

117TH CONGRESS
2D SESSION

S. 4900

To reauthorize the SBIR and STTR programs and pilot programs, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2022

Mr. CARDIN (for himself and Ms. ERNST) introduced the following bill; which
was read twice, considered, read the third time, and passed

A BILL

To reauthorize the SBIR and STTR programs and pilot
programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SBIR and STTR Ex-
5 tension Act of 2022”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATION; ADMINISTRATOR.—The
9 terms “Administration” and “Administrator” mean

1 the Small Business Administration and the Adminis-
 2 trator thereof, respectively.

3 (2) FEDERAL AGENCY; PHASE I; PHASE II;
 4 PHASE III; SBIR; STTR.—The terms “Federal agen-
 5 cy”, “Phase I”, “Phase II”, “Phase III”, “SBIR”,
 6 and “STTR” have the meanings given those terms,
 7 respectively, in section 9(e) of the Small Business
 8 Act (15 U.S.C. 638(e)).

9 **SEC. 3. REAUTHORIZATION OF SBIR AND STTR PROGRAMS**
 10 **AND PILOT PROGRAMS.**

11 Section 9 of the Small Business Act (15 U.S.C. 638)
 12 is amended by striking “2022” each place that term ap-
 13 pears and inserting “2025”.

14 **SEC. 4. FOREIGN RISK MANAGEMENT.**

15 (a) DEFINITIONS.—Section 9(e) of the Small Busi-
 16 ness Act (15 U.S.C. 638(e)) is amended—

17 (1) in paragraph (13)(B), by striking “and” at
 18 the end;

19 (2) in paragraph (14), by striking the period at
 20 the end and inserting a semicolon; and

21 (3) by adding at the end the following:

22 “(15) the term ‘covered individual’ means an
 23 individual who—

24 “(A) contributes in a substantive, mean-
 25 ingful way to the scientific development or exe-

1 cution of a research and development project
2 proposed to be carried out with a research and
3 development award from a Federal research
4 agency; and

5 “(B) is designated as a covered individual
6 by the Federal research agency concerned;

7 “(16) the term ‘foreign affiliation’ means a
8 funded or unfunded academic, professional, or insti-
9 tutional appointment or position with a foreign gov-
10 ernment or government-owned entity, whether full-
11 time, part-time, or voluntary (including adjunct, vis-
12 iting, or honorary);

13 “(17) the term ‘foreign country of concern’
14 means the People’s Republic of China, the Demo-
15 cratic People’s Republic of Korea, the Russian Fed-
16 eration, the Islamic Republic of Iran, or any other
17 country determined to be a country of concern by
18 the Secretary of State;

19 “(18) the term ‘malign foreign talent recruit-
20 ment program’ has the meaning given such term in
21 section 10638 of the Research and Development,
22 Competition, and Innovation Act (division B of Pub-
23 lic Law 117–167); and

24 “(19) the term ‘federally funded award’ means
25 a Phase I, Phase II (including a Phase II award

1 under subsection (cc)), or Phase III SBIR or STTR
 2 award made using a funding agreement.”.

3 (b) DUE DILIGENCE PROGRAM TO ASSESS SECURITY
 4 RISKS.—

5 (1) IN GENERAL.—Section 9 of the Small Busi-
 6 ness Act (15 U.S.C. 638) is amended by adding at
 7 the end the following:

8 “(v) DUE DILIGENCE PROGRAM TO ASSESS SEC-
 9 RITY RISKS.—

10 “(1) ESTABLISHMENT.—The head of each Fed-
 11 eral agency required to establish an SBIR or STTR
 12 program, in coordination with the Administrator,
 13 shall establish and implement a due diligence pro-
 14 gram to assess security risks presented by small
 15 business concerns seeking a federally funded award.

16 “(2) RISKS.—Each program established under
 17 paragraph (1) shall—

18 “(A) assess, using a risk-based approach
 19 as appropriate, the cybersecurity practices, pat-
 20 ent analysis, employee analysis, and foreign
 21 ownership of a small business concern seeking
 22 an award, including the financial ties and obli-
 23 gations (which shall include surety, equity, and
 24 debt obligations) of the small business concern
 25 and employees of the small business concern to

1 a foreign country, foreign person, or foreign en-
2 tity; and

3 “(B) assess awards and proposals or appli-
4 cations, as applicable, using a risk-based ap-
5 proach as appropriate, including through the
6 use of open-source analysis and analytical tools,
7 for the nondisclosures of information required
8 under (g)(13).

9 “(3) ADMINISTRATIVE COSTS.—

10 “(A) IN GENERAL.—In addition to the
11 amount allocated under subsection (mm)(1),
12 each Federal agency required to establish an
13 SBIR program may allocate not more than 2
14 percent of the funds allocated to the SBIR pro-
15 gram of the Federal agency for the cost of es-
16 tablishing the due diligence program required
17 under this subsection.

18 “(B) REPORTING.—

19 “(i) IN GENERAL.—Not later than
20 December 31 of the year in which this sub-
21 paragraph is enacted, and not later than
22 December 31 of each year thereafter, the
23 head of a Federal agency that exercises the
24 authority under subparagraph (A) shall
25 submit to the Committee on Small Busi-

ness and the Committee on Science, Space,
and Technology of the House of Represent-
atives, the Committee on Small Business
and Entrepreneurship of the Senate, and
the Administrator, for the covered year—

“(I) the total funds allowed to be
allocated for the cost of establishing
the due diligence program required
under this subsection;

“(II) the total amount of funds
obligated or expended under subpara-
graph (A); and

“(III) the due diligence activities
carried out or to be carried out using
amounts allocated under subpara-
graph (A).

