the end the following:

“(aa) **VENTURE CAPITAL OPERATING COMPANIES.**—Effective only for the SBIR and STTR programs the following shall apply:

“(1) A business concern that has more than 500 employees shall not qualify as a small business concern.

“(2) In determining whether a small business concern is independently owned and operated under section 3(a)(1) or meets the small business size standards instituted under section 3(a)(2), the Administrator shall not consider a business concern to be affiliated with a venture capital operating company (or with any other business that the venture capital operating company has financed) if—

“(A) the venture capital operating company does not own 50 percent or more of the business concern; and

“(B) employees of the venture capital operating company do not constitute a majority of the board of directors of the business concern.

“(3) A business concern shall be deemed to be ‘independently owned and operated’ if—

“(A) it is owned in majority part by one or more natural persons or venture capital operating companies;

“(B) there is no single venture capital operating company that owns 50 percent or more of the business concern; and

“(C) there is no single venture capital operating company the employees of which constitute a majority of the board of directors of the business concern.

“(4) If a venture capital operating company controlled by a business with more than 500 employees (in this paragraph referred to as a ‘VCOC under large business control’) has an ownership interest in a small business concern that is owned in majority part by venture capital operating companies, the small business concern is eligible to receive an award under the SBIR or STTR program only if—

“(A) not more than two VCOCs under large business control have an ownership interest in the small business concern; and

“(B) the VCOCs under large business control do not collectively own more than 20 percent of the small business concern.

“(5) The term ‘venture capital operating company’ means a business concern—

“(A) that—

“(i) is a Venture Capital Operating Company, as that term is defined in regulations promulgated by the Secretary of Labor; or

“(ii) is an entity that—

“(I) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-51 et seq.); or

“(II) is an investment company, as defined in section 3(c)(1) of such Act (15 U.S.C. 80a-3(c)(1)), which is not registered under such Act because it is beneficially owned by less than 100 persons; and

“(B) that is itself organized or incorporated and domiciled in the United States, or is controlled by a business concern that is incorporated and domiciled in the United States.”.

## **TITLE II—COMMERCIALIZATION ACTIVITIES AND RESEARCH TOPICS DESERVING SPECIAL CONSIDERATION**

### **SEC. 201. FOCUS ON COMMERCIALIZATION.**

Section 9(a) of the Small Business Act (15 U.S.C. 638(a)) is amended by adding at the end the following: “It is further the policy of Congress that the programs established in this section should focus on promoting research and development of projects governed by commercial business plans, which have significant potential to produce products or services for the marketplace or for acquisition by Federal agencies.”.

### **SEC. 202. INCLUSION OF ENERGY-RELATED RESEARCH TOPICS AND RARE DISEASE-RELATED RESEARCH TOPICS AS DESERVING “SPECIAL CONSIDERATION” AS SBIR RESEARCH TOPICS.**

Section 9(g)(3) of the Small Business Act (15 U.S.C. 638(g)(3)) is amended—

(1) in the matter preceding subparagraph (A) by inserting after “critical technologies” the following: “or pressing research priorities”;

(2) in subparagraph (A) by striking “or” at the end; and

(3) by adding at the end the following:

“(C) the National Academy of Sciences, in the final report issued by the ‘America’s Energy Future: Technology Opportunities, Risks, and Tradeoffs’ project, and in subsequent reports issued by the National Academy of Sciences on sustainability, energy, and alternative fuels;

“(D) the National Institutes of Health, in the annual report on the rare diseases research activities of the National Institutes of Health for fiscal year 2005, and in subsequent reports issued by the National Institutes of Health on rare diseases research activities; or

“(E) the National Academy of Sciences, in the final report issued by the ‘Transit Research and Development: Federal Role in the National Program’ project and the ‘Transportation Research, Development and Technology Strategic Plan (2006–2010)’ issued by the United States Department of Transportation Research and Innovative Technology Administration, and in subsequent reports issued by the National Academy of Sciences and United

States Department of Transportation on transportation and infrastructure;”.

**SEC. 203. NANOTECHNOLOGY-RELATED RESEARCH TOPICS.**

(a) SBIR.—Section 9(g)(3) of the Small Business Act (15 U.S.C. 638(g)(3)), as amended, is further amended—

- (1) in subparagraph (D) by striking “or” at the end;
- (2) in subparagraph (E) by adding “or” at the end; and
- (3) by adding at the end the following:

“(F) the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in subsequent reports issued by the National Science and Technology Council Committee on Technology, focusing on areas of nanotechnology identified in such plan;”.

(b) STTR.—Section 9(o)(3) of the Small Business Act (15 U.S.C. 638(o)(3)) is amended—

- (1) in subparagraph (A) by striking “or” at the end;
- (2) in subparagraph (B) by adding “or” at the end; and
- (3) by adding at the end the following:

“(C) by the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in subsequent reports issued by the National Science and Technology Council Committee on Technology, focusing on areas of nanotechnology identified in such plan;”.

**SEC. 204. CLARIFYING THE DEFINITION OF “PHASE THREE”.**

Section 9(e) of the Small Business Act (15 U.S.C. 638(e)) is amended—

- (1) in paragraph (4)(C) in the matter preceding clause (i) by inserting after “a third phase” the following: “, which shall consist of work that derives from, extends, or logically concludes efforts performed under prior SBIR funding agreements (which may be referred to as ‘Phase III’);”;
- (2) in paragraph (8) by striking “and” at the end;
- (3) in paragraph (9) by striking the period at the end and inserting “; and”;

and

- (4) by adding at the end the following:

“(10) the term ‘commercialization’ means the process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to government or commercial markets.”.

**SEC. 205. AGENCY RESEARCH GOALS.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by striking subsection (h) and inserting the following:

**“(h) AGENCY RESEARCH GOALS.—**

“(1) IN GENERAL.—In addition to the requirements of subsection (f), each Federal agency that is required by this section to have an SBIR program and that awards annually \$5,000,000,000 or more in procurement contracts shall, effective for fiscal year 2010 and each fiscal year thereafter, establish annual goals for commercialization of projects funded by SBIR awards.

“(2) SPECIFIC GOALS.—The goals required by paragraph (1) shall include specific goals for each of the following:

“(A) The percentage of SBIR projects that receive funding for the third phase (as defined in subsection (e)(4)(C)).

“(B) The percentage of SBIR projects that are successfully integrated into a program of record.

“(C) The amount of Federal dollars received by SBIR projects through Federal contracts, not including dollars received through the SBIR program.

“(3) SUBMISSION TO COMMITTEES.—For each fiscal year for which goals are required by paragraph (1), the agency shall submit to the Committee on Small Business and the Committee on Science and Technology of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate—

“(A) not later than 60 days after the beginning of the fiscal year, the goals; and

“(B) not later than 90 days after the end of the fiscal year, data on the extent to which the goals were met and a description of the methodology used to collect such data.”.

**SEC. 206. COMMERCIALIZATION PROGRAMS.**

Section 9 of the Small Business Act (15 U.S.C. 638) as amended, is further amended, by adding at the end the following:

**“(bb) COMMERCIALIZATION PROGRAMS.—**

“(1) IN GENERAL.—Each agency required by this section to conduct an SBIR program shall establish a commercialization program that supports the progress of SBIR awardees to the third phase. The commercialization program may include activities such as partnership databases, partnership conferences, multiple second phases, mentoring between prime contractors and SBIR awardees, multiple second phases with matching private investment requirements, jumbo awards, SBIR helpdesks, and transition assistance programs. The agency shall include in its annual report an analysis of the various activities considered for inclusion in the commercialization program and a statement of the reasons why each activity considered was included or not included, as the case may be.

**“(2) FUNDING FOR COMMERCIALIZATION PROGRAMS.—**

“(A) IN GENERAL.—From amounts made available to carry out this paragraph, the Administrator may, on petition by agencies required by this section to conduct an SBIR program, transfer funds to such agencies to support the commercialization programs of such agencies.

“(B) PETITIONS.—The Administrator shall establish rules for making transfers under subparagraph (A). The initial set of rules shall be promulgated not later than 90 days after the date of the enactment of this paragraph.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this paragraph \$27,500,000 for fiscal year 2010 and each fiscal year thereafter.

“(3) FUNDING LIMITATION.—For payment of expenses incurred to administer the commercialization programs described in paragraphs (1) and (2), the head of an agency may use not more than an amount equal to 1 percent of the funds set aside for the agency's Small Business Innovation Research program. Such funds—

“(A) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

“(B) shall not be used for the purpose of funding costs associated with salaries and expenses of employees of the Federal Government.”.

### **TITLE III—RURAL DEVELOPMENT AND OUTREACH**

**SEC. 301. OUTREACH AND SUPPORT ACTIVITIES.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by inserting after subsection (r) the following:

**“(s) OUTREACH AND SUPPORT ACTIVITIES.—**

“(1) IN GENERAL.—Subject to the other provisions of this subsection, the Administrator shall make grants on a competitive basis to organizations, to be used by the organizations to do one or both of the following:

“(A) To conduct outreach efforts to increase participation in the programs under this section.

“(B) To provide application support and entrepreneurial and business skills support to prospective participants in the programs under this section.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator \$10,000,000 to carry out paragraph (1) for each of fiscal years 2010 and 2011.

“(3) AMOUNT OF ASSISTANCE.—For each of subparagraphs (A) and (B) of paragraph (1), the amount of assistance provided to an organization under that subparagraph in any fiscal year—

“(A) shall be equal to the total amount of matching funds from non-Federal sources provided by the organization; and

“(B) shall not exceed \$250,000.

“(4) DIRECTION.—An organization receiving funds under paragraph (1) shall, in using those funds, direct its activities at one or both of the following:

“(A) Small business concerns located in geographic areas that are underrepresented in the programs under this section.

“(B) Small business concerns owned and controlled by women, small business concerns owned and controlled by service-disabled veterans, and small business concerns owned and controlled by minorities.

**(5) ADVISORY BOARD.—**

“(A) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subsection, the Administrator shall establish an advisory board for the activities carried out under this subsection.

“(B) NON-APPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.

“(C) MEMBERS.—The members of the advisory board shall include the following:

“(i) The Administrator (or the Administrator’s designee).

“(ii) For each Federal agency required by this section to conduct an SBIR program, the head of the agency (or the designee of the head of the agency).

“(iii) Representatives of small business concerns that are current or former recipients of SBIR awards, or representatives of organizations of such concerns.

“(iv) Representatives of service providers of SBIR outreach and assistance, or representatives of organizations of such service providers.

“(D) DUTIES.—The advisory board shall have the following duties:

“(i) To develop guidelines for awards under paragraph (1), including guidelines relating to award sizes, proposal requirements, measures for monitoring awardee performance, and measures for determining the overall value of the activities carried out by the awardees.

“(ii) To identify opportunities for coordinated outreach, technical assistance, and commercialization activities among Federal agencies, the recipients of the awards under paragraph (1), and applicants and recipients of SBIR awards, including opportunities such as—

“(I) podcasting or webcasting for conferences, training workshops, and other events;

“(II) shared online resources to match prospective applicants with the network of paragraph (1) recipients; and

“(III) venture capital conferences tied to technologies and sectors that cross agencies.

“(iii) To review and recommend revisions to activities under paragraph (1).

“(iv) To submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science and Technology of the House of Representatives an annual report on the activities carried out under paragraph (1) and the effectiveness and impact of those activities.

**(6) SELECTION CRITERIA.—**In awarding grants under this subsection, the Administrator shall use selection criteria developed by the advisory board established under paragraph (5). The criteria shall include—

“(A) criteria designed to give preference to applicants who propose to carry out activities that will reach either an underperforming geographic area or an underrepresented population group (as measured by the number of SBIR applicants);

“(B) criteria designed to give preference to applicants who propose to carry out activities that complement, and are integrated into, the existing public-private innovation support system for the targeted region or population;

“(C) criteria designed to give preference to applicants who propose to measure the effectiveness of the proposed activities; and

“(D) criteria designed to give preference to applicants who include a Small Business Development Center program that is accredited for its technology services.

