

Calendar No. 169

118TH CONGRESS
1ST SESSION**S. 1396**

To improve commercialization activities in the SBIR and STTR programs,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2023

Mr. COONS (for himself, Mr. RUBIO, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

JULY 25, 2023

Reported by Mr. CARDIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To improve commercialization activities in the SBIR and
STTR 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 “Research Advancing
5 to Market Production for Innovators Act”.

1 **SEC. 2. IMPROVEMENTS TO COMMERCIALIZATION SELEC-**
 2 **TION.**

3 (a) IN GENERAL.—Section 9 of the Small Business
 4 Act (15 U.S.C. 638) is amended—

5 (1) in subsection (g)—

6 (A) in paragraph (4)(B)(i), by striking “1
 7 year” and inserting “180 days”;

8 (B) in paragraph (16), by striking “and”
 9 at the end;

10 (C) in paragraph (17), by striking the pe-
 11 riod at the end and inserting “; and”; and

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

13 “(18) with respect to peer review carried out
 14 under the SBIR program, to the extent practicable,
 15 include in the peer review—

16 “(A) the likelihood of commercialization in
 17 addition to scientific and technical merit and
 18 feasibility; and

19 “(B) not less than 1 reviewer with com-
 20 mercialization expertise who is capable of as-
 21 sessing the likelihood of commercialization.”;

22 (2) in subsection (o)—

23 (A) in paragraph (4)(B)(i), by striking “1
 24 year” and inserting “180 days”;

25 (B) in paragraph (20), by striking “and”
 26 at the end;

1 (C) in paragraph (21), by striking the pe-
 2 riod at the end and inserting “; and”; and

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

4 “(22) with respect to peer review carried out
 5 under the STTR program, to the extent practicable,
 6 include in the peer review—

7 “(A) the likelihood of commercialization in
 8 addition to scientific and technical merit and
 9 feasibility; and

10 “(B) not less than 1 reviewer with com-
 11 mercialization expertise who is capable of as-
 12 sessing the likelihood of commercialization.”;

13 (3) in subsection (cc)—

14 (A) by striking “During fiscal years 2012
 15 through 2025, the National Institutes of
 16 Health, the Department of Defense, and the
 17 Department of Education” and inserting the
 18 following:

19 “(1) IN GENERAL.—During fiscal years 2024
 20 through 2029, each Federal agency with an SBIR or
 21 STTR program”; and

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

23 “(2) LIMITATION.—The total value of awards
 24 provided by a Federal agency under this subsection
 25 in a fiscal year shall be—

1 “(A) except as provided in subparagraph
 2 (B), not more than 10 percent of the total
 3 funds allocated to the SBIR and STTR pro-
 4 grams of the Federal agency during that fiscal
 5 year; and

6 “(B) with respect to the National Insti-
 7 tutes of Health, not more than 15 percent of
 8 the total funds allocated to the SBIR and
 9 STTR programs of the National Institutes of
 10 Health during that fiscal year.

11 “(3) EXTENSION.—During fiscal years 2028
 12 and 2029, each Federal agency with an SBIR or
 13 STTR program may continue phase flexibility as de-
 14 scribed in this subsection only if the reports required
 15 under subsection (tt)(1) have been submitted to the
 16 appropriate committees.”;

17 (4) in subsection (hh)(2)(A)(i), by inserting
 18 “application process and requirements” after “sim-
 19 plified and standardized”; and

20 (5) by adding at the end the following:

21 “(yy) TECHNOLOGY COMMERCIALIZATION OFFI-
 22 CIAL.—Each Federal agency participating in the SBIR or
 23 STTR program shall designate a Technology Commer-
 24 cialization Official in the Federal agency, who shall—

1 “(1) have sufficient commercialization experi-
2 ence;

3 “(2) provide assistance to SBIR and STTR
4 program awardees in commercializing and
5 transitioning technologies;

6 “(3) identify SBIR and STTR program tech-
7 nologies with sufficient technology and commer-
8 cialization readiness to advance to Phase III awards
9 or other non-SBIR or STTR program contracts;

10 “(4) coordinate with the Technology Commer-
11 cialization Officials of other Federal agencies to
12 identify additional markets and commercialization
13 pathways for promising SBIR and STTR program
14 technologies;

15 “(5) submit to the Administration an annual
16 report on the number of technologies from the SBIR
17 or STTR program that have advanced commer-
18 cialization activities, including information required
19 in the commercialization impact assessment under
20 subsection (aaa);

21 “(6) submit to the Administration an annual
22 report on actions taken by the Federal agency, and
23 the results of those actions, to simplify, standardize,
24 and expedite the application process and require-
25 ments, procedures, and contracts as required under

1 subsection (hh) and described in subsection
2 (aaa)(1)(E); and

3 “(7) carry out such other duties as the Federal
4 agency determines necessary.”