“(ii) ANNUAL REPORT INCLUSION.—
The Administrator shall include the infor-
mation submitted by head of a Federal
agency under clause (i) in the next annual
report submitted under subsection (b)(7)
after the Administrator receives such infor-
mation.

“(iii) COVERED YEAR.—In this sub-
paragraph, the term ‘covered year’ means,

1 with respect to the information required
2 under clause (i), the year covered by the
3 annual report submitted under subsection
4 (b)(7) in which the Administrator is re-
5 quired to include such information by
6 clause (ii).

7 “(C) TERMINATION DATE.—This para-
8 graph shall terminate on September 30, 2025.”.

9 (2) IMPLEMENTATION.—

10 (A) IN GENERAL.—Not later than 270
11 days after the date of enactment of this Act,
12 the head of a Federal agency required to estab-
13 lish an SBIR or STTR program shall imple-
14 ment a due diligence program under subsection
15 (vv) of section 9 of the Small Business Act (15
16 U.S.C. 638), as added by paragraph (1), at the
17 Federal agency that, to the extent practicable,
18 incorporates the applicable best practices dis-
19 seminated under paragraph (3).

20 (B) PAPERWORK REDUCTION ACT.—Chap-
21 ter 35 of title 44, United States Code (com-
22 monly known as the “Paperwork Reduction
23 Act”), shall not apply to the implementation of
24 a due diligence program under subsection (vv)

1 of section 9 of the Small Business Act (15
2 U.S.C. 638), as added by paragraph (1).

3 (C) BRIEFING.—Not later than 30 days
4 after the date of enactment of this Act, and on
5 a recurring basis until implementation is com-
6 plete, each Federal agency required to establish
7 a due diligence program under subsection (vv)
8 of section 9 of the Small Business Act (15
9 U.S.C. 638), as added by paragraph (1), shall
10 brief the Committee on Small Business and En-
11 trepreneurship of the Senate and the Com-
12 mittee on Small Business and the Committee
13 on Science, Space, and Technology of the
14 House of Representatives on the implementa-
15 tion of the due diligence program.

16 (3) BEST PRACTICES.—Not later than 180 days
17 after the date of enactment of this Act, the Adminis-
18 trator shall—

19 (A) in coordination with the Director of
20 the Office of Science and Technology Policy and
21 in consultation with the Committee on Foreign
22 Investment in the United States, disseminate
23 among Federal agencies required to establish
24 an SBIR or STTR program best practices of
25 those Federal agencies for due diligence pro-

grams required under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by paragraph (1); and

(B) in consultation with the Committee on Foreign Investment in the United States, provide to Federal agencies described in subparagraph (A) guidance on the business relationships required to be disclosed under paragraph (13)(G) of subsection (g) and paragraph (17)(G) of subsection (o) of section 9 of the Small Business Act (15 U.S.C. 638), as added by this Act.

(4) GAO STUDY.—Not later than 1 year after the date of enactment of this Act, and annually thereafter for 3 years, the Comptroller General of the United States shall conduct a study and submit to the Committee on Small Business and Entrepreneurship and the Committee on Armed Services of the Senate and the Committee on Small Business, the Committee on Armed Services, and the Committee on Science, Space, and Technology of the House of Representatives a report on the implementation and best practices of due diligence programs established under subsection (vv) of section 9 of the Small Business Act (15 U.S.C. 638), as added by

1 paragraph (1), across Federal agencies required to
2 establish an SBIR or STTR program.

3 (5) RULE OF CONSTRUCTION.—Nothing in sub-
4 section (vv) of section 9 of the Small Business Act
5 (15 U.S.C. 638), as added by paragraph (1), shall
6 be construed to—

7 (A) apply to any Federal agency with a
8 due diligence program that applies to the SBIR
9 or STTR programs required under subsection
10 (vv) of section 9 of the Small Business Act (15
11 U.S.C. 638), as added by paragraph (1), in ex-
12 istence as of the date of enactment of this Act;
13 or

14 (B) restrict any Federal agency from tak-
15 ing due diligence measures in addition to those
16 required under such subsection (vv) at the Fed-
17 eral agency.

18 (c) DISCLOSURES REGARDING TIES TO PEOPLE’S
19 REPUBLIC OF CHINA AND OTHER FOREIGN COUN-
20 TRIES.—

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

23 (A) in paragraph (11), by striking “and”
24 at the end;

1 (B) in paragraph (12), by striking the pe-
2 riod at the end and inserting a semicolon; and

3 (C) by adding at the end the following:

4 “(13) require each small business concern sub-
5 mitting a proposal or application for a federally
6 funded award to disclose in the proposal or applica-
7 tion—

8 “(A) the identity of all owners and covered
9 individuals of the small business concern who
10 are a party to any foreign talent recruitment
11 program of any foreign country of concern, in-
12 cluding the People’s Republic of China;

13 “(B) the existence of any joint venture or
14 subsidiary of the small business concern that is
15 based in, funded by, or has a foreign affiliation
16 with any foreign country of concern, including
17 the People’s Republic of China;

18 “(C) any current or pending contractual or
19 financial obligation or other agreement specific
20 to a business arrangement, or joint venture-like
21 arrangement with an enterprise owned by a for-
22 eign state or any foreign entity;