**(7) PEER REVIEW.—**In awarding grants under this subsection, the Administrator shall use a peer review process. Reviewers shall include—

“(A) SBIR program managers for agencies required by this section to conduct SBIR programs; and

“(B) private individuals and organizations that are knowledgeable about SBIR, the innovation process, technology commercialization, and State and regional technology-based economic development programs.

**(8) PER-STATE LIMITATIONS.—**

“(A) IN GENERAL.—To be eligible to receive a grant under this subsection, the applicant must have the written endorsement of the Governor of the State where the targeted regions or populations are located (if the regions or populations are located in more than one State, the applicant must have the written endorsement of the Governor of each such State). Such an endorsement must indicate that the Governor will ensure that the activities

to be carried out under the grant will be integrated with the balance of the State's portfolio of investments to help small business concerns commercialize technology.

“(B) LIMITATION.—Each fiscal year, a Governor may have in effect not more than one written endorsement for a grant under paragraph (1)(A), and not more than one written endorsement for a grant under paragraph (1)(B).

“(9) SPECIFIC REQUIREMENTS FOR AWARDS.—In making awards under paragraph (1) the Administrator shall ensure that each award shall be for a period of 2 fiscal years. The Administrator shall establish rules and performance goals for the disbursement of funds for the second fiscal year, and funds shall not be disbursed to a recipient for such a fiscal year until after the advisory board established under this subsection has determined that the recipient is in compliance with the rules and performance goals.”.

**SEC. 302. RURAL PREFERENCE.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(cc) RURAL PREFERENCE.—In making awards under this section, Federal agencies shall give priority to applications so as to increase the number of SBIR and STTR award recipients from rural areas.”.

**SEC. 303. OBTAINING SBIR APPLICANT'S CONSENT TO RELEASE CONTACT INFORMATION TO ECONOMIC DEVELOPMENT ORGANIZATIONS.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(dd) CONSENT TO RELEASE CONTACT INFORMATION TO ORGANIZATIONS.—

“(1) ENABLING CONCERN TO GIVE CONSENT.—Each Federal agency required by this section to conduct an SBIR program shall enable a small business concern that is an SBIR applicant to indicate to the agency whether the agency has its consent to—

“(A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant; and

“(B) release the concern's contact information to such organizations.

“(2) RULES.—The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that the agency include in its SBIR application forms a provision through which the applicant can indicate consent for purposes of paragraph (1).”.

**SEC. 304. INCREASED PARTNERSHIPS BETWEEN SBIR Awardees AND PRIME CONTRACTORS, VENTURE CAPITAL INVESTMENT COMPANIES, AND LARGER BUSINESSES.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(ee) INCREASED PARTNERSHIPS.—

“(1) IN GENERAL.—Each agency required by this section to conduct an SBIR program shall establish initiatives by which the agency encourages partnerships between SBIR awardees and prime contractors, venture capital investment companies, business incubators, and larger businesses, for the purpose of facilitating the progress of the SBIR awardees to the third phase.

“(2) DEFINITION.—In this subsection, the term 'business incubator' means an entity that provides coordinated and specialized services to entrepreneurial businesses which meet selected criteria during the businesses' startup phases, including providing services such as shared office space and office services, access to equipment, access to telecommunications and technology services, flexible leases, specialized management assistance, access to financing, mentoring and training services, or other coordinated business or technical support services designed to provide business development assistance to entrepreneurial businesses during these businesses' startup phases.”.

## **TITLE IV—SBIR AND STTR ENHANCEMENT**

**SEC. 401. INCREASED NUMBER OF RESEARCH TOPIC SOLICITATIONS ANNUALLY AND SHORTENED PERIOD FOR FINAL DECISIONS ON APPLICATIONS.**

(a) INCREASED NUMBER OF RESEARCH TOPIC SOLICITATIONS ANNUALLY.—Section 9(g)(2) of the Small Business Act (15 U.S.C. 638(g)(2)) is amended by inserting before the semicolon at the end the following: “, but not less often than twice per year”.

(b) SHORTENED PERIOD FOR FINAL DECISIONS ON APPLICATIONS.—Section 9(g)(4) of the Small Business Act (15 U.S.C. 638(g)(4)) is amended by inserting before the semicolon at the end the following: “, but a final decision on each proposal shall be

rendered not later than 90 days after the date on which the solicitation closes unless the Administrator determines, on a case by case basis, that a decision may be extended from 90 days to 180 days".

**SEC. 402. AGENCIES SHOULD FUND VITAL R&D PROJECTS WITH THE POTENTIAL FOR COMMERCIALIZATION.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

"(ff) MULTIPLE FIRST PHASE SBIR AWARDS REPORT.—The Administrator shall, on an annual basis, submit to the Committee on Small Business and the Committee on Science and Technology of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a list identifying each small business concern that, for the period covered by the preceding 5 fiscal years, received 15 or more first phase SBIR awards and no second phase SBIR awards.”.

**SEC. 403. FEDERAL AGENCY ENGAGEMENT WITH SBIR AWARDEES THAT HAVE BEEN AWARDED MULTIPLE PHASE ONE AWARDS BUT HAVE NOT BEEN AWARDED PHASE TWO AWARDS.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

"(gg) REQUIREMENTS RELATING TO FEDERAL AGENCY ENGAGEMENT WITH CERTAIN FIRST PHASE SBIR AWARDEES.—Each Federal agency required by this section to conduct an SBIR program shall engage with SBIR awardees that have been awarded multiple first phase SBIR awards but have not been awarded any second phase SBIR awards and shall develop performance measures with respect to awardee progression in the SBIR program.”.

**SEC. 404. FUNDING FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

"(hh) ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—

"(1) IN GENERAL.—From amounts made available to carry out this subsection, the Administrator may, on petition by Federal agencies required by this section to conduct an SBIR program, transfer funds to such agencies to assist with the administrative, oversight, and contract processing costs relating to such program.

"(2) PETITIONS.—The Administrator shall establish rules for making transfers under paragraph (1). The initial set of rules shall be promulgated not later than 180 days after the date of the enactment of this subsection.

"(3) LIMIT ON TRANSFER.—A Federal agency may not receive under this subsection in a fiscal year an amount greater than 3 percent of the SBIR budget of such agency for such fiscal year.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection \$27,500,000 for each of fiscal years 2010 and 2011.”.

**SEC. 405. COMPTROLLER GENERAL AUDIT OF HOW FEDERAL AGENCIES CALCULATE EXTRAMURAL RESEARCH BUDGETS.**

The Comptroller General of the United States shall carry out a detailed audit of how Federal agencies calculate extramural research budgets for purposes of calculating the size of the agencies' Small Business Innovation Research Program and Small Business Technology Transfer Program budgets. Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Small Business and the Committee on Science and Technology of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the results of the audit.

**SEC. 406. AGENCY DATABASES TO SUPPORT PROGRAM EVALUATION.**

Section 9(k) of the Small Business Act (15 U.S.C. 638(k)) is amended—

(1) in paragraph (2)(A)—

- (A) by striking “and” at the end of clause (ii);
- (B) by inserting “and” at the end of clause (iii); and
- (C) by adding at the end the following new clause:

“(iv) information on the ownership structure of award recipients, both at the time of receipt of the award and upon completion of the award period;”;

(2) by amending paragraph (3) to read as follows:

“(3) UPDATING INFORMATION FOR DATABASE.—

“(A) IN GENERAL.—A Federal agency shall not make a Phase I or Phase II payment to a small business concern under this section unless the small

business concern has provided all information required under this subsection and available at the time with respect to the award under which the payment is made, and with respect to any other award under this section previously received by the small business concern or a predecessor in interest to the small business concern.

“(B) APPORTIONMENT.—In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if it notes the apportionment for each award.

“(C) ANNUAL UPDATES UPON TERMINATION.—A small business concern receiving an award under this section shall—

“(i) in the case of a second phase award, update information in the databases required under paragraphs (2) and (6) concerning that award at the termination of the award period;

“(ii) in the case of award recipients not described in clause (iii), be requested to voluntarily update such information annually thereafter for a period of 5 years; and

“(iii) in the case of a small business concern applying for a subsequent first phase or second phase award, be required to update such information annually thereafter for a period of 5 years.”; and

(3) by adding at the end the following new paragraph:

“(6) AGENCY PROGRAM EVALUATION DATABASES.—Each Federal agency required to establish an SBIR or STTR program under this section shall develop and maintain, for the purpose of evaluating such programs, a database containing information required to be contained in the database under paragraph (2). Each such database shall be designed to be accessible to other agencies that are required to maintain a database under this paragraph. Each such database shall be developed and operated in a manner to ensure that each such database is relevant to and contributes to the agency’s oversight and evaluation of the SBIR and STTR programs. Paragraphs (4) and (5) apply to each database under this paragraph.”.

#### SEC. 407. AGENCY DATABASES TO SUPPORT TECHNOLOGY UTILIZATION.

Section 9(k) of the Small Business Act (15 U.S.C. 638(k)), as amended, is further amended by adding at the end the following new paragraph:

“(7) AGENCY DATABASES TO SUPPORT TECHNOLOGY UTILIZATION.—Each Federal agency with an SBIR or STTR program shall create and maintain a technology utilization database, which shall be available to the public and shall contain data supplied by the award recipients specifically to help them attract customers for the products and services generated under the SBIR or STTR project, and to attract additional investors and business partners. Each database created under this paragraph shall include information on the other databases created under this paragraph by other Federal agencies. Participation in a database under this paragraph shall be voluntary, except that such participation is required of all award recipients who received supplemental payments from SBIR and STTR program funds above their initial Phase II award. Each database created under this paragraph shall be developed and operated in a manner to ensure that each such database is relevant to and contributes to the agency’s oversight and evaluation of the SBIR and STTR programs.”.

#### SEC. 408. INTERAGENCY POLICY COMMITTEE.

(a) ESTABLISHMENT.—The Director of the Office of Science and Technology Policy shall establish an Interagency SBIR/STTR Policy Committee comprised of one representative from each Federal agency with an SBIR program and the Office of Management and Budget.

(b) COCHAIRS.—The Director of the Office of Science and Technology Policy and the Director of the National Institute of Standards and Technology shall jointly chair the Interagency SBIR/STTR Policy Committee.

(c) DUTIES.—The Interagency SBIR/STTR Policy Committee shall review the following issues and make policy recommendations on ways to improve program effectiveness and efficiency:

(1) The public and government databases described in section 9(k) (1) and (2) of the Small Business Act (15 U.S.C. 638(k) (1) and (2)).

(2) Federal agency flexibility in establishing Phase I and II award sizes, and appropriate criteria to exercise such flexibility.

(3) Commercialization assistance best practices in Federal agencies with significant potential to be employed by other agencies, and the appropriate steps to achieve that leverage, as well as proposals for new initiatives to address funding gaps business concerns face after Phase II but before commercialization.

(4) Development and incorporation of a standard evaluation framework to enable systematic assessment of SBIR and STTR, including through improved tracking of awards and outcomes and development of performance measures for individual agency programs.

(d) REPORTS.—The Interagency SBIR/STTR Policy Committee shall transmit to the Committee on Science and Technology and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business and Entrepreneurship of the Senate—

(1) a report on its review and recommendations under subsections (c)(1) and (c)(4) not later than 1 year after the date of enactment of this Act;

(2) a report on its review and recommendations under subsection (c)(2) not later than 18 months after the date of enactment of this Act; and

(3) a report on its review and recommendations under subsection (c)(3) not later than 2 years after the date of enactment of this Act.

**SEC. 409. NATIONAL RESEARCH COUNCIL SBIR STUDY.**

Section 108(d) of the Small Business Reauthorization Act of 2000 (15 U.S.C. 638 note), enacted into law by reference under section 1(a)(9) of the Consolidated Appropriations Act, 2001 (Public Law 106-554), is amended—

(1) by striking “of the Senate” and all that follows through “not later than 3” and inserting “of the Senate, not later than 3”; and

(2) by striking “; and” and all that follows through “update of such report”.

