

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To: Members, House Committee on Small Business
From: Chairman Sam Graves
Date: May 9, 2011
Re: Markup: H.R. 1425 “The Creating Jobs Through Small Business
Innovation Act of 2011”

Introduction

On Wednesday, May 11, 2011 at 1:00 p.m., the Committee will mark up legislation (H.R. 1425) reauthorizing the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Program (STTR) programs. The legislation was marked up and passed the House Committee on Science, Space, and Technology by voice vote on May 4, 2011.

This memo will provide a section-by-section analysis of H.R. 1425 along with explanations of why each provision is necessary. Following that, the memo will detail all of the amendments that have been accepted and incorporated into the bill by the House Science, Space and Technology Committee. These changes will already be included in the Committee marks up on Wednesday.

For more detailed background information on the SBIR and STTR programs, please refer to the two previous memorandums prepared by the Committee for our two hearings on this topic. On April 6, 2011 the Committee held a hearing titled, “Spurring Innovation and Job Creation: The SBIR Program” and the memo can be found here: http://smbiz.house.gov/UploadedFiles/Hearing_Memo.pdf. Additionally, on April 7, 2011, the Subcommittee on Healthcare and Technology held a hearing titled, “The Creating Jobs Through Small Business Innovation Act of 2011” and that memo can be found here: http://smbiz.house.gov/UploadedFiles/Hearing_Memo_4-7.pdf

Section By Section Description

Title 1—Reauthorization of the SBIR and STTR Programs

Sec. 101. Extension Length

This section extends the SBIR and STTR programs for three years until September 30, 2014.

- The Committee is making significant changes to the program. Allowing the program to continue with these changes for a long period of time, such as eight years in the prior authorization, locks the program in a static environment. Such stasis makes no sense in a dynamic area such as high-technology innovation and leaves no incentive for Congress to review the program make changes to improve the commercialization of innovative research.

Sec. 102. SBIR and STTR Award Levels

This section increases the size of SBIR and STTR awards from \$100,000 to \$150,000 for Phase I and from \$750,000 to \$1 million for Phase II, and requires the SBA to make annual adjustments of the award sizes for inflation. The provision prohibits any agency from issuing an SBIR or STTR award if the size of the award exceeds the award guidelines established in this section by more than 50 percent. Finally, the provision requires federal agencies to maintain information on awards exceeding the award guidelines, including the award amount; a justification for exceeding the guidelines; the identity and location of the recipient; and whether or not the recipient firm has received venture capital, hedge fund, or private equity firm investment, and if so, whether or not it is majority owned and controlled by one or more venture capital companies, hedge funds, or private equity firms. Nothing shall prevent a Federal agency from supplementing an award under the SBIR or STTR programs with Federal funds that are outside of the SBIR and STTR allocations.

- The cost of business, especially in high-end research, has exploded in the past 25 years. Because the award levels have not been raised since 1982, the Committee believes these increases are necessary to put the awards on an even level with inflation. The Committee believes that the investment of taxpayer dollars needs to be commensurate with the cost of doing business. Finally, it is not uncommon for the Congress to make statutory adjustments for inflation or other changes in the economy.

Sec. 103. Agency and Program Flexibility

The section allows SBIR and STTR applicants to receive awards for subsequent SBIR or STTR phases at another agency and also allows small business concerns which received SBIR or STTR awards to receive awards for subsequent phases in either the STTR or SBIR program, respectively.

- The Committee believes that one of the strongest attributes of the SBIR and STTR programs is the flexibility afforded each agency to design and implement their individual programs. Allowing different agencies to combine subsequent awards for particularly promising innovations increases the chances of commercialization.

Sec. 104. Elimination of Phase II Invitations

This section requires that federal agencies conduct their solicitation of Phase II SBIR and STTR proposals without any invitation, pre-screening, pre-selection, or down-selection (reduction in the number of contractors or sub-contractors working on a project as it moves from one phase to another) process between the first and second phase.

