

COMMERCIALIZING ON SMALL BUSINESS INNOVATION
ACT OF 2016

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JULY 25, 2016.—Ordered to be printed
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Mr. CHABOT, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 4783]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 4783) to reauthorize and improve 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.

I. AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercializing on Small Business Innovation Act of 2016”.

SEC. 2. EXTENSION OF TERMINATION DATES.

(a) SBIR.—Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended by striking “2017” and inserting “2022”.

(b) STTR.—Section 9(n)(1)(A) of the Small Business Act (15 U.S.C. 638(n)(1)(A)) is amended by striking “2017” and inserting “2022”.

(c) ADMINISTRATIVE FUNDING.—Section 9(mm)(1) of the Small Business Act (15 U.S.C. 638(mm)(1)) is amended by striking “2017” and inserting “2022”.

SEC. 3. REQUIRED EXPENDITURE AMOUNTS.

(a) SBIR.—Section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) is amended—

- (1) in subparagraph (H), by striking the “and” at the end;
- (2) in subparagraph (I), by striking “and each fiscal year thereafter,” and inserting a semicolon; and
- (3) by inserting after subparagraph (I) the following new subparagraphs:
 - “(J) not less than 3.46 percent of such budget in fiscal year 2018;
 - “(K) not less than 3.72 percent of such budget in fiscal year 2019;

“(L) not less than 3.98 percent of such budget in fiscal year 2020;
 “(M) not less than 4.24 percent of such budget in fiscal year 2021; and
 “(N) not less than 4.50 percent of such budget in fiscal year 2022 and
 each fiscal year thereafter.”

(b) **STTR.**—Section 9(n)(1)(B) of the Small Business Act (15 U.S.C. 638(n)(1)(B)) is amended—

- (1) in clause (iv), by striking the “and” at the end;
- (2) in clause (v), by striking “for fiscal year 2016 and each fiscal year thereafter.” and inserting “for each of fiscal years 2016 and 2017;” ; and
- (3) by adding at the end the following new clauses:
 - “(vi) 0.50 percent for each of fiscal years 2018 and 2019;
 - “(vii) 0.55 percent for each of fiscal years 2020 and 2021; and
 - “(viii) 0.60 percent for fiscal year 2022 and each fiscal year thereafter.”

SEC. 4. REPORTING REQUIREMENTS.

(a) **ANNUAL REPORT TO CONGRESS.**—Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) is amended by striking “to report not less than annually” and inserting “to submit a report not later than December 31 of each year”.

(b) **ANNUAL REPORTS TO THE ADMINISTRATOR REQUIRED TO BE SUBMITTED NOT LATER THAN MARCH 30 OF EACH YEAR.**—Section 9 of the Small Business Act (15 U.S.C. 638) is amended—

- (1) in subsection (g)(9), by striking “make an annual report” and inserting “not later than March 30 of each year, submit a report”;
- (2) in subsection (i)(1), by striking “shall report annually to the Small Business Administration” and inserting “shall, not later than March 30 of each year, submit a report to the Small Business Administration that includes”;
- (3) in subsection (j)—
 - (A) in paragraph (1)(E), by striking “simplified, standardized, and timely annual report” and inserting “not later than March 30 of each year, a simplified and standardized report”; and
 - (B) in paragraph (3)(C), by striking “to require agencies to report to the Administration, not less frequently than annually, all instances in which an” and inserting “to require each agency, not later than March 30 of each year, to submit a report to the Administration on all instance in which the”;
- (4) in subsection (o)(10), by striking “submit an annual report” and inserting “not later than March 30 of each year, submit a report”;
- (5) in subsection (y)(6)(C), by striking “submit” and inserting “not later than March 30 of each year, submit”;
- (6) in subsection (dd)(4)(A), by striking “and submit” and inserting “and, not later than March 30 of each year, submit”;
- (7) in subsection (gg)(6), by striking “include in the annual” and inserting “include, not later than March 30 of each year, a”;
- (8) in subsection (ii) by inserting “, not later than March 30 of each year,” after “shall”;
- (9) in subsection (mm)(6), by inserting “, not later than June 30 of each year,” after “shall”;
- (10) in subsection (nn)(3)(A)—
 - (A) by striking “an annual” and inserting “a” ; and
 - (B) by inserting “, not later than March 30 of each year,” after “shall”;
 and
- (11) in subsection (ss), by striking “October 1, 2013, and annually thereafter,” and inserting “March 30 of each year.”

(c) **FAILURE TO REPORT ADMINISTRATIVE FUNDS.**—Section 9(mm) of the Small Business Act (15 U.S.C. 638(mm)) is amended by adding at the end the following new paragraph:

“(7) **FAILURE TO REPORT ADMINISTRATIVE FUNDS.**—

“(A) **IN GENERAL.**—Not later than March 30 following each fiscal year for which funds are authorized to be used by a Federal agency under paragraph (1), the Federal agency shall submit a report to the Administrator that identifies how the Federal agency used such funds during such fiscal year.

“(B) **FAILURE TO SUBMIT A REPORT.**—If a Federal agency fails to submit a report required under subparagraph (A), paragraph (1) shall not apply to such Federal agency unless—

- “(i) such report is submitted; and
- “(ii) such Federal agency submits an additional report to the Administrator that identifies how such Federal agency plans to ensure timely reporting under this paragraph.”

SEC. 5. INDEXING AWARDS FOR INFLATION.

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

- (1) in subsection (j)(2)—
- (A) by striking subparagraph (D);
 - (B) by redesignating subparagraphs (E) through (I) as subparagraphs (D) through (H), respectively; and
 - (C) in subparagraph (H), as so redesignated, by striking “subparagraph (H)” and inserting “subparagraph (G)”;
- (2) in subsection (p)(2)(B)—
- (A) in clause (vii), by adding “and” at the end;
 - (B) in clause (viii), by striking “and” at the end; and
 - (C) by striking clause (ix);
- (3) in subsection (gg)(3), by striking “awards under subsection (j)(2)(D) or (p)(2)(B)(ix).” and inserting “awards under subsection (tt)(2).”; and
- (4) by adding at the end the following new subsection:
- “(tt) AWARDS UNDER PHASE I AND PHASE II ADJUSTED FOR INFLATION.—
- “(1) PHASE I AWARDS.—An award for Phase I of an SBIR or STTR program may not exceed \$150,000.
 - “(2) PHASE II AWARDS.—An award for Phase II of an SBIR or STTR program may not exceed \$1,000,000.
 - “(3) ADJUSTMENT FOR INFLATION.—The Administrator shall adjust the dollar amounts under paragraphs (1) and (2) for inflation in accordance with section 1908 of title 41, United States Code.”.

SEC. 6. REQUIREMENTS FOR INSERTION INCENTIVES.

Section 9(y)(5) of the Small Business Act (15 U.S.C. 638(y)(5)) is amended by striking “is authorized to” and inserting “shall”.

SEC. 7. CLARIFICATION OF ELIGIBILITY OF CERTAIN SMALL BUSINESSES.

(a) SBIR.—Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) is amended by adding at the end the following new paragraph:

“(4) MODIFICATION TO CLARIFY ELIGIBILITY OF CERTAIN SMALL BUSINESSES.—Not later than 180 days after the date of the enactment of the Commercializing on Small Business Innovation Act of 2016, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the small business concerns described in subparagraphs (B), (C), and (D) of section 3(p)(3) are eligible to receive awards under the SBIR program.”.

(b) STTR.—Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) is amended by adding at the end the following new paragraph:

“(4) MODIFICATION TO CLARIFY ELIGIBILITY OF CERTAIN SMALL BUSINESSES.—Not later than 180 days after the date of the enactment of the Commercializing on Small Business Innovation Act of 2016, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the small business concerns described in subparagraphs (B), (C), and (D) of section 3(p)(3) are eligible to receive awards under the STTR program.”.

SEC. 8. COMMERCIALIZATION ASSISTANCE PILOT PROGRAM.

Section 9 of the Small Business Act (15 U.S.C. 638), as amended by section 5, is further amended by adding at the end the following new subsection:

“(uu) COMMERCIALIZATION ASSISTANCE PILOT PROGRAMS.—

“(1) PILOT PROGRAMS IMPLEMENTED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than one year after the date of the enactment of Commercializing on Small Business Innovation Act of 2016, a covered agency shall implement a commercialization assistance pilot program to award eligible entities with a second sequential SBIR award.

“(B) EXCEPTION.—If the Administrator determines that a covered agency has a program that is sufficiently similar to a commercialization assistance pilot program, such agency shall not be required to implement a commercialization assistance pilot program under subparagraph (A).

“(C) PERCENT OF AGENCY FUNDS.—A covered agency may not use more than 5 percent of its total SBIR budget for awards under the commercialization assistance pilot program.

“(D) TERMINATION.—The commercialization assistance pilot programs shall terminate on September 30, 2022.

“(2) MATCHING REQUIREMENT.—

“(A) IN GENERAL.—The Administrator shall require as a condition of any award made to an eligible entity under a commercialization assistance pilot program, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such award be provided

from an eligible third-party investor, before the end of the commercialization assistance pilot program award.

“(B) INELIGIBLE FUNDING.—An eligible entity may not use funding from ineligible sources to meet the matching requirement of subparagraph (A).

“(3) AWARD.—

“(A) SIZE OF AWARD.—An award under this subsection may not exceed the limitations in subsection (aa)(1).

“(B) TIMING.—Awards provided under the commercialization assistance pilot program shall be distributed during the Phase II award period of the recipient eligible entity.

“(4) APPLICATION.—In order to be selected to receive a second sequential SBIR award under a commercialization assistance pilot program, an eligible entity shall submit to the covered agency implementing such pilot program—

“(A) an application at such time, in such manner, and containing such information as the covered agency may require; and

“(B) the source and amount of the matching funding required under paragraph (2).

“(5) USE OF FUNDS.—The funds awarded under a commercialization assistance pilot program may only be used for research and development activities that build on the eligible entity’s Phase II program and catalyze acceleration towards commercialization.

“(6) DETERMINATION OF RECIPIENTS.—In determining which applicants receive awards under the commercialization assistance pilot program, the head of a covered agency shall consider—

“(A) the extent to which the supplemental funds awarded under the pilot program could aid the applicant commercialize its research;

“(B) whether the proposed plan provides a sound approach for establishing technical feasibility that could lead to commercialization;

“(C) whether the proposed activity reflect changes to the Phase II commercialization plan that further improves the chances of conversion of research in order to provide societal benefits;

“(D) whether the small business concern has progressed satisfactorily in the Phase II activity to justify additional funding;

“(E) the expectations of the third-party funding; and

“(F) the likelihood that the third-party funded activity will lead to commercial and societal benefit.

