SECTION-BY-SECTION ANALYSIS

DRAFT

SBIR/STTR REAUTHORIZATION ACT OF 2016

Sec. 1. Short Title
Specifies the short title of the legislation as the “SBIR/STTR Reauthorization Act of 2016.”

Sec. 2. Table of Contents
Breaks out the six titles of the bill.

Title I – Reauthorization of Programs

Sec. 101. Permanency of SBIR and STTR programs
Makes the SBIR and STTR programs permanent.

Title II – Enhanced Small Business Access to Federal Innovation Investments

Sec. 201. Allocation Increases and Transparency in Base Calculation
Makes several changes to the required expenditure amounts for the SBIR and STTR programs to clarify the law, increase the percentages, and provide simplification and transparency for the base funding calculation at the Department of Defense (DoD).

Revises the law to require agencies to *obligate for expenditure* a minimum percentage each year instead of to *expend* each year. The Government Accountability Office (GAO) recommended this change in order to make clearer Congressional intent and expectations for the spending requirement, which impacts agencies like DoD that use the money over a two-year period and have a hard time demonstrating that they are complying with the allocation requirement as interpreted by the GAO.

Increases the amounts that agencies are required to allocate to the SBIR and STTR programs, in order to stimulate America's innovation economy and to remedy the continued under-representation of small businesses in federal research and development.

- For the SBIR program at all non-Department of Defense agencies, the allocation increases incrementally over ten years (2018-2028) from 3.2 percent to 6 percent. The funding is based on and taken out of each agency’s extramural research and development budget.

- For the SBIR program at DoD, the allocation increases incrementally over the same period of ten years, but the funding source has been modified in order to reduce the administrative burden on the DoD, improve transparency of how DoD calculates the allocation and to increase the Department's compliance with the allocation requirement. The baseline percentage has been adjusted accordingly. Specifically, the DoD's allocation increases from 2.5 percent to 5 percent. The funding is based on and taken out of DoD's entire research and development budget, not just the extramural portion. DoD staff requested and GAO recommended changing the funding source in order to streamline the calculation process. Under current practice, DoD wastes significant staff time recalculating the extramural budget of DoD throughout the year as expenditures change.

- For the STTR program at all agencies (non-DoD and DoD), the allocation increases incrementally over six years (2018-2024 from .45 percent to 1 percent. Similar to the SBIR program change, at DoD the funding source for the STTR program has been changed and comes out of the entire research and development budget, not just the extramural portion, in order to reduce the administrative burden on the DoD, improve transparency of how DoD calculates the allocation and to increase the Department's compliance with the allocation requirement. Unlike the SBIR program changes, the bill does not adjust the percentages because the amounts are so small.

Sec. 202. Regular Oversight of Award Amounts

Builds in regular Congressional review of the dollar amount of award levels. The purpose is to ensure that the dollar amounts allowed for the various phases are sufficient for the expected research and development while maintaining a balance between the size of award and the number of awards. The guidelines for size of awards reside in the SBIR and STTR policy directives, not in the *Small Business Act*.

Accordingly, this section directs the Small Business Administration (SBA) to modify the policy directives in two ways: 1) eliminate the Administration's authority to automatically increase the award levels each year for inflation, and 2) clarify that Congress intends to review the dollar value of awards every three years.

Includes a Sense of Congress that every three years the Congress should evaluate whether to adjust the dollar amount of the award levels.

Clarifies that a sequential Phase II award is subject to the same requirements for regular Phase I and Phase II awards, which safeguard against awards that significantly exceed the guidelines. Specifically, size of awards cannot be increased by more than 50 percent of the award size guidelines. It is important to note that returning the award adjustment authority to Congress has the added value of building in regular oversight of the SBIR and STTR programs in general.

Title III – Commercialization Improvements

Sec. 301. Permanency of the Commercialization Pilot Program for Civilian Agencies

Makes the voluntary Commercialization Pilot program permanent. It also makes it faster and easier for more agencies to implement the program and therefore available to more small businesses. To make the program easier to use, this section eliminates a part of the pilot program that required agencies that wanted to opt into the program to go through an application process. Interested agencies were required to submit an application to SBA justifying the use of 10 percent of SBIR funds for maturation instead of for Phase I and Phase II projects.

The Commercialization Readiness Pilot Program for civilian agencies was established in 2011 in order to address ongoing concerns about the valley of death, which is the time between the end of a Phase II award and commercialization. Some small businesses with promising SBIR and STTR technologies needed more support to advance their development, especially in those fields with high manufacturing or regulatory costs. The program allows all non-DoD agencies to use up to 10 percent of their SBIR funding to make post Phase II awards of up to three times the regular size (up to $3 million).