- This provision ensures that agencies cannot invite or screen companies for Phase II awards in a manner that would inhibit Phase I awardees from applying for a Phase II award in a competitive process that is open to all Phase I awardees. Any kind of screening or invitation by agencies takes away from a truly open and competitive selection process for Phase II, potentially denying small businesses that have participated in and learned lessons from Phase I from using that knowledge in Phase II. The Committee believes that competition is the crux of the SBIR and STTR programs, and there is nothing in current statute that prohibits agencies from engaging in any process of invitation for Phase II awards. As a result, the Committee included this provision to protect open competition.

Sec. 105. Phase Flexibility

This section grants agencies the ability to provide a Phase II Award if the Agency finds that the small business concern has already completed the work typically done during Phase I.

- If a company has already completed the work that would typically be done during Phase I, the Committee believes that giving SBIR program managers the option of proceeding directly to Phase II can have the effect of moving the process along more quickly for the benefit of the company, and conversely, the needs of the agency. Furthermore, it makes no sense to use very scarce taxpayer funds to fund research that has already been done. Finally, if the purpose of the program is to commercialize research by small businesses, there is no reason to simply limit it to research that was originally funded by federal dollars.¹

Sec. 106 and Sec. 107. Participation by Firms with Substantial Investment from Multiple Venture Capital Operating Companies in a Portion of the SBIR Program

Section 106 allows the Departments of Health of Human Services and Energy and the National Science Foundation to permit firms majority-owned and controlled by one or more venture capital companies, one or more hedge funds, or one or more private equity firms to compete for up to 45 percent of the agency's SBIR funds. All other qualifying federal agencies shall allow majority-owned private investment backed small businesses to compete for up to 35 percent of the agency's SBIR funds. Sec. 107 defines what affiliations are between various outside investors (such as venture capital companies, private equity firms, etc.) and small business concerns for purposes of determining whether the combination is eligible for an award under the SBIR program.

¹ In an analogous situation, no one would think that it would be logical to issue loans for expansion of small businesses under the SBA guarantee loan program only if the business got a start-up loan from the SBA.

- The Committee believes that the capital structure of a small business concern is irrelevant for the purposes of the SBIR program. This is supported by the series of hearings conducted by the Committee over the last four years and independent research. The National Research Council (NRC) has found in its May 2009 research report that small businesses engaged in federal research require sufficient sources of external capital to successfully commercialize their research. This is readily apparent in the medical and defense industries, but also in other fields including transportation and energy. As a result, the Committee believes that the overriding policy focus should be on enhancing small firms' access to financing—including equity investment in the form of venture capital. The Committee believes that the recent NRC report provides further justification for restoring the SBIR program to its pre-2003 status when venture capital investment was permitted. That said, it has become evident that some members of Congress have concerns regarding restoring the SBIR program to its pre-2003 status. The Committee believes that a compromise that permits a portion of agency SBIR funds be made available to small businesses with majority-owned venture capital funding while retaining the larger segment of funds to small businesses without such funding is an adequate resolution. The Committee intends to closely monitor the participation of these firms through the various increased reporting requirements found in numerous sections of the legislation. Furthermore, the Committee finds that venture capital companies should not be placed at a disadvantage to other entities that provide capital to businesses, such as hedge funds or private equity firms. As a result, the Committee treats private equity and hedge funds the same way it treats venture capital companies.

Sec. 108. SBIR and STTR Special Acquisition Preference

This section codifies the language from the SBIR and STTR Policy Directives confirming the intent of Congress to establish a special acquisition preference for SBIR and STTR Phase III awards. The provision clarifies that preference for contracts concerning research developed with SBIR or STTR funds should go to the developers and holders of SBIR and STTR technologies to the greatest extent practicable.

- The Committee asserts that the primary goal of the SBIR program is to commercialize research that meets the procurement needs of federal agencies. It makes little sense to fund research and development and then look elsewhere to meet the agency's needs. Therefore, this provision is designed to help small businesses move through to Phase III by directing agencies to first look for companies that have developed products through the SBIR program when searching for products to procure.

Sec. 109. Collaborating with Federal Laboratories and Research and Development Centers

This section reduces the burden on cooperation between SBIR/STTR firms and federal laboratories by ensuring that such subcontracting is generally permitted without the requirement for a waiver. The provision also ensures that subcontracting to federal

laboratories is not required of SBIR or STTR awardees. Finally, it clarifies that firms that have entered into a cooperative agreement with a federal laboratory are eligible to receive SBIR/STTR awards.