23 “(D) whether the small business concern is
24 wholly owned in the People’s Republic of China
25 or another foreign country of concern;

1 “(E) the percentage, if any, of venture
2 capital or institutional investment by an entity
3 that has a general partner or individual holding
4 a leadership role in such entity who has a for-
5 eign affiliation with any foreign country of con-
6 cern, including the People’s Republic of China;

7 “(F) any technology licensing or intellec-
8 tual property sales to a foreign country of con-
9 cern, including the People’s Republic of China,
10 during the 5-year period preceding submission
11 of the proposal; and

12 “(G) any foreign business entity, offshore
13 entity, or entity outside the United States re-
14 lated to the small business concern;

15 “(14) after reviewing the disclosures of a small
16 business concern under paragraph (13), and if deter-
17 mined appropriate by the head of such Federal
18 agency, request such small business concern to pro-
19 vide true copies of any contractual or financial obli-
20 gation or other agreement specific to a business ar-
21 rangement, or joint-venture like arrangement with
22 an enterprise owned by a foreign state or any for-
23 eign entity in effect during the 5-year period pre-
24 ceding submission of the proposal with respect to

1 which such small business concern made such disclo-
2 sures;”.

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

5 (A) in paragraph (15), by striking “and”
6 at the end;

7 (B) in paragraph (16), by striking the pe-
8 riod at the end and inserting a semicolon; and

9 (C) by adding at the end the following:

10 “(17) require each small business concern sub-
11 mitting a proposal or application for a federally
12 funded award to disclose in the proposal or applica-
13 tion—

14 “(A) the identity of all owners and covered
15 individuals of the small business concern who
16 are a party to any foreign talent recruitment
17 program of any foreign country of concern, in-
18 cluding the People’s Republic of China;

19 “(B) the existence of any joint venture or
20 subsidiary of the small business concern that is
21 based in, funded by, or has a foreign affiliation
22 with any foreign country of concern, including
23 the People’s Republic of China;

24 “(C) any current or pending contractual or
25 financial obligation or other agreement specific

1 to a business arrangement, or joint venture-like
2 arrangement with an enterprise owned by a for-
3 eign state or any foreign entity;

4 “(D) whether the small business concern is
5 wholly owned in the People’s Republic of China
6 or another foreign country;

7 “(E) the percentage, if any, of venture
8 capital or institutional investment by an entity
9 that has a general partner or individual holding
10 a leadership role in such entity who has a for-
11 eign affiliation with any foreign country of con-
12 cern, including the People’s Republic of China;

13 “(F) any technology licensing or intellec-
14 tual property sales to a foreign country of con-
15 cern, including the People’s Republic of China,
16 during the 5-year period preceding submission
17 of the proposal; and

18 “(G) any foreign business entity, offshore
19 entity, or entity outside the United States re-
20 lated to the small business concern;

21 “(18) after reviewing the disclosures of a small
22 business concern under paragraph (17), and if deter-
23 mined appropriate by the head of such Federal
24 agency, request such small business concern to pro-
25 vide true copies of any contractual or financial obli-

1 gation or other agreement specific to a business ar-
 2 rangement, or joint-venture like arrangement with
 3 an enterprise owned by a foreign state or any for-
 4 eign entity in effect during the 5-year period pre-
 5 ceding submission of the proposal with respect to
 6 which such small business concern made such disclo-
 7 sures;”.

8 (d) DENIAL OF AWARDS.—

9 (1) SBIR.—Section 9(g) of the Small Business
 10 Act (15 U.S.C. 638(g)), as amended by subsection
 11 (c)(1), is further amended by adding at the end the
 12 following:

13 “(15) not make an award under the SBIR pro-
 14 gram of the Federal agency to a small business con-
 15 cern if the head of the Federal agency determines
 16 that—

17 “(A) the small business concern submitting
 18 the proposal or application—

19 “(i) has an owner or covered indi-
 20 vidual that is party to a malign foreign tal-
 21 ent recruitment program;

22 “(ii) has a business entity, parent
 23 company, or subsidiary located in the Peo-
 24 ple’s Republic of China or another foreign
 25 country of concern; or

1 “(iii) has an owner or covered indi-
2 vidual that has a foreign affiliation with a
3 research institution located in the People’s
4 Republic of China or another foreign coun-
5 try of concern; and

6 “(B) the relationships and commitments
7 described in clauses (i) through (iii) of subpara-
8 graph (A)—

9 “(i) interfere with the capacity for ac-
10 tivities supported by the Federal agency to
11 be carried out;

12 “(ii) create duplication with activities
13 supported by the Federal agency;

14 “(iii) present concerns about conflicts
15 of interest;

16 “(iv) were not appropriately disclosed
17 to the Federal agency;

18 “(v) violate Federal law or terms and
19 conditions of the Federal agency; or

20 “(vi) pose a risk to national secu-
21 rity;”.