At the time Congress was contemplating creation of the program, there was concern that these very large awards would use already scarce funding for Phase I and Phase II awards, which would disproportionately adversely impact small businesses in low-participation states. To provide some safe guards, the program was structured so that agencies would need to proactively opt into through an application process. SBA could only approve an agency's application if it the agency had a compelling reason to make the additional investments, thereby shifting money from earlier stage research and development in Phases I and II. Small businesses and small-business advocates have urged Congress during this reauthorization to find more ways to increase commercialization of SBIR and STTR technologies. Making the program permanent will help increase commercialization because it allows for an award after Phase II of up to $3 million.

Sec. 302. Enforcement of national small business goal for Federal research and development Modifies a provision enacted 34 years ago that requires federal agencies with research and research and development budgets of more than $20 million to establish a goal for federal research and research and development with small businesses, not lower than what they currently do. The agencies have never established the goal and this provision enforces the statute by requiring the agencies to put in place a goal of not less than 10 percent by fiscal year 2018.

Sec. 303. Tracking Rapid Innovation Fund Awards in Annual Congressional Report
Modifies the requirements of the annual SBIR/STTR report from SBA to Congress to include data on commercialization through DoD's Rapid Innovation Fund (RIF) program. The information will help track the number and dollar of Rapid Innovation Fund awards that go to SBIR and STTR firms each year, as well as small businesses in general. It will also include a projection of awards that could be made if Congress were to provide a more stable funding source for the RIF program and thereby increase the commercialization of such technologies. The RIF program is set to expire in 2023. The SBIR/STTR Reauthorization Act of 2016 anticipates passage of a separate, complementary bill that would make the RIF program permanent and create a steady and larger funding stream to further develop SBIR and STTR technologies and technologies of non-traditional contractors.

Sec. 304. Intellectual Property Protection for Technology Development

Clarifies, at the urging of SBIR/STTR firms, that costs for seeking intellectual property protections for SBIR/STTR technologies are allowable as indirect cost expenses. This provision is in order to address concerns that contracting and auditing agents across the agencies had been inconsistently allowing or denying cost coverage, creating severe administrative burdens for SBIR and STTR firms undergoing routine audits from the government.

Specific patent costs that may be expensed as indirect costs include, but are not limited to:

- Costs of preparing invention disclosures, reports and related documents
- Costs for searching current patents to determine potentially conflicting rights
- U.S. Patent and Trademark Office fees
- Advising on patent laws, regulations, clauses and employee agreements

Limits patent cost coverage to technologies specifically developed through SBIR and STTR program phases. Phase I is limited to an amount of not more than $5,000. Phase II is limited to not more than $15,000. Phase III, which does not use SBIR or STTR dollars, has no limitations.

Sec. 305. Annual GAO Audit of Compliance with Commercialization Goals
Replaces annual self-reporting from the agencies to Congress with an annual audit of the agencies by GAO. GAO will track implementation of outstanding key commercialization goals, such as:

- National Small Business Goal enacted in 1982 -- Agency by agency goal for research and development projects with small businesses
- Phase III Insertion Goals for Subcontracting enacted in 2011 – Authorized the DoD to create incentives for contracting officers to transition small business technologies for contracts of $100 million or more by:
    - Establishing goals for the transition of Phase III technologies in subcontracting plans
    - Requiring a prime contractor on such contracts to report the number and dollar contracts with small businesses for their Phase III SBIR or STTR projects
- Phase II Insertion Goals and Incentives enacted in 2011 – Required the DoD to set a goal to increase the number of Phase II SBIR and STTR contracts that transition into programs of record or fielded systems.

Requires GAO to document how the agencies have complied with each of those requirements when they are implemented. Finally, as part of the report, GAO must provide a list, by agency, of small businesses that believe their technology was stolen by the government or a prime contractor, or that the Phase III preference was not exercised even though the contract was for work that derived from, extended, or completed efforts made under prior SBIR or STTR projects.

Sec. 306. Clarifying Phase III Preferences
Clarifies that the Phase III preference for SBIR and STTR technologies includes awards through the Rapid Innovation Fund program. The Phase III preference says that

agencies shall, to the greatest extent practicable, issue Phase III awards to technology related to technology, including sole source awards, to the SBIR or STTR recipients that developed the technology.

Sec. 307. Improvements to Technical and Business Assistance
Modernizes the dollar amounts allowed for providing technical and business assistance to SBIR and STTR firms in order to help them succeed in commercializing their technologies. The amounts are increased from $5,000 to $6,500 per Phase I award and $10,000 to $15,000 per Phase II award.