**SEC. 410. EXPRESS AUTHORITY TO “FAST-TRACK” PHASE TWO AWARDS FOR PROMISING PHASE ONE RESEARCH.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(ii) AUTHORITY TO ‘FAST-TRACK’ PHASE TWO AWARDS FOR PROMISING PHASE ONE RESEARCH.—To address the delay between an award for the first phase of an SBIR program and the application for and extension of an award for the second phase of such program, each Federal agency with an SBIR program may develop ‘fast-track’ programs to eliminate such delay by issuing second phase SBIR awards as soon as practicable, including in appropriate cases simultaneously with the issuance of the first phase SBIR award. The Administrator shall encourage the development of such ‘fast-track’ programs.”.

**SEC. 411. INCREASED SBIR AND STTR AWARD LEVELS.**

(a) SBIR AWARD LEVEL AND ANNUAL ADJUSTMENTS.—Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) is amended by adding at the end the following:

“(4) FURTHER ADDITIONAL MODIFICATIONS.—Not later than 180 days after the date of enactment of this paragraph and notwithstanding paragraph (2)(D), the Administrator shall modify the policy directives issued pursuant to this subsection to provide for an increase to \$250,000 in the amount of funds which an agency may award in the first phase of an SBIR program, and to \$2,000,000 in the second phase of an SBIR program, and a mandatory annual adjustment of such amounts to reflect economic adjustments and programmatic considerations.”.

(b) STTR AWARD LEVEL AND ANNUAL ADJUSTMENTS.—Section 9(p)(2)(B)(ix) of the Small Business Act (15 U.S.C. 638(p)(2)(B)(ix)) is amended—

(1) by striking “\$100,000” and “\$750,000” and inserting “\$250,000” and “\$2,000,000”, respectively; and

(2) by striking “greater or lesser amounts” and inserting “with a mandatory annual adjustment of such amounts to reflect economic adjustments and programmatic considerations, and with lesser amounts”.

(c) LIMITATION ON CERTAIN AWARDS.—Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(jj) LIMITATION ON PHASE I AND II AWARDS.—No Federal agency shall issue an award under the SBIR program or the STTR program if the size of the award exceeds the amounts established under subsections (j)(4) and (p)(2)(B)(ix).”.

**SEC. 412. EXPRESS AUTHORITY FOR AN AGENCY TO AWARD SEQUENTIAL PHASE TWO AWARDS FOR SBIR-FUNDED PROJECTS.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(kk) REQUIREMENTS RELATING TO ADDITIONAL SECOND PHASE SBIR AWARDS.—

“(1) IN GENERAL.—A small business concern that receives a second phase SBIR award for a project remains eligible to receive additional second phase SBIR awards for such project.

“(2) TECHNICAL OR WEAPONS SYSTEMS.—Agencies are expressly authorized to provide additional second phase SBIR awards for testing and evaluation assistance for the insertion of SBIR technologies into technical or weapons systems.”.

**SEC. 413. FIRST PHASE REQUIRED.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(ll) FIRST PHASE REQUIRED.—Under this section, a Federal agency shall provide to a small business concern an award for the second phase of an SBIR program with respect to a project only if such agency finds that the small business concern has been provided an award for the first phase of an SBIR program with respect to such project or has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided an award for the first phase.”

**SEC. 414. INVOLVEMENT OF CHIEF COUNSEL FOR ADVOCACY.**

Section 9 of the Small Business Act (15 U.S.C. 638), as amended, is further amended by adding at the end the following:

“(mm) INVOLVEMENT OF CHIEF COUNSEL FOR ADVOCACY.—The Chief Counsel for Advocacy, as described in section 201 of Public Law 94–305 (15 U.S.C. 634a), and any individual reporting to the Chief Counsel for Advocacy, without regard to whether such individual was hired under section 204 of Public Law 94–305 (15 U.S.C. 634d), may not provide to the Administrator, to any individual who reports directly or indirectly to the Administrator, or to any Federal agency any advice, guidance, oversight, or review with respect to the programs authorized under this section.”

## I. PURPOSE OF THE BILL AND SUMMARY

The Enhancing Small Business Research and Innovation Act of 2009 extends through fiscal year 2011 the Federal government's largest small business research and development programs. The legislation modernizes the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, changing the legislative guidelines and policies in order to update the program in response to the unique challenges facing small research companies and the changing research priorities of Federal agencies.

The Act is aimed at three broad goals. First, the bill seeks to encourage greater participation in SBIR. An increase in the number of small businesses applying for SBIR is critical to the on going success of the program. Second, the bill permits small companies that are majority-owned by qualifying venture capital firms to participate in the SBIR program. A 2003 ruling by the Small Business Administration (SBA) has made small firms with large investments from venture capital companies ineligible to participate in the SBIR program. The SBA ruling forces many small businesses to choose between accepting investments from venture capital firms and participating in the Federal government's largest R&D program for small research firms. Third, the bill seeks to encourage and support commercialization initiatives at Federal agencies that administer SBIR programs. Under current law certain Federal agencies have the authority to develop commercialization programs. This bill extends to all agencies the authority to develop programs designed to support the commercialization of SBIR-funded research.

Additionally, the bill seeks to codify in statute the programmatic flexibility that Federal agencies need in order to administer SBIR awards in a manner that is most consistent with the agency's specific mission. Along with granting to Federal agencies a great degree of autonomy, the bill also requires Federal agencies to establish more concrete goals and objectives with respect to their SBIR programs and directs the agencies to provide Congress with more regular reports.

#### ENCOURAGING GREATER PARTICIPATION IN SBIR AND STTR

The Act includes a number of provisions designed to encourage more small firms to apply for SBIR and STTR awards. The bill more than doubles the size of SBIR and STTR awards for Phase I and Phase II grants and establishes a 90-day timeline for issuing a final decision on an SBIR application after the solicitation is closed.

The legislation establishes a federal grant program to reach out to small firms located in underrepresented areas, and that are owned by service-disabled veterans, women, and minorities. Under the grant program established by the bill, the SBA Administrator is instructed to make competitive grants to organizations to conduct outreach efforts to increase participation in the SBIR program and provide application support and entrepreneurial and business skills support for current and prospective participants in the SBIR program. To be eligible for these awards, an organization must have the written endorsement of the Governor of the State where the targeted regions or populations are based. Awards made under grant program established by the bill cannot exceed \$250,000 per year and require matching funds from sources other than the Federal government.

#### PERMITTING SMALL COMPANIES THAT ARE MORE THAN 50%-OWNED BY QUALIFYING VENTURE CAPITAL FIRMS TO PARTICIPATE IN SBIR

The Act includes provisions that establish clear guidelines governing the participation of small businesses with substantial investment from venture capital operating companies in the SBIR program. The provisions will allow a small company that is majority-owned by qualifying venture capital firms<sup>1</sup> to participate in the SBIR program, so long as the small business concerns do not (1) have a single venture capital company owning a majority of the concern or (2) have a venture capital company controlling a majority of the concern's board of director's seats. Safeguards—including limits on corporate-backed entities have been incorporated to prevent large companies from using the SBIR program at the expense of smaller researchers.

#### ADVANCING COMMERCIALIZATION OF SBIR-FUNDED RESEARCH AND DEVELOPMENT PROJECTS

To support the successful commercialization of SBIR-funded research, the Act permits an agency to grant multiple Phase Two awards and requires agencies to establish initiatives designed to encourage partnerships between SBIR awardees and prime contractors, venture capital investment companies and larger businesses. The legislation also allows an agency to issue a Phase Two award to a qualifying applicant, even if the applicant's research proposal had not been awarded a Phase One grant.

The Act defines "Phase Three" of the SBIR program and requires agencies to establish commercialization programs that support the progress of SBIR awardees towards "Phase Three" of the SBIR program. The commercialization programs may include activities such

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<sup>1</sup> Small companies majority-owned by a single venture capital firm are not be eligible to participate in the SBIR program under the Act.

as partnerships databases, partnership conferences, mentoring initiatives between prime contractors and SBIR awardees, SBIR helpdesks and transition assistance programs. The legislation authorizes appropriations to the SBA funds equal to approximately 1% of the SBIR set-aside. The SBA will allocate these funds to agencies to support the commercialization programs that they are required to implement.

#### RETAINS PROGRAMMATIC FLEXIBILITY

The Committee's legislation makes these meaningful changes to the SBIR without reducing the programmatic flexibility that is a central feature of the SBIR program as it is currently administered.

#### II. BACKGROUND AND NEED FOR LEGISLATION

In 1982, Congress passed the Small Business Innovation Development Act which established the SBIR program. The intent of the Act was to increase government funding of small, innovative companies for the performance of research and development with commercial potential. Supporters of the SBIR program argued that while small companies were highly innovative, such firms were underrepresented in federal R&D activities.

The potential of small companies to be sources of significant innovation led Congress to establish the SBIR program. From the program's original development, however, SBIR has been intended to stimulate technological innovation related to each participating agency's goals and mission, use small businesses for federal R&D needs and increase private sector commercialization of innovations derived from federal R&D expenditures. To meet these objectives, the Act required that Federal departments with an extramural research budget of \$100 million or more to set aside a small percentage of their agency's overall research budget and award technology development contracts to small firms. The percentage of R&D activities to be conducted by small firms has increased since the Act was originally passed and now stands at 2.5 percent.

Currently, eleven agencies have research budgets large enough to require participation in the SBIR program. In 2006, Federal agencies awarded more than \$2 billion to small research firms through the SBIR program. In 2007, the Department of Defense alone awarded more than \$1 billion to small firms for the development of advanced technologies. From the program's inception in FY1983 through FY2006, over \$20 billion in awards have been made for more than 90,000 projects.

A key element of the SBIR program is that it establishes a three-phase development system for participants. During Phase One, participating agencies fund a proposed idea to determine if it has scientific and technical merit and is feasible. Projects that demonstrate potential after the initial endeavor can compete for Phase Two awards (lasting one to two years) to perform the principal R&D. Generally, Phase One and Phase Two awards may not exceed \$100,000 and \$750,000, respectively. A third phase of the program, aimed at the commercialization of a product or process developed in the earlier phases, is intended to be funded by the private sector.

Since SBIR's inception in 1983, the program has been the focus of numerous studies, assessments and evaluations. The Government Accountability Office (GAO) has issued a series of reports on the implementation of the Small Business Development Act. The National Academies of Science completed a comprehensive three-year evaluation of the SBIR program in 2007. Additionally, participating federal agencies have also provided assessments of their agency's SBIR program.

#### INDEPENDENT EVALUATIONS OF THE SBIR PROGRAM

The Small Business Innovation Development Act directed the GAO to assess the implementation of the Act. GAO has issued at least nine reports documenting its findings. A 1987 study found that both the evaluation and selection processes were sufficient to "reasonably" ensure awards were based on technical merit. In 1989, GAO reported that agency heads found the SBIR effort to be beneficial and met the organization's R&D needs. A GAO report issued in May 1992 noted that almost two-thirds of the projects already had sales or received additional funding (primarily from the private sector) totaling approximately \$1.1 billion. Another GAO study, released in April 1998, noted that between 35% and 50% of SBIR projects had resulted in sales or additional private sector investment. A more recent report by GAO in June 2005 found that the effort appears to be achieving its goal of "enhanced" participation of small business in the R&D enterprise.

As part of the reauthorization of the SBIR program in 2000, Congress directed the National Research Council (NRC) of the National Academies to "conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs" and to make recommendations with respect to the SBIR program. After more than 3 years of research and analysis, the NRC study released its assessment of the SBIR program as administered by the five federal agencies that together make up some 96 percent of SBIR program expenditures in July 2007.<sup>2</sup>

The core finding of the study is that the SBIR program is sound in concept and effective in practice. In support of the report's core finding, the NRC concludes that the SBIR program is: (1) stimulating technological innovations, (2) increasing private sector commercialization of innovations, (3) using small business to meet federal research and development needs and (4) providing widely distributed support for innovation activity.

