

117TH CONGRESS
2D SESSION

S. 4900

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) ADMINISTRATION; ADMINISTRATOR.—The
7 terms “Administration” and “Administrator” mean
8 the Small Business Administration and the Adminis-
9 trator thereof, respectively.

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

16 **SEC. 3. REAUTHORIZATION OF SBIR AND STTR PROGRAMS**
17 **AND PILOT PROGRAMS.**

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

21 **SEC. 4. FOREIGN RISK MANAGEMENT.**

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

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

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

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

4 “(15) the term ‘covered individual’ means an
5 individual who—

6 “(A) contributes in a substantive, mean-
7 ingful way to the scientific development or exe-
8 cution of a research and development project
9 proposed to be carried out with a research and
10 development award from a Federal research
11 agency; and

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

14 “(16) the term ‘foreign affiliation’ means a
15 funded or unfunded academic, professional, or insti-
16 tutional appointment or position with a foreign gov-
17 ernment or government-owned entity, whether full-
18 time, part-time, or voluntary (including adjunct, vis-
19 iting, or honorary);

20 “(17) the term ‘foreign country of concern’
21 means the People’s Republic of China, the Demo-
22 cratic People’s Republic of Korea, the Russian Fed-
23 eration, the Islamic Republic of Iran, or any other
24 country determined to be a country of concern by
25 the Secretary of State;

1 “(18) the term ‘malign foreign talent recruit-
 2 ment program’ has the meaning given such term in
 3 section 10638 of the Research and Development,
 4 Competition, and Innovation Act (division B of Pub-
 5 lic Law 117–167); and

6 “(19) the term ‘federally funded award’ means
 7 a Phase I, Phase II (including a Phase II award
 8 under subsection (cc)), or Phase III SBIR or STTR
 9 award made using a funding agreement.”.

10 (b) DUE DILIGENCE PROGRAM TO ASSESS SECURITY
 11 RISKS.—

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

15 “(vv) DUE DILIGENCE PROGRAM TO ASSESS SECU-
 16 RITY RISKS.—

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

23 “(2) RISKS.—Each program established under
 24 paragraph (1) shall—

“(A) assess, using a risk-based approach as appropriate, the cybersecurity practices, patent analysis, employee analysis, and foreign ownership of a small business concern seeking an award, including the financial ties and obligations (which shall include surety, equity, and debt obligations) of the small business concern and employees of the small business concern to a foreign country, foreign person, or foreign entity; and

“(B) assess awards and proposals or applications, as applicable, using a risk-based approach as appropriate, including through the use of open-source analysis and analytical tools, for the nondisclosures of information required under (g)(13).

“(3) ADMINISTRATIVE COSTS.—

“(A) IN GENERAL.—In addition to the amount allocated under subsection (mm)(1), each Federal agency required to establish an SBIR program may allocate not more than 2 percent of the funds allocated to the SBIR program of the Federal agency for the cost of establishing the due diligence program required under this subsection.

“(B) REPORTING.—

“(i) IN GENERAL.—Not later than December 31 of the year in which this subparagraph is enacted, and not later than December 31 of each year thereafter, the head of a Federal agency that exercises the authority under subparagraph (A) shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, 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 subparagraph (A); and

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

1 “(ii) ANNUAL REPORT INCLUSION.—

2 The Administrator shall include the infor-
 3 mation submitted by head of a Federal
 4 agency under clause (i) in the next annual
 5 report submitted under subsection (b)(7)
 6 after the Administrator receives such infor-
 7 mation.

8 “(iii) COVERED YEAR.—In this sub-
 9 paragraph, the term ‘covered year’ means,
 10 with respect to the information required
 11 under clause (i), the year covered by the
 12 annual report submitted under subsection
 13 (b)(7) in which the Administrator is re-
 14 quired to include such information by
 15 clause (ii).