Reduces administrative burdens on the agencies that offer business and technical assistance by eliminating the current requirement that micro-manages the disbursement of funds by year instead of by award.

Clarifies that the assistance is for not only technical assistance but also for business assistance and expands the examples of uses of the types of assistance to firms. Additional business assistance examples include assistance for selling their products, market research and intellectual property protections.

Title IV – Program Diversification Initiatives

Sec. 401. Regional SBIR State Collaborative Initiative Pilot Program
Establishes a 2-year program in which the SBA provides grants to regional, multi-state collaboratives in order to address the needs of small business concerns in the bottom 50% of the SBIR program. Grants to each state would be up to $300,000 for one year, and may be renewed for one extra year. The goal is to help small businesses in these states become more competitive in the proposal and selection process for awards under the SBIR and STTR program.

- This section also extends the 3% SBIR Administration Funds Pilot program from September 30, 2017, to September 30, 2019. It requires SBIR agencies that opt into the 3% Pilot to transfer 15% of that funding to the SBA for three purposes (about $8.8 million):

    - To implement the Regional State Collaborative Initiative Pilot Program
    - To carry out the SBIR Federal and State Technology Partnership Program (FAST)
    - To support the SBA's office that ad the SBIR program and the STTR program in order to deploy outreach initiatives in a coordinated and streamlined way.

Extends the authorization of the FAST program for two years, through September 30, 2019, to make it uniform with the authorizations of the related programs –the 3% Administrative Funds Pilot and the new Collaborative Pilot.

Sec. 402. Federal and State Technology Partnership Program

Brings the Federal and State Technology Partnership (FAST) program into sync with the Regional SBIR State Collaborative Initiative Pilot Program by reauthorizing the FAST program through September 30, 2019. Updating the sunset not only puts the FAST program on the same schedule as the Regional SBIR State Collaborative Pilot, but it also adds another provision in law that requires Congress to regularly review the SBIR and STTR programs. The FAST program was created in 2000 to strengthen the technological competitiveness of small businesses in all 50 states by providing competitive matching grants to states to help them support the SBIR and STTR programs. The goal was to address concerns that awards were concentrated in only a few states, and the Committee was looking for a way to increase participation without imposing quotas, which would have undermined making awards based on the merits of the proposals. The program is mostly used by the state technology transfer directors, with the strongest interest from rural states which have traditionally been in the lower tier of states in terms of SBIR/STTR awards and total dollars.

Title V – Oversight and Simplification

Sec. 501. Data Modernization Summit
Uses the Interagency Policy Committee, made up of the SBA, the SBIR/STTR program managers and agency IT experts, to resolve within one year a way to reduce and make more uniform the paperwork and data collection from SBIR and STTR firms. This responds to concerns heard by the Committee that small businesses face unnecessary burdens when providing agencies and the SBA with information, especially for the commercialization index.

Sec. 502. Implementation of Outstanding Reauthorization Provisions
Addresses concerns that agencies have not implemented key outstanding provisions of the 2011 Reauthorization Act, and that SBA has a backlog of annual reports to Congress. If the agencies and SBAdo not implement those provisions or clear out the report backlog, they will not be able to use their 3% administration dollars. This holds harmless the portion of the 3% administrative funds that go to the SBA to run the Regional SBIR State Collaborative Initiative Pilot Program and the FAST program.

Sec. 503. Strengthening of the Requirement to Shorten the Application Review and Decision Time
Clarifies a requirement from the 2011 reauthorization act that required most agencies to reduce their application review and decision time to 90 days. There was an exemption for the HHS and NSF that allowed them up to one year for a decision. USDA has requested the same exemption. This section instead gives USDA more time but not one year. Going forward, the goal would be for USDA and NSF to get their review time to six months, and the HHS to ten months from one year.

Sec. 504. Continued GAO Oversight of Allocation Compliance and Accuracy in Funding Base Calculations
Directs GAO, through fiscal year 2019, to continue its annual audit of the agencies' compliance with the allocation amounts. Adds a to determine whether the change in the base funding for the

Department of Defense improves transparency for figuring out if the agency is complying with the allocation requirements, reduces the burden of calculating the allocations, and whether the change improves DoD's compliance with the allocation requirements.

Title VI – Technical Changes

Sec. 601. Uniform Reference to the Department of Health and Human Service
Makes universal the reference to NIH as HHS.

Sec. 602. Flexibility for Phase II Award
Clarifies a provision from the 2011 reauthorization that eliminated all invitations to Phase II awards. This now provides flexibility so that agencies can invite firms to Phase II but cannot exclude firms from competing.