#### 2009 NRC REPORT ON VENTURE CAPITAL FUNDING IN THE NATIONAL INSTITUTES OF HEALTH (NIH)

A recent NRC report on the venture capital prohibition in the SBIR program found that the impact of the 2003 ruling falls disproportionately on the most promising firms i.e., those firms that have repeatedly been selected by both NIH for their promising

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<sup>2</sup>The agencies examined by the NRC study, in order of program size, are the Department of Defense, the National Institutes of Health, the National Aeronautics and Space Administration, the Department of Energy, and the National Science Foundation.

technologies and by venture investors for their commercial potential.<sup>3</sup>

While the report does site a percentage of venture-backed firms likely excluded from the SBIR program (4.1 percent to 11.9 percent), it qualifies this by stating that there is a downward bias—this means the percentage excluded is likely higher.<sup>4</sup> This is due to the fact that venture capital investment smaller firms considered by the study (1) was just beginning in the 1990s and (2) has matured dramatically in the last five years to favor investment in commercially viable technologies and therapies. The result is that the level of exclusion is likely much higher than the report states.

The report concludes that restricting access to SBIR funding for firms that benefit from venture investments would thus appear to disproportionately affect some of the most commercially promising small innovative firms. To this extent, the SBA ruling has the potential to diminish the positive impact of the nation's investments in research and development in the biomedical area.<sup>5</sup>

The NRC states that by selecting out some of the most commercially promising innovative small firms, the SBA directive appears to limit opportunities to exploit the nation's substantial investments in research at NIH. This is contrary to one of the four key goals of the SBIR program, which is the commercialization of federal research. The implementation of the SBA ruling appears to be negatively affecting current participation by firms and the long-term commercialization potential of the NIH SBIR program.<sup>6</sup>

#### The Need to Reauthorize and Modernize the SBIR Program

The SBIR program has been reauthorized three times since its enactment, first in 1986 and subsequently in 1992 and 2000. The latest authorization was set to expire on September 30, 2008 but was temporarily extended by the SBA through March 20, 2009, and again extended by a continuing resolution passed by the House and Senate. Under the current extension, SBIR will expire on July 31, 2009. The STTR program was last reauthorized in 2001 and is scheduled to sunset on September 30, 2009.

The positive evaluations of the SBIR program issued by independent research organizations and testimony presented to the Committee on Small Business during the 110th Congress and 111th Congress in support of SBIR and STTR create the basis of support for H.R. 2965. Small firms, federal agencies, patient organizations, economic development organizations and academics have testified in strong support of reauthorization of the SBIR and STTR programs.

During the eight years that have elapsed since Congress last passed legislation extending and modernizing the SBIR program, our country's R&D priorities and the role of small innovative companies in the U.S. economy have changed. The manner in which the participating federal agencies administer their SBIR programs has also changed over the last eight years. Reflective of these changes, participating small firms, participating federal agencies,

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<sup>3</sup> *Venture Funding and the NIH SBIR Program*, National Research Council of the National Academies of Science, May 2009.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

research organizations and other interested parties support modernizing the SBIR program. Specifically, expert witnesses have testified that legislation is necessary in order to make the following important changes to SBIR program.

**EXPAND COMMERCIALIZATION OPPORTUNITIES FOR SBIR AND STTR R&D PROJECTS**

Witnesses have testified before the Committee that small businesses face serious challenges in commercializing their research following Phases I and II. Many potential partners and investors require that a product achieve a certain degree of technological readiness before they are willing to support or invest in a given product's later stage development. This is described as the "valley of death," where promising research is derailed because the small business does not have the funding required to develop the product to the requisite technological readiness. Witnesses have described how SBIR- and STTR-funded projects can stall or fail at the end of a Phase II award due to a lack of available funding to continue developing the product to the desired specifications.

In order to address the "valley of death," several federal agencies have developed initiatives within their SBIR programs that offer commercialization support to SBIR awardees. These initiatives include business planning assistance, business-to-business mentoring, manufacturing assistance, technology transition assistance, partnership assistance and/or additional funding. Although these initiatives are only a few years old, early anecdotal data from these agencies suggest that the programs are increasing commercialization of SBIR-funded research and development projects.

**PERMIT VENTURE-BACKED FIRMS TO PARTICIPATE IN THE SBIR PROGRAM**

To qualify for SBIR awards, small firms must affirm that they meet certain ownership criteria, such as being 51 percent or more owned by individuals who are U.S. citizens or permanent resident aliens. In 2003, an SBA administrative law judge issued a decision that venture capital firms could not be considered "individuals" for the purpose of satisfying the ownership criteria of the SBIR program. As a result, a number of firms that are majority-owned by venture capital firms that had once been eligible to participate (or did, in fact participate) in the SBIR program before the 2003 ruling are no longer eligible. Small venture-backed companies that have been ruled ineligible for SBIR are unable to secure necessary funding to conduct important research activities.

The ruling created confusion among program participants and has led some firms to steer away from the program. Since 2003, NIH reports that SBIR applications have been decreasing and awards to new applicants are also decreasing. In FY 2006, only about one-fourth of the awardees were new to the program—the lowest proportion in a decade. Many of the small research companies that are rendered ineligible by the SBA's 2003 ruling have fewer than 100 employees and—in the case of small biotechnology companies—no revenue.

Legislation is needed so that small firms with significant venture capital investment can compete for and win SBIR awards. However, legislation should also prohibit small firms from receiving and

competing for SBIR awards if either: (1) a single venture capital company owns a majority of the small firm or (2) a single venture capital company controls a majority of the concern's board of director's seats.

#### INCREASE OUTREACH TO RURAL AREAS AND UNDERSERVED POPULATIONS

Effective outreach to small firms owned and controlled by women, veterans and minorities and to businesses located in areas that are underrepresented in the SBIR and STTR programs is a continuing challenge for the programs. Some state economic development offices run effective application support and entrepreneurial and business skills support for current and prospective participants in the programs while other states offer no such support. Federal agencies report that, despite their outreach efforts, they struggle to receive applications from underrepresented populations.

The SBIR reauthorization legislation that Congress passed during the 106th Congress included the authorization for funding of a "Federal and State Technology Partnership Program" (FAST). FAST was designed to promote awards in states that do not have a high volume of SBIR awards, and in low-income areas of all states. Before authorization for the program expired in 2005, between 2002 and 2005 the SBA was able to make grants to organizations to support the development of SBIR proposals.

#### RESOURCES FOR SBIR MANAGEMENT AND EVALUATION

Under current law, participating federal agencies are prohibited from using any of the 2.5 percent SBIR set-aside to fund the program's administrative costs, including costs associated with salaries and expenses. Authorizing agencies to separately fund operating expenses may enhance SBIR program utilization, management and evaluation. Federal agencies that set aside special funds to pay for SBIR management expenses have asserted that they have more effective programs than agencies that do not set aside special funds for administration of the program. Proposals have also called for databases to collect relevant information on project outcomes and milestones to provide greater transparency to the programs for both the government and the private sector.

#### INCREASE AWARD SIZE AND SIMPLIFY APPLICATION PROCESS

The SBIR application process should be reviewed to ensure that it is not overly burdensome and that firms receive a timely decision. Witnesses have also recommended that the size of SBIR awards be increased. The award levels set out in the legislation have not increased since 1992 and the value of the awards has been eroded by inflation. Simplifying the application process and increasing the award levels would, according to witness testimony, increase the competition for SBIR awards and ultimately result in a more effective program. A related issue is a potential cap on the dollar amount that an SBIR agency can award a grantee. Under SBA's existing policy directive, the agencies are able to grant awards that exceed the guidance provided in legislation. Representatives of Federal agencies that administer the SBIR program have testified that an inflexible cap on SBIR awards dollar amounts

would undermine programs that have successfully helped small firms commercialize SBIR-funded research and development.

### III. HEARINGS

In the 111th Congress, the Committee on Small Business held three hearings on the SBIR and STTR programs and related legislation. On June 17, 2009, the Committee convened a hearing entitled “Legislative Initiatives to Strengthen and Modernize the SBIR and STTR Programs.” Testimony was taken from a wide range of small businesses that use these programs in the defense, health care, and energy arenas. This hearing followed a previous full Committee hearing on April 22, 2009, which explored issues related to the overall effectiveness of the SBIR program and a legislative hearing in the Committee’s Contracting and Technology Subcommittee on June 4, 2009.

In the 110th Congress, the Committee on Small Business also convened three hearings on the reauthorization of the SBIR program. On January 29, 2008, the House Committee on Small Business convened a hearing entitled “SBIR: America’s Technology Development Incubator.” The hearing explored the numerous contributions that the SBIR program makes to national security priorities, economic development objectives and America’s international economic competitiveness. On February 13, 2008 the House Committee on Small Business, Subcommittee on Investigations and Oversight convened a hearing entitled “SBIR: Advancing Medical Innovations.” The Subcommittee hearing examined the impact of the SBIR program on the development of innovative medical technologies, therapies and products. On March 13, 2008 the Committee on Small Business held a hearing to review a Committee Print of proposed legislation that would reauthorize and modernize the SBIR program.

### IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session on June 25, 2009 and ordered H.R. 2965 reported, as amended, to the House by a recorded vote of 22 yeas to zero nays at 10:55am. Four amendments were offered during the markup. Ms. Velázquez offered an amendment, which was adopted by voice vote, to require the interagency policy committee established in the legislation to develop an evaluation framework for the SBIR and STTR programs. Mr. Akin offered an amendment, which was adopted by voice vote, which would prevent the SBA’s Office of Advocacy from intervening in matters concerning the SBIR and STTR programs. Mr. King offered two amendments. His first amendment, which was rejected by voice vote, would have eliminated minorities and women from the focus of the legislation’s outreach program. His second amendment would have prohibited SBIR and STTR funds from being directed to certain organizations. This amendment was rejected by a recorded vote of 9 yeas to 13 nays at 10:49 am.

### V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. As noted in the com-

prehensive description of the markup above, two recorded votes were conducted. During committee consideration of the legislation, an amendment numbered King #2 was offered by Mr. King. This amendment was NOT AGREED to by a recorded vote of 9 yeas to 13 nays at 10:49 am. A motion by Ms. Velázquez to report the bill, as amended, to the House with a favorable recommendation was AGREED to by a vote of 22 yeas to zero nays at 10:55 am.