5 (b) REPORT.—Not later than 1 year after the date
6 of enactment of this Act, the Administrator of the Small
7 Business Administration shall submit to the Committee on
8 Small Business and Entrepreneurship of the Senate and
9 the Committee on Small Business of the House of Rep-
10 resentatives summarizing the metrics relating to and an
11 evaluation of the authority provided under section 9(cc)
12 of the Small Business Act, as amended by subsection (a),
13 which shall include the size and location of the small busi-
14 ness concerns receiving awards under the SBIR or STTR
15 program.

16 **SEC. 3. IMPROVEMENTS TO TECHNICAL AND BUSINESS AS-**
17 **SISTANCE; COMMERCIALIZATION IMPACT AS-**
18 **SESSMENT; PATENT ASSISTANCE.**

19 Section 9 of the Small Business Act (15 U.S.C. 638),
20 as amended by section 2, is amended—

21 (1) in subsection (q)—

22 (A) in paragraph (1), in the matter pre-
23 ceeding subparagraph (A)—

24 (i) by striking “may enter into an
25 agreement with 1 or more vendors selected

under paragraph (2)(A)” and inserting
 “shall authorize recipients of awards under
 the SBIR or STTR program to select, if
 desired, commercialization activities pro-
 vided under subparagraph (A), (B), or (C)
 of paragraph (2)”;

(ii) by inserting “, cybersecurity as-
 sistance” after “intellectual property pro-
 tections”;

(B) in paragraph (2), by adding at the end
 the following:

“(C) STAFF.—A small business concern
 may, by contract or otherwise, use funding pro-
 vided under this section to hire new staff, aug-
 ment staff, or direct staff to conduct or partici-
 pate in training activities consistent with the
 goals listed in paragraph (1).”;

(C) in paragraph (3), by striking subpara-
 graphs (A) and (B) and inserting the following:

“(A) PHASE I.—A Federal agency de-
 scribed in paragraph (1) shall authorize a re-
 cipient of a Phase I SBIR or STTR award to
 utilize not more than \$6,500 per project, in-
 cluded as part of the award of the recipient or
 in addition to the amount of the award of the

recipient as determined appropriate by the head of the Federal agency, for the services described in paragraph (1)—

“(i) provided through a vendor selected under paragraph (2)(A);

“(ii) provided through a vendor other than a vendor selected under paragraph (2)(A);

“(iii) achieved through the activities described in paragraph (2)(C); or

“(iv) provided or achieved through any combination of clauses (i), (ii), and (iii).

“(B) PHASE H.—A Federal agency described in paragraph (1) shall authorize a recipient of a Phase H SBIR or STTR award to utilize not more than \$50,000 per project, included as part of the award of the recipient or in addition to the amount of the award of the recipient as determined appropriate by the head of the Federal agency, for the services described in paragraph (1)—

“(i) provided through a vendor selected under paragraph (2)(A);

1 “(ii) provided through a vendor other
2 than a vendor selected under paragraph
3 (2)(A);

4 “(iii) achieved through the activities
5 described in paragraph (2)(C); or

6 “(iv) provided or achieved through
7 any combination of clauses (i), (ii), and
8 (iii).”; and

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

10 “(5) TARGETED REVIEW.—A Federal agency
11 may perform targeted reviews of technical and busi-
12 ness assistance funding as described in subsection
13 (mm)(1)(F).”; and

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

15 “(zz) I-CORPS PARTICIPATION.—

16 “(1) IN GENERAL.—Each Federal agency that
17 is required to conduct an SBIR or STTR program
18 with an Innovation Corps (commonly known as ‘I-
19 Corps’) program shall—

20 “(A) provide an option for participation in
21 an I-Corps teams course by recipients of an
22 award under the SBIR or STTR program; and

23 “(B) authorize the recipients described in
24 subparagraph (A) to use an award provided
25 under subsection (q) to provide additional tech-

1 nical assistance for participation in the I-Corps
2 teams course.

