

“SBIR/STTR Extension Act of 2022”
Section-by-Section

Sec. 1. Short title.

Sec. 2. Definitions.

Sec. 3. Reauthorization of SBIR and STTR Programs and Pilot Programs.

This section extends the SBIR, STTR and pilot programs for three years, from September 30, 2022, through September 30, 2025. The six pilot programs that are set to expire at the end of September are:

Phase Flexibility Pilot. Section (9)(cc) authorizes the National Institutes of Health (NIH), the Department of Defense (DoD), and the Department of Education (ED) to skip Phase I awards and go directly to Phase II awards for applicants that have already proven the scientific and technical merit and feasibility of a project to accelerate development.

Civilian Agency Commercialization Readiness Pilot. Section (9)(gg) authorizes civilian agencies to use up to 10% of SBIR and STTR funding for awards (maximum of 3 times the dollar amount of Phase II awards) to support the testing, evaluation, and commercialization of promising SBIR/STTR Phase II technologies to accelerate commercial/transition success.

Pilot to Accelerate DoD SBIR/STTR Awards. Section (9)(hh) requires DoD to accelerate the process for making SBIR/STTR awards by requiring the decision and disbursement of awards to be as close to 90 days as possible. Also requires DoD to develop simplified and standardized procedures and model contracts for all phases.

NIH Phase 0 Proof of Concept Partnership Pilot. Section (9)(jj) authorizes NIH to use up to \$5 million of STTR funding to make awards (maximum of \$1 million up to four years) to research institutions for grants (max of \$100,000) to researchers to support proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into viable companies.

Assistance for Administrative, Oversight, and Contract Processing Costs Pilot. Section (9)(mm) authorizes agencies to use up to 3% of SBIR funding for limited administrative purposes, including the acceleration of proposal and award processes; outreach to underserved states and communities; site visits and conferences; oversight, Congressional reporting; fraud prevention; and the acceleration of commercializing projects.

Commercialization Assistance Pilot Program (3rd Phase II). Section (9)(uu) requires agencies to establish a commercialization assistance pilot program, unless a similar program already exists. Agencies may use up to 5% of SBIR funding to pilots making a third Phase II award, contingent on 100% matching funds.

Sec. 4. Foreign Risk Management.

Each Federal agency with an SBIR or STTR program must, within 270 days of enactment, establish a due diligence program to assess the potential risk posed by foreign ties and obligations. SBA will collaborate with the Office of Science and Technology Policy (OSTP) and consult with the Committee on Foreign Investment in the United States (CFIUS) to facilitate best practice sharing between the eleven agency programs to support these activities. Small businesses will be required to disclose business relationships and financial arrangements before receiving an SBIR or STTR award. Agencies shall not make an award if they determine existence of improper business ties to or affiliations with foreign countries of concern, or if agency-supported activities, or national security are deemed to be at risk. An existing and comparable due diligence program at a federal agency that applies to SBIR or STTR programs can be used to meet the requirements of this section, and nothing in this Act prevents agencies from implementing additional due diligence measures.

This section builds on research security provisions enacted as part of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 166-92), the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283), and the CHIPS and Science Act (P.L. 117-167), requirements which also apply to the SBIR and STTR programs. Agencies required to establish an SBIR program may use up to 2 percent of their total SBIR funds (in addition to the administrative funds extended in this Act under (mm)), to implement the SBIR and STTR due

diligence protocols. Agencies that use the funding authority will have annual reporting requirements, and, like the SBIR and STTR programs, the funding is authorized through September 30, 2025, unless Congress extends the authority. The “Paperwork Reduction Act” requirements shall not apply to the implementation of SBIR and STTR due diligence protocols established under this Act to speed implementation of research security protections. The Government Accountability Office (GAO) will issue annual reports on the implementation and best practices of due diligence programs.

Sec 5. Agency Recovery Authority and Ongoing Reporting.

This section allows agencies to recover SBIR and STTR award funds in the case that a small business concern has made material application misstatements or if the small business concern has made a change in ownership or company structure that poses a risk to national security. A small business must report regularly throughout the duration of an award regarding any changes to their disclosures.

Sec 6. Report on Adversarial Military and Foreign Influence in the SBIR and STTR Programs.

This section directs DoD, the Department of Energy (DOE), the National Science Foundation (NSF), and HHS to issue a report to Congress on the national security and research and integrity risks in the SBIR and STTR programs as well as the agency’s capability to identify and mitigate such risks. HHS will issue a second report that separately assesses adversarial military and foreign influences in NIH’s SBIR and STTR programs. The reports are due within 180 days of enactment.

Sec. 7. Program on Innovation Open Topics.

This section requires DoD to conduct not less than 1 open topic announcement at each component of the agency per fiscal year. Within 180 days of enactment, DoD must brief Congress on the Department’s implementation efforts. This section also requires GAO to conduct four studies comparing open topics and conventional topics across all agencies that use open topic solicitations. The first study is due within one year of enactment, and thereafter annually for three years. The report must compare open topic and conventional topic activities across several categories: awardee transition rates; award timeliness; funding amounts; awards made to first time applicants and first-time winners; awards made to underserved demographics; outreach and assistance efforts for new and diverse small businesses; and a comparison of the types of technology and end users.

Sec. 8. Increased Minimum Performance Standards for Experienced Firms.

This section creates increased minimum performance standards for more experienced firms.