**Committee on Small Business  
111<sup>th</sup> Congress –First Session  
Recorded Vote Sheet**

**Full Committee Markup  
Thursday, June 25, 2009-9:30pm  
2360 Rayburn House Office Building  
*Rep. King Amendment on H.R. 2965, "Enhancing Small Business Research and Innovation Act of 2009"***

**10:49 am**

<b>Aye</b>	<b>/</b>	<b>No</b>
—	<u>X</u>	Nydia M. Velázquez (NY)
—	<u>X</u>	Dennis Moore (KS)
—	<u>X</u>	Heath Shuler (NC)
—	<u>X</u>	Kathy Dahlkemper (PA)
—	<u>X</u>	Kurt Schrader (OR)
—	<u>X</u>	Ann Kirkpatrick (AZ)
—	<u>X</u>	Glenn Nye (VA)
—	<u>X</u>	Michael Michaud (ME)
—	—	Melissa Bean (IL)
—	—	Dan Lipinski (IL)
—	<u>X</u>	Jason Altmire (PA)
—	<u>X</u>	Yvette Clarke (NY)
—	<u>X</u>	Brad Ellsworth (IN)
—	—	Joe Sestak (PA)
<u>X</u>	—	Bobby Bright (AL)
—	<u>X</u>	Parker Griffith (AL)
—	<u>X</u>	Deborah Halvorson (IL)

<b>Aye</b>	<b>/</b>	<b>No</b>
<u>X</u>	—	Sam Graves (MO)
—	—	Roscoe G. Bartlett (MD)
<u>X</u>	—	W. Todd Akin (MO)
<u>X</u>	—	Steve King (IA)
—	—	Lynn A. Westmoreland (GA)
—	—	Louie Gohmert (TX)
<u>X</u>	—	Mary Fallin (OK)
—	—	Vern Buchanan (FL)
<u>X</u>	—	Blaine Luetkemeyer (MO)
<u>X</u>	—	Aaron Schock (IL)
<u>X</u>	—	Glenn Thompson (PA)
<u>X</u>	—	Mike Coffman (CO)

**TOTAL AYES: 9**  
**TOTAL NOES: 13**

**Committee on Small Business  
111<sup>th</sup> Congress –First Session  
Recorded Vote Sheet**

**Full Committee Markup  
Thursday, June 25, 2009-9:30pm  
2360 Rayburn House Office Building  
Final Passage: H.R. 2965, "Enhancing Small Business Research and Innovation Act  
of 2009"**

10:55 am

<b>Aye /</b>	<b>No</b>	<b>Aye /</b>	<b>No</b>
<input checked="" type="checkbox"/>	Nydia M. Velázquez (NY)	<input checked="" type="checkbox"/>	Sam Graves (MO)
<input checked="" type="checkbox"/>	Dennis Moore (KS)	<input type="checkbox"/>	Roscoe G. Bartlett (MD)
<input checked="" type="checkbox"/>	Heath Shuler (NC)	<input checked="" type="checkbox"/>	W. Todd Akin (MO)
<input checked="" type="checkbox"/>	Kathy Dahlkemper (PA)	<input checked="" type="checkbox"/>	Steve King (IA)
<input checked="" type="checkbox"/>	Kurt Schrader (OR)	<input type="checkbox"/>	Lynn A. Westmoreland (GA)
<input checked="" type="checkbox"/>	Ann Kirkpatrick (AZ)	<input type="checkbox"/>	Louie Gohmert (TX)
<input checked="" type="checkbox"/>	Glenn Nye (VA)	<input checked="" type="checkbox"/>	Mary Fallin (OK)
<input checked="" type="checkbox"/>	Michael Michaud (ME)	<input type="checkbox"/>	Vern Buchanan (FL)
<input type="checkbox"/>	Melissa Bean (IL)	<input checked="" type="checkbox"/>	Blaine Luetkemeyer (MO)
<input type="checkbox"/>	Dan Lipinski (IL)	<input checked="" type="checkbox"/>	Aaron Schock (IL)
<input checked="" type="checkbox"/>	Jason Altmire (PA)	<input checked="" type="checkbox"/>	Glenn Thompson (PA)
<input checked="" type="checkbox"/>	Yvette Clarke (NY)	<input checked="" type="checkbox"/>	Mike Coffman (CO)
<input checked="" type="checkbox"/>	Brad Ellsworth (IN)		
<input type="checkbox"/>	Joe Sestak (PA)		
<input checked="" type="checkbox"/>	Bobby Bright (AL)		
<input checked="" type="checkbox"/>	Parker Griffith (AL)		
<input checked="" type="checkbox"/>	Deborah Halvorson (IL)		

TOTAL AYES: 22  
TOTAL NOES: 0

## VI. SECTION-BY-SECTION ANALYSIS OF H.R. 2965

### *Sec. 1. Short title*

This provision sets a short title for the Act as “The Enhancing Small Business Research and Innovation Act of 2009.”

#### Title 1. Program Extension and Venture Capital Investment

### *Sec. 101. Authorization period*

The Small Business Act is amended to extend through FY2011 the SBIR and STTR programs of the SBA. The Committee believes that a two-year authorization period is appropriate given the rapid changes in technological evolution and the constantly evolving needs on small firms. A biennial authorization provides for necessary congressional oversight and program evaluation. The Committee believes that programs as valuable as SBIR and STTR should be given regular oversight from Congress, which is most appropriately conducted through the legislative reauthorization process.

The last SBIR reauthorization bill that Congress passed was in 2001 and extended the SBIR program for eight years. The length of this authorization did not require Congress to focus its attention on this important research and development program and allowed years to pass between formal Congressional inquiries into the SBIR program’s implementation and effectiveness.

It should be noted that Congress is able to reauthorize the Department of Defense (DoD), with a budget of nearly a trillion dollars (equal to more than 7 percent of GDP), each year. For comparison, the SBIR and STTR program’s cost is estimated at less than \$70 million per year. If an agency as complicated as DoD, with varied and complex programs, can be reauthorized annually, it would seem reasonable that SBIR and STTR could be reauthorized biennially.

The argument that the SBIR and STTR programs should be reauthorized for a longer period to give the programs stability is weak. Lengthy reauthorization periods serve little purpose other than to evade oversight and ultimately reduce the public policy nexus for government initiatives. In addition, a program like SBIR—which is technology-focused—needs to be continually updated to reflect the changing economic realities more frequently.

Finally, the Committee notes that SBIR and STTR funding awards are made annually, just as federal contracts are made annually. The funding for future awards—much like future contracts—is dependent on the agencies budget being funded from Congress. Such an annual requirement has not deterred small firms from seeking work with the government and has not deterred small firms from applying to the SBIR and STTR programs.

### *Sec. 102. Venture capital investment standards*

This provision permits small businesses with investment from venture capital companies to participate in the SBIR and STTR program. It reverses a policy that resulted from a 2003 SBA administrative ruling. This ruling, by an administrative law judge of the SBA’s Office of Hearing and Appeals, placed a restriction on venture capital investment in SBIR awardees. The Committee notes that this ruling could have been overturned by regulation in the

last six years, but the SBA has failed to revisit this issue fully. As a result, the Committee has incorporated this section into H.R. 2965.

The Committee believes that the capital structure of a small business concern is irrelevant for the purposes of the SBIR program. This is supported by the series of hearings conducted by the Committee over the last two years and independent research. The NRC has found in its May 2009 research report that small businesses engaged in federal research require sufficient sources of external capital to successfully commercialize their research.<sup>7</sup> This is readily apparent in the medical and defense industries, but also in other fields including transportation and energy. As a result, the Committee believes that the overriding policy focus should be on enhancing small firms' access to financing—including equity investment in the form of venture capital. The Committee believes that the recent NRC report provides further justification for restoring the SBIR program to its pre-2003 status when venture capital investment was permitted.

The Committee understands that many research companies, in particular those that are small, do not possess positive revenue streams. This limits the impact on small businesses' cash flow and increases their ability to carry out their research activities. Such realities make access to venture capital even more critical, as such investment often does not require immediate repayment. The Committee also recognizes that Congress has placed significant weight on small SBIR firms' ability to secure non-federal private funding. This emphasis is clearly apparent in section 9(e)(4)(B)(ii) and 9(e)(4)(C)(i) of the Small Business Act and suggests that reopening sources of external financing such as venture capital is aligned with Congress' original intent in establishing the SBIR program.

To accomplish this, the section specifies that portfolio companies of venture capital companies are not affiliated with the venture capital company itself or other portfolio companies of the same venture capital company for the purposes of the SBIR and STTR program. This treatment for affiliation is sensible for the venture capital industry as employees of one portfolio company do not regularly provide uncompensated services for, nor are they regularly dually employed by, other portfolio companies. In fact, it is not uncommon for portfolio companies of the same venture capital company to be in the same industry sector as other portfolio companies and even compete with one another. As a result, the Committee believes that small business concerns with venture capital investment should not have employees from other portfolio companies of the same venture capital company counted as its own employees.

In addition, this provision deems a small business concern with venture capital investment to be independently owned and operated. The nature of venture capital is to provide investment capital and not day-to-day management and control of a business. Venture capital investors seek financial profits—not outright operational control. The Committee finds no evidence that venture capital companies are investing in small business concerns solely to access SBIR funds. Rather it finds that they are seeking to benefit as an

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<sup>7</sup>For a broader discussion of the May 2009 NRC report please see Section II of this Committee Report.

investor in the underlying research, which has the effect of contributing to the success of the small business. Often a venture capital company divests itself within seven years of its initial investment. As a result, the Committee believes that treating SBIR-eligible small business concerns with venture capital investment as independently owned and operated is appropriate.

In both dealing with the affiliation standard and the independently owned and operated standard, the legislation is limited to small business concerns that: 1) do have a single venture capital company owning a majority of the concern and 2) do not have a venture capital company controlling a majority of the concern's board of director's seats. This ensures that while a majority of a small business concern may be owned by venture capital companies, no single venture capital company can own a majority or control its operations via the board of directors.

The legislation defines venture capital company for the purposes of this Act, including requiring that such entity have less than 500 employees and be domiciled in the United States. It also prevents the venture capital operating company from being controlled by a business that is not a small business concern. The Committee does not believe a cap of any size is appropriate and that such a restraint would create massive administrative problems within SBIR agencies and does not recognize the recent evolution of capital markets. Such constraints serve only to impair the underpinnings of a market-based economy and would impair the free flow of capital to small businesses. Such federal government intervention in the capital markets and such regulation of financial transactions is inconsistent with the needs of small firms participating in the SBIR program.

Finally, the legislation clarifies the role that corporate-owned venture capital companies can play when investing in SBIR eligible companies. Under current law, corporate-owned venture capital companies can invest in SBIR eligible companies, so long as they do constitute a majority ownership share of the small business concern. This section specifies that an SBIR company can only have investment from two such corporate-owned venture capital companies and that together they can only own up to 20 percent of the SBIR eligible concern.

## TITLE II. COMMERCIALIZATION AND RESEARCH PRIORITIES

### *Sec. 201. Focus on Commercialization*

The Committee intends this section to place emphasis on applied research in the SBIR and the STTR programs. Taxpayer funds used for these initiatives are meant to go toward research that can be readily commercialized, not basic research which is the purview of the universities and the recipient of the lion's share (97.5 percent) of federal extramural research budgets. The provision amends section 9 to modify the purpose and policy of the SBIR and STTR programs as follows:

"It is further the policy of Congress that the programs established in this section should focus on promoting research and development of projects governed by commercial business plans, which have significant potential to produce products or services for the marketplace or for acquisition by Federal agencies."

*Sec. 202. Rare Disease and Energy-related Research Focus and Priorities*

In issuing research SBIR solicitations, this section requires agencies to give special consideration to topics contained in the report of the National Institutes of Health, in the annual report on the rare diseases research activities of the National Institutes of Health for fiscal year 2005, and in subsequent reports issued by the National Institutes of Health on rare diseases research activities. In addition, this section requires agencies to give special consideration to topics contained in the report of the National Academy of Sciences, in the final report issued by the 'America's Energy Future: Technology Opportunities, Risks, and Tradeoffs' project, and in subsequent reports issued by the National Academy of Sciences on sustainability, energy, and alternative fuels.

The intention of this section is to expand the number of research activities into rare-disease research and energy-related research. The Committee expects federal agencies to increase SBIR solicitations in these areas and increase awards for meritorious proposals responding to such solicitations.

*Sec. 203. Nanotechnology Research Focus and Priority*

In issuing research SBIR and STTR solicitations, this section requires agencies to give special consideration to topics contained in the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in subsequent reports issued by the National Science and Technology Council Committee on Technology, focusing on areas of nanotechnology identified in such plan.

The Committee intends that such designation will increase the likelihood of federal SBIR agencies issuing research solicitations in this area.

*Sec. 204. Definition of Phase Three*

This section revises the definition of "Phase Three" of the SBIR program so that it is clear that such work shall be directed toward commercial applications and derives from research and development completed in earlier phases.

The purpose of the provision is to identify metrics that Federal agencies can use to measure how many of the Phase Two projects they fund have successfully reached Phase Three of the SBIR program. The Committee expects that a definition of "Phase Three" of the SBIR program will provide a basis for agencies to set goals for successful commercialization of SBIR-funded research.

*Sec. 205. Agency research goals*

This provision requires that agencies must establish annual goals associated with (1) the percentage of SBIR projects that receive Phase Three funds, (2) the percentage of SBIR projects that are integrated into a program of record and (3) the amount of non-SBIR federal dollars received by SBIR projects through Federal contracts. The Committee expects that each Federal agency that awards annually \$5,000,000,000 or more in procurement contracts shall submit to Congress annual goals for commercialization and data on the extent to which the goals were met. The Committee ex-

pects that the report that agencies make to Congress will include a description of the methodology used to collect the data.