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

18 (2) IMPLEMENTATION.—

19 (A) IN GENERAL.—Not later than 270
 20 days after the date of enactment of this Act,
 21 the head of a Federal agency required to estab-
 22 lish an SBIR or STTR program shall imple-
 23 ment a due diligence program under subsection
 24 (vv) of section 9 of the Small Business Act (15
 25 U.S.C. 638), as added by paragraph (1), at the

1 Federal agency that, to the extent practicable,
2 incorporates the applicable best practices dis-
3 seminated under paragraph (3).

4 (B) PAPERWORK REDUCTION ACT.—Chap-
5 ter 35 of title 44, United States Code (com-
6 monly known as the “Paperwork Reduction
7 Act”), shall not apply to the implementation of
8 a due diligence program under subsection (vv)
9 of section 9 of the Small Business Act (15
10 U.S.C. 638), as added by paragraph (1).

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

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

4 (A) in coordination with the Director of
5 the Office of Science and Technology Policy and
6 in consultation with the Committee on Foreign
7 Investment in the United States, disseminate
8 among Federal agencies required to establish
9 an SBIR or STTR program best practices of
10 those Federal agencies for due diligence pro-
11 grams required under subsection (vv) of section
12 9 of the Small Business Act (15 U.S.C. 638),
13 as added by paragraph (1); and

14 (B) in consultation with the Committee on
15 Foreign Investment in the United States, pro-
16 vide to Federal agencies described in subpara-
17 graph (A) guidance on the business relation-
18 ships required to be disclosed under paragraph
19 (13)(G) of subsection (g) and paragraph
20 (17)(G) of subsection (o) of section 9 of the
21 Small Business Act (15 U.S.C. 638), as added
22 by this Act.

23 (4) GAO STUDY.—Not later than 1 year after
24 the date of enactment of this Act, and annually
25 thereafter for 3 years, the Comptroller General of

1 the United States shall conduct a study and submit
2 to the Committee on Small Business and Entrepre-
3 neurship and the Committee on Armed Services of
4 the Senate and the Committee on Small Business,
5 the Committee on Armed Services, and the Com-
6 mittee on Science, Space, and Technology of the
7 House of Representatives a report on the implemen-
8 tation and best practices of due diligence programs
9 established under subsection (vv) of section 9 of the
10 Small Business Act (15 U.S.C. 638), as added by
11 paragraph (1), across Federal agencies required to
12 establish an SBIR or STTR program.

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

17 (A) apply to any Federal agency with a
18 due diligence program that applies to the SBIR
19 or STTR programs required under subsection
20 (vv) of section 9 of the Small Business Act (15
21 U.S.C. 638), as added by paragraph (1), in ex-
22 istence as of the date of enactment of this Act;
23 or

24 (B) restrict any Federal agency from tak-
25 ing due diligence measures in addition to those

1 required under such subsection (vv) at the Fed-
 2 eral agency.

3 (c) DISCLOSURES REGARDING TIES TO PEOPLE’S
 4 REPUBLIC OF CHINA AND OTHER FOREIGN COUN-
 5 TRIES.—

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

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

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

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

13 “(13) require each small business concern sub-
 14 mitting a proposal or application for a federally
 15 funded award to disclose in the proposal or applica-
 16 tion—

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

22 “(B) the existence of any joint venture or
 23 subsidiary of the small business concern that is
 24 based in, funded by, or has a foreign affiliation

1 with any foreign country of concern, including
2 the People’s Republic of China;

3 “(C) any current or pending contractual or
4 financial obligation or other agreement specific
5 to a business arrangement, or joint venture-like
6 arrangement with an enterprise owned by a for-
7 eign state or any foreign entity;

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

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

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

22 “(G) any foreign business entity, offshore
23 entity, or entity outside the United States re-
24 lated to the small business concern;

1 “(14) after reviewing the disclosures of a small
 2 business concern under paragraph (13), and if deter-
 3 mined appropriate by the head of such Federal
 4 agency, request such small business concern to pro-
 5 vide true copies of any contractual or financial obli-
 6 gation or other agreement specific to a business ar-
 7 rangement, or joint-venture like arrangement with
 8 an enterprise owned by a foreign state or any for-
 9 eign entity in effect during the 5-year period pre-
 10 ceding submission of the proposal with respect to
 11 which such small business concern made such disclo-
 12 sures;”.