22 (2) STTR.—Section 9(o) of the Small Business
23 Act (15 U.S.C. 638(o)), as amended by subsection
24 (c)(2), is further amended by adding at the end the
25 following:

1 “(19) not make an award under the STTR pro-
2 gram of the Federal agency to a small business con-
3 cern if the head of the Federal agency determines
4 that—

5 “(A) the small business concern submitting
6 the proposal or application—

7 “(i) has an owner or covered indi-
8 vidual that is party to a malign foreign tal-
9 ent recruitment program;

10 “(ii) has a business entity, parent
11 company, or subsidiary located in the Peo-
12 ple’s Republic of China or another foreign
13 country of concern; or

14 “(iii) has an owner or covered indi-
15 vidual that has a foreign affiliation with a
16 research institution located in the People’s
17 Republic of China or another foreign coun-
18 try of concern; and

19 “(B) the relationships and commitments
20 described in clauses (i) through (iii) of subpara-
21 graph (A)—

22 “(i) interfere with the capacity for ac-
23 tivities supported by the Federal agency to
24 be carried out;

1 “(ii) create duplication with activities
2 supported by the Federal agency;

3 “(iii) present concerns about conflicts
4 of interest;

5 “(iv) were not appropriately disclosed
6 to the Federal agency;

7 “(v) violate Federal law or terms and
8 conditions of the Federal agency; or

9 “(vi) pose a risk to national secu-
10 rity;”.

11 **SEC. 5. AGENCY RECOVERY AUTHORITY AND ONGOING RE-**
12 **PORTING.**

13 (a) SBIR.—Section 9(g) of the Small Business Act
14 (15 U.S.C. 638(g)), as amended by section 4(d)(1), is fur-
15 ther amended by adding at the end the following:

16 “(16) require a small business concern receiving
17 an award under its SBIR program to repay all
18 amounts received from the Federal agency under the
19 award if—

20 “(A) the small business concern makes a
21 material misstatement that the Federal agency
22 determines poses a risk to national security; or

23 “(B) there is a change in ownership,
24 change to entity structure, or other substantial
25 change in circumstances of the small business

1 concern that the Federal agency determines
2 poses a risk to national security; and

3 “(17) require a small business concern receiving
4 an award under its SBIR program to regularly re-
5 port to the Federal agency and the Administration
6 throughout the duration of the award on—

7 “(A) any change to a disclosure required
8 under subparagraphs (A) through (G) of para-
9 graph (13);

10 “(B) any material misstatement made
11 under paragraph (16)(A); and

12 “(C) any change described in paragraph
13 (16)(B).”.

14 (b) STTR.—Section 9(o) of the Small Business Act
15 (15 U.S.C. 638(o)), as amended by section 4(d)(1), is fur-
16 ther amended by adding at the end the following:

17 “(20) require a small business concern receiving
18 an award under its STTR program to repay all
19 amounts received from the Federal agency under the
20 award if—

21 “(A) the small business concern makes a
22 material misstatement that the Federal agency
23 determines poses a risk to national security; or

24 “(B) there is a change in ownership,
25 change to entity structure, or other substantial

1 change in circumstances of the small business
 2 concern that the Federal agency determines
 3 poses a risk to national security; and

4 “(21) require a small business concern receiving
 5 an award under its STTR program to regularly re-
 6 port to the Federal agency and the Administration
 7 throughout the duration of the award on—

8 “(A) any change to a disclosure required
 9 under subparagraphs (A) through (G) of para-
 10 graph (17);

11 “(B) any material misstatement made
 12 under paragraph (20)(A); and

13 “(C) any change described in paragraph
 14 (20)(B).”.

15 (c) PAPERWORK REDUCTION ACT.—Chapter 35 of
 16 title 44, United States Code (commonly known as the “Pa-
 17 perwork Reduction Act”), shall not apply to the implemen-
 18 tation of paragraphs (16) and (17) of subsection (g) or
 19 paragraphs (20) and (21) of subsection (o) of section 9
 20 of the Small Business Act (15 U.S.C. 638), as added by
 21 subsections (a) and (b).

1 **SEC. 6. REPORT ON ADVERSARIAL MILITARY AND FOREIGN**
2 **INFLUENCE IN THE SBIR AND STTR PRO-**
3 **GRAMS.**

4 (a) COVERED AGENCY DEFINED.—In this section,
5 the term “covered agency” means—

6 (1) the Department of Defense;

7 (2) the Department of Energy;

8 (3) the Department of Health and Human
9 Services; or

10 (4) the National Science Foundation.

11 (b) REQUIREMENT.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), not later than 180 days after the date of
14 enactment of this Act, the head of each covered
15 agency shall submit a report assessing the adver-
16 sarial military and foreign influences in the SBIR
17 and STTR programs at the covered agency to—

18 (A) the Committee on Armed Services, the
19 Committee on Small Business and Entrepre-
20 neurship, and the Committee on Commerce,
21 Science, and Transportation of the Senate; and

22 (B) the Committee on Armed Services, the
23 Committee on Small Business, and the Com-
24 mittee on Science, Space, and Technology of
25 the House of Representatives.

1 (2) DEPARTMENT OF HEALTH AND HUMAN
2 SERVICES.—The Secretary of Health and Human
3 Services shall submit 2 reports under paragraph
4 (1)—

5 (A) 1 assessing the adversarial military
6 and foreign influences in the SBIR and STTR
7 programs of the National Institutes of Health;
8 and

9 (B) 1 assessing the adversarial military
10 and foreign influences in the SBIR and STTR
11 programs of the Department of Health and
12 Human Services other than those of the Na-
13 tional Institutes of Health.

14 (c) CONTENTS.—Each report submitted by a covered
15 agency under subsection (b) shall include an analysis of—

16 (1) the national security and research and in-
17 tegrity risks of the SBIR and STTR programs of
18 the covered agency; and

19 (2) the capability of such covered agency to
20 identify and mitigate such risks.