*Sec. 206. SBIR commercialization program*

This section requires that agencies establish efforts designed to support SBIR-funded research projects in their transition to Phase Three. This provision also authorizes an annual appropriation to the SBA of \$27,500,000 for such purposes of carrying out this program.

The Committee intends that Federal agencies will develop commercialization programs, and in doing so, will consider initiatives such as partnership databases, partnership conferences, multiple Phase Twos, mentoring between Primes and SBIR, multiple Phase Two with matching private investment requirements, jumbo awards, SBIR Helpdesks, and Transition Assistance Programs. The Committee intends for the agencies to petition the SBA in order to receive funds to pay for the administration of programs designed to help SBIR-funded research projects transition to Phase Three.

The Committee expects that, not later than 90 days after the date of enactment of this section, the Administrator of the SBA will develop and establish rules for making transfer to agencies that have developed or are developing SBIR commercialization programs.

**TITLE III. OUTREACH AND PARTNERSHIPS**

*Sec. 301. Outreach and support activities*

The provisions will establish an annual competitive grant program where organizations in all fifty states may submit proposals to conduct SBIR outreach efforts and/or application support and business skills development efforts directed at small businesses in underrepresented states and regions, women-, service-disabled veterans- and minority-owned small businesses. The provisions are intended to increase the number of small firms applying for awards, increase the number of small companies owned and controlled by women and minorities that apply for SBIR awards, and encourage economic development organizations to develop effective programs to increase the size of the SBIR economy in their State.

The Committee expects that, not later than 90 days after the date of enactment of this subsection, the SBA Administrator will establish an Advisory Board for this program. The Board will develop guidelines for the administration of the program that are consistent with the statutory direction provided in this section. The Committee expects that the Advisory Board will serve as stewards of the program and will submit an annual report to Congress on the effectiveness and impact of the program.

*Sec. 302. Rural preference*

This section requires agencies to give a preference to SBIR and STTR award applications submitted by small businesses located in rural areas. The Committee notes that the language is written to give a priority for applications, not awards, and it meant generally to give an emphasis—not a binding requirement—to agencies for rural applicants. In addition, the Committee recognizes that there are several statutory definitions of “rural.” The Committee’s intent is that the SBA, when implementing this provision, select a nar-

rower definition of the term “rural.” This would focus the initiative on those areas most in need of assistance while, in turn, would not likely have a significant effect on the number of SBIR and STTR applications or award determinations.

Further, it is not the Committee’s intent that this provision is used by agencies to exclude meritorious research proposals from non-rural areas. The Committee expects the SBA to issue a rule-making for notice and comment in this area and solicit a broad range of feedback from the SBIR and STTR community before implementing this provision.

*Sec. 303. Privacy and applicants consent required*

The section directs Federal agencies to enable SBIR applicants to permit the Federal agency to identify the applicant to appropriate local and state-level economic development organizations and release the concern’s contact information to such organizations. The Committee expects that Federal agencies will make necessary changes to the SBIR applications forms in order to comply with the requirements of this section. The Committee also expects that Federal agencies will respond to the data requests from appropriate local and State-level economic organizations and provide the data in a timely manner.

*Sec. 304. Partnering*

This section directs each agency to establish initiatives to encourage partnerships between SBIR awardees and prime contractors, venture capital investment companies, business incubators, and larger businesses in order to facilitate the progression of SBIR awardees to Phase Three. The SBA Administrator shall establish by regulation protections so that small firms retain a substantial benefit from any joint venture that results from this section. In addition, the Administrator shall establish by regulation joint venture size standards and affiliations requirements for this section

TITLE IV. SBIR AND STTR ENHANCEMENT

*Sec. 401. Research solicitations*

The intension of the section is to ensure that each agency issues at least two rounds of SBIR research solicitations each year. A single, annual solicitation forces many small firms to wait a year or more to have their SBIR application(s) evaluated. The Committee is concerned that the length of this delay can discourage potential applicants. The Committee also intends that agencies include acquisition personnel and executives in the development of the SBIR topics to ensure that SBIR topics are truly addressing future procurement needs.

The section also directs Federal agencies to render a final decision on each proposal 90 days after the date a solicitation closes. A clear timeline will allow applicants to better forecast and prepare for receipt of potential SBIR awards. Recognizing that the agencies will not be able to meet with this directive in all cases, the section provides the agencies with the authority to extend the 90-day deadline to a 180-day deadline on a case-by-case basis.

*Sec. 402. Phase One reporting requirements*

This section requires the SBA to submit to Congress the firms that have received 15 or more Phase One awards and zero Phase Two awards in the previous five-year period. Given the statutory emphasis on commercialization, the intention of the provision is to ensure that the Congress have access to data about SBIR awardees that have received a large number of Phase One grants and have not received a Phase Two award.

*Sec. 403. Phase One performance measures*

This provision requires each agency to engage with SBIR awardees that have been awarded multiple Phase One awards but no Phase Two awards, and to develop performance metrics to measure awardee progress in the SBIR program.

The Committee expects that the Administrator of the SBA shall “develop quality metrics that can assist agencies in developing standards to limit the perceived effect of so-called ‘SBIR Mills’.”<sup>8</sup> The Committee further expects that the SBA will incorporate these metrics into the SBIR policy directives.

*Sec. 404. SBIR Agency Administration and Oversight*

This section authorizes funding at SBA for administrative, oversight, and contract-processing costs related to SBIR. This authority allows the SBIR program offices in each of the Federal SBIR/STTR agencies to withdraw funds from this account at SBA that is equal up to 3 percent of their respective agencies total SBIR set-aside. The Committee intends that these funds are used to strengthen management of the SBIR and STTR programs, increase the progress of companies in these initiatives, enhance oversight, and result in more SBIR/STTR funded research being incorporated into agency procurement actions.

*Sec. 405. Extramural Budget*

This provision is intended improve accountability of the way Federal agencies determine what is “extramural” and what is “intra-mural”. The Committee is not aware of the existence of independent audits that confirm that the agencies are performing these calculations correctly. A GAO report analyzing this issue will provide more transparency to these calculations.

*Sec. 406. Outcomes database*

This section requires SBIR and STTR small business participants to provide updated project information for purposes of updating agency databases which evaluate the outcome of Phase One and Two awards; and participating agencies to develop and maintain such databases. This shall include milestones where appropriate.

The intention of the section is to increase the data that Federal agencies collect about the small business concerns that participate in the SBIR and STTR programs and to require that Federal agencies develop a database for the purpose of program evaluation.

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<sup>8</sup>From the statement of Administrator Steven C. Preston delivered to the House Committee on Small Business on March 13, 2008.

*Sec. 407. Databases to support technology utilization*

This provision requires each agency to create and maintain a technology utilization database, available to the public, containing data supplied by award recipients. The purpose of this section is to enhance outreach to attract investors and potential business partners to the small companies that are participating in SBIR.

*Sec. 408. Interagency policy committee and reports*

The purpose of this section is to establish an Interagency SBIR/STTR Policy Committee that will examine the programmatic challenges facing all agencies administering SBIR/STTR programs and develop recommendations on ways to improve program effectiveness and efficiency. In addition, the Interagency Policy Committee will make recommendations to the SBA regarding a process to systematically evaluate the SBIR and STTR program. This Interagency Policy Committee will act solely in an advisory capacity to the Congress and the SBA and will not have any formal authority to implement or enact policy directives regarding the SBIR and STTR programs. The Committee will report to Congress twelve months, eighteen months and twenty-four months after the date of enactment of this section on its progress.

*Sec. 409. NRC SBIR study*

This section removes the authorization established in the Small Business Reauthorization Act of 2000 that the NRC provide an updated report on the SBIR program.

*Sec. 410. Fast track authority*

A funding gap of 6 to 12 months (which is the timeframe that often separates a Phase One and Phase Two grant) can derail a small company's ability to continue its research. To address this issue, the Committee provided authority to agencies to issue Phase Two awards on a timeline that best supports the development of promising research and technologies. The Committee intends agencies to issue Phase Two SBIR awards to promising Phase One awardees as soon as is practicable, including in appropriate cases simultaneously with the issuance of the Phase One award.

*Sec. 411. Award size increase and authority to exceed awards levels*

Since 1992, the statutory prescriptions for SBIR award amounts have remained unchanged at \$100,000 for a Phase One award and \$750,000 for a Phase Two award. The Section increases the award levels to \$250,000 for Phase One and \$2 million for Phase Two for both the SBIR and STTR programs. The increase, which is greater than a simple indexing for inflation, is intended to encourage more small firms to apply for the awards. The amount designated by the Committee also recognizes the high costs associated with the development of valuable new technologies and therapies.

The section is silent on whether or not federal agencies can exceed the award levels that are prescribed in the legislation. However, the Committee does not intend such silence to prevent agencies from exercising their independent judgment regarding awards in excess of the stated award sizes. The Committee recognizes that Federal agencies that previously exceeded the proscribed award levels are funding research at the level necessary to accomplish the

Agencies' goals and supporting commercialization of promising research. As such, the Committee does not seek to end this practice of permitting participating agencies to exceed the proscribed award levels.

*Sec. 412. Multiple Phase Two awards*

The section permits the issuance of multiple Phase Two awards, including for purposes related to military technology and weapons systems. The Committee provides federal agencies with this explicit authority with the intention that agencies will issue multiple Phase II awards in order to ensure that a greater number of SBIR research projects cross the so-called "valley of death".

*Sec. 413. First Phase required*

The Committee intends this section to limit companies' ability to evade Phase One. An exception is granted, however, for companies that can demonstrate to agency SBIR proposal evaluators that the company has completed phase one work. The Committee believes that this is a reasonable way to balance the hypothesis testing conducted in Phase One, with the realities that some small firms may have progressed passed this stage through other means.

*Sec. 414. Involvement of Chief Counsel for Advocacy*

This section provides that the Chief Counsel of SBA's Office of Advocacy or any other reporting to the Chief Counsel may not provide advice, guidance, oversight, or review to any agency participating in the SBIR or STTR programs. The Committee intends such provision to limit any involvement by the Office of Advocacy in the operation of or policy decisions pertaining to the SBIR and STTR programs.

## VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The legislation is currently under review by CBO and the Committee expects that an estimate will be completed and as such made part of the Congressional Record prior to consideration of the legislation by the House.

## VIII. COMMITTEE ESTIMATE OF COSTS

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2965. The legislation is under review by CBO and an estimate will be made part of the Congressional Record prior to consideration of the legislation by the House. Based on estimates provide by CBO for H.R. 5819, as reported by the Committee on Small Business in the 110th Congress and further analysis by Committee staff, the Committee estimates that the bill could cost \$142 million over the two year authorization. The Committee notes two major changes regarding cost between H.R. 5819 and H.R. 2965. First, H.R. 2965 does not increase the SBIR and STTR set-aside, which H.R. 5819 did and CBO estimated cost \$29 million over the five-year budget period. Second, H.R. 2965 includes a management program that will reimburse agencies for their expenses associated with operating the SBIR and STTR programs. The Committee assumes that

this initiative will generally negate agencies direct expenses of operating the programs, which CBO estimated at \$111 million over the five-year budget period. As such, the committee estimates the cost of H.R. 2965 would be \$260.5 million over the 2010–2014 period, subject to appropriation of the specified and necessary amounts. In addition, based on prior CBO analysis and current staff review, the Committee does not believe that H.R. 2965 would affect direct spending or revenue.

#### IX. OVERSIGHT FINDINGS

In accordance with clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2965 are incorporated into the descriptive portions of this report.

#### X. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

#### XI. COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 2965 contains no unfunded mandates.

#### XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2965 does not relate to the terms and conditions of employment or access to public services or accommodations with the meaning of section 102(b)(3) of P.L. 104–1.