3 ~~“(2) COST OF PARTICIPATION.—~~The cost of
4 participation by a recipient described in paragraph
5 ~~(1)(A)~~ in an I-Corps course may be provided by—

6 ~~“(A) an I-Corps team grant;~~

7 ~~“(B) funds awarded to the recipient under~~
8 ~~subsection (q);~~

9 ~~“(C) the participating teams or other~~
10 ~~sources as appropriate; or~~

11 ~~“(D) any combination of sources described~~
12 ~~in subparagraphs (A), (B), and (C).~~

13 ~~“(aaa) COMMERCIALIZATION IMPACT ASSESS-~~
14 ~~MENT.—~~

15 ~~“(1) IN GENERAL.—~~The Administrator shall co-
16 ordinate with each Federal agency with an SBIR or
17 STTR program to develop an annual commercializa-
18 tion impact assessment report of the Federal agency;
19 which shall measure, for the 5-year period preceding
20 the report—

21 ~~“(A) for Phase II contracts—~~

22 ~~“(i) the total amount of sales of new~~
23 ~~products and services to the Federal Gov-~~
24 ~~ernment or other commercial markets;~~

1 “(ii) the total outside investment from
2 partnerships, joint ventures, or other pri-
3 vate sector funding sources;

4 “(iii) the total number of technologies
5 licensed to other companies;

6 “(iv) the total number of acquisitions
7 of small business concerns participating in
8 the SBIR program or the STTR program
9 that are acquired by other entities;

10 “(v) the total number of new spin-out
11 companies;

12 “(vi) the total outside investment
13 from venture capital or angel investments;

14 “(vii) the total number of patent ap-
15 plications;

16 “(viii) the total number of patents ac-
17 quired;

18 “(ix) the year of first Phase I award
19 and the total number of employees at time
20 of first Phase I award;

21 “(x) the total number of employees
22 from the preceding completed year; and

23 “(xi) the percent of revenue, as of the
24 date of the report, generated through
25 SBIR or STTR program funding;

1 “(B) the total number and value of subse-
 2 quent Phase II awards, as described in sub-
 3 section (bb), awarded for each particular
 4 project or technology;

5 “(C) the total number and value of Phase
 6 III awards awarded subsequent to a Phase II
 7 award;

8 “(D) the total number and value of non-
 9 SBIR and STTR program Federal awards and
 10 contracts; and

11 “(E) actions taken by the Federal agency,
 12 and the results of those actions, relating to de-
 13 veloping a simplified and standardized applica-
 14 tion process and requirements, procedures, and
 15 model contracts throughout the Federal agency
 16 for Phase I, Phase II, and Phase III SBIR pro-
 17 gram awards in subsection (hh).

18 “(2) PUBLICATION.—A commercialization im-
 19 pact assessment report described in paragraph (1) of
 20 a Federal agency shall be—

21 “(A) included in the annual report of the
 22 Federal agency required under this section; and

23 “(B) published on the website of the Ad-
 24 ministration.

25 “(bbb) PATENT ASSISTANCE.—

1 “(1) DEFINITIONS.—In this subsection—

2 “(A) the term ‘Director’ means the Under
3 Secretary of Commerce for Intellectual Property
4 and Director of the USPTO; and

5 “(B) the term ‘USPTO’ means the United
6 States Patent and Trademark Office.

7 “(2) ASSISTANCE.—

8 “(A) IN GENERAL.—The Administrator
9 shall enter into an interagency agreement with
10 the Director under which the Director shall as-
11 sist recipients of an award under the SBIR or
12 STTR program (in this paragraph referred to
13 as ‘SBIR and STTR recipients’) relating to in-
14 tellectual property protection by establishing a
15 prioritized patent examination program for
16 SBIR and STTR recipients.

17 “(B) PROGRAM DETAILS.—The program
18 established by the Director under subparagraph
19 (A) shall have the following characteristics:

20 “(i) The program shall incorporate all
21 existing (as of the date on which the Direc-
22 tor establishes the program) benefits under
23 the procedures for prioritized examination
24 described in section 11(h) of the Leahy-

1 Smith America Invents Act (35 U.S.C. 41
2 note).

3 “(ii) Under the program, with respect
4 to prioritized examination, an SBIR or
5 STTR recipient shall not be required to
6 pay any prioritized examination fee or
7 processing fee otherwise required under
8 section 41(h) of the Leahy-Smith America
9 Invents Act (35 U.S.C. 41 note).

10 “(iii) Under the program, the Director
11 shall ensure that, of the total number of
12 requests for prioritized examination accept-
13 ed by the USPTO in a fiscal year, the
14 greater of the following shall be reserved
15 for prioritized examinations for SBIR and
16 STTR recipients:

17 “(I) 5 percent of the total num-
18 ber of such requests that may be ac-
19 cepted during that fiscal year.

20 “(II) 500 requests for prioritized
21 examination.

22 “(iv) Under the program, the Director
23 may not grant more than 2 prioritized ex-
24 amination requests to any individual recipi-
25 ent.

1 “(v) Under the program, the Director
 2 may increase the number of requests for
 3 prioritized examination that may be ac-
 4 cepted in any fiscal year (as described in
 5 section 1.102(e) of title 37, Code of Fed-
 6 eral Regulations, or any successor regula-
 7 tion) by the number determined under
 8 clause (iii) for that fiscal year.

9 “(C) RULES.—The Director shall issue
 10 rules to carry out the