- The Committee believes that entering into a cooperative research and development agreement should not preclude a small business concern from also obtaining an SBIR or STTR award. The use of both funding channels may ensure that the small business has sufficient funds to commercialize its research and meet the needs of the government at the same time.

Sec. 110. Notice Requirement

This section ensures that the SBA is notified any time the SBIR or STTR policy directives are challenged in court.

- This provision is aimed at greater information flow and simply requires that any dispute up to and including court cases be brought to the Administrator in a timely manner. The Committee contends this is necessary as a tool to provide greater oversight of the SBIR and STTR programs. It also enables the SBA to modify directives to alleviate the concerns about the directives.

Sec. 111. Additional SBIR and STTR Awards

The section allows SBIR and STTR applicants to receive one additional Phase II award for a single project. It also requires agencies to verify that any activity to be performed with respect to a project with a Phase I and Phase II award has not been funded from another Federal agency.

- In conjunction with the Committee's determination that commercialization is the goal of the SBIR and STTR programs and the viewpoint that flexibility among the individual participating agencies is paramount in the success of the SBIR and STTR programs, this provision grants authority to agencies to provide one additional Phase II award for especially promising innovations to help further commercialization success.

Title II—Commercialization and Outreach Initiatives

Sec. 201. Technical assistance for awardees

This section increases the amount of discretionary technical assistance that SBIR and STTR agencies can contract out to awardees from \$4,000 to \$5,000 for Phase I awards and from \$4,000 to \$5,000 per year for Phase II awards. The technical assistance included in this section is drawn from the agency's SBIR allocation. The provision also clarifies that this amount is in addition to the amount of the recipient's award. It also requires agencies to provide SBIR and STTR award winners who wish to procure their own technical assistance with the allowable amount. Finally, the provision prohibits the agencies from using these funds to pay its contractor for technical assistance for a given SBIR or STTR award unless the contractor provides the technical assistance to that awardee.

- A significant number of small businesses have been started as a result of SBIR grants. While technically proficient, some innovators have very little, if any, prior

business experience. The Committee believes that the technical assistance that can be obtained via these funds run the gamut from developing business plans all the way to commercialization support.

Sec. 202. Commercialization Readiness Program at Department of Defense

This section makes permanent the SBIR Commercialization Pilot Program (CPP) at the Department of Defense and extends it to the department's STTR program. It also changes the name to the Commercialization Readiness Program. The provision authorizes the Secretary of Defense to establish goals for transitioning Phase I and Phase II technologies in subcontracting plans for contracts of \$100 million or more. The provision also requires the Secretary of Defense to set a goal to increase the number of Phase II contracts that lead to technology transition into programs of record or fielded systems and to use incentives to encourage agency program managers and prime contractors to meet that goal. Finally, the provision includes reporting requirements on the status of projects funded through CRP.

- Given the Committee's position that the SBIR program is designed to commercialize research in order to meet the needs of federal agencies and the specialized needs of the DOD, the CPP meets the objectives of both the SBIR program and the DOD. The purpose of the CPP was to increase DOD SBIR technology transition and commercialization success, thereby accelerating the fielding of capabilities to soldiers and benefiting the nation through stimulated technological innovation; improved manufacturing capability; and increased competition, productivity, and economic growth. The evidence before the Committee indicated that the CPP at the DOD has been successful in increasing commercialization rates and has proven beneficial to the DOD.

Sec. 203. Commercialization Readiness Pilot Program for Civilian Agencies

This section authorizes agencies other than the Department of Defense to create Commercialization Readiness Pilot Programs (using no more than 10% of their program authorization) to support advanced development of small business technologies which are facing high manufacturing or regulatory costs. The provision authorizes these agencies to grant post-Phase II awards up to two times the regular size (up to \$3 million). Authority to establish such a pilot program expires at the end of FY2014.

- The Committee believes that given the overall success of the DOD CPP, other agencies should have the opportunity to establish their own Commercialization Readiness Programs using the DOD CRP as a guide. The Committee believes that such pilot programs should only be established if the agency finds that commercialization of Phase II prototypes will meet its procurement needs. However, nothing in this section requires the agency to create its own CPP.