21 (d) FORM.—Each report submitted under subsection
22 (b) shall be in unclassified form, but may include a classi-
23 fied annex.

24 (e) INDEPENDENT ENTITY CONTRACTING.—The
25 head of each covered agency, in coordination with the

1 heads of other Federal agencies, as appropriate, may enter
 2 into a contract with an independent entity to prepare a
 3 report required under subsection (b).

4 **SEC. 7. PROGRAM ON INNOVATION OPEN TOPICS.**

5 (a) IN GENERAL.—Section 9 of the Small Business
 6 Act (15 U.S.C. 638), as amended by this Act, is further
 7 amended—

8 (1) in subsection (b)(7)—

9 (A) in subparagraph (G), by striking
 10 “and” at the end; and

11 (B) by adding at the end the following:

12 “(I) the number of applications submitted
 13 to each Federal agency participating in the
 14 SBIR or STTR program in innovation open
 15 topics as compared to conventional topics, and
 16 how many small business concerns receive fund-
 17 ing from open topics compared to conventional
 18 topics;

19 “(J) the total number and dollar amount,
 20 and average size, of awards made by each Fed-
 21 eral agency participating in the SBIR or STTR
 22 program, by phase, from—

23 “(i) open topics; and

24 “(ii) conventional topics;”; and

25 (2) by adding at the end the following:

1 “(ww) PROGRAM ON INNOVATION OPEN TOPICS.—

2 “(1) ESTABLISHMENT.—Not later than 180
3 days after the date of enactment of this subsection,
4 the Secretary of Defense shall establish innovation
5 open topic activities using the SBIR and STTR pro-
6 grams of the Department of Defense in order to—

7 “(A) increase the transition of commercial
8 technology to the Department of Defense;

9 “(B) expand the small business nontradi-
10 tional industrial base;

11 “(C) increase commercialization derived
12 from investments of the Department of De-
13 fense; and

14 “(D) expand the ability for qualifying
15 small business concerns to propose technology
16 solutions to meet the needs of the Department
17 of Defense.

18 “(2) FREQUENCY.—The Secretary of Defense
19 shall conduct not less than 1 open topic announce-
20 ment at each component of the Department of De-
21 fense per fiscal year.

22 “(3) BRIEFING.—Not later than 180 days after
23 the date of enactment of this subsection, the Sec-
24 retary of Defense shall provide a briefing on the es-

1 tablishment of the program required under para-
2 graph (1) to—

3 “(A) the Committee on Armed Services
4 and the Committee on Small Business and En-
5 trepreneurship of the Senate; and

6 “(B) the Committee on Small Business,
7 the Committee on Armed Services, and the
8 Committee on Science, Space, and Technology
9 of the House of Representatives.”.

10 (b) GAO REPORT.—Not later than 1 year after the
11 date of enactment of this Act, and annually thereafter for
12 3 years, the Comptroller General of the United States
13 shall submit to Congress and issue a publicly available re-
14 port comparing open topics and conventional topics under
15 the SBIR and STTR programs that includes, to the extent
16 practicable—

17 (1) an assessment of the percentage of small
18 business concerns that progress from Phase I to
19 Phase II awards, then to Phase III awards;

20 (2) the number of awards under the SBIR and
21 STTR programs made to first-time applicants and
22 first-time awardees;

23 (3) the number of awards under the SBIR and
24 STTR programs made to non-traditional small busi-

1 ness concerns, including those owned by women, mi-
2 norities, and veterans;

3 (4) a description of outreach and assistance ef-
4 forts by the Department of Defense to encourage
5 and prepare new and diverse small business concerns
6 to participate in the program established under sub-
7 section (ww) of section 9 of the Small Business Act
8 (15 U.S.C. 638), as added by subsection (a);

9 (5) the length of time to review and disburse
10 awards under such subsection (ww), evaluated in a
11 manner enabling normalized comparisons of such
12 times taken by each Federal agency that is required
13 to establish an SBIR or STTR program and offers
14 open topics;

15 (6) the ratio, and an assessment, of the amount
16 of funding allocated towards open topics as com-
17 pared to conventional topics at each Federal agency
18 that is required to establish an SBIR or STTR pro-
19 gram and offers open topics; and

20 (7) a comparison of the types of technology and
21 end users funded under open topics compared to the
22 types of technology and end users funded under con-
23 ventional topics.

1 **SEC. 8. INCREASED MINIMUM PERFORMANCE STANDARDS**
 2 **FOR EXPERIENCED FIRMS.**

3 Section 9 of the Small Business Act (15 U.S.C. 638),
 4 as amended by this Act, is further amended—

5 (1) in subsection (b)(7), by adding at the end
 6 the following:

7 “(K) the minimum performance standards
 8 established under subsection (qq), including any
 9 applicable modifications under paragraph (3) of
 10 such subsection, and the number of small busi-
 11 ness concerns that did not meet those minimum
 12 performance standards, provided that the Ad-
 13 ministrator does not publish any personally
 14 identifiable information, the identity of each
 15 such small business concern, or any otherwise
 16 sensitive information; and

17 “(L) the aggregate number and dollar
 18 amount of SBIR and STTR awards made pur-
 19 suant to waivers under subsection (qq)(3)(E),
 20 provided that the Administrator does not pub-
 21 lish any personally identifiable information, the
 22 identity of each such small business concern, or
 23 any otherwise sensitive information;”; and

24 (2) in subsection (qq)—

25 (A) by redesignating paragraphs (3) and
 26 (4) as paragraphs (4) and (5), respectively;

1 (B) by inserting after paragraph (2) the
 2 following:

3 “(3) INCREASED MINIMUM PERFORMANCE
 4 STANDARDS FOR EXPERIENCED FIRMS.—

5 “(A) PROGRESS TO PHASE II SUCCESS.—

6 “(i) IN GENERAL.—With respect to a
 7 small business concern that received or re-
 8 ceives more than 50 Phase I awards dur-
 9 ing a covered period, each minimum per-
 10 formance standard established under para-
 11 graph (1)(A)(ii) shall be doubled for such
 12 covered period.