“(7) EVALUATION REPORT.—Not later than 3 years after the date of the enactment of Commercializing on Small Business Innovation Act of 2016, the Comptroller General of the United States shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an evaluative report that includes—

“(A) a summary of the activities of the commercialization assistance pilot programs;

“(B) a detailed compilation of results achieved by the commercialization assistance pilot programs, including the number of small business concerns that received awards under the pilot program;

“(C) the rate at which the recipients under the pilot program commercialized their research;

“(D) the growth in employment and revenue of companies that participated in the pilot program;

“(E) a comparison of commercialization success of pilot program participants and recipients of a non-matching sequential Phase II award;

“(F) demographic information such as ethnicity and geographic location of participant companies;

“(G) an accounting of the funds used at each participating agency in the pilot program;

“(H) a distribution of third-party funding by source;

“(I) an analysis of the program’s effectiveness at each participating agency; and

“(J) recommendations for improvement to the pilot program, in the case that Congress were to make it permanent.

“(8) DEFINITIONS.—For purposes of this subsection:

“(A) COVERED AGENCY.—The term ‘covered agency’ means a Federal agency required to have an SBIR program.

“(B) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a small business concern that has received a Phase II award and a Phase II sequential award from the covered agency to which such entity is applying for a second sequential SBIR award.

“(C) ELIGIBLE THIRD-PARTY INVESTOR.—The term ‘eligible third-party investors’ means a small business concern other than the eligible entity, a venture capital firm, an individual investor, a non-SBIR Federal, State or local government, or any combination thereof.

“(D) INELIGIBLE SOURCES.—The term ‘ineligible sources’ means the following:

- “(i) The awardee’s internal research and development funds.
- “(ii) Funding in forms other than cash such as in-kind or other intangible assets.
- “(iii) Funding from the owners of the eligible entity, or the family members or affiliates of such owners.
- “(iv) Funding attained through loans or other forms of debt obligations.”.

SEC. 9. INCREASED UNDERSERVED POPULATION PARTICIPATION WAIVER REMOVED.

(a) IN GENERAL.—Section 9(mm)(2) of the Small Business Act (15 U.S.C. 638(mm)(2)) is amended to read as follows:

“(2) OUTREACH AND TECHNICAL ASSISTANCE.—A Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.”.

(b) CONFORMING AMENDMENT.—Section 9(mm)(6) of the Small Business Act (15 U.S.C. 638(mm)(6)) is amended by striking “(A) and any use of the waiver authority under paragraph (2)(B)”.

II. PURPOSE AND BILL SUMMARY

The purpose of H.R. 4783, the “Commercializing on Small Business Innovation Act of 2016” is to amend the Small Business Act (the Act)¹ to improve the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs. The objectives of these programs include expansion of commercialization of federally funded small business research and development (R&D), stimulation of technological innovation in the small business sector, and increased use of this community to meet the government’s diverse research and development needs. H.R. 4783 strengthens the program in six ways.

First, given the success of the SBIR/STTR programs, H.R. 4783 reauthorizes the programs for 5 years beyond the current September 30, 2017, expiration date. Second, the legislation, without any cost to the taxpayer, allows small businesses to compete for more contracts and grants, expanding the program from the current 3 percent to 4.5 percent of the participating federal agencies extramural research budgets. Third, the bill insists on agency accountability, including several hard reporting deadlines for participating agencies and for the Small Business Administration (SBA) to provide future Congresses with better information on a greater grasp of the programs’ strengths and weaknesses. Fourth, as SBA has failed to act on its long standing authority to index awards to inflation, the legislation statutorily adopts the formula used for all other procurement programs. Fifth, it creates a Commercialization Assistance Pilot Program at each participating SBIR agency to allow businesses to compete for additional funding that would help them overcome the lag time between phase II and phase III of the program, while ensuring that there is commercialization potential in the research by requiring a 1 to 1 match of non-SBIR dollars.

¹ Originally, title II of the Act of July 30, 1953, c. 282, 67 Stat. 232, was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85–536, § 1, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. §§ 631–657s.

Finally, the legislation clarifies congressional intent of the previous reauthorization to ensure that taxpayers reap the benefits of the SBIR and STTR programs by tying them to long term projects at the Department of Defense (DoD).

III. NEED FOR LEGISLATION

H.R. 4783 was introduced by Chairman Steve Chabot and Ranking Member Nydia Velázquez on March 17, 2017, after significant oversight of the SBIR and STTR programs by the Committee. Prior to explaining the necessary changes, a brief overview of each program will be provided.

A. SBIR

Congressional support for the SBIR initiative was predicated upon the belief that while technology-based companies under 500 employees² tended to be highly innovative, and innovation being essential to the economic well-being of the United States, these businesses were underrepresented in the award of government R&D contracts. In order to increase participation of such entities in federal R&D efforts, Congress passed the Small Business Innovation Development Act (SBIRA) in 1982,³ which established the SBIR program. The purpose of SBIRA was to increase government funding of small businesses that conduct R&D with a particular focus on technology that has high commercial potential.

The objectives of the SBIR program include expansion of commercialization of federally funded R&D, stimulation of technological innovation in the small business sector, increased use of this community to meet the government's diverse R&D needs, and additional involvement of minority and disadvantaged individuals in the process. The program requires 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 research and development activities to be conducted by small firms originally was set at 1.25 percent but has increased incrementally to 3.0 percent where it now stands.

Currently, eleven agencies have research budgets large enough to require participation in the SBIR program: the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; and the National Science Foundation. Each agency's SBIR activity reflects that organization's management style. Individual departments select R&D interests, administer program operations, and control financial support. Funding may be disbursed in the form of contracts, grants, or cooperative agreements. Separate agencies issue solicitations for R&D at specific times and small businesses submit competing proposals to do the work.

²Criteria for eligibility in the SBIR program include companies that are: independently owned and operated; not dominant in the field of research proposed; for profit; the employer of 500 or fewer people; and at least 51 percent owned by one or more United States citizens or lawfully admitted permanent resident aliens. 13 C.F.R. § 121.702.

³Pub. L. No. 97-219, 96 Stat. 217 (1982) (codified at 18 U.S.C. § 638).

Congress delegated to the SBA the authority for creating broad policy and guidelines under which qualifying agencies operate their SBIR programs. The SBA monitors and reports to Congress on the conduct of the separate departmental SBIR activities. While the SBA provides direction and monitors the program, it does not provide funding for the awards, select the award winners, or distribute the award dollars.

The SBIR program is designed to award grants via a three-phase process. In the first phase, awards up to \$150,000 are provided to evaluate a concept's scientific or technical merit and feasibility. The project must be of interest to and coincide with the mission of the supporting organization. Projects that demonstrate potential after the initial endeavor may compete for Phase II awards of up to \$1 million to perform the principal R&D. Phase III funding, directed at the commercialization of the product or process, is expected to be generated in the private sector. Federal dollars, but not SBIR funds, may be used if the government perceives that the final technology or technique will meet public needs.

B. STTR

STTR is an important small business program that also expands funding opportunities in the federal innovation R&D arena. Central to the program is expansion of the public/private sector partnership to include joint venture opportunities for small businesses and the nation's network of nonprofit research institutions. Much like SBIR, STTR is a highly competitive program that reserves a specific percentage of federal R&D funding for award to small businesses and nonprofit research institution partners.

Often, the risk and expense of conducting serious R&D efforts can be beyond the means of many small businesses, especially those who have just initiated their businesses. Conversely, nonprofit research laboratories are instrumental in developing high-tech innovations. But frequently, innovation is confined to the theoretical, not the practical. STTR combines the strengths of both entities by introducing entrepreneurial skills to high-tech research efforts. The technologies and products are then transferred from the laboratory to the marketplace.

Eligibility criteria for businesses in STTR mirror those of SBIR; they must be American-owned and independently operated; for-profit; and employ no more than 500 workers. The nonprofit research institution must also meet certain eligibility criteria, such as being located the United States, and meet one of the three following definitions: it must be a nonprofit college or university; a domestic nonprofit research organization; or a federally funded R&D center.⁴

Each year, five federal departments and agencies are required by STTR to reserve a portion (currently 0.45 percent) of their R&D funds for award to small business/nonprofit research institution partnerships. Those are: the Department of Defense (DoD); the Department of Energy (DOE); the Department of Health and Human Services; the National Aeronautics and Space Administration

⁴Examples of each of these could be a major research university such as the University of Pittsburgh, a non-profit research organization such as the Cystic Fibrosis Foundation, or a federally funded R&D center such as the Los Alamos National Laboratory.

(NASA); and the National Science Foundation (NSF).⁵ As with SBIR, SBA develops broad guidelines but the agencies designate R&D topics, accept proposals, and award funds.

Similar to the SBIR program, agencies make STTR awards based on small business/nonprofit research institution qualification, degree of innovation, and future market potential. Small businesses that receive awards then begin a three-phase program. Phase I and II awards are capped at the same levels as SBIR. The Phase III (commercialization) portion of the project is designed to encourage private sector investment or non-STTR or SBIR federal agency funding, which is also similar to SBIR.

C. REVIEW OF SBIR AND STTR

In 2007, after more than three years of research and analysis, the National Research Council (NRC) of the National Academies of Science (NAS) released its assessment of the SBIR program as administered by the five federal agencies DoD; National Institutes of Health; NASA; DOE; and the NSF) that together made up approximately 96 percent of SBIR program expenditures at that time. The core finding of the study is that the SBIR program is sound in concept and effective in practice.⁶ In support of the report's core finding, the NRC concluded that the SBIR program is: (1) stimulating technological innovations; (2) increasing private sector commercialization of research; (3) using small businesses to meet federal research and development needs; and (4) providing widely distributed support for innovation activity.⁷

To expand on this research and to provide greater information to policymakers in the future, Congress directed⁸ the NRC to continue its examination of the SBIR program as well as expand its review to include the STTR program. By and large, the NRC found that the SBIR program is meeting most of its statutory objectives. For instance, the NRC points out that SBIR projects at the Department of Defense (DOD) commercialize at a substantial rate, with the percentage of Phase II projects reporting sales continues to be greater than 45 percent.⁹ The NRC also found that the SBIR program at the National Institutes of Health is having a positive overall impact and is meeting three of the four legislative objectives of the program with regard to stimulating technical innovation, using small businesses to meet federal R&D needs and increasing private-sector commercialization of innovations derived from federal R&D.¹⁰ Finally, the NRC found that STTR is meeting its statutory objective of fostering cooperation between small business concerns and research institutions, and does so in some respects to an extent that SBIR does not.¹¹

As a result of Public Law 112–81, the Government Accountability Office (GAO) conducted several investigations constituting a com-

⁵ Federal agencies with extramural R&D budgets that exceed \$1 billion are required to participate in the STTR program.

⁶ NRC, National Academies of Science, *An Assessment of the Small Business Innovation Research Program 3* (2007).

⁷ *Id.* at 3–6.

⁸ Pub. L. No. 112–81, Div. E., 125 Stat. 1850, 1822–62 (2011). The short title of Division E is the SBIR/STTR Reauthorization Act of 2011.