Sec. 204. Interagency Policy Committee

This section directs the White House Office of Science and Technology Policy to establish an SBIR/STTR Interagency Policy Committee to review and make policy recommendations on ways to improve the effectiveness and efficiency of the SBIR and STTR programs.

- The Committee finds that greater oversight is an important tool in gauging the success of the SBIR and STTR programs. This provision encourages greater information flow among all participating agencies and directs them to suggest to Congress improvements to the programs. The Committee strongly urges OSTP to nominate the SBA to the Committee because that agency has the best information on small businesses in the government.

Sec. 205 Clarifying Definition of Phase III

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

- The Committee finds that commercialization is the primary goal of the SBIR program. This provision clearly defines “commercialization” as “the production and delivery of products, processes, technologies, or services for sale (whether by the originating party or by others) to use by the federal government or commercial markets.”

Sec. 206. Shortened Period for Final Decisions on Proposals and Applications

This section requires that not later than 90 days after, and if the Administrator authorizes an extension, then not later than 180 days, from the date on which the solicitation closes for SBIR and STTR programs, that the agency make a decision on each proposal submitted. It also allows the Director of NIH to make an award under the SBIR or STTR programs when an application for award undergoes a technical and scientific peer review.

- The Committee has received testimony from numerous witnesses that the length of time it takes for the entire process to be completed from submission of a grant proposal to final notice of award is too long and overly erratic. This provision is necessary so as to provide a greater sense of certainty to applicants so they can better plan both for the short and long term. In addition, there should be no reason for an agency to take more than 90 days to make a decision on an award particularly for Phase I or Phase II.

Title III—Oversight and Evaluation

Sec. 301. Streamlining Annual Evaluation Requirements

This section requires the Administrator to report to Congress at least annually the number of proposals received from firms with venture capital, private equity, or hedge fund investment, including those owned and controlled by multiple venture capital, private equity, or hedge fund firms. It also requires the Administrator to report on efforts to increase outreach to firms owned and controlled by women and socially or economically disadvantaged individuals, the implementation and compliance with the allocation of funds for firms majority-owned and controlled by multiple venture capital, private equity or hedge fund companies, and appeals of Phase III awards and notices of noncompliance with the SBIR and the STTR Policy

Directives. Finally, the section requires the Administration to coordinate the implementation of electronic databases at the participating agencies.

- One of the most common complaints about the SBIR and STTR program is that the agencies are not required to collect enough specific information that would allow Congress and the SBA to assess the performance of the program, make modifications to improve operations and increase oversight. Section 301 provides certain metrics to assess the scope of SBIR participants. It also requires the establishment of a database for central collection of information that allows proper assessment of the program by Congress, the SBA, other federal agencies, and the public.

Sec. 302. Data Collection From Agencies for SBIR

This section requires agencies with an SBIR program to collect data annually on whether or not an applicant or awardee has venture capital, private equity or hedge fund investment, if it is majority-owned and controlled by multiple venture capital, private equity, or hedge fund firms, the amount of that outside capital it has received at the time of award, if it has foreign investors and who they are, if it is owned by a woman, if it is owned by a socially or economically disadvantaged individual, and if it has a university affiliation. The provision also requires agencies to justify awards given that exceed the statutory guidelines. Agencies must collect data and report annually on whether or not the award winner is from a state receiving less federal research funding for small businesses than a majority of other states.

- With the significant changes to the participation by small businesses with significant outside private investment in the SBIR program, the Committee believes that requiring agencies to collect this information necessary for proper evaluation of the program. Furthermore, the original directives of the SBIR program included a requirement to examine “Additional involvement of minority and disadvantaged individuals in the process.” It only sense makes to require the agencies to collect the demographics of the individuals winning awards. Finally, the Committee believes it is important for agencies to ensure winners are American citizens, as well as requiring agencies to justify the reason for giving awards exceeding the guidelines outlined in the bill.