Progress to Phase II - Increased Performance Standards for More Experienced Firms

This new Phase I to Phase II transition standard applies to firms that have won more than 50 Phase I awards during the five fiscal years preceding the most recent year. These firms must double their transition rate. The current minimum standard applies to firms with more than 20 Phase I awards and requires a minimum transition rate of 1 Phase II award per 4 Phase I awards. Firms with more than 50 awards, as detailed above, will now be required to meet an average of at least 2 Phase II awards per 4 Phase I awards.

Progress to Phase III - Increased Performance Standards for More Experienced Firms

Tier one applies to firms that have won more than 50 Phase II awards during the ten fiscal years preceding the two most recent. The performance standard would increase by 150% and require an average of \$250,000 of sales and/or investments per Phase II award received during the covered period. The current standard is an average of \$100,000 for firms that have won more than 15 Phase II awards during the covered period. This Act codifies the current practice that sales and/or investments shall result from awards within the covered period.

Tier two applies to firms that have won more than 100 Phase II awards during the ten fiscal years preceding the two most recent. The standard would increase by 350% and require an average of \$450,000 of sales and/or investments per Phase II award received during the covered period. The current standard is an average of \$100,000 for firms that have won more than 15 Phase II awards during the covered period. This Act codifies the current practice that sales and/or investments shall result from awards within the covered period.

Consequence of Failure to Meet Standard. If a firm does meet an increased performance standard, it may not receive more than 20 Phase I or Direct to Phase II awards at each agency in the following year. An agency may implement more restrictive limitations on the number of Phase I or Direct to Phase II awards. For example, the National Aeronautics and Space Administration (NASA) limits its SBIR program to 10 proposals and 5 awards, and its STTR program to 10 proposals and 2 awards; NASA would be permitted to continue those limitations.

Patents for Increased Standards. Unlike the existing minimum performance standard that allows firms to use sales and investments or patents to meet the commercialization standard, patents may not be used under the increased commercialization standards.

Documentation. A small business that is subject to the increased minimum performance standards for Progress to Phase III commercialization shall submit supporting documentation to SBA to verify reported sales associated with their SBIR and STTR awards during the covered period; the requirement relates to the covered sales that the small business reports to SBA as helping to meet the standards. The sales do not include federal transactions because those can be verified through the federal database. The small business must provide documentation for such sales going back five fiscal years.

Waiver. SBA may grant a waiver for a topic that is critical to an agency's mission or relates to national security. For topics that receive waivers, all firms may compete and receive awards for the specific topic, including a firm that did not meet the increased performance standards and would otherwise be subject to a 20 award per agency cap.

Reporting. Not later than July 2023 and annually thereafter until the increased minimum performance standards expire, the Administrator shall submit to Congress a list of the small business concerns that do not meet the minimum performance standards or the increased performance standards and identify those that received an award because of a waiver. The list shall be confidential and exempt from section 552 of title 5, United States Code.

SBA must expand the SBIR/STTR annual report to Congress to include 1) the minimum and increased performance standards and the number of firms that have not met the transition and commercialization performance standards, and 2) the aggregate number and dollar amount of SBIR and STTR awards made pursuant to waivers for firms that did not meet the performance standards. SBA is prohibited from publishing personally identifiable information, the identity of the firm, or otherwise sensitive information.

Implementation. The Administration shall implement the increased minimum performance standards not later than April 1, 2023 (the Fiscal Year 2023 benchmark assessment).

Termination. The increased minimum performance standards will terminate on September 30, 2025.

Inspector General Audit. The SBA OIG must conduct an audit on firms subject to the increased minimum performance standards for commercialization (firms with more than 50 Phase II awards over consecutive ten fiscal years preceding the two most recent) to determine if such firms verified information reported to SBA. The OIG must examine reported sales and investments going back five years, third-party revenue, and reported investments and income whose providence is unclear. The OIG is also required to assess the SBA's self-certification requirements for minimum and increased performance standards. The SBA OIG shall begin the audit no later than one year after implementation of the increased minimum performance standards and periodically thereafter, providing the SBA OIG flexibility in the future to audit firms based on the level of perceived risk. Findings will be reported to Congress.

Sec. 9. Prohibition Against Writing Solicitation Topics.

This section requires SBIR/STTR agencies to implement a multilevel review and approval process for solicitations and prohibits private entities from shaping solicitation eligibility requirements. Agencies not in compliance will be referred to their IG for further investigation. Agencies will continue to have the right to clarify topics for applicants, consistent with current practice at agencies, including at DoD where changes are transparent to the public for not only the SBIR and STTR programs but also general acquisition.

Sec. 10. GAO Study on Multiple Award Winners.

This section requires GAO, within 18 months of enactment, to study multiple award winners (businesses that have won more than 50 Phase II awards). GAO must review their impact on the program; their ability to commercialize and meet the tenets of the SBIR and STTR programs; the impact on new entrants and seeding technology necessary to the Federal agency mission or commercial markets; and whether the types of technology such concerns are pursuing are primarily hardware, software, or system components for the warfighter (specific to DoD); an evaluation and study of varying levels of award caps and lifetime program earning caps; an assessment of the increased minimum performance standards on the behavior of those concerns and on the SBIR and STTR programs, and whether to continue the standards; and recommendations on whether alternative minimum performance standards are effective and the extent to which such alternative minimum performance standards preserve the competitive, merit-based foundation of the SBIR and STTR programs.

Sec. 11. GAO Report on Subcontracting in SBIR and STTR Programs.

This section requires GAO to issue a report on subcontracting practices of SBIR and STTR awardees. The report will evaluate the subcontracting agreements and their compliance with the Federal Funding Accountability and Transparency Act (P. L. 109–282).