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

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

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

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

20 “(17) require each small business concern sub-
 21 mitting a proposal or application for a federally
 22 funded award to disclose in the proposal or applica-
 23 tion—

24 “(A) the identity of all owners and covered
 25 individuals of the small business concern who

1 are a party to any foreign talent recruitment
2 program of any foreign country of concern, in-
3 cluding the People’s Republic of China;

4 “(B) the existence of any joint venture or
5 subsidiary of the small business concern that is
6 based in, funded by, or has a foreign affiliation
7 with any foreign country of concern, including
8 the People’s Republic of China;

9 “(C) any current or pending contractual or
10 financial obligation or other agreement specific
11 to a business arrangement, or joint venture-like
12 arrangement with an enterprise owned by a for-
13 eign state or any foreign entity;

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

17 “(E) the percentage, if any, of venture
18 capital or institutional investment by an entity
19 that has a general partner or individual holding
20 a leadership role in such entity who has a for-
21 eign affiliation with any foreign country of con-
22 cern, including the People’s Republic of China;

23 “(F) any technology licensing or intellec-
24 tual property sales to a foreign country of con-
25 cern, including the People’s Republic of China,

1 during the 5-year period preceding submission
2 of the proposal; and

3 “(G) any foreign business entity, offshore
4 entity, or entity outside the United States re-
5 lated to the small business concern;

6 “(18) after reviewing the disclosures of a small
7 business concern under paragraph (17), and if deter-
8 mined appropriate by the head of such Federal
9 agency, request such small business concern to pro-
10 vide true copies of any contractual or financial obli-
11 gation or other agreement specific to a business ar-
12 rangement, or joint-venture like arrangement with
13 an enterprise owned by a foreign state or any for-
14 eign entity in effect during the 5-year period pre-
15 ceding submission of the proposal with respect to
16 which such small business concern made such disclo-
17 sures;”.

18 (d) DENIAL OF AWARDS.—

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

23 “(15) not make an award under the SBIR pro-
24 gram of the Federal agency to a small business con-

1 cern if the head of the Federal agency determines
2 that—

3 “(A) the small business concern submitting
4 the proposal or application—

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

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

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

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

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

23 “(ii) create duplication with activities
24 supported by the Federal agency;

1 “(iii) present concerns about conflicts
2 of interest;

3 “(iv) were not appropriately disclosed
4 to the Federal agency;

5 “(v) violate Federal law or terms and
6 conditions of the Federal agency; or

7 “(vi) pose a risk to national secu-
8 rity;”.

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

13 “(19) not make an award under the STTR 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;”.

1 **SEC. 5. AGENCY RECOVERY AUTHORITY AND ONGOING RE-**
 2 **PORTING.**

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

6 “(16) require a small business concern receiving
 7 an award under its SBIR program to repay all
 8 amounts received from the Federal agency under the
 9 award if—

10 “(A) the small business concern makes a
 11 material misstatement that the Federal agency
 12 determines poses a risk to national security; or

13 “(B) there is a change in ownership,
 14 change to entity structure, or other substantial
 15 change in circumstances of the small business
 16 concern that the Federal agency determines
 17 poses a risk to national security; and

18 “(17) require a small business concern receiving
 19 an award under its SBIR program to regularly re-
 20 port to the Federal agency and the Administration
 21 throughout the duration of the award on—

22 “(A) any change to a disclosure required
 23 under subparagraphs (A) through (G) of para-
 24 graph (13);

25 “(B) any material misstatement made
 26 under paragraph (16)(A); and

1 “(C) any change described in paragraph
2 (16)(B).”.