Sec. 303. Data Collection From Agencies for STTR

This section requires agencies with an STTR program to collect data annually on: whether or not an applicant or awardee has venture capital, private equity or hedge fund investment; if it is majority-owned and controlled by multiple venture capital, private equity, or hedge fund firms; the amount of that outside capital it has received at the time of award; if it has foreign investors and who they are; if it is owned by a woman; if it is owned by a socially or economically disadvantaged individual; and, if it has a university affiliation. The provision also requires agencies to justify awards given that exceed the statutory guidelines.

- The Committee finds that the rationale for data gathered pursuant to Section 302 apply with equal force to this section.

Sec. 304. Public Database

This section requires that the public database maintained by the Administrator include information on whether or not a firm receiving an award has venture capital, private equity or hedge fund investment, if it is majority-owned and controlled by multiple venture capital, private equity, or hedge fund firms, the amount of that outside capital it has received at the time of award, is owned by a woman, is owned by a if it is owned by a socially or economically disadvantaged individual, or has a university affiliation.

- The Committee asserts that increased transparency of the SBIR and STTR programs is essential to continued program success and growth. Since the funds being spent are public monies, a database on how taxpayer dollars are spent is both appropriate and necessary.

Sec. 305. Government Database

This section requires that the government database maintained by the Administrator in coordination with the agencies for the purposes of evaluation of the SBIR and STTR programs include information on the ownership structure and affiliations of awardee firms that have venture capital, private equity, or hedge fund investment, and that are majority owned and controlled by multiple venture capital, private equity, or hedge fund firms whether or not a firm is owned by a woman, is owned by a minority, or has a university affiliation.

- Given the fact that agencies and Congress need data on outside investors that benefit from the SBIR program, this provision collects the necessary data. The government database collects additional information, such as a description of the project receiving awards, the specific aim of the project receiving an award, the number of employees and certain proprietary information that should not be part of a public database.

Sec. 306. Accuracy in Funding Base Calculations

This section requires the Comptroller General of the United States to conduct an audit of the SBIR and STTR programs to determine whether federal agencies are complying with the expenditure requirements.

- This provision is intended improve accountability of the way federal agencies determine their research budgets. The Committee is not aware of the existence of independent audits that confirm that the agencies are performing these calculations correctly. A GAO report analyzing this issue will provide more transparency to these calculations.

Sec. 307. Continued Evaluation by the National Academy of Sciences

This section authorizes the National Academy of Sciences to continue its evaluation of the SBIR program and requires that updates of the studies be provided to Congress every four years from the date of enactment.

- The NAS completed one of the most thorough and complete studies of the SBIR program in 2007, and that study is widely cited and used as the most comprehensive gauge of how successful the SBIR program is. The Committee relied heavily on the information distributed in the study with its

reauthorization efforts and continued study could yield additional information to be used in oversight and future reauthorization efforts. Additionally, having a third party evaluation will help the Interagency Policy Committee described in Sec. 204 improve the efficiency of the SBIR program.

Sec. 308. Technology Insertion Reporting Requirements

This section requires the Administration to include in its annual report to Congress information on Phase III awards issued by SBIR and STTR agencies, including the dollar amount of these awards, their recipients, and the name of component or agency issuing them.

- Again, the graduation of projects to Phase III is the ultimate outcome of the SBIR and STTR programs and is a significant concern of the Committee. Currently, agencies are not required to track and report on Phase III successes. The Committee believes that these additional tracking requirements are necessary to measure the utility of the program and expects that greater reporting may lead to increased use of Phase III.

Sec. 309. Obtaining Consent from SBIR and STTR Applicants to Release Contact Information to Economic Development Organizations

This section requires each Federal agency that conducts an SBIR or STTR program to enable small business concerns that are SBIR or STTR applicants to indicate whether that Federal agency has consent to identify the small business concern to local and State-level economic development organizations.

- The Committee contends that if participating small businesses can supply certain information to the federal government when applying for an SBIR or STTR grant, it makes sense to have them report that information to state and local economic development organizations. These organizations could put SBIR awardees in contact with state and/or local programs that could be useful. The Committee believes that if state and local economic development organizations do not know who SBIR awardees are, they cannot effectively reach out to them.