13 “(ii) CONSEQUENCE OF FAILURE TO
 14 MEET STANDARD.—If the head of a Fed-
 15 eral agency determines that a small busi-
 16 ness concern that received a Phase I award
 17 from the Federal agency is not meeting an
 18 applicable increased minimum performance
 19 standard modified under clause (i), the
 20 small business concern may not receive
 21 more than 20 total Phase I awards and
 22 Phase II awards under subsection (cc)
 23 from each Federal agency during the 1-
 24 year period beginning on the date on which
 25 such determination is made.

1 “(iii) COVERED PERIOD DEFINED.—In
 2 this subparagraph, the term ‘covered pe-
 3 riod’ means a consecutive period of 5 fiscal
 4 years preceding the most recent fiscal year.

5 “(B) PROGRESS TO PHASE III SUCCESS.—

6 “(i) IN GENERAL.—Each minimum
 7 performance standard established under
 8 paragraph (2)(A)(ii) shall—

9 “(I) with respect to a small busi-
 10 ness concern that received or receives
 11 more than 50 Phase II awards during
 12 a covered period, require an average
 13 of \$250,000 of aggregate sales and in-
 14 vestments per Phase II award re-
 15 ceived during such covered period; and

16 “(II) with respect to a small
 17 business concern that received or re-
 18 ceives more than 100 Phase II awards
 19 during a covered period, require an
 20 average of \$450,000 of aggregate
 21 sales and investments per Phase II
 22 award received during such covered
 23 period.

24 “(ii) CONSEQUENCE OF FAILURE TO
 25 MEET STANDARD.—If the head of a Fed-

1 eral agency determines that a small busi-
 2 ness concern that received a Phase I award
 3 from the agency is not meeting an applica-
 4 ble increased minimum performance stand-
 5 ard modified under clause (i), the small
 6 business concern may not receive more
 7 than 20 total Phase I awards and Phase II
 8 awards under subsection (cc) from each
 9 agency during the 1-year period beginning
 10 on the date on which such determination is
 11 made.

12 “(iii) DOCUMENTATION.—

13 “(I) IN GENERAL.—A small busi-
 14 ness concern that is subject to an in-
 15 creased minimum performance stand-
 16 ard described in clause (i) shall sub-
 17 mit to the Administrator supporting
 18 documentation evidencing that all cov-
 19 ered sales of the small business con-
 20 cern were properly used to meet the
 21 increased minimum performance
 22 standard.

23 “(II) COVERED SALE DE-
 24 FINED.—In this clause, the term ‘cov-

1 ered sale’ means a sale by a small
2 business concern—

3 “(aa) that the small busi-
4 ness concern claims to be attrib-
5 utable to an SBIR or STTR
6 award;

7 “(bb) for which no amount
8 of the payment was or is made
9 using Federal funds;

10 “(cc) which the small busi-
11 ness concern uses to meet an ap-
12 plicable increased minimum per-
13 formance standard under clause
14 (i); and

15 “(dd) that was or is received
16 during the 5 fiscal years imme-
17 diately preceding the fiscal year
18 in which the small business con-
19 cern uses the sale to meet the in-
20 creased minimum performance
21 standard.

22 “(iv) COVERED PERIOD DEFINED.—In
23 this subparagraph, the term ‘covered pe-
24 riod’ means a consecutive period of 10 fis-

1 cal years preceding the most recent 2 fiscal
2 years.

3 “(C) PATENTS FOR INCREASED MINIMUM
4 PERFORMANCE STANDARDS.—A small business
5 concern with respect to which an increased min-
6 imum performance standard under subpara-
7 graph (B) applies may not meet the increased
8 minimum performance standard by obtaining
9 patents.

10 “(D) EFFECTIVE DATE.—Subparagraphs
11 (A) through (C) shall take effect on April 1,
12 2023.

13 “(E) WAIVER.—

14 “(i) IN GENERAL.—The Administrator
15 may, upon the request of a senior official
16 of a Federal agency, grant a waiver with
17 respect to a topic for the SBIR or STTR
18 program of the Federal agency if—

19 “(I) the topic is critical to the
20 mission of the Federal agency or re-
21 lates to national security; and

22 “(II) the official submits to the
23 Administrator a request for the waiver
24 in accordance with clause (iii).

1 “(ii) WAIVER EFFECTS.—If the Ad-
2 ministration grants a waiver with respect
3 to a topic for the SBIR or STTR program
4 of a Federal agency, subparagraphs (A)(ii)
5 and (B)(ii) shall not prohibit any covered
6 small business concern from receiving an
7 SBIR or STTR award under such topic.