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

6 “(20) require a small business concern receiving
7 an award under its STTR program to repay all
8 amounts received from the Federal agency under the
9 award if—

10 “(A) the small business concern makes a
11 material misstatement that the Federal agency
12 determines poses a risk to national security; or

13 “(B) there is a change in ownership,
14 change to entity structure, or other substantial
15 change in circumstances of the small business
16 concern that the Federal agency determines
17 poses a risk to national security; and

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

22 “(A) any change to a disclosure required
23 under subparagraphs (A) through (G) of para-
24 graph (17);

1 “(B) any material misstatement made
2 under paragraph (20)(A); and

3 “(C) any change described in paragraph
4 (20)(B).”.

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

12 **SEC. 6. REPORT ON ADVERSARIAL MILITARY AND FOREIGN**
13 **INFLUENCE IN THE SBIR AND STTR PRO-**
14 **GRAMS.**

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

- 17 (1) the Department of Defense;
- 18 (2) the Department of Energy;
- 19 (3) the Department of Health and Human
- 20 Services; or
- 21 (4) the National Science Foundation.

22 (b) REQUIREMENT.—

- 23 (1) IN GENERAL.—Except as provided in para-
- 24 graph (2), not later than 180 days after the date of
- 25 enactment of this Act, the head of each covered

1 agency shall submit a report assessing the adver-
 2 sarial military and foreign influences in the SBIR
 3 and STTR programs at the covered agency to—

4 (A) the Committee on Armed Services, the
 5 Committee on Small Business and Entrepre-
 6 neurship, and the Committee on Commerce,
 7 Science, and Transportation of the Senate; and

8 (B) the Committee on Armed Services, the
 9 Committee on Small Business, and the Com-
 10 mittee on Science, Space, and Technology of
 11 the House of Representatives.

12 (2) DEPARTMENT OF HEALTH AND HUMAN
 13 SERVICES.—The Secretary of Health and Human
 14 Services shall submit 2 reports under paragraph
 15 (1)—

16 (A) 1 assessing the adversarial military
 17 and foreign influences in the SBIR and STTR
 18 programs of the National Institutes of Health;
 19 and

20 (B) 1 assessing the adversarial military
 21 and foreign influences in the SBIR and STTR
 22 programs of the Department of Health and
 23 Human Services other than those of the Na-
 24 tional Institutes of Health.

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

3 (1) the national security and research and in-
4 tegrity risks of the SBIR and STTR programs of
5 the covered agency; and

6 (2) the capability of such covered agency to
7 identify and mitigate such risks.

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

11 (e) INDEPENDENT ENTITY CONTRACTING.—The
12 head of each covered agency, in coordination with the
13 heads of other Federal agencies, as appropriate, may enter
14 into a contract with an independent entity to prepare a
15 report required under subsection (b).

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

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

20 (1) in subsection (b)(7)—

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

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

24 “(I) the number of applications submitted
25 to each Federal agency participating in the

1 SBIR or STTR program in innovation open
 2 topics as compared to conventional topics, and
 3 how many small business concerns receive fund-
 4 ing from open topics compared to conventional
 5 topics;

6 “(J) the total number and dollar amount,
 7 and average size, of awards made by each Fed-
 8 eral agency participating in the SBIR or STTR
 9 program, by phase, from—

10 “(i) open topics; and

11 “(ii) conventional topics;”; and

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

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

14 “(1) ESTABLISHMENT.—Not later than 180
 15 days after the date of enactment of this subsection,
 16 the Secretary of Defense shall establish innovation
 17 open topic activities using the SBIR and STTR pro-
 18 grams of the Department of Defense in order to—

19 “(A) increase the transition of commercial
 20 technology to the Department of Defense;

21 “(B) expand the small business nontradi-
 22 tional industrial base;

23 “(C) increase commercialization derived
 24 from investments of the Department of De-
 25 fense; and

1 “(D) expand the ability for qualifying
2 small business concerns to propose technology
3 solutions to meet the needs of the Department
4 of Defense.