⁹ NRC, NAS, SBIR at the Department of Defense 201 (2014).

¹⁰ NRC, NAS, SBIR/STTR at the National Institutes of Health 234 (2015).

¹¹ NRC, NAS, STTR An Assessment of the Small Business Technology Transfer Program 91 (2016).

prehensive body of work to assess, among other things, participating agency management, development, and transitioning SBIR/STTR and STTR technologies across their science and technology enterprises. By and large, the reports pointed to a strong and vibrant program, with a few caveats. For example, the GAO found that the SBA's ability to fully determine compliance with spending requirements for the SBIR and STTR programs is limited because most agencies submitted incorrect data; GAO recommended that SBA should update its guidance to require that adequate information be provided.¹²

In the conference report to the National Defense Authorization Act for Fiscal Year 2013, the conferees directed the GAO to conduct a study to assess the DOD's transition of technologies developed by small businesses through the SBIR program, including: (1) an analysis of technologies developed under the SBIR program and the extent to which such technologies were incorporated into major weapon systems or major automated information systems; (2) an analysis of established or ad hoc procedures to allow program offices to monitor, evaluate, and transition small business-developed technologies into their programs; and (3) additional actions that may be needed to improve DOD and the military services' processes for monitoring, evaluating, and transitioning small business-developed technologies for use in major weapon systems or major automated information systems (including any appropriate data collection and measures of effectiveness and performance).¹³

GAO released the report¹⁴ required by the FY 2013 NDAA on December 20, 2013. GAO found that some common and branch-specific transition initiatives, such as the Commercialization Readiness Program and the Navy Transition Assistance Program help to improve small businesses' abilities to transition their products to Phase III.¹⁵ While some programs are of assistance, GAO recommended that DOD must improve tracking and reporting of technology transition outcomes for SBIR projects in order to improve transition rates. Specifically, the GAO suggested that DOD: establish a common definition of technology transition for all SBIR projects to support annual reporting requirements; develop a plan to meet the new technology reporting requirements that will improve the completeness, quality, and reliability of SBIR transition data; and report to Congress on the Department's plan for meeting the new SBIR reporting requirements, including specific steps for improving the technology transition data.¹⁶

D. NECESSARY REFORMS

For the SBIR and STTR programs to remain successful, they must present small businesses with a reliable avenue to commercialization. Therefore, the legislation removes uncertainty about the program by reauthorizing it for an additional five years, until September 30, 2022.

¹²GAO, Small Business Research Programs: Challenges Remain in Meeting Spending and Reporting Requirements (GAO15-358) (Ap. 2015).

¹³H.R. Conf. Rep. No. 112-705, at 942-943 (2012).

¹⁴GAO, Small Business Innovation Research: DOD's Program Supports Weapon Systems, but Lacks Comprehensive Data on Technology Transition Outcomes (GAO-14-96) (2013).

¹⁵*Id.* at 6-7.

¹⁶*Id.* at 14-15.

Second, given that the alternative to the SBIR and STTR programs within agencies extramural research budgets are often sole source contracts and grants, the legislation increases opportunities for competition by expanding the portion of an agency's extramural R&D budget subject to the program from the current 3 percent to 4.5 percent, phased in over the five years. This will result in fifty percent increase in opportunities for small R&D companies.

There have been multiple year delays in the annual reports on the SBIR and STTR programs, in part due to the failure of the participating agencies to provide the necessary data to SBA. Therefore, the bill ties the ability of participating agencies to access administrative funds to their submission of the required reports.

While SBA has long had the authority in the authority to adjust the caps on the size of SBIR awards due to inflation,¹⁷ it has refused to use this power. Consequently, award sizes remain frozen and become increasingly less useful. Therefore, the bill adopts the inflationary formula currently used for all of the other SBA procurement programs and applies it to SBIR award sizes.

Additionally, the Committee heard testimony that the amount of time between completing a phase II SBIR award and the award of a phase III can be fatal for small businesses. Thus, it looked to the success of the National Science Federation's Phase IIB program, which incents successful firms to finding matching private sector funds in exchange for another round of SBIR funding. Thus, the legislation expands this pilot program to all participating agencies, with the requirement that it be studied.

Finally, given that the intent of the program is to allow taxpayers to reap the benefit of this early stage funding of R&D, prior legislation authorized the use of incentives for defense contractors to incorporate program technologies. This bill makes the use of incentives mandatory.

IV. HEARINGS

In the 114th Congress, the Committee held three hearings that looked at the issues covered by H.R. 4783. On March 2, 2016, the Committee held a hearing titled, "Commercializing on Innovation: Reauthorizing the Small Business Innovation Research and Small Business Technology Transfer Programs." The hearing heard from agency program managers on topics relevant to reauthorization. Less than a week later, the Subcommittee on Contracting and Workforce held a hearing in Lynn, Massachusetts to hear from small business participants in the SBIR and STTR programs. The hearing, held March 8, 2016, was called "Commercializing on Innovation: Reauthorizing the Small Business Innovation Research and Small Business Technology Transfer Programs Part II." Earlier in the year, the Subcommittee on Health and Technology met for a hearing titled, "Oversight of the Office of Investment and Innovation at the SBA" on January 12, 2016. The hearing examined SBA's management of the programs.

¹⁷The Act at § 9(j)(2)(D).

V. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on March 23, 2016 and ordered H.R. 4783 reported, as amended, to the House by a voice vote at 9:56 a.m. During the markup, three amendments were offered. All amendments were adopted. Disposition of the amendments is addressed below and is based on the order amendments were filed with the Clerk of the Committee and not necessarily in the order that they were considered at the markup.

Amendment Number Two was offered by Mr. Knight (R-CA). It extended a pilot program allowing agencies to use 3 percent of the available SBIR and STTR funds for administrative expenses. Currently, the pilot program will lapse on September 30, 2017, which the amendment changed to September 30, 2022. The amendment passed by voice vote at 9:50 a.m.

Amendment Number Three was offered by Ms. Velázquez (D-NY). This amendment created a Commercialization Assistance Pilot Program at each participating SBIR agency. The pilot would allow businesses to compete for additional funding that would help them overcome between phases II and III of the program, while ensuring that there is commercialization potential in the research by requiring a 1 to 1 match of non-SBIR dollars. The amendment passed by voice vote at 9:47 a.m.

Amendment Number Four was offered by Ms. Velázquez (D-NY). The amendment removes the waiver to conduct outreach to under-represented populations available to agencies that use part of their SBIR funds for administrative purposes. The amendment also sets deadlines for agencies to report the use of SBIR funding for administrative purposes to SBA as well as a deadline for when SBA must report this data to the Committee. The amendment passed by voice vote at 9:55 a.m.

VI. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes on H.R. 4783.

VII. SECTION-BY-SECTION ANALYSIS OF H.R. 4783 AS AMENDED

Section 1. Short title

This section provides that the bill may be cited as the “Commercializing on Small Business Innovation Act of 2016.”

Section 2. Extension of termination dates

This section amends section 9(m) of the Act to extend the authorization of the SBIR and STTR programs from September 30, 2017 until September 30, 2022.

Section 3. Required expenditure amounts

This section alters the amounts reserved for the SBIR and STTR programs. For the SBIR program, it does so by amending section 9(f)(1) of the Act, and increasing the percentage from 3 percent to 3.46 percent in FY 2018, 3.72 percent in FY 2019, 3.98 percent in

FY 2020, 4.24 percent in FY 2021, and 4.5 percent in FY 2022. For the STTR program, it amends section 9(n)(1)(B) of the Act to increase the percentage from 0.45 percent to 0.5 percent in FY 2018 and FY 2019, 0.55 percent in FY 2020 and FY 2021, and 0.6 percent in FY 2022.

Section 4. Reporting requirements

This section amends section 9(b)(7) of the Act to require the SBA to file its annual report on the SBIR and STTR programs to Congress by December 31 of each calendar year. The section also requires each of the participating agencies to submit all of the required reports and information to the SBA by March 31 of each year. Further, it amends section 9(mm) of the Act to add a new paragraph (7) stating that any agency using a portion of the extramural R&D budget for administrative funds must disclose to the SBA the purposes to which it used the administrative funds. Finally, it states that any agency failing to comply with this reporting requirement may not use any funds for administrative purposes.

Section 5. Indexing awards for inflation

Section 5 amends section 9 of the Act to provide inflation adjustments for the SBIR and STTR awards. Currently, a phase I award may not exceed \$150,000, and a phase II award may not exceed \$1,000,000. The amendment adds a new subsection (tt) to allow that these amounts may be adjusted for inflation in any year divisible by five using the formula provided in 41 U.S.C. 1908.

Section 6. Requirements for insertion incentives

This section amends section 9(y)(5) of the Act. Currently, the Act provides that for contracts worth more than \$100 million, the Department of Defense may provide goals for the use of SBIR and STTR technologies in subcontracting plans. This section makes the insertion of these goals mandatory.

Section 7. Clarification of eligibility of certain small businesses

The SBIR reauthorization in the FY 13 NDAA sought to restore eligibility for the SBIR and STTR programs after decisions made by the Office of Hearings and Appeals at SBA created confusion in this area. However, in doing so, it overlooked certain programs in the Act, creating an unintended disparity contradicting the Committee's longstanding commitment to parity. Therefore, this section directs SBA to revise its guidance to allow these firms to participate in the SBIR and STTR programs.

Section 8. Commercialization assistance pilot program

This section amends section 9 of the Act to add a new subsection (uu). The new subsection creates a pilot program for agencies that do not have commercialization pilot programs already in place. Agencies are authorized to spend up to 5 percent of its SBIR budget to provide contracts or grants to participants that successfully completed phase II of the program. However, to be eligible for a payment under this pilot, the small business must have collected a matching amount of private sector funds equal to the award under the pilot program. While the pilot program will last until

2022, the Comptroller General is directed to report on the success of the pilot within three years.

Section 9. Increased underserved population participation waiver removed

This section amends section 9(mm)(2) of the Act. The revised paragraph (2) directs that a federal agency participating in the SBIR program use a portion of the administrative funds for outreach efforts to increase the participation of socially and economically disadvantaged small businesses, woman-owned small businesses, and small businesses in states that are normally underrepresented in the SBIR program.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

At the time H.R. 4783 was reported to the House, the Congressional Budget Office had not provided a cost estimate.

IX. UNFUNDED MANDATES

H.R. 4783 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, Pub. L. No. 104-4, and would impose no costs on state, local or tribal governments.

X. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 4783 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

XI. OVERSIGHT FINDINGS

In accordance with clause (2)(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 4783 are incorporated into the descriptive portions of this report.

XII. STATEMENT OF CONSTITUTIONAL AUTHORITY

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

XIII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4783 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Pub. L. No. 104-1.

XIV. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 4783 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 4783 does not contain any congressional earmarks, limited tax benefits or limited tariff benefits as defined in subsections (d), (e) or (f) of clause 9 of rule XXI of the Rules of the House.