8 “(iii) AGENCY REQUEST AND CON-
9 GRESSIONAL NOTIFICATION.—Not later
10 than 15 days before the release of a solici-
11 tation including a topic for which a senior
12 official of a Federal agency is requesting a
13 waiver under clause (i), the senior official
14 shall submit to the Administrator, the
15 Committee on Small Business and the
16 Committee on Science, Space, and Tech-
17 nology of the House of Representatives,
18 and the Committee on Small Business and
19 Entrepreneurship of the Senate a request
20 for the waiver.

21 “(iv) ADMINISTRATOR DETERMINA-
22 TION AND CONGRESSIONAL NOTIFICA-
23 TION.—Not later than 15 days after re-
24 ceiving a request for a waiver under clause
25 (i), the Administrator shall make a deter-

mination with respect to the request and notify the senior official at the Federal agency that made the request, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate of the determination.

“(v) DEFINITIONS.—In this subparagraph:

“(I) COVERED SMALL BUSINESS CONCERN.—The term ‘covered small business concern’ means a small business concern that is subject to the consequences under subparagraph (A)(ii) or (B)(ii) pursuant to a determination by the head of a Federal agency that such small business concern did not meet an increased minimum performance standard that was applicable to such small business concern.

“(II) SENIOR OFFICIAL.—The term ‘senior official’ means an indi-

1 vidual appointed to a position in a
2 Federal agency that is classified above
3 GS-15 pursuant section 5108 of title
4 5, United States Code, or any equiva-
5 lent position, as determined by the
6 Administrator.

7 “(F) REPORTING.—

8 “(i) IN GENERAL.—Not later than
9 July 1, 2023, and annually thereafter, the
10 Administrator shall submit to Congress a
11 list of the small business concerns that did
12 not meet—

13 “(I) an applicable minimum per-
14 formance standard established under
15 paragraph (1)(A)(ii) or (2)(A)(ii); or

16 “(II) an applicable increased
17 minimum performance standard.

18 “(ii) WAIVERS.—Each list submitted
19 under clause (i) shall identify each small
20 business concern that received an SBIR or
21 STTR award pursuant to a waiver granted
22 under subparagraph (E) by the Adminis-
23 trator during the period covered by the
24 list.

1 “(iii) CONFIDENTIALITY.—Each list
2 submitted under clause (i) shall be con-
3 fidential and exempt from disclosure under
4 section 552(b)(3) of title 5, United States
5 Code (commonly known as the ‘Freedom of
6 Information Act’).

7 “(G) IMPLEMENTATION.—Not later than
8 April 1, 2023, the Administration shall imple-
9 ment the increased minimum performance
10 standards under this paragraph.

11 “(H) RULES OF CONSTRUCTION.—Nothing
12 in this paragraph shall be construed—

13 “(i) to prohibit a small business con-
14 cern from participating in a Phase I (or
15 Phase II if under the authority of sub-
16 section (cc)) of an SBIR or STTR pro-
17 gram under paragraph (1)(B) or (2)(B)
18 solely on the basis of a determination by
19 the head of a Federal agency that the
20 small business concern is not meeting an
21 increased minimum performance standard;
22 or

23 “(ii) to prevent the head of a Federal
24 agency from implementing more restrictive
25 limitations on the number of federally

1 funded Phase I awards and direct to Phase
 2 II awards under subsection (cc) that may
 3 be awarded to a small business concern
 4 than the limitations described in subpara-
 5 graphs (A)(ii) and (B)(ii).

6 “(I) TERMINATION.—This paragraph shall
 7 terminate on September 30, 2025.”;

8 (C) in paragraph (5), as so redesignated,
 9 by striking “paragraph (3)(A)” and inserting
 10 “paragraph (4)(A)”; and

11 (D) by adding at the end the following:

12 “(6) INSPECTOR GENERAL AUDIT.—Not later
 13 than 1 year after the date on which the Adminis-
 14 trator implements the increased minimum perform-
 15 ance standards under paragraph (3), and periodi-
 16 cally thereafter, the Inspector General of the Admin-
 17 istration shall—

18 “(A) conduct an audit on whether the
 19 small business concerns subject to increased
 20 minimum performance standards under para-
 21 graph (3)(B) verified—

22 “(i) the sales by and investments in
 23 the small business concerns—

24 “(I) during the 5 fiscal years im-
 25 mediately preceding the fiscal year in

1 which the small business concern used
 2 such sales and investments to meet an
 3 applicable increased performance
 4 standard; and

5 “(II) as a direct result of a
 6 Phase I award or Phase II award
 7 made under subsection (cc) during the
 8 covered period (as defined in para-
 9 graph (3)(B)(iv)), consistent with the
 10 definition of Phase III, as applicable;

11 “(ii) any third-party revenue the small
 12 business concerns list as investments or in-
 13 comes to meet the increased minimum per-
 14 formance standard—

15 “(I) is a direct result of a Phase
 16 I award or Phase II award made
 17 under subsection (cc) during the cov-
 18 ered period (as defined in paragraph
 19 (3)(B)(iv)); and

20 “(II) consistent with the require-
 21 ments of the Administrator as in ef-
 22 fect on September 30, 2022, or any
 23 successor requirements; and

24 “(iii) any dollar amounts such small
 25 business concerns list as investments or in-

1 come to meet such increased minimum per-
 2 formance standard the providence of which
 3 is unclear and that is not directly attrib-
 4 utable to a Phase I award or Phase II
 5 award made under subsection (cc) during
 6 the covered period (as defined in para-
 7 graph (3)(B)(iv)), consistent with the defi-
 8 nition of Phase III, as applicable;

9 “(B) assess the self-certification require-
 10 ments for the minimum performance standards
 11 established under paragraph (2)(A)(ii) and the
 12 increased minimum performance standards
 13 under paragraph (3)(B); and

14 “(C) submit to the Committee on Small
 15 Business and Entrepreneurship of the Senate
 16 and the Committee on Small Business and the
 17 Committee on Science, Space, and Technology
 18 of the House of Representatives a report on the
 19 audit conducted under subparagraph (A) and
 20 the assessment conducted under subparagraph
 21 (B).