#### XIII. FEDERAL ADVISORY COMMITTEE STATEMENT

This legislation does not establish or authorize the establishment of any new advisory committees.

#### XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 2965 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

#### XV. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 2965 includes a number of provisions designed to modernize and make more effective the SBIR and STTR programs.

#### XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SMALL BUSINESS ACT

\* \* \* \* \*

SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy. *It is further the policy of Congress that the programs established in this section should focus on promoting research and development of projects governed by commercial business plans, which have significant potential to produce products or services for the marketplace or for acquisition by Federal agencies.*

\* \* \* \* \*

(e) For the purpose of this section—  
 (1) \* \* \*

\* \* \* \* \*

(4) the term “Small Business Innovation Research Program” or “SBIR” means a program under which a portion of a Federal agency’s research or research and development effort is reserved for award to small business concerns through a uniform process having—

(A) \* \* \*

\* \* \* \* \*

(C) where appropriate, a third phase, *which shall consist of work that derives from, extends, or logically concludes efforts performed under prior SBIR funding agreements (which may be referred to as “Phase III”)*—  
 (i) \* \* \*

\* \* \* \* \*

(8) the term “research institution” means a nonprofit institution, as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto); [and]

(9) the term “commercial applications” shall not be construed to exclude testing and evaluation of products, services, or technologies for use in technical or weapons systems, and further, awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems may be made in either the second or the third phase of the Small Business

Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection [.]*; and*

*(10) the term “commercialization” means the process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to government or commercial markets.*

\* \* \* \* \*

(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act and regulations issued hereunder—

(1) \* \* \*

(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration, *but not less often than twice per year*;

(3) unilaterally determine research topics within the agency’s SBIR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies *or pressing research priorities*, as identified by—

(A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, and in subsequent reports issued under that authority; [or]

\* \* \* \* \*

*(C) the National Academy of Sciences, in the final report issued by the “America’s Energy Future: Technology Opportunities, Risks, and Tradeoffs” project, and in subsequent reports issued by the National Academy of Sciences on sustainability, energy, and alternative fuels;*

*(D) the National Institutes of Health, in the annual report on the rare diseases research activities of the National Institutes of Health for fiscal year 2005, and in subsequent reports issued by the National Institutes of Health on rare diseases research activities;*

*(E) the National Academy of Sciences, in the final report issued by the “Transit Research and Development: Federal Role in the National Program” project and the “Transportation Research, Development and Technology Strategic Plan (2006–2010)” issued by the United States Department of Transportation Research and Innovative Technology Administration, and in subsequent reports issued by the National Academy of Sciences and United States Department of Transportation on transportation and infrastructure; or*

*(F) the national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in subsequent reports issued by the National Science and Technology Council Committee on Technology, focusing on areas of nanotechnology identified in such plan;*

(4) unilaterally receive and evaluate proposals resulting from SBIR proposals, *but a final decision on each proposal shall be rendered not later than 90 days after the date on which the solicitation closes unless the Administrator determines, on a case*

*by case basis, that a decision may be extended from 90 days to 180 days;*

\* \* \* \* \*

[(h) In addition to the requirements of subsection (f), each Federal agency which has a budget for research or research and development in excess of \$20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.]

(h) *AGENCY RESEARCH GOALS.*—

(1) *IN GENERAL.*—*In addition to the requirements of subsection (f), each Federal agency that is required by this section to have an SBIR program and that awards annually \$5,000,000,000 or more in procurement contracts shall, effective for fiscal year 2010 and each fiscal year thereafter, establish annual goals for commercialization of projects funded by SBIR awards.*

(2) *SPECIFIC GOALS.*—*The goals required by paragraph (1) shall include specific goals for each of the following:*

(A) *The percentage of SBIR projects that receive funding for the third phase (as defined in subsection (e)(4)(C)).*

(B) *The percentage of SBIR projects that are successfully integrated into a program of record.*

(C) *The amount of Federal dollars received by SBIR projects through Federal contracts, not including dollars received through the SBIR program.*

(3) *SUBMISSION TO COMMITTEES.*—*For each fiscal year for which goals are required by paragraph (1), the agency shall submit to the Committee on Small Business and the Committee on Science and Technology of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate—*

(A) *not later than 60 days after the beginning of the fiscal year, the goals; and*

(B) *not later than 90 days after the end of the fiscal year, data on the extent to which the goals were met and a description of the methodology used to collect such data.*

\* \* \* \* \*

(j)(1) \* \* \*

\* \* \* \* \*

(4) *FURTHER ADDITIONAL MODIFICATIONS.*—*Not later than 180 days after the date of enactment of this paragraph and notwithstanding paragraph (2)(D), the Administrator shall modify the policy directives issued pursuant to this subsection to provide for an increase to \$250,000 in the amount of funds which an agency may award in the first phase of an SBIR program, and to \$2,000,000 in the second phase of an SBIR program, and a mandatory annual adjustment of such amounts to reflect economic adjustments and programmatic considerations.*

## (k) DATABASE.—

(1) \* \* \*

(2) GOVERNMENT DATABASE.—Not later than 180 days after the date of the enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1) or an STTR program pursuant to subsection (n)(1), shall develop and maintain a database to be used exclusively for SBIR and STTR program evaluation that—

(A) contains for each second phase award made by a Federal agency—

(i) \* \* \*

(ii) information collected in accordance with paragraph (3) on additional investment from any source, other than first phase or second phase SBIR or STTR awards, to further the research and development conducted under the award; **and**

(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR and STTR program managers of Federal agencies, considers relevant and appropriate; *and*

(iv) *information on the ownership structure of award recipients, both at the time of receipt of the award and upon completion of the award period;*

\* \* \* \* \*

## (3) UPDATING INFORMATION FOR DATABASE.—

**[(A) IN GENERAL.]**—A small business concern applying for a second phase award under this section shall be required to update information in the database established under this subsection for any prior second phase award received by that small business concern. In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if it notes the apportionment for each award.

**[(B) ANNUAL UPDATES UPON TERMINATION.]**—A small business concern receiving a second phase award under this section shall—

**[(i) update information in the database concerning that award at the termination of the award period; and**

**[(ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.]**

## (3) UPDATING INFORMATION FOR DATABASE.—

**(A) IN GENERAL.**—A Federal agency shall not make a Phase I or Phase II payment to a small business concern under this section unless the small business concern has provided all information required under this subsection and available at the time with respect to the award under which the payment is made, and with respect to any other award under this section previously received by the small business concern or a predecessor in interest to the small business concern.

(B) APPORTIONMENT.—In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if it notes the apportionment for each award.

(C) ANNUAL UPDATES UPON TERMINATION.—A small business concern receiving an award under this section shall—

(i) in the case of a second phase award, update information in the databases required under paragraphs (2) and (6) concerning that award at the termination of the award period;

(ii) in the case of award recipients not described in clause (iii), be requested to voluntarily update such information annually thereafter for a period of 5 years; and

(iii) in the case of a small business concern applying for a subsequent first phase or second phase award, be required to update such information annually thereafter for a period of 5 years.

\* \* \* \* \*

(6) AGENCY PROGRAM EVALUATION DATABASES.—Each Federal agency required to establish an SBIR or STTR program under this section shall develop and maintain, for the purpose of evaluating such programs, a database containing information required to be contained in the database under paragraph (2). Each such database shall be designed to be accessible to other agencies that are required to maintain a database under this paragraph. Each such database shall be developed and operated in a manner to ensure that each such database is relevant to and contributes to the agency's oversight and evaluation of the SBIR and STTR programs. Paragraphs (4) and (5) apply to each database under this paragraph.

(7) AGENCY DATABASES TO SUPPORT TECHNOLOGY UTILIZATION.—Each Federal agency with an SBIR or STTR program shall create and maintain a technology utilization database, which shall be available to the public and shall contain data supplied by the award recipients specifically to help them attract customers for the products and services generated under the SBIR or STTR project, and to attract additional investors and business partners. Each database created under this paragraph shall include information on the other databases created under this paragraph by other Federal agencies. Participation in a database under this paragraph shall be voluntary, except that such participation is required of all award recipients who received supplemental payments from SBIR and STTR program funds above their initial Phase II award. Each database created under this paragraph shall be developed and operated in a manner to ensure that each such database is relevant to and contributes to the agency's oversight and evaluation of the SBIR and STTR programs.

\* \* \* \* \*

(m) TERMINATION.—The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, [2008] 2011.

## (n) REQUIRED EXPENDITURES FOR STTR BY FEDERAL AGENCIES.—

## (1) REQUIRED EXPENDITURE AMOUNTS.—

(A) IN GENERAL.—With respect to each fiscal year through fiscal year [2009] 2011, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

\* \* \* \* \*

## (o) FEDERAL AGENCY STTR AUTHORITY.—Each Federal agency required to establish an STTR program in accordance with subsection (n) and regulations issued under this Act, shall—

## (1) \* \* \*

\* \* \* \* \*

(3) unilaterally determine research topics within the agency's STTR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified—

(A) by the National Critical Technologies Panel (or its successor) in reports required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976; [or]

(B) by the Secretary of Defense, in accordance with section 2522 of title 10, United States Code; or

(C) by the *national nanotechnology strategic plan required under section 2(c)(4) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(c)(4)) and in subsequent reports issued by the National Science and Technology Council Committee on Technology, focusing on areas of nanotechnology identified in such plan;*

\* \* \* \* \*

## (p) STTR POLICY DIRECTIVE.—

## (1) \* \* \*

(2) CONTENTS.—The policy directive required by paragraph (1) shall provide for—

## (A) \* \* \*

(B) a simplified, standardized funding process that provides for—

## (i) \* \* \*

\* \* \* \* \*

(ix) 1-year awards for the first phase of an STTR program, generally not to exceed [\$100,000] \$250,000, and 2-year awards for the second phase of an STTR program, generally not to exceed [\$750,000] \$2,000,000, [greater or lesser amounts] with a mandatory annual adjustment of such amounts to reflect economic adjustments and programmatic considerations, and with lesser amounts to be awarded at the discretion of the awarding agency, and shorter or

longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project;

\* \* \* \* \*

*(s) OUTREACH AND SUPPORT ACTIVITIES.—*

*(1) IN GENERAL.—Subject to the other provisions of this subsection, the Administrator shall make grants on a competitive basis to organizations, to be used by the organizations to do one or both of the following:*

*(A) To conduct outreach efforts to increase participation in the programs under this section.*

*(B) To provide application support and entrepreneurial and business skills support to prospective participants in the programs under this section.*

*(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator \$10,000,000 to carry out paragraph (1) for each of fiscal years 2010 and 2011.*

*(3) AMOUNT OF ASSISTANCE.—For each of subparagraphs (A) and (B) of paragraph (1), the amount of assistance provided to an organization under that subparagraph in any fiscal year—*

*(A) shall be equal to the total amount of matching funds from non-Federal sources provided by the organization; and*

*(B) shall not exceed \$250,000.*

*(4) DIRECTION.—An organization receiving funds under paragraph (1) shall, in using those funds, direct its activities at one or both of the following:*

*(A) Small business concerns located in geographic areas that are underrepresented in the programs under this section.*

*(B) Small business concerns owned and controlled by women, small business concerns owned and controlled by service-disabled veterans, and small business concerns owned and controlled by minorities.*

*(5) ADVISORY BOARD.—*

*(A) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this subsection, the Administrator shall establish an advisory board for the activities carried out under this subsection.*

*(B) NON-APPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.*

*(C) MEMBERS.—The members of the advisory board shall include the following:*

*(i) The Administrator (or the Administrator's designee).*

*(ii) For each Federal agency required by this section to conduct an SBIR program, the head of the agency (or the designee of the head of the agency).*

*(iii) Representatives of small business concerns that are current or former recipients of SBIR awards, or representatives of organizations of such concerns.*

*(iv) Representatives of service providers of SBIR outreach and assistance, or representatives of organizations of such service providers.*

(D) DUTIES.—The advisory board shall have the following duties:

(i) To develop guidelines for awards under paragraph (1), including guidelines relating to award sizes, proposal requirements, measures for monitoring awardee performance, and measures for determining the overall value of the activities carried out by the awardees.