XVI. PERFORMANCE GOALS AND OBJECTIVES

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

H.R. 4783 includes a number of provisions designed to improve the opportunities for small business concerns to compete for federal research and development contracts and grants pursuant to the Small Business Act, and to improve agency compliance with the Small Business Act.

XVII. CHANGES TO EXISTING LAW

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*, and 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.

(b) It shall be the duty of the Administration, and it is hereby empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section; and

(4) to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small business' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;

(7) **[to report not less than annually]** *to submit a report not later than December 31 of each year* to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—

(A) the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);

(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;

(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the SBIR and STTR programs;

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies;

(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program; and

- (G) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k);
- (8) to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and
- (9) to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data.
- (c) The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.
- (d)(1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:
- (A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;
 - (B) to undertake and utilize applied research;
 - (C) to collect research information related to a particular industry and disseminate it to participating members;
 - (D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;
 - (E) to prosecute applications for patents and render patent services for participating members; and
 - (F) to negotiate and grant licenses under patents held under the point program, and to establish corporations designed to exploit particular patents obtained by it.
- (2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.
- (3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust

laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(e) For the purpose of this section—

(1) the term “extramural budget” means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries, and except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs for weapons and weapons-related activities or for naval reactor programs;

(2) the term “Federal agency” means an executive agency as defined in section 105 of title 5, United States Code, or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

(3) the term “funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

(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) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential, as described in subparagraph (B), submitted pursuant to SBIR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal’s commercial potential, as evidenced by—

(i) the small business concern’s record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program—

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or merit-based selection procedures;

(5) the term “research” or “research and development” means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

(6) the term “Small Business Technology Transfer Program” or “STTR” means a program under which a portion of a Federal agency’s extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR program solicitations;

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program—

(i) in which commercial applications of STTR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria;

(7) the term “cooperative research and development” means research or research and development conducted jointly by a small business concern and a research institution in which not

less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution;

(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);

(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 Phase II or Phase III of the Small Business Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection;

(10) the term “commercialization” means—

(A) the process of developing products, processes, technologies, or services; and

(B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets;

(11) the term “Phase I” means—

(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

(12) the term “Phase II” means—

(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

(B) with respect to the STTR program, the second phase described in paragraph (6)(B); and

(13) the term “Phase III” means—

(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

(B) with respect to the STTR program, the third phase described in paragraph (6)(C).

(f) FEDERAL AGENCY EXPENDITURES FOR THE SBIR PROGRAM.—

(1) REQUIRED EXPENDITURE AMOUNTS.—Except as provided in paragraph (2)(B), each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns—

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996;

(C) not less than 2.5 percent of such budget in each of fiscal years 1997 through 2011;

(D) not less than 2.6 percent of such budget in fiscal year 2012;

(E) not less than 2.7 percent of such budget in fiscal year 2013;

(F) not less than 2.8 percent of such budget in fiscal year 2014;

(G) not less than 2.9 percent of such budget in fiscal year 2015;

(H) not less than 3.0 percent of such budget in fiscal year 2016; **[and]**

(I) not less than 3.2 percent of such budget in fiscal year 2017 **[and each fiscal year thereafter,];**

(J) not less than 3.46 percent of such budget in fiscal year 2018;

(K) not less than 3.72 percent of such budget in fiscal year 2019;

(L) not less than 3.98 percent of such budget in fiscal year 2020;

(M) not less than 4.24 percent of such budget in fiscal year 2021; and

(N) not less than 4.50 percent of such budget in fiscal year 2022 and each fiscal year thereafter,

specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

(2) LIMITATIONS.—A Federal agency shall not—

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

(3) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(4) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1).

(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) unilaterally determine categories of projects to be in its SBIR program;

(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

(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, 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
 - (B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 of title 10, United States Code, and in subsequent reports issued under that authority;
- (4)(A) unilaterally receive and evaluate proposals resulting from SBIR proposals; and
- (B) make a final decision on each proposal submitted under the SBIR program—
- (i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or
 - (ii) if the Administrator authorizes an extension with respect to a solicitation, not later than 90 days after the date that would otherwise be applicable to the agency under clause (i);
- (5) subject to subsection (l), unilaterally select awardees for the SBIR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;
- (6) administer its own SBIR funding agreements (or delegate such administration to another agency);
- (7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements;
- (8) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k), including—
- (A) whether an awardee—
 - (i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—
 - (I) the amount of venture capital, hedge fund, or private equity firm investment that the awardee has received as of the date of the award; and
 - (II) the amount of additional capital that the awardee has invested in the SBIR technology;
 - (ii) has an investor that—
 - (I) is an individual who is not a citizen of the United States or a lawful permanent resident of

the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator;

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

(vi) is located in a State described in subsection (u)(3);

(B) a justification statement from the agency, if an awardee receives an award in an amount that is more than the award guidelines under this section; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(9) **make an annual report** *not later than March 30 of each year, submit a report* on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(10) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(11) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(12) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR program of the Federal agency.

(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.

(i) ANNUAL REPORTING.—

(1) IN GENERAL.—Each Federal agency required by this section to have an SBIR program or to establish goals **shall** report annually to the Small Business Administration **shall, not later than March 30 of each year, submit a report to the Small Business Administration that includes** the number of awards (including awards under subsection (y)) pursuant to grants,

contracts, or cooperative agreements over \$10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

(2) CALCULATION OF EXTRAMURAL BUDGET.—

(A) METHODOLOGY.—Not later than 4 months after the date of the enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

(B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7).

(j)(1) POLICY DIRECTIVES.—The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of the enactment of the Small Business Innovation Development Act of 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

(A) simplified, standardized, and timely SBIR solicitations;

(B) a simplified, standardized funding process which provides for (i) the timely receipt and review of proposals; (ii) outside peer review for at least Phase II proposals, if appropriate; (iii) protection of proprietary information provided in proposals; (iv) selection of awardees; (v) retention of rights in data generated in the performance of the contract by the small business concern; (vi) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (vii) cost sharing; and (viii) cost principles and payment schedules;

(C) exemptions from the regulations under paragraph (2) if national security or intelligence functions clearly would be jeopardized;

(D) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program;

(E) **【simplified, standardized, and timely annual report】** *not later than March 30 of each year, a simplified and standardized report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;*

(F) standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and

(G) the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f).

(2) MODIFICATIONS.—Not later than 90 days after the date of enactment of the Small Business Research and Development Enhancement Act of 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

(B) continued use by a small business concern participating in Phase III of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production;

[(D) an increase to \$150,000 in the amount of funds which an agency may award in Phase I of an SBIR program, and to \$1,000,000 in Phase II of an SBIR program, and an adjustment of such amounts every year for inflation;]

[(E) (D) a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976; or

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

[(F) (E) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 8(a)(4), and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including Phase III of such programs, and the collection of data to document such participation;

[(G) (F) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for Phase I of an SBIR program and the application for and extension of an award for Phase II of such program;

[(H) (G) procedures to ensure that a small business concern that submits a proposal for a funding agreement for Phase I of an SBIR program and that has received more than 15 Phase II SBIR awards during the preceding

5 fiscal years is able to demonstrate the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards; and

【(I)】 *(H)* procedures to ensure that agencies participating in the SBIR program retain the information submitted under 【subparagraph (H)】 *subparagraph (G)* at least until the General Accounting Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

(3) ADDITIONAL MODIFICATIONS.—Not later than 120 days after the date of the enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III;

(B) to provide for the requirement of a succinct commercialization plan with each application for a Phase II award that is moving toward commercialization;

(C) 【to require agencies to report to the Administration, not less frequently than annually, all instances in which an】 *to require each agency, not later than March 30 of each year, to submit a report to the Administration on all instance in which the agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—*

(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

(D) to implement subsection (v), including establishing standardized procedures for the provision of information pursuant to subsection (k)(3).

(4) MODIFICATION TO CLARIFY ELIGIBILITY OF CERTAIN SMALL BUSINESSES.—*Not later than 180 days after the date of the enactment of the Commercializing on Small Business Innovation Act of 2016, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the small business concerns described in subparagraphs (B), (C), and (D) of section 3(p)(3) are eligible to receive awards under the SBIR program.*

(k) DATABASE.—

(1) PUBLIC DATABASE.—Not later than 180 days after the date of the enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Adminis-

trator shall develop, maintain, and make available to the public a searchable, up-to-date, electronic database that includes—

(A) the name, size, location, and an identifying number assigned by the Administrator, of each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency;

(B) a description of each Phase I or Phase II SBIR or STTR award received by that small business concern, including—

(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

(ii) the Federal agency making the award; and

(iii) the date and amount of the award;

(C) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made;

(D) information regarding mentors and Mentoring Networks, as required by section 35(d);

(E) with respect to assistance under the STTR program only—

(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution; and

(F) for each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency, whether the small business concern—

(i) has venture capital, hedge fund, or private equity firm investment and, if so, whether the small business concern is registered as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms as required under subsection (dd)(3);

(ii) is owned by a woman or has a woman as a principal investigator;

(iii) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

(iv) is owned by a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

(v) received assistance under the Federal and State Technology Partnership Program (FAST Program).

(2) GOVERNMENT DATABASE.—Not later than 90 days after the date of enactment of the SBIR/STTR Reauthorization Act of 2011, 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 small business concern that applies for, submits a proposal for, or receives an award under Phase I or Phase II of the SBIR program or the STTR program—

(i) the name, size, and location of, and the identifying number assigned by the Administration to, the small business concern;

(ii) an abstract of the applicable project;

(iii) the specific aims of the project;

(iv) the number of employees of the small business concern;

(v) the names and titles of the key individuals that will carry out the project, the position each key individual holds in the small business concern, and contact information for each key individual;

(vi) the percentage of effort each individual described in clause (v) will contribute to the project;

(vii) whether the small business concern is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(viii) the Federal agency to which the application is made and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or the STTR program;

(B) contains for each Phase II award made by a Federal agency—

(i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with paragraph (3) on additional investment from any source, other than Phase I or Phase II 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;

(C) includes any narrative information that a small business concern receiving a Phase II award voluntarily submits to further describe the outputs and outcomes of its awards;

(D) includes, for each awardee—

(i) the name, size, and location of, and any identifying number assigned by the Administrator to, the awardee;

(ii) whether the awardee has venture capital, hedge fund, or private equity firm investment and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment as of the date of the award;

(II) the percentage of ownership of the awardee held by a venture capital operating company, hedge fund, or private equity firm, including whether the awardee is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(III) the amount of additional capital that the awardee has invested in the SBIR or STTR technology, which information shall be collected on an annual basis;

(iii) the names and locations of any affiliates of the awardee;

(iv) the number of employees of the awardee;

(v) the number of employees of the affiliates of the awardee; and

(vi) the names of, and the percentage of ownership of the awardee held by—

(I) any individual who is not a citizen of the United States or a lawful permanent resident of the United States; or

(II) any person that is not an individual and is not organized under the laws of a State or the United States;

(E) includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR or STTR program evaluation;

(F) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and non-disclosure agreement with the Federal Government covering the use of the database; and

(G) includes a timely and accurate list of any individual or small business concern that has participated in the SBIR program or STTR program that has been—

(i) convicted of a fraud-related crime involving funding received under the SBIR program or STTR program; or

(ii) found civilly liable for a fraud-related violation involving funding received under the SBIR program or STTR program.