22 “(7) INCREASED MINIMUM PERFORMANCE
 23 STANDARD DEFINED.—In this subsection, the term
 24 ‘increased minimum performance standard’ means a
 25 minimum performance standard established under

1 paragraph (1)(A)(ii) or (2)(A)(ii) as modified under
 2 subparagraph (A) or (B), respectively, of paragraph
 3 (3) with respect to a small business concern.”.

4 **SEC. 9. PROHIBITION AGAINST WRITING SOLICITATION**
 5 **TOPICS.**

6 (a) IN GENERAL.—Section 9 of the Small Business
 7 Act (15 U.S.C. 638), as amended by this Act, is further
 8 amended by adding at the end the following subsection:
 9 “(xx) ADDITIONAL PROVISIONS RELATING TO SOLIC-
 10 ITATION TOPICS.—

11 “(1) IN GENERAL.—A Federal agency required
 12 to establish an SBIR or STTR program shall imple-
 13 ment a multi-level review and approval process with-
 14 in the Federal agency for solicitation topics to en-
 15 sure adequate competition and that no private indi-
 16 vidual or entity is shaping the requirements for eligi-
 17 bility for the solicitation topic after the selection of
 18 the solicitation topic, except that the Federal agency
 19 may amend the requirements to clarify the solicita-
 20 tion topic.

21 “(2) REFERRAL.—A Federal agency that does
 22 not comply with paragraph (1) shall be referred to
 23 the Inspector General of the Administration for fur-
 24 ther investigation.”.

1 **SEC. 10. GAO STUDY ON MULTIPLE AWARD WINNERS.**

2 Not later than 18 months after the date of enactment
3 of this Act, the Comptroller General of the United States
4 shall conduct a study and submit to the Committee on
5 Small Business and Entrepreneurship of the Senate and
6 the Committee on Small Business and the Committee on
7 Science, Space, and Technology of the House of Rep-
8 resentatives a report, which shall be made publicly avail-
9 able, on small business concerns that are awarded not less
10 than 50 Phase II awards under the SBIR or STTR pro-
11 grams during the consecutive period of 10 fiscal years pre-
12 ceding the most recent 2 fiscal years, including, to the ex-
13 tent practicable, an analysis of—

14 (1) the impact of the small business concerns
15 on the SBIR and STTR programs;

16 (2) the ratio of the number of Phase II awards
17 received by the small business concerns to the total
18 number of Phase II awards;

19 (3) the ability of the small business concerns to
20 commercialize and meet the tenets of the SBIR and
21 STTR programs;

22 (4) the impact on new entrants and seeding
23 technology necessary to the Federal agency mission
24 or commercial markets and, with respect to the De-
25 partment of Defense, whether the types of tech-
26 nology the small business concerns are pursuing are

1 primarily hardware, software, or system components
2 for the warfighter;

3 (5) an evaluation and study of varying levels of
4 award caps and lifetime program earning caps;

5 (6) an assessment of the increased minimum
6 performance standards under paragraph (3) of sec-
7 tion 9(qq) of the Small Business Act (15 U.S.C.
8 638(qq)), as added by section 8, on the behavior of
9 those concerns and on the SBIR and STTR pro-
10 grams, and whether to continue such increased min-
11 imum performance standards; and

12 (7) recommendations on whether alternative
13 minimum performance standards under section
14 9(qq) of the Small Business Act (15 U.S.C.
15 638(qq)) should be considered, and the extent to
16 which such alternative minimum performance stand-
17 ards preserve the competitive, merit-based founda-
18 tion of the SBIR and STTR programs.

19 **SEC. 11. GAO REPORT ON SUBCONTRACTING IN SBIR AND**
20 **STTR PROGRAMS.**

21 Not later than 1 year after the date of the enactment
22 of this Act, the Comptroller General of the United States
23 shall submit to the Committee on Small Business and En-
24 trepreneurship of the Senate and the Committee on Small
25 Business and the Committee on Science, Space, and Tech-

1 nology of the House of Representatives a report evalu-
2 ating, to the extent practicable, the following:

3 (1) The extent to which SBIR awardees and
4 STTR awardees are in compliance with the Federal
5 Funding Accountability and Transparency Act (31
6 U.S.C. 6101 note).

7 (2) The extent to which SBIR awardees and
8 STTR awardees enter into subcontracting agree-
9 ments with respect to an SBIR or STTR award.

10 (3) The total number and dollar amount of sub-
11 contracts entered into between an SBIR awardee or
12 an STTR awardee and a concern that is not a small
13 business concern (including such concerns that are
14 defense contractors) with respect to an SBIR or
15 STTR award.

16 (4) A description of the type and purpose of
17 subcontracting agreements described in paragraph
18 (2).

19 (5) An analysis of whether the use of sub-
20 contracts by an SBIR awardee or an STTR awardee
21 is consistent with the purposes of section 9 of the
22 Small Business Act (15 U.S.C. 638).

○