(ii) To identify opportunities for coordinated outreach, technical assistance, and commercialization activities among Federal agencies, the recipients of the awards under paragraph (1), and applicants and recipients of SBIR awards, including opportunities such as—

(I) podcasting or webcasting for conferences, training workshops, and other events;

(II) shared online resources to match prospective applicants with the network of paragraph (1) recipients; and

(III) venture capital conferences tied to technologies and sectors that cross agencies.

(iii) To review and recommend revisions to activities under paragraph (1).

(iv) To submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science and Technology of the House of Representatives an annual report on the activities carried out under paragraph (1) and the effectiveness and impact of those activities.

(6) SELECTION CRITERIA.—In awarding grants under this subsection, the Administrator shall use selection criteria developed by the advisory board established under paragraph (5). The criteria shall include—

(A) criteria designed to give preference to applicants who propose to carry out activities that will reach either an underperforming geographic area or an underrepresented population group (as measured by the number of SBIR applicants);

(B) criteria designed to give preference to applicants who propose to carry out activities that complement, and are integrated into, the existing public-private innovation support system for the targeted region or population;

(C) criteria designed to give preference to applicants who propose to measure the effectiveness of the proposed activities; and

(D) criteria designed to give preference to applicants who include a Small Business Development Center program that is accredited for its technology services.

(7) PEER REVIEW.—In awarding grants under this subsection, the Administrator shall use a peer review process. Reviewers shall include—

(A) SBIR program managers for agencies required by this section to conduct SBIR programs; and

(B) private individuals and organizations that are knowledgeable about SBIR, the innovation process, technology

commercialization, and State and regional technology-based economic development programs.

(8) *PER-STATE LIMITATIONS.*—

(A) *IN GENERAL.*—To be eligible to receive a grant under this subsection, the applicant must have the written endorsement of the Governor of the State where the targeted regions or populations are located (if the regions or populations are located in more than one State, the applicant must have the written endorsement of the Governor of each such State). Such an endorsement must indicate that the Governor will ensure that the activities to be carried out under the grant will be integrated with the balance of the State's portfolio of investments to help small business concerns commercialize technology.

(B) *LIMITATION.*—Each fiscal year, a Governor may have in effect not more than one written endorsement for a grant under paragraph (1)(A), and not more than one written endorsement for a grant under paragraph (1)(B).

(9) *SPECIFIC REQUIREMENTS FOR AWARDS.*—In making awards under paragraph (1) the Administrator shall ensure that each award shall be for a period of 2 fiscal years. The Administrator shall establish rules and performance goals for the disbursement of funds for the second fiscal year, and funds shall not be disbursed to a recipient for such a fiscal year until after the advisory board established under this subsection has determined that the recipient is in compliance with the rules and performance goals.

\* \* \* \* \*

(aa) *VENTURE CAPITAL OPERATING COMPANIES.*—Effective only for the SBIR and STTR programs the following shall apply:

(1) A business concern that has more than 500 employees shall not qualify as a small business concern.

(2) In determining whether a small business concern is independently owned and operated under section 3(a)(1) or meets the small business size standards instituted under section 3(a)(2), the Administrator shall not consider a business concern to be affiliated with a venture capital operating company (or with any other business that the venture capital operating company has financed) if—

(A) the venture capital operating company does not own 50 percent or more of the business concern; and

(B) employees of the venture capital operating company do not constitute a majority of the board of directors of the business concern.

(3) A business concern shall be deemed to be “independently owned and operated” if—

(A) it is owned in majority part by one or more natural persons or venture capital operating companies;

(B) there is no single venture capital operating company that owns 50 percent or more of the business concern; and

(C) there is no single venture capital operating company the employees of which constitute a majority of the board of directors of the business concern.

(4) If a venture capital operating company controlled by a business with more than 500 employees (in this paragraph re-

ferred to as a “VCOC under large business control”) has an ownership interest in a small business concern that is owned in majority part by venture capital operating companies, the small business concern is eligible to receive an award under the SBIR or STTR program only if—

(A) not more than two VCOCs under large business control have an ownership interest in the small business concern; and

(B) the VCOCs under large business control do not collectively own more than 20 percent of the small business concern.

(5) The term “venture capital operating company” means a business concern—

(A) that—

(i) is a Venture Capital Operating Company, as that term is defined in regulations promulgated by the Secretary of Labor; or

(ii) is an entity that—

(I) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-51 et seq.); or

(II) is an investment company, as defined in section 3(c)(1) of such Act (15 U.S.C. 80a-3(c)(1)), which is not registered under such Act because it is beneficially owned by less than 100 persons; and

(B) that is itself organized or incorporated and domiciled in the United States, or is controlled by a business concern that is incorporated and domiciled in the United States.

(bb) COMMERCIALIZATION PROGRAMS.—

(1) IN GENERAL.—Each agency required by this section to conduct an SBIR program shall establish a commercialization program that supports the progress of SBIR awardees to the third phase. The commercialization program may include activities such as partnership databases, partnership conferences, multiple second phases, mentoring between prime contractors and SBIR awardees, multiple second phases with matching private investment requirements, jumbo awards, SBIR helpdesks, and transition assistance programs. The agency shall include in its annual report an analysis of the various activities considered for inclusion in the commercialization program and a statement of the reasons why each activity considered was included or not included, as the case may be.

(2) FUNDING FOR COMMERCIALIZATION PROGRAMS.—

(A) IN GENERAL.—From amounts made available to carry out this paragraph, the Administrator may, on petition by agencies required by this section to conduct an SBIR program, transfer funds to such agencies to support the commercialization programs of such agencies.

(B) PETITIONS.—The Administrator shall establish rules for making transfers under subparagraph (A). The initial set of rules shall be promulgated not later than 90 days after the date of the enactment of this paragraph.

(C) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this paragraph \$27,500,000 for fiscal year 2010 and each fiscal year thereafter.

(3) *FUNDING LIMITATION.*—For payment of expenses incurred to administer the commercialization programs described in paragraphs (1) and (2), the head of an agency may use not more than an amount equal to 1 percent of the funds set aside for the agency's Small Business Innovation Research program. Such funds—

(A) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

(B) shall not be used for the purpose of funding costs associated with salaries and expenses of employees of the Federal Government.

(cc) *RURAL PREFERENCE.*—In making awards under this section, Federal agencies shall give priority to applications so as to increase the number of SBIR and STTR award recipients from rural areas.

(dd) *CONSENT TO RELEASE CONTACT INFORMATION TO ORGANIZATIONS.*—

(1) *ENABLING CONCERN TO GIVE CONSENT.*—Each Federal agency required by this section to conduct an SBIR program shall enable a small business concern that is an SBIR applicant to indicate to the agency whether the agency has its consent to—

(A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant; and

(B) release the concern's contact information to such organizations.

(2) *RULES.*—The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that the agency include in its SBIR application forms a provision through which the applicant can indicate consent for purposes of paragraph (1).

(ee) *INCREASED PARTNERSHIPS.*—

(1) *IN GENERAL.*—Each agency required by this section to conduct an SBIR program shall establish initiatives by which the agency encourages partnerships between SBIR awardees and prime contractors, venture capital investment companies, business incubators, and larger businesses, for the purpose of facilitating the progress of the SBIR awardees to the third phase.

(2) *DEFINITION.*—In this subsection, the term “business incubator” means an entity that provides coordinated and specialized services to entrepreneurial businesses which meet selected criteria during the businesses’ startup phases, including providing services such as shared office space and office services, access to equipment, access to telecommunications and technology services, flexible leases, specialized management assistance, access to financing, mentoring and training services, or other coordinated business or technical support services designed to provide business development assistance to entrepreneurial businesses during these businesses’ startup phases.

(ff) *MULTIPLE FIRST PHASE SBIR AWARDS REPORT.*—The Administrator shall, on an annual basis, submit to the Committee on Small Business and the Committee on Science and Technology of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a list identifying each small business concern that, for the period covered by the preceding 5 fis-

*cal years, received 15 or more first phase SBIR awards and no second phase SBIR awards.*

*(gg) REQUIREMENTS RELATING TO FEDERAL AGENCY ENGAGEMENT WITH CERTAIN FIRST PHASE SBIR AWARDEES.—Each Federal agency required by this section to conduct an SBIR program shall engage with SBIR awardees that have been awarded multiple first phase SBIR awards but have not been awarded any second phase SBIR awards and shall develop performance measures with respect to awardee progression in the SBIR program.*

*(hh) ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—*

*(1) IN GENERAL.—From amounts made available to carry out this subsection, the Administrator may, on petition by Federal agencies required by this section to conduct an SBIR program, transfer funds to such agencies to assist with the administrative, oversight, and contract processing costs relating to such program.*

*(2) PETITIONS.—The Administrator shall establish rules for making transfers under paragraph (1). The initial set of rules shall be promulgated not later than 180 days after the date of the enactment of this subsection.*

*(3) LIMIT ON TRANSFER.—A Federal agency may not receive under this subsection in a fiscal year an amount greater than 3 percent of the SBIR budget of such agency for such fiscal year.*

*(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection \$27,500,000 for each of fiscal years 2010 and 2011.*

*(ii) AUTHORITY TO “FAST-TRACK” PHASE TWO AWARDS FOR PROMISING PHASE ONE RESEARCH.—To address the delay between an award for the first phase of an SBIR program and the application for and extension of an award for the second phase of such program, each Federal agency with an SBIR program may develop “fast-track” programs to eliminate such delay by issuing second phase SBIR awards as soon as practicable, including in appropriate cases simultaneously with the issuance of the first phase SBIR award. The Administrator shall encourage the development of such “fast-track” programs.*

*(jj) LIMITATION ON PHASE I AND II AWARDS.—No Federal agency shall issue an award under the SBIR program or the STTR program if the size of the award exceeds the amounts established under subsections (j)(4) and (p)(2)(B)(ix).*

*(kk) REQUIREMENTS RELATING TO ADDITIONAL SECOND PHASE SBIR AWARDS.—*

*(1) IN GENERAL.—A small business concern that receives a second phase SBIR award for a project remains eligible to receive additional second phase SBIR awards for such project.*

*(2) TECHNICAL OR WEAPONS SYSTEMS.—Agencies are expressly authorized to provide additional second phase SBIR awards for testing and evaluation assistance for the insertion of SBIR technologies into technical or weapons systems.*

*(ll) FIRST PHASE REQUIRED.—Under this section, a Federal agency shall provide to a small business concern an award for the second phase of an SBIR program with respect to a project only if such agency finds that the small business concern has been provided an*

*award for the first phase of an SBIR program with respect to such project or has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided an award for the first phase.*

*(mm) INVOLVEMENT OF CHIEF COUNSEL FOR ADVOCACY.—The Chief Counsel for Advocacy, as described in section 201 of Public Law 94–305 (15 U.S.C. 634a), and any individual reporting to the Chief Counsel for Advocacy, without regard to whether such individual was hired under section 204 of Public Law 94–305 (15 U.S.C. 634d), may not provide to the Administrator, to any individual who reports directly or indirectly to the Administrator, or to any Federal agency any advice, guidance, oversight, or review with respect to the programs authorized under this section.*

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## **SECTION 108 OF THE SMALL BUSINESS REAUTHORIZATION ACT OF 2000**

### **SEC. 108. NATIONAL RESEARCH COUNCIL REPORTS.**

(a) \* \* \*

\* \* \* \* \*

(d) REPORT.—The National Research Council shall transmit to the heads of agencies entering into an agreement under this section and to the Committee on Science and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [of the Senate—

[(1) not later than 3] of the Senate, not later than 3 years after the date of the enactment of this Act, a report including the results of the study conducted under subsection (a)(1) and recommendations made under subsection (a)(2)[; and

[(2) not later than 6 years after that date of the enactment, an update of such report].