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

9 “(3) BRIEFING.—Not later than 180 days after
10 the date of enactment of this subsection, the Sec-
11 retary of Defense shall provide a briefing on the es-
12 tablishment of the program required under para-
13 graph (1) to—

14 “(A) the Committee on Armed Services
15 and the Committee on Small Business and En-
16 trepreneurship of the Senate; and

17 “(B) the Committee on Small Business,
18 the Committee on Armed Services, and the
19 Committee on Science, Space, and Technology
20 of the House of Representatives.”.

21 (b) GAO REPORT.—Not later than 1 year after the
22 date of enactment of this Act, and annually thereafter for
23 3 years, the Comptroller General of the United States
24 shall submit to Congress and issue a publicly available re-
25 port comparing open topics and conventional topics under

1 the SBIR and STTR programs that includes, to the extent
2 practicable—

3 (1) an assessment of the percentage of small
4 business concerns that progress from Phase I to
5 Phase II awards, then to Phase III awards;

6 (2) the number of awards under the SBIR and
7 STTR programs made to first-time applicants and
8 first-time awardees;

9 (3) the number of awards under the SBIR and
10 STTR programs made to non-traditional small busi-
11 ness concerns, including those owned by women, mi-
12 norities, and veterans;

13 (4) a description of outreach and assistance ef-
14 forts by the Department of Defense to encourage
15 and prepare new and diverse small business concerns
16 to participate in the program established under sub-
17 section (ww) of section 9 of the Small Business Act
18 (15 U.S.C. 638), as added by subsection (a);

19 (5) the length of time to review and disburse
20 awards under such subsection (ww), evaluated in a
21 manner enabling normalized comparisons of such
22 times taken by each Federal agency that is required
23 to establish an SBIR or STTR program and offers
24 open topics;

1 (6) the ratio, and an assessment, of the amount
 2 of funding allocated towards open topics as com-
 3 pared to conventional topics at each Federal agency
 4 that is required to establish an SBIR or STTR pro-
 5 gram and offers open topics; and

6 (7) a comparison of the types of technology and
 7 end users funded under open topics compared to the
 8 types of technology and end users funded under con-
 9 ventional topics.

10 **SEC. 8. INCREASED MINIMUM PERFORMANCE STANDARDS**
 11 **FOR EXPERIENCED FIRMS.**

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

14 (1) in subsection (b)(7), by adding at the end
 15 the following:

16 “(K) the minimum performance standards
 17 established under subsection (qq), including any
 18 applicable modifications under paragraph (3) of
 19 such subsection, and the number of small busi-
 20 ness concerns that did not meet those minimum
 21 performance standards, provided that the Ad-
 22 ministrator does not publish any personally
 23 identifiable information, the identity of each
 24 such small business concern, or any otherwise
 25 sensitive information; and

“(L) the aggregate number and dollar amount of SBIR and STTR awards made pursuant to waivers under subsection (qq)(3)(E), provided that the Administrator does not publish any personally identifiable information, the identity of each such small business concern, or any otherwise sensitive information;” and
(2) in subsection (qq)—

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

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

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

“(A) PROGRESS TO PHASE II SUCCESS.—

“(i) IN GENERAL.—With respect to a small business concern that received or receives more than 50 Phase I awards during a covered period, each minimum performance standard established under paragraph (1)(A)(ii) shall be doubled for such covered period.

“(ii) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If the head of a Federal agency determines that a small busi-

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

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

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

16 “(i) IN GENERAL.—Each minimum
 17 performance standard established under
 18 paragraph (2)(A)(ii) shall—

19 “(I) with respect to a small busi-
 20 ness concern that received or receives
 21 more than 50 Phase II awards during
 22 a covered period, require an average
 23 of \$250,000 of aggregate sales and in-
 24 vestments per Phase II award re-
 25 ceived during such covered period; and

1 “(II) with respect to a small
2 business concern that received or re-
3 ceives more than 100 Phase II awards
4 during a covered period, require an
5 average of \$450,000 of aggregate
6 sales and investments per Phase II
7 award received during such covered
8 period.