(3) UPDATING INFORMATION FOR DATABASE.—

(A) IN GENERAL.—A small business concern applying for a Phase II award under this section shall be required to update information in the database established under this subsection for any prior Phase II 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 Phase II award among those awards, if it notes the apportionment for each award.

(B) ANNUAL UPDATES UPON TERMINATION.—A small business concern receiving a Phase II 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.

(C) GOVERNMENT DATABASE.—Not later than 60 days after the date established by a Federal agency for submitting applications or proposals for a Phase I or Phase II award under the SBIR program or STTR program, the head of the Federal agency shall submit to the Administrator the data required under paragraph (2) with respect to each small business concern that applies or submits a proposal for the Phase I or Phase II award.

(4) PROTECTION OF INFORMATION.—Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5, United States Code.

(5) RULE OF CONSTRUCTION.—Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35, United States Code.

(I) REPORTING OF AWARDS MADE FROM SINGLE PROPOSAL, TO MULTIPLE AWARD WINNERS, OR TO CRITICAL TECHNOLOGY TOPICS.—

(1) SINGLE PROPOSAL.—If a Federal agency required to establish an SBIR program under subsection (f) makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8).

(2) MULTIPLE AWARDS.—An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) an accounting of the awards the agency has made for Phase I of an SBIR program during the reporting period to entities that have received more than 15 awards for the Phase II of an SBIR program during the preceding 5 fiscal years.

(3) CRITICAL TECHNOLOGY AWARDS.—An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8), an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3), including an identification of the specific critical technologies topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

(m) TERMINATION.—The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, **[2017]** 2022.

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

(1) REQUIRED EXPENDITURE AMOUNTS.—

(A) IN GENERAL.—With respect to each fiscal year through fiscal year ~~2017~~ 2022, 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.

(B) EXPENDITURE AMOUNTS.—The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

(i) 0.15 percent for each fiscal year through fiscal year 2003;

(ii) 0.3 percent for each of fiscal years 2004 through 2011;

(iii) 0.35 percent for each of fiscal years 2012 and 2013;

(iv) 0.40 percent for each of fiscal years 2014 and 2015; ~~and~~

(v) 0.45 percent ~~for fiscal year 2016 and each fiscal year thereafter.~~ *for each of fiscal years 2016 and 2017;*

(vi) *0.50 percent for each of fiscal years 2018 and 2019;*

(vii) *0.55 percent for each of fiscal years 2020 and 2021; and*

(viii) *0.60 percent for fiscal year 2022 and each fiscal year thereafter.*

(2) LIMITATIONS.—A Federal agency shall not—

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 25(c)(1) of the Office of Federal Procurement Policy Act); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

(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) unilaterally determine categories of projects to be included in its STTR program;

(2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administration;

(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;

(4)(A) unilaterally receive and evaluate proposals resulting from STTR solicitations; and

(B) make a final decision on each proposal submitted under the STTR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension for a solicitation, not later than 90 days after the date that would be applicable to the agency under clause (i);

(5) unilaterally select awardees for its STTR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own STTR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of the completion of such requirements;

(8) include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its STTR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives;

(9) collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from applicants and awardees as is necessary to assess the STTR program outputs and outcomes, including information necessary to maintain the database described in subsection (k), including—

(A) whether an applicant or awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the applicant or awardee has received as of the date of the application or award, as applicable; and

(II) the amount of additional capital that the applicant or awardee has invested in the STTR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator;

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator;

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

(vi) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator;

(B) if an awardee receives an award in an amount that is more than the award guidelines under this section, a statement from the agency that justifies the award amount; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(10) **submit an annual report** *not later than March 30 of each year, submit a report on the STTR program to the Administration and the Office of Science and Technology Policy;*

(11) adopt the agreement developed by the Administrator under subsection (w) as the agency's model agreement for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(12) develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and develop-

ment centers (as defined in subsection (e)(8)) that participate in STTR agreements—

- (A) are free from organizational conflicts of interests relative to the STTR program;
 - (B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and
 - (C) use outside peer review, as appropriate;
- (13) not later than July 31, 1993, develop procedures for assessing the commercial merit and feasibility of STTR proposals, as evidenced by—
- (A) the small business concern's record of successfully commercializing STTR or other research;
 - (B) the existence of Phase II funding commitments from private sector or non-STTR funding sources;
 - (C) the existence of Phase III follow-on commitments for the subject of the research; and
 - (D) the presence of other indicators of the commercial potential of the idea;
- (14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program;
- (15) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and
- (16) provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR program of the Federal agency.

(p) STTR POLICY DIRECTIVE.—

(1) ISSUANCE.—The Administrator shall issue a policy directive for the general conduct of the STTR programs within the Federal Government. Such policy directive shall be issued after consultation with—

- (A) the heads of each of the Federal agencies required by subsection (n) to establish an STTR program;
- (B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and
- (C) the Director of the Office of Federal Procurement Policy.

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

- (A) simplified, standardized, and timely STTR solicitations;
- (B) a simplified, standardized funding process that provides for—
 - (i) the timely receipt and review of proposals;
 - (ii) outside peer review, if appropriate;
 - (iii) protection of proprietary information provided in proposals;
 - (iv) selection of awardees;
 - (v) retention by a small business concern of the rights to data generated by the concern in the per-

formance of an STTR award for a period of not less than 4 years;

(vi) continued use by a small business concern, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of the STTR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(vii) cost sharing; *and*

(viii) cost principles and payment schedules; **[and]**

[(ix) 1-year awards for Phase I of an STTR program, generally not to exceed \$150,000, and 2-year awards for Phase II of an STTR program, generally not to exceed \$1,000,000, (each of which the Administrator shall adjust for inflation annually) greater or 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;]

(C) minimizing regulatory burdens associated with participation in STTR programs;

(D) guidelines for a model agreement, to be used by all agencies, for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(E) procedures to ensure that—

(i) a recipient of an STTR award is a small business concern, as defined in section 3 and the regulations promulgated thereunder; and

(ii) such small business concern exercises management and control of the performance of the STTR funding agreement pursuant to a business plan providing for the commercialization of the technology that is the subject matter of the award; and

(F) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an STTR program enters into follow-on, non-STTR funding agreements with the small business concern for such research, development, or production.

(3) MODIFICATIONS.—Not later than 120 days after the date of enactment of this paragraph, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III.

(4) MODIFICATION TO CLARIFY ELIGIBILITY OF CERTAIN SMALL BUSINESSES.—Not later than 180 days after the date of the enactment of the Commercializing on Small Business Innovation Act of 2016, the Administrator shall modify the policy directives issued pursuant to this subsection to clarify that the small business concerns described in subparagraphs (B), (C), and (D) of section 3(p)(3) are eligible to receive awards under the STTR program.

(q) DISCRETIONARY TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Each Federal agency required by this section to conduct an SBIR program or STTR program may enter into an agreement with a vendor selected under paragraph (2) to provide small business concerns engaged in SBIR or STTR projects with technical assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies, or access to technical and business literature available through on-line data bases, for the purpose of assisting such concerns in—

(A) making better technical decisions concerning such projects;

(B) solving technical problems which arise during the conduct of such projects;

(C) minimizing technical risks associated with such projects; and

(D) developing and commercializing new commercial products and processes resulting from such projects.

(2) VENDOR SELECTION.—Each agency may select a vendor to assist small business concerns to meet the goals listed in paragraph (1) for a term not to exceed 5 years. Such selection shall be competitive and shall utilize merit-based criteria.

(3) ADDITIONAL TECHNICAL ASSISTANCE.—

(A) PHASE I.—A Federal agency described in paragraph

(1) may—

(i) provide to the recipient of a Phase I SBIR or STTR award, through a vendor selected under paragraph (2), the services described in paragraph (1), in an amount equal to not more than \$5,000 per year; or

(ii) authorize the recipient of a Phase I SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$5,000 per year, which shall be in addition to the amount of the recipient's award.

(B) PHASE II.—A Federal agency described in paragraph

(1) may—

(i) provide to the recipient of a Phase II SBIR or STTR award, through a vendor selected under paragraph (2), the services described in paragraph (1), in an amount equal to not more than \$5,000 per year; or

(ii) authorize the recipient of a Phase II SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$5,000 per year, which shall be in addition to the amount of the recipient's award.

(C) FLEXIBILITY.—In carrying out subparagraphs (A) and (B), each Federal agency shall provide the allowable amounts to a recipient that meets the eligibility requirements under the applicable subparagraph, if the recipient requests to seek technical assistance from an individual or entity other than the vendor selected under paragraph (2) by the Federal agency.

(D) LIMITATION.—A Federal agency may not—

(i) use the amounts authorized under subparagraph (A) or (B) unless the vendor selected under paragraph

- (2) provides the technical assistance to the recipient;
- or
- (ii) enter a contract with a vendor under paragraph (2) under which the amount provided for technical assistance is based on total number of Phase I or Phase II awards.

(r) PHASE III AGREEMENTS.—

(1) IN GENERAL.—In the case of a small business concern that is awarded a funding agreement for Phase II of an SBIR or STTR program, a Federal agency may enter into a Phase III agreement with that business concern for additional work to be performed during or after the Phase II period. The Phase II funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to Phase III agreements with that agency or any other agency.

(2) DEFINITION.—In this subsection, the term “Phase III agreement” means a follow-on, non-SBIR or non-STTR funded contract as described in paragraph (4)(C) or paragraph (6)(C) of subsection (e).

(3) INTELLECTUAL PROPERTY RIGHTS.—Each funding agreement under an SBIR or STTR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(4) PHASE III AWARDS.—To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

(s) COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(t) INCLUSION IN STRATEGIC PLANS.—Program information relating to the SBIR and STTR programs shall be included by each Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5, United States Code.

(u) COORDINATION OF TECHNOLOGY DEVELOPMENT PROGRAMS.—

(1) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this subsection, the term “technology development program” means—

(A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

(B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(F) the Institutional Development Award Program of the National Institutes of Health; and

(G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(2) COORDINATION REQUIREMENTS.—Each Federal agency that is subject to subsection (f) and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

(A) any proposal to provide outreach and assistance to one or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

(i) a State that is eligible to participate in that program; or

(ii) a State described in paragraph (3); or

(B) any proposal for Phase I of the SBIR program, if the proposal, though meritorious, is not funded through the SBIR program for that fiscal year due to funding restraints, from a small business concern located in—

(i) a State that is eligible to participate in a technology development program; or

(ii) a State described in paragraph (3).