Sec. 310. Pilot to Allow Funding for Administrative, Oversight, and Contract Processing Costs

This section requires that the Administrator allow each Federal agency to not use more than three percent of the funds allocated to the SBIR programs for the first fiscal year beginning after the enactment of this subsection, and each year thereafter through fiscal 2014, for costs relating to administrative, oversight and contract processing activities for SBIR programs that the Federal agency was not carrying out the last full fiscal year before the enactment of this subsection, as well as for the period of three years after the enactment of this subsection, for the implementation of commercialization and outreach initiatives that were not in effect on the date of the enactment of this subsection.

- Under current law, agencies are prohibited from using SBIR funds to manage the program. This section authorizes participating agencies to set aside three percent of their SBIR/STTR account for administrative, oversight, and

outreach costs related to SBIR. The Committee contends that agencies are reluctant to use non-SBIR dollars to manage the SBIR program, which undermines effectiveness. This enables them to use funds to administer the program.

Sec. 311. GAO Study with Respect to Outside Investment Involvement

This section requires that not later than two years after the date of the enactment of this Act, and every two years thereafter, the Comptroller General of the United States conduct a study on the impact of requirements relating to venture capital operating company, private equity firm, and hedge fund involvement in the SBIR and STTR programs.

- The Committee believes that the significant changes made in this legislation need additional third party evaluation to evaluate the effectiveness of the changes. This provision requires the GAO to study the impact of having greater participation of firms receiving significant outside investment on the larger SBIR and STTR programs.

Sec. 312. Reducing Vulnerability of SBIR and STTR Programs to Fraud, Waste, and Abuse

This section requires the Administrator to, not later than 90 days after the enactment of this Act, amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse. Critical provisions include:

- Requiring Inspectors General of participating SBIR/STTR federal agencies to establish fraud detection measures, coordinate fraud-related information sharing between agencies, and provide fraud prevention-related education and training to agencies administering the program;
- Requiring the Administrator to amend the SBIR and STTR Policy Directives to include specific measures to prevent waste, fraud and abuse;
- Creating a special SBIR/STTR telephone hotline that allows individuals to report waste, fraud and abuse; and,
- Ordering the Government Accountability Office to conduct a study assessing the SBIR/STTR programs' vulnerabilities to waste, fraud and abuse.
 - Eliminating waste, fraud, and abuse of federal programs must be a primary objective of executive branch employees and legislators. In 2009, the Senate Commerce Committee conducted an investigation into potential fraudulent practices by SBIR and STTR program participants. Their investigation found 29 cases of SBIR fraud between 1990 and the present. These cases involved more than 300 SBIR or STTR contracts valued at more than \$100 million dollars. Obviously, insufficient attention was paid by program managers to combat fraud in the program. That is unacceptable. This section requires the Administrator to

develop rules that will prevent the type of fraud uncovered by the Senate Commerce Committee.

Sec. 313. Simplified Paperwork Requirements

This section directs the Administrator to issue regulations or guidelines to (the extent possible) standardize SBIR and STTR application paperwork.

- While the Committee affirms flexibility among the participating agencies is a positive trait of the SBIR and STTR programs, no reason exists to have a multiplicity of forms and record keeping requirement. This section requires the Administrator to ease paperwork burdens on small businesses by adopting standardized forms without unduly inhibiting flexible operations by agencies.

Title IV—Policy Directives

Sec. 401. Conforming amendments to the SBIR and the STTR Policy Directives

This section requires conforming amendments to the SBA's SBIR and STTR Policy Directives within 180 days to implement the provisions of this Act. It also requires that the Administration publish the SBIR and STTR Policy Directives in the Code of Federal Regulations within 180 days.

- The legislation makes significant changes to the SBIR and STTR programs. These changes encompass previous SBA policy directives. Although it seems self-evident that the Administrator would change these directives, the Committee is cognizant that such changes may not occur without a Congressional mandate to do so. Finally, by codifying these directives the SBA will not be able to change the directives on the whims of new managers of the programs. This will provide certainty to SBIR and STTR participants and agencies.

Title V—Other Provisions

Sec. 501. Report on SBIR and STTR Program Goals

This provision directs each federal agency required to participate in an SBIR or STTR program to: (1) develop metrics in conjunction with the Interagency Policy Committee described in Sec. 204 to evaluate the effectiveness and benefit of such program; (2) conduct an annual evaluation of their program using such metrics; and (3) report evaluation results annually to the Administrator and the relevant Congressional Committees.