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

22 “(iii) DOCUMENTATION.—

23 “(I) IN GENERAL.—A small busi-
24 ness concern that is subject to an in-
25 creased minimum performance stand-

1 ard described in clause (i) shall sub-
2 mit to the Administrator supporting
3 documentation evidencing that all cov-
4 ered sales of the small business con-
5 cern were properly used to meet the
6 increased minimum performance
7 standard.

8 “(II) COVERED SALE DE-
9 FINED.—In this clause, the term ‘cov-
10 ered sale’ means a sale by a small
11 business concern—

12 “(aa) that the small busi-
13 ness concern claims to be attrib-
14 utable to an SBIR or STTR
15 award;

16 “(bb) for which no amount
17 of the payment was or is made
18 using Federal funds;

19 “(cc) which the small busi-
20 ness concern uses to meet an ap-
21 plicable increased minimum per-
22 formance standard under clause
23 (i); and

24 “(dd) that was or is received
25 during the 5 fiscal years imme-

1 diately preceding the fiscal year
2 in which the small business con-
3 cern uses the sale to meet the in-
4 creased minimum performance
5 standard.

6 “(iv) COVERED PERIOD DEFINED.—In
7 this subparagraph, the term ‘covered pe-
8 riod’ means a consecutive period of 10 fis-
9 cal years preceding the most recent 2 fiscal
10 years.

11 “(C) PATENTS FOR INCREASED MINIMUM
12 PERFORMANCE STANDARDS.—A small business
13 concern with respect to which an increased min-
14 imum performance standard under subpara-
15 graph (B) applies may not meet the increased
16 minimum performance standard by obtaining
17 patents.

18 “(D) EFFECTIVE DATE.—Subparagraphs
19 (A) through (C) shall take effect on April 1,
20 2023.

21 “(E) WAIVER.—

22 “(i) IN GENERAL.—The Administrator
23 may, upon the request of a senior official
24 of a Federal agency, grant a waiver with

1 respect to a topic for the SBIR or STTR
2 program of the Federal agency if—

3 “(I) the topic is critical to the
4 mission of the Federal agency or re-
5 lates to national security; and

6 “(II) the official submits to the
7 Administrator a request for the waiver
8 in accordance with clause (iii).

9 “(ii) WAIVER EFFECTS.—If the Ad-
10 ministration grants a waiver with respect
11 to a topic for the SBIR or STTR program
12 of a Federal agency, subparagraphs (A)(ii)
13 and (B)(ii) shall not prohibit any covered
14 small business concern from receiving an
15 SBIR or STTR award under such topic.

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

1 and the Committee on Small Business and
2 Entrepreneurship of the Senate a request
3 for the waiver.

4 “(iv) ADMINISTRATOR DETERMINA-
5 TION AND CONGRESSIONAL NOTIFICA-
6 TION.—Not later than 15 days after re-
7 ceiving a request for a waiver under clause
8 (i), the Administrator shall make a deter-
9 mination with respect to the request and
10 notify the senior official at the Federal
11 agency that made the request, the Com-
12 mittee on Small Business and the Com-
13 mittee on Science, Space, and Technology
14 of the House of Representatives, and the
15 Committee on Small Business and Entre-
16 preneurship of the Senate of the deter-
17 mination.

18 “(v) DEFINITIONS.—In this subpara-
19 graph:

20 “(I) COVERED SMALL BUSINESS
21 CONCERN.—The term ‘covered small
22 business concern’ means a small busi-
23 ness concern that is subject to the
24 consequences under subparagraph
25 (A)(ii) or (B)(ii) pursuant to a deter-

mination 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 individual appointed to a position in a Federal agency that is classified above GS–15 pursuant section 5108 of title 5, United States Code, or any equivalent position, as determined by the Administrator.