(3) ADDITIONALLY ELIGIBLE STATE.—A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.

(v) REDUCING PAPERWORK AND COMPLIANCE BURDEN.—

(1) STANDARDIZATION OF REPORTING REQUIREMENTS.—The Administrator shall work with the Federal agencies required by this section to have an SBIR or STTR program to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under subsection (k), taking into consideration the unique needs of each agency, and to the extent possible, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.

(2) SIMPLIFICATION OF APPLICATION AND AWARD PROCESS.—Not later than 1 year after the date of enactment of this paragraph, and after a period of public comment, the Administrator shall issue regulations or guidelines, taking into consideration the unique needs of each Federal agency, to ensure that each Federal agency required to carry out an SBIR program or STTR program simplifies and standardizes the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program or STTR program of the Federal agency

(including procedures relating to overhead rates for applicants and documentation requirements) to reduce the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR program or STTR program.

(w) STTR MODEL AGREEMENT FOR INTELLECTUAL PROPERTY RIGHTS.—

(1) IN GENERAL.—The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(2) OPPORTUNITY FOR COMMENT.—In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

(x) RESEARCH AND DEVELOPMENT FOCUS.—

(1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF IDENTIFICATION.—In carrying out subsection (g), the Secretary of Defense shall, not less often than once every 4 years, revise and update the criteria and procedures utilized to identify areas of the research and development efforts of the Department of Defense which are suitable for the provision of funds under the Small Business Innovation Research Program and the Small Business Technology Transfer Program.

(2) UTILIZATION OF PLANS.—The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note).

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers (PMs) and program executive officers (PEOs).

(y) COMMERCIALIZATION READINESS PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense and the Secretary of each military department is authorized to create and administer a “Commercialization Readiness Program” to accelerate the transition of technologies, products, and services developed under the Small Business Innovation Research Program or Small Business Technology Transfer Program to Phase III, including the acquisition process. The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the in-

sertion or transition of SBIR or STTR technologies, including any such program in effect on the date of enactment of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3136).

(2) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED TRANSITION TO ACQUISITION PROCESS.—In carrying out the Commercialization Readiness Program, the Secretary of Defense and the Secretary of each military department shall identify research programs of the Small Business Innovation Research Program or Small Business Technology Transfer Program that have the potential for rapid transitioning to Phase III and into the acquisition process.

(3) LIMITATION.—No research program may be identified under paragraph (2) unless the Secretary of the military department concerned certifies in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

(4) FUNDING.—

(A) IN GENERAL.—The Secretary of Defense and each Secretary of a military department may use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program for payment of expenses incurred to administer the Commercialization Readiness Program under this subsection.

(B) LIMITATIONS.—The funds described in subparagraph (A)—

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

(ii) shall not be used to make Phase III awards.

(5) INSERTION INCENTIVES.—For any contract with a value of not less than \$100,000,000, the Secretary of Defense [is authorized to] *shall*—

(A) establish goals for the transition of Phase III technologies in subcontracting plans; and

(B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase III SBIR or STTR projects.

(6) GOAL FOR SBIR AND STTR TECHNOLOGY INSERTION.—The Secretary of Defense shall—

(A) set a goal to increase the number of Phase II SBIR contracts and the number of Phase II STTR contracts awarded by the Secretary that lead to technology transition into programs of record or fielded systems;

(B) use incentives in effect on the date of enactment of the SBIR/STTR Reauthorization Act of 2011, or create new incentives, to encourage agency program managers and prime contractors to meet the goal under subparagraph (A); and

(C) [submit] *not later than March 30 of each year, submit* to the Administrator for inclusion in the annual report under subsection (b)(7)—

(i) the number and percentage of Phase II SBIR and STTR contracts awarded by the Secretary that led to technology transition into programs of record or fielded systems;

(ii) information on the status of each project that received funding through the Commercialization Readiness Program and efforts to transition those projects into programs of record or fielded systems; and

(iii) a description of each incentive that has been used by the Secretary under subparagraph (B) and the effectiveness of that incentive with respect to meeting the goal under subparagraph (A).

(z) ENCOURAGING INNOVATION IN ENERGY EFFICIENCY.—

(1) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its duties under this section relating to SBIR and STTR solicitations by Federal departments and agencies, the Administrator shall—

(A) ensure that such departments and agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and

(B) include in the annual report to Congress under subsection (b)(7) a determination of whether the priority described in subparagraph (A) is being carried out.

(2) CONSULTATION REQUIRED.—The Administrator shall consult with the heads of other Federal departments and agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this subsection.

(3) GUIDELINES.—The Administrator shall, as soon as is practicable after the date of enactment of this subsection, issue guidelines and directives to assist Federal agencies in meeting the requirements of this subsection.

(4) DEFINITIONS.—In this subsection—

(A) the term “biomass”—

(i) means any organic material that is available on a renewable or recurring basis, including—

(I) agricultural crops;

(II) trees grown for energy production;

(III) wood waste and wood residues;

(IV) plants (including aquatic plants and grasses);

(V) residues;

(VI) fibers;

(VII) animal wastes and other waste materials; and

(VIII) fats, oils, and greases (including recycled fats, oils, and greases); and

(ii) does not include—

(I) paper that is commonly recycled; or

(II) unsegregated solid waste;

(B) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

- (C) the term “renewable energy system” means a system of energy derived from—
- (i) a wind, solar, biomass (including biodiesel), or geothermal source; or
 - (ii) hydrogen derived from biomass or water using an energy source described in clause (i).
- (aa) LIMITATION ON SIZE OF AWARDS.—
- (1) LIMITATION.—No Federal agency may issue an award under the SBIR program or the STTR program if the size of the award exceeds the award guidelines established under this section by more than 50 percent.
 - (2) MAINTENANCE OF INFORMATION.—Participating agencies shall maintain information on awards exceeding the guidelines established under this section, including—
 - (A) the amount of each award;
 - (B) a justification for exceeding the guidelines for each award;
 - (C) the identity and location of each award recipient; and
 - (D) whether an award recipient has received any venture capital, hedge fund, or private equity firm investment and, if so, whether the recipient is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.
 - (3) REPORTS.—The Administrator shall include the information described in paragraph (2) in the annual report of the Administrator to Congress.
 - (4) WAIVER FOR SPECIFIC TOPIC.—Upon the receipt of an application from a Federal agency, the Administrator may grant a waiver from the requirement under paragraph (1) with respect to a specific topic (but not for the agency as a whole) for a fiscal year if the Administrator determines, based on the information contained in the application from the agency, that—
 - (A) the requirement under paragraph (1) will interfere with the ability of the agency to fulfill its research mission through the SBIR program or the STTR program; and
 - (B) the agency will minimize, to the maximum extent possible, the number of awards that do not satisfy the requirement under paragraph (1) to preserve the nature and intent of the SBIR program and the STTR program.
 - (5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prevent a Federal agency from supplementing an award under the SBIR program or the STTR program using funds of the Federal agency that are not part of the SBIR program or the STTR program of the Federal agency.
- (bb) SUBSEQUENT PHASE II AWARDS.—
- (1) AGENCY FLEXIBILITY.—A small business concern that received a Phase I award from a Federal agency under this section shall be eligible to receive a subsequent Phase II award from another Federal agency, if the head of each relevant Federal agency or the relevant component of the Federal agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to

the Administrator for inclusion in the public database under subsection (k).

(2) SBIR AND STTR PROGRAM FLEXIBILITY.—A small business concern that received a Phase I award under this section under the SBIR program or the STTR program may receive a subsequent Phase II award in either the SBIR program or the STTR program and the participating agency or agencies shall report the awards to the Administrator for inclusion in the public database under subsection (k).

(3) PREVENTING DUPLICATIVE AWARDS.—The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(cc) PHASE FLEXIBILITY.—During fiscal years 2012 through 2017, the National Institutes of Health, the Department of Defense, and the Department of Education may each provide to a small business concern an award under Phase II of the SBIR program with respect to a project, without regard to whether the small business concern was provided an award under Phase I of an SBIR program with respect to such project, if the head of the applicable agency determines that the small business concern has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided a Phase I award.

(dd) PARTICIPATION OF SMALL BUSINESS CONCERNS MAJORITY-OWNED BY VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS IN THE SBIR PROGRAM.—

(1) AUTHORITY.—Upon providing a written determination described in paragraph (2) to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, not later than 30 days before the date on which any such award is made—

(A) the Director of the National Institutes of Health, the Secretary of Energy, and the Director of the National Science Foundation may award not more than 25 percent of the funds allocated for the SBIR program of the applicable Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns; and

(B) the head of a Federal agency other than a Federal agency described in subparagraph (A) that participates in the SBIR program may award not more than 15 percent of the funds allocated for the SBIR program of the Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns.

(2) DETERMINATION.—A written determination described in this paragraph is a written determination by the head of a

Federal agency that explains how the use of the authority under paragraph (1) will—

- (A) induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;
- (B) substantially contribute to the mission of the Federal agency;
- (C) demonstrate a need for public research; and
- (D) otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(3) REGISTRATION.—A small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and qualified for participation in the program authorized under paragraph (1) shall—

- (A) register with the Administrator on the date that the small business concern submits an application for an award under the SBIR program; and
- (B) indicate in any SBIR proposal that the small business concern is registered under subparagraph (A) as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(4) COMPLIANCE.—

(A) IN GENERAL.—The head of a Federal agency that makes an award under this subsection during a fiscal year shall collect [and submit] *and, not later than March 30 of each year, submit* to the Administrator data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

(B) ANNUAL REPORTING.—The Administrator shall include as part of each annual report by the Administration under subsection (b)(7) any data submitted under subparagraph (A) and a discussion of the compliance of each Federal agency that makes an award under this subsection during the fiscal year with the maximum percentages under paragraph (1).

(5) ENFORCEMENT.—If a Federal agency awards more than the percent of the funds allocated for the SBIR program of the Federal agency authorized under paragraph (1) for a purpose described in paragraph (1), the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under paragraph (1) to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under paragraph (1) to be more than the amount authorized under paragraph (1) for a purpose described in paragraph (1).

(6) FINAL DECISIONS ON APPLICATIONS UNDER THE SBIR PROGRAM.—

(A) DEFINITION.—In this paragraph, the term “covered small business concern” means a small business concern that—

- (i) was not majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date on which the small business

concern submitted an application in response to a solicitation under the SBIR programs; and

(ii) on the date of the award under the SBIR program is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) IN GENERAL.—If a Federal agency does not make an award under a solicitation under the SBIR program before the date that is 9 months after the date on which the period for submitting applications under the solicitation ends—

(i) a covered small business concern is eligible to receive the award, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program for a small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms, if the covered small business concern meets all other requirements for such an award; and

(ii) the head of the Federal agency shall transfer an amount equal to any amount awarded to a covered small business concern under the solicitation to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency, not later than 90 days after the date on which the Federal agency makes the award.