- The Committee asserts that establishing viable performance metrics is critical to further improve the SBIR and STTR programs. The Committee believes that using the recommendations of the Interagency Policy Committee (those who are closest to the program on a day-to-day basis) is an effective strategy to provide up to date information among the participating agencies and to Congress.

Sec. 502. Competitive Selection Procedures for SBIR and STTR Programs

This section requires all SBIR or STTR funds to be awarded pursuant to competitive and merit-based selection procedures.

- The SBIR and STTR programs are highly competitive by nature. The Committee believes that re-affirming the SBIR and STTR are competitive in nature is beneficial to program competitiveness.

Sec. 503. SBA Regulations on Loan Restrictions

This section requires the SBA to develop regulations solely for purposes of the SBIR program that define when or how restrictive covenants in loan agreements would constitute control for purposes of affiliation.

- After researching several Securities Exchange Commission filing documents, the Committee contends that in some instances, restrictive covenants included in certain loan agreements could constitute affiliation, as that term is used by the Administrator, among loan originators and recipients. As a result, it seems prudent to have the SBA draft regulations for purposes of section 9 of the Small Business Act to determine what constitutes affiliation for the purposes of restrictions embedded in loan restrictions rather than relying on individual appeals through the SBA's Office of Hearings and Appeals.

Science Committee Changes

On April 13, 2011, the Subcommittee on Technology and Innovation of the Committee on Space, Science, and Technology accepted four amendments via voice vote to the legislation:

- Rep. Lipinski (D-IL) offered an amendment to Sec. 203 that directs the agencies making awards in the SBIR and STTR commercialization pilot program to consider whether the technology to be supported is likely to be manufactured in the United States.
- Rep. Quayle (R-AZ) offered an amendment to Sec. 206 that ensures that SBIR and STTR applications go through peer review processes at the National Institutes of Health and the National Science Foundation before awards are made.
- Mr. Lipinski (D-IL) offered an amendment to Sec. 307 that requires the evaluation by the National Academies to include an estimate of the number of jobs created "in the United States" rather than just the number of jobs created.
- Mr. Lujan (D-NM) offered an amendment that creates a new Sec. 504 that requires Federal agencies to encourage applications under SBIR and STTR by small business concerns: 1) located in underrepresented geographic areas; 2) owned by women, owned by veterans, owned by minorities, and 3) located in areas with high unemployment.

On May 4th, the full Committee on Science, Space and Technology held a markup of the bill and made the following changes to the bill:

- Rep. Wu (D-OR) offered an amendment to Sec. 106 that moves the National Aeronautics and Space Administration (NASA) into the 45% allowable majority-owned venture capital owned agency category.
- Rep. Smith (R-TX) of Texas offered an amendment to Sec. 109 that alters existing law to reduce the amount of advance payments required from a small business concern entering into an agreement under Sec. 109 from the amount necessary to cover 90 days of activities to the amount necessary to cover 30 days of activities.
- Mr. Lipinski (D-IL) offered an amendment that created a new Sec. 207 stipulating that of the funds set aside for STTR at the NIH, requires \$10 million to be used to establish a pilot program to provide grants to universities and research institutions to provide researchers with initial investment resources to support the creation of small businesses and the commercialization of research innovations.
- Dr. Broun (R-GA) offered an amendment that adds a number of provisions throughout the bill to monitor and prevent waste, fraud, and abuse throughout the SBIR and STTR programs, including requiring the Inspector General of each agency involved in SBIR/STTR to establish practices to prevent and detect fraud and abuse.
- Mr. Rohrabacher (R-CA) offered an amendment to the newly created Sec. 504 that added “small business concerns owned and controlled by people with disabilities” to the list that Federal agencies ought to encourage applications under SBIR and STTR.
- Mr. Luján (D-NM) offered an amendment to Section 307 that requires the study and report by the National Academies of Sciences be expanded to include a study of how the STTR program has stimulated technological innovation and used small business to meet Federal technology transfer needs.