“(F) REPORTING.—

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

“(I) an applicable minimum performance standard established under paragraph (1)(A)(ii) or (2)(A)(ii); or

“(II) an applicable increased minimum performance standard.

1 “(ii) WAIVERS.—Each list submitted
 2 under clause (i) shall identify each small
 3 business concern that received an SBIR or
 4 STTR award pursuant to a waiver granted
 5 under subparagraph (E) by the Adminis-
 6 trator during the period covered by the
 7 list.

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

14 “(G) IMPLEMENTATION.—Not later than
 15 April 1, 2023, the Administration shall imple-
 16 ment the increased minimum performance
 17 standards under this paragraph.

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

20 “(i) to prohibit a small business con-
 21 cern from participating in a Phase I (or
 22 Phase II if under the authority of sub-
 23 section (cc)) of an SBIR or STTR pro-
 24 gram under paragraph (1)(B) or (2)(B)
 25 solely on the basis of a determination by

1 the head of a Federal agency that the
2 small business concern is not meeting an
3 increased minimum performance standard;
4 or

5 “(ii) to prevent the head of a Federal
6 agency from implementing more restrictive
7 limitations on the number of federally
8 funded Phase I awards and direct to Phase
9 II awards under subsection (cc) that may
10 be awarded to a small business concern
11 than the limitations described in subpara-
12 graphs (A)(ii) and (B)(ii).

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

15 (C) in paragraph (5), as so redesignated,
16 by striking “paragraph (3)(A)” and inserting
17 “paragraph (4)(A)”; and

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

19 “(6) INSPECTOR GENERAL AUDIT.—Not later
20 than 1 year after the date on which the Adminis-
21 trator implements the increased minimum perform-
22 ance standards under paragraph (3), and periodi-
23 cally thereafter, the Inspector General of the Admin-
24 istration shall—

1 “(A) conduct an audit on whether the
 2 small business concerns subject to increased
 3 minimum performance standards under para-
 4 graph (3)(B) verified—

5 “(i) the sales by and investments in
 6 the small business concerns—

7 “(I) during the 5 fiscal years im-
 8 mediately preceding the fiscal year in
 9 which the small business concern used
 10 such sales and investments to meet an
 11 applicable increased performance
 12 standard; and

13 “(II) as a direct result of a
 14 Phase I award or Phase II award
 15 made under subsection (cc) during the
 16 covered period (as defined in para-
 17 graph (3)(B)(iv)), consistent with the
 18 definition of Phase III, as applicable;

19 “(ii) any third-party revenue the small
 20 business concerns list as investments or in-
 21 comes to meet the increased minimum per-
 22 formance standard—

23 “(I) is a direct result of a Phase
 24 I award or Phase II award made
 25 under subsection (cc) during the cov-

1 ered period (as defined in paragraph
2 (3)(B)(iv)); and

3 “(II) consistent with the require-
4 ments of the Administrator as in ef-
5 fect on September 30, 2022, or any
6 successor requirements; and

7 “(iii) any dollar amounts such small
8 business concerns list as investments or in-
9 come to meet such increased minimum per-
10 formance standard the providence of which
11 is unclear and that is not directly attrib-
12 utable to a Phase I award or Phase II
13 award made under subsection (cc) during
14 the covered period (as defined in para-
15 graph (3)(B)(iv)), consistent with the defi-
16 nition of Phase III, as applicable;

17 “(B) assess the self-certification require-
18 ments for the minimum performance standards
19 established under paragraph (2)(A)(ii) and the
20 increased minimum performance standards
21 under paragraph (3)(B); and

22 “(C) submit to the Committee on Small
23 Business and Entrepreneurship of the Senate
24 and the Committee on Small Business and the
25 Committee on Science, Space, and Technology

1 of the House of Representatives a report on the
 2 audit conducted under subparagraph (A) and
 3 the assessment conducted under subparagraph
 4 (B).