(7) EVALUATION CRITERIA.—A Federal agency may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contracts under the SBIR program or STTR program.

(ee) COLLABORATING WITH FEDERAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS.—

(1) AUTHORIZATION.—Subject to the limitations under this section, the head of each participating Federal agency may make SBIR and STTR awards to any eligible small business concern that—

(A) intends to enter into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award; or

(B) has entered into a cooperative research and development agreement (as defined in section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d))) with a Federal laboratory.

(2) PROHIBITION.—No Federal agency shall—

(A) condition an SBIR or STTR award upon entering into agreement with any Federal laboratory or any federally funded laboratory or research and development center for any portion of the activities to be performed under that award;

(B) approve an agreement between a small business concern receiving an SBIR or STTR award and a Federal laboratory or federally funded laboratory or research and development center, if the small business concern performs

a lesser portion of the activities to be performed under that award than required by this section and by the SBIR Policy Directive and the STTR Policy Directive of the Administrator; or

(C) approve an agreement that violates any provision, including any data rights protections provision, of this section or the SBIR and the STTR Policy Directives.

(3) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall modify the SBIR Policy Directive and the STTR Policy Directive issued under this section to ensure that small business concerns—

(A) have the flexibility to use the resources of the Federal laboratories or federally funded research and development centers; and

(B) are not mandated to enter into agreement with any Federal laboratory or any federally funded laboratory or research and development center as a condition of an award.

(4) ADVANCE PAYMENT.—If a small business concern receiving an award under this section enters into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award, the Federal laboratory or federally funded research and development center may not require advance payment from the small business concern in an amount greater than the amount necessary to pay for 30 days of such activities.

(ff) ADDITIONAL SBIR AND STTR AWARDS.—

(1) EXPRESS AUTHORITY FOR AWARDING A SEQUENTIAL PHASE II AWARD.—A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) PREVENTING DUPLICATIVE AWARDS.—The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(gg) PILOT PROGRAM.—

(1) AUTHORIZATION.—The head of each covered Federal agency may allocate not more than 10 percent of the funds allocated to the SBIR program and the STTR program of the covered Federal agency—

(A) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or

(B) to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) APPLICATION BY FEDERAL AGENCY.—

(A) IN GENERAL.—A covered Federal agency may not establish a pilot program unless the covered Federal agency makes a written application to the Administrator, not later than 90 days before the first day of the fiscal year in which

the pilot program is to be established, that describes a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

(B) DETERMINATION.—The Administrator shall—

(i) make a determination regarding an application submitted under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

(ii) publish the determination in the Federal Register; and

(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(3) MAXIMUM AMOUNT OF AWARD.—The head of a covered Federal agency may not make an award under a pilot program in excess of 3 times the dollar amounts generally established for Phase II [awards under subsection (j)(2)(D) or (p)(2)(B)(ix).] *awards under subsection (t)(2)*.

(4) REGISTRATION.—Any applicant that receives an award under a pilot program shall register with the Administrator in a registry that is available to the public.

(5) AWARD CRITERIA OR CONSIDERATION.—When making an award under this section, the head of a covered Federal agency shall give consideration to whether the technology to be supported by the award is likely to be manufactured in the United States.

(6) REPORT.—The head of each covered Federal agency shall [include in the annual] *include, not later than March 30 of each year, a report of the covered Federal agency to the Administrator an analysis of the various activities considered for inclusion in the pilot program of the covered Federal agency and a statement of the reasons why each activity considered was included or not included, as the case may be.*

(7) TERMINATION.—The authority to establish a pilot program under this section expires at the end of fiscal year 2017.

(8) DEFINITIONS.—In this subsection—

(A) the term “covered Federal agency”—

(i) means a Federal agency participating in the SBIR program or the STTR program; and

(ii) does not include the Department of Defense; and

(B) the term “pilot program” means each program established under paragraph (1).

(hh) TIMING OF RELEASE OF FUNDING.—Federal agencies participating in the SBIR program or STTR program shall, to the extent possible, attempt to shorten the amount of time between the provision of notice of an award under the SBIR program or STTR pro-

gram and the subsequent release of funding with respect to the award.

(ii) REPORTING ON TIMING.—Federal agencies participating in the SBIR program or STTR program shall, *not later than March 30 of each year*, provide to the Administrator, for the annual report on the SBIR and STTR program under subsection (b)(7), the average amount of time the agency takes to make a final decision on proposals submitted under such programs, the average amount of time the agency takes to release funding with respect to an award under such programs, and the goals established to reduce such amounts.

(jj) PHASE 0 PROOF OF CONCEPT PARTNERSHIP PILOT PROGRAM.—

(1) IN GENERAL.—The Director of the National Institutes of Health may use \$5,000,000 of the funds allocated under subsection (n)(1) for a Proof of Concept Partnership pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. To implement this program, the Director shall award, through a competitive, merit-based process, grants to qualifying institutions. These grants shall only be used to administer Proof of Concept Partnership awards in conformity with this subsection.

(2) DEFINITIONS.—In this subsection—

(A) the term “Director” means the Director of the National Institutes of Health;

(B) the term “pilot program” refers to the Proof of Concept Partnership pilot program; and

(C) the terms “qualifying institution” and “institution” mean a university or other research institution that participates in the National Institutes of Health’s STTR program.

(3) PROOF OF CONCEPT PARTNERSHIPS.—

(A) IN GENERAL.—A Proof of Concept Partnership shall be set up by a qualifying institution to award grants to individual researchers. These grants should provide researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into a viable company. This work may include technical validations, market research, clarifying intellectual property rights position and strategy, and investigating commercial or business opportunities.

(B) AWARD GUIDELINES.—The administrator of a Proof of Concept Partnership program shall award grants in accordance with the following guidelines:

(i) The Proof of Concept Partnership shall use a market-focused project management oversight process, including—

(I) a rigorous, diverse review board comprised of local experts in translational and proof of concept research, including industry, start-up, venture capital, technical, financial, and business experts and university technology transfer officials;

(II) technology validation milestones focused on market feasibility;

(III) simple reporting effective at redirecting projects; and

(IV) the willingness to reallocate funding from failing projects to those with more potential.

(ii) Not more than \$100,000 shall be awarded towards an individual proposal.

(C) EDUCATIONAL RESOURCES AND GUIDANCE.—The administrator of a Proof of Concept Partnership program shall make educational resources and guidance available to researchers attempting to commercialize their innovations.

(4) AWARDS.—

(A) SIZE OF AWARD.—The Director may make awards to a qualifying institution for up to \$1,000,000 per year for up to 3 years.

(B) AWARD CRITERIA.—In determining which qualifying institutions receive pilot program grants, the Director shall consider, in addition to any other criteria the Director determines necessary, the extent to which qualifying institutions—

(i) have an established and proven technology transfer or commercialization office and have a plan for engaging that office in the program's implementation;

(ii) have demonstrated a commitment to local and regional economic development;

(iii) are located in diverse geographies and are of diverse sizes;

(iv) can assemble project management boards comprised of industry, start-up, venture capital, technical, financial, and business experts;

(v) have an intellectual property rights strategy or office; and

(vi) demonstrate a plan for sustainability beyond the duration of the funding award.

(5) LIMITATIONS.—The funds for the pilot program shall not be used—

(A) for basic research, but to evaluate the commercial potential of existing discoveries, including—

(i) proof of concept research or prototype development; and

(ii) activities that contribute to determining a project's commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities; or

(B) to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

(6) EVALUATIVE REPORT.—The Director shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an evaluative report regarding the activities of the pilot program. The report shall include—

(A) a detailed description of the institutional and proposal selection process;

- (B) an accounting of the funds used in the pilot program;
 - (C) a detailed description of the pilot program, including incentives and activities undertaken by review board experts;
 - (D) a detailed compilation of results achieved by the pilot program, including the number of small business concerns included and the number of business packages developed, and the number of projects that progressed into subsequent STTR phases; and
 - (E) an analysis of the program's effectiveness with supporting data.
- (7) SUNSET.—The pilot program under this subsection shall terminate at the end of fiscal year 2017.
- (kk) PHASE III REPORTING.—The annual SBIR or STTR report to Congress by the Administration under subsection (b)(7) shall include, for each Phase III award—
- (1) the name of the agency or component of the agency or the non-Federal source of capital making the Phase III award;
 - (2) the name of the small business concern or individual receiving the Phase III award; and
 - (3) the dollar amount of the Phase III award.
- (ll) 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 or an STTR program shall enable a small business concern that is an SBIR applicant or an STTR applicant to indicate to the Federal agency whether the Federal agency has the consent of the concern to—
- (A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant or an STTR applicant; and
 - (B) release the contact information of the concern to such organizations.
- (2) RULES.—The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that a Federal agency include in the SBIR and STTR application a provision through which the applicant can indicate consent for purposes of paragraph (1).
- (mm) ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—
- (1) IN GENERAL.—Subject to paragraph (3) and until September 30, ~~2017~~ 2022, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—
- (A) the administration of the SBIR program or the STTR program of the Federal agency;
 - (B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits, personnel interviews, and national conferences;
 - (C) the implementation of commercialization and outreach initiatives that were not in effect on the date of enactment of this subsection;

(D) carrying out the program under subsection (y);

(E) activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;

(F) targeted reviews of recipients of awards under the SBIR program or STTR program of the Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;

(G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;

(H) carrying out subsection (dd);

(I) contract processing costs relating to the SBIR program or STTR program of the Federal agency; and

(J) funding for additional personnel and assistance with application reviews.

[(2) OUTREACH AND TECHNICAL ASSISTANCE.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), a Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

[(B) WAIVER.—A Federal agency may request the Administrator to waive the requirement contained in subparagraph (A). Such request shall include an explanation of why the waiver is necessary. The Administrator may grant the waiver based on a determination that the agency has demonstrated a sufficient need for the waiver, that the outreach objectives of the agency are being met, and that there is increased participation by States with respect to which a low level of SBIR awards have historically been awarded.]

(2) OUTREACH AND TECHNICAL ASSISTANCE.—A Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

(3) PERFORMANCE CRITERIA.—A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

(4) RULES.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall issue rules to carry out this subsection.

(5) COORDINATION WITH IG.—Each Federal agency shall coordinate the activities funded under subparagraph (E), (F), or (G) of paragraph (1) with their respective Inspectors General,

when appropriate, and each Federal agency that allocates more than \$50,000,000 to the SBIR program of the Federal agency for a fiscal year may share such funding with its Inspector General when the Inspector General performs such activities.

(6) REPORTING.—The Administrator shall, *not later than June 30 of each year*, collect data and provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report on the use of funds under this subsection, including funds used to achieve the objectives of paragraph (2) [(A) and any use of the waiver authority under paragraph (2)(B)].