5 “(7) INCREASED MINIMUM PERFORMANCE
 6 STANDARD DEFINED.—In this subsection, the term
 7 ‘increased minimum performance standard’ means a
 8 minimum performance standard established under
 9 paragraph (1)(A)(ii) or (2)(A)(ii) as modified under
 10 subparagraph (A) or (B), respectively, of paragraph
 11 (3) with respect to a small business concern.”.

12 **SEC. 9. PROHIBITION AGAINST WRITING SOLICITATION**
 13 **TOPICS.**

14 (a) IN GENERAL.—Section 9 of the Small Business
 15 Act (15 U.S.C. 638), as amended by this Act, is further
 16 amended by adding at the end the following subsection:

17 “(xx) ADDITIONAL PROVISIONS RELATING TO SOLIC-
 18 ITATION TOPICS.—

19 “(1) IN GENERAL.—A Federal agency required
 20 to establish an SBIR or STTR program shall imple-
 21 ment a multi-level review and approval process with-
 22 in the Federal agency for solicitation topics to en-
 23 sure adequate competition and that no private indi-
 24 vidual or entity is shaping the requirements for eligi-
 25 bility for the solicitation topic after the selection of

1 the solicitation topic, except that the Federal agency
2 may amend the requirements to clarify the solicita-
3 tion topic.

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

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

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

21 (1) the impact of the small business concerns
22 on the SBIR and STTR programs;

23 (2) the ratio of the number of Phase II awards
24 received by the small business concerns to the total
25 number of Phase II awards;

1 (3) the ability of the small business concerns to
2 commercialize and meet the tenets of the SBIR and
3 STTR programs;

4 (4) the impact on new entrants and seeding
5 technology necessary to the Federal agency mission
6 or commercial markets and, with respect to the De-
7 partment of Defense, whether the types of tech-
8 nology the small business concerns are pursuing are
9 primarily hardware, software, or system components
10 for the warfighter;

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

13 (6) an assessment of the increased minimum
14 performance standards under paragraph (3) of sec-
15 tion 9(qq) of the Small Business Act (15 U.S.C.
16 638(qq)), as added by section 8, on the behavior of
17 those concerns and on the SBIR and STTR pro-
18 grams, and whether to continue such increased min-
19 imum performance standards; and

20 (7) recommendations on whether alternative
21 minimum performance standards under section
22 9(qq) of the Small Business Act (15 U.S.C.
23 638(qq)) should be considered, and the extent to
24 which such alternative minimum performance stand-

1 ards preserve the competitive, merit-based founda-
2 tion of the SBIR and STTR programs.

3 **SEC. 11. GAO REPORT ON SUBCONTRACTING IN SBIR AND**
4 **STTR PROGRAMS.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Comptroller General of the United States
7 shall submit to the Committee on Small Business and En-
8 trepreneurship of the Senate and the Committee on Small
9 Business and the Committee on Science, Space, and Tech-
10 nology of the House of Representatives a report evalu-
11 ating, to the extent practicable, the following:

12 (1) The extent to which SBIR awardees and
13 STTR awardees are in compliance with the Federal
14 Funding Accountability and Transparency Act (31
15 U.S.C. 6101 note).

16 (2) The extent to which SBIR awardees and
17 STTR awardees enter into subcontracting agree-
18 ments with respect to an SBIR or STTR award.

19 (3) The total number and dollar amount of sub-
20 contracts entered into between an SBIR awardee or
21 an STTR awardee and a concern that is not a small
22 business concern (including such concerns that are
23 defense contractors) with respect to an SBIR or
24 STTR award.

1 (4) A description of the type and purpose of
2 subcontracting agreements described in paragraph
3 (2).

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

Passed the Senate September 20, 2022.

Attest:

Secretary.

117TH CONGRESS
2^D SESSION
S. 4900

AN ACT

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