(7) FAILURE TO REPORT ADMINISTRATIVE FUNDS.—

(A) IN GENERAL.—*Not later than March 30 following each fiscal year for which funds are authorized to be used by a Federal agency under paragraph (1), the Federal agency shall submit a report to the Administrator that identifies how the Federal agency used such funds during such fiscal year.*

(B) FAILURE TO SUBMIT A REPORT.—*If a Federal agency fails to submit a report required under subparagraph (A), paragraph (1) shall not apply to such Federal agency unless—*

(i) such report is submitted; and

(ii) such Federal agency submits an additional report to the Administrator that identifies how such Federal agency plans to ensure timely reporting under this paragraph.

(nn) ANNUAL REPORT ON SBIR AND STTR PROGRAM GOALS.—

(1) DEVELOPMENT OF METRICS.—The head of each Federal agency required to participate in the SBIR program or the STTR program shall develop metrics to evaluate the effectiveness and the benefit to the people of the United States of the SBIR program and the STTR program of the Federal agency that—

(A) are science-based and statistically driven;

(B) reflect the mission of the Federal agency; and

(C) include factors relating to the economic impact of the programs.

(2) EVALUATION.—The head of each Federal agency described in paragraph (1) shall conduct an annual evaluation using the metrics developed under paragraph (1) of—

(A) the SBIR program and the STTR program of the Federal agency; and

(B) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

(3) REPORT.—

(A) IN GENERAL.—The head of each Federal agency described in paragraph (1) shall, *not later than March 30 of each year*, submit to the appropriate committees of Congress and the Administrator [an annual] a report describing in detail the results of an evaluation conducted under paragraph (2).

(B) PUBLIC AVAILABILITY OF REPORT.—The head of each Federal agency described in paragraph (1) shall make each report submitted under subparagraph (A) available to the public online.

(C) DEFINITION.—In this paragraph, the term “appropriate committees of Congress” means—

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(oo) COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(pp) LIMITATION ON PILOT PROGRAMS.—

(1) EXISTING PILOT PROGRAMS.—The Administrator may only carry out a covered pilot program that is in operation on the date of enactment of this subsection during the 3-year period beginning on such date of enactment.

(2) NEW PILOT PROGRAMS.—The Administrator may only carry out a covered pilot program established after the date of enactment of this subsection—

(A) during the 3-year period beginning on the date on which such program is established; and

(B) if such program does not continue and is not based on, in any manner, a previously established covered pilot program.

(3) COVERED PILOT PROGRAM DEFINED.—In this subsection, the term “covered pilot program” means any initiative, project, innovation, or other activity—

(A) established by the Administrator;

(B) relating to an SBIR or STTR program; and

(C) not specifically authorized by law.

(qq) MINIMUM STANDARDS FOR PARTICIPATION.—

(1) PROGRESS TO PHASE II SUCCESS.—

(A) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION RATE.—Not later than 1 year after the date of enactment of this subsection, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZATION RATE.—If the head of a Federal agency de-

termines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(2) PROGRESS TO PHASE III SUCCESS.—

(A) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION RATE.—Not later than 2 years after the date of enactment of this subsection, the head of each Federal agency participating in the SBIR or STTR program shall—

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZATION RATE.—If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(3) ADMINISTRATION OVERSIGHT.—

(A) APPROVAL AND PUBLICATION OF SYSTEMS AND MINIMUM PERFORMANCE STANDARDS.—Each system and minimum performance standard established under paragraph (1) or paragraph (2) shall be submitted by the head of the applicable Federal agency to the Administrator and shall be subject to the approval of the Administrator. In making a determination with respect to approval, the Administrator shall ensure that the minimum performance standard exceeds a de minimis level. The Administrator shall publish on the Internet Web site of the Administration the systems and minimum performance standards approved.

(B) SUBMISSION OF EVALUATION RESULTS BY AGENCY.—The head of each covered Federal agency shall submit to the Administrator the results of each evaluation conducted under paragraph (1) or paragraph (2).

(4) REQUIREMENT OF NOTICE AND COMMENT.—Each system and minimum performance standard established under paragraph (1) or paragraph (2) and each approval provided by the

Administrator under paragraph (3)(A), at least 60 days before becoming effective, shall be preceded by the provision of notice of and an opportunity for public comment on such system, standard, or approval.

(rr) PUBLICATION OF CERTAIN INFORMATION.—In order to increase the number of small businesses receiving awards under the SBIR or STTR programs of participating agencies, and to simplify the application process for such awards, the Administrator shall establish and maintain a public Internet Web site on which the Administrator shall publish such information relating to notice of and application for awards under the SBIR program and STTR program of each participating Federal agency as the Administrator determines appropriate.

(ss) REPORT ON ENHANCEMENT OF MANUFACTURING ACTIVITIES.—Not later than [October 1, 2013, and annually thereafter,] *March 30 of each year*, the head of each Federal agency that makes more than \$50,000,000 in awards under the SBIR and STTR programs of the agency combined shall submit to the Administrator, for inclusion in the annual report required under subsection (b)(7), information that includes—

(1) a description of efforts undertaken by the head of the Federal agency to enhance United States manufacturing activities;

(2) a comprehensive description of the actions undertaken each year by the head of the Federal agency in carrying out the SBIR or STTR program of the agency in support of Executive Order 13329 (69 Fed. Reg. 9181; relating to encouraging innovation in manufacturing);

(3) an assessment of the effectiveness of the actions described in paragraph (2) at enhancing the research and development of United States manufacturing technologies and processes;

(4) a description of efforts by vendors selected to provide discretionary technical assistance under subsection (q)(1) to help SBIR and STTR concerns manufacture in the United States; and

(5) recommendations that the program managers of the SBIR or STTR program of the agency consider appropriate for additional actions to increase the effectiveness of enhancing manufacturing activities.

(tt) AWARDS UNDER PHASE I AND PHASE II ADJUSTED FOR INFLATION.—

(1) PHASE I AWARDS.—*An award for Phase I of an SBIR or STTR program may not exceed \$150,000.*

(2) PHASE II AWARDS.—*An award for Phase II of an SBIR or STTR program may not exceed \$1,000,000.*

(3) ADJUSTMENT FOR INFLATION.—*The Administrator shall adjust the dollar amounts under paragraphs (1) and (2) for inflation in accordance with section 1908 of title 41, United States Code.*

(uu) COMMERCIALIZATION ASSISTANCE PILOT PROGRAMS.—

(1) PILOT PROGRAMS IMPLEMENTED.—

(A) IN GENERAL.—*Except as provided in subparagraph (B), not later than one year after the date of the enactment of Commercializing on Small Business Innovation Act of*

2016, a covered agency shall implement a commercialization assistance pilot program to award eligible entities with a second sequential SBIR award.

(B) *EXCEPTION.*—If the Administrator determines that a covered agency has a program that is sufficiently similar to a commercialization assistance pilot program, such agency shall not be required to implement a commercialization assistance pilot program under subparagraph (A).

(C) *PERCENT OF AGENCY FUNDS.*—A covered agency may not use more than 5 percent of its total SBIR budget for awards under the commercialization assistance pilot program.

(D) *TERMINATION.*—The commercialization assistance pilot programs shall terminate on September 30, 2022.

(2) *MATCHING REQUIREMENT.*—

(A) *IN GENERAL.*—The Administrator shall require as a condition of any award made to an eligible entity under a commercialization assistance pilot program, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such award be provided from an eligible third-party investor, before the end of the commercialization assistance pilot program award.

(B) *INELIGIBLE FUNDING.*—An eligible entity may not use funding from ineligible sources to meet the matching requirement of subparagraph (A).

(3) *AWARD.*—

(A) *SIZE OF AWARD.*—An award under this subsection may not exceed the limitations in subsection (aa)(1).

(B) *TIMING.*—Awards provided under the commercialization assistance pilot program shall be distributed during the Phase II award period of the recipient eligible entity.

(4) *APPLICATION.*—In order to be selected to receive a second sequential SBIR award under a commercialization assistance pilot program, an eligible entity shall submit to the covered agency implementing such pilot program—

(A) an application at such time, in such manner, and containing such information as the covered agency may require; and

(B) the source and amount of the matching funding required under paragraph (2).

(5) *USE OF FUNDS.*—The funds awarded under a commercialization assistance pilot program may only be used for research and development activities that build on the eligible entity's Phase II program and catalyze acceleration towards commercialization.

(6) *DETERMINATION OF RECIPIENTS.*—In determining which applicants receive awards under the commercialization assistance pilot program, the head of a covered agency shall consider—

(A) the extent to which the supplemental funds awarded under the pilot program could aid the applicant commercialize its research;

(B) whether the proposed plan provides a sound approach for establishing technical feasibility that could lead to commercialization;

(C) whether the proposed activity reflect changes to the Phase II commercialization plan that further improves the chances of conversion of research in order to provide societal benefits;

(D) whether the small business concern has progressed satisfactorily in the Phase II activity to justify additional funding;

(E) the expectations of the third-party funding; and

(F) the likelihood that the third-party funded activity will lead to commercial and societal benefit.

(7) **EVALUATION REPORT.**—Not later than 3 years after the date of the enactment of Commercializing on Small Business Innovation Act of 2016, the Comptroller General of the United States shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an evaluative report that includes—

(A) a summary of the activities of the commercialization assistance pilot programs;

(B) a detailed compilation of results achieved by the commercialization assistance pilot programs, including the number of small business concerns that received awards under the pilot program;

(C) the rate at which the recipients under the pilot program commercialized their research;

(D) the growth in employment and revenue of companies that participated in the pilot program;

(E) a comparison of commercialization success of pilot program participants and recipients of a non-matching sequential Phase II award;

(F) demographic information such as ethnicity and geographic location of participant companies;

(G) an accounting of the funds used at each participating agency in the pilot program;

(H) a distribution of third-party funding by source;

(I) an analysis of the program's effectiveness at each participating agency; and

(J) recommendations for improvement to the pilot program, in the case that Congress were to make it permanent.

(8) **DEFINITIONS.**—For purposes of this subsection:

(A) **COVERED AGENCY.**—The term “covered agency” means a Federal agency required to have an SBIR program.

(B) **ELIGIBLE ENTITY.**—The term “eligible entity” means a small business concern that has received a Phase II award and a Phase II sequential award from the covered agency to which such entity is applying for a second sequential SBIR award.

(C) **ELIGIBLE THIRD-PARTY INVESTOR.**—The term “eligible third-party investors” means a small business concern other than the eligible entity, a venture capital firm, an individual investor, a non-SBIR Federal, State or local government, or any combination thereof.

(D) **INELIGIBLE SOURCES.**—The term “ineligible sources” means the following:

(i) The awardee's internal research and development funds.

(ii) Funding in forms other than cash such as in-kind or other intangible assets.

(iii) Funding from the owners of the eligible entity, or the family members or affiliates of such owners.

(iv) Funding attained through loans or other forms of debt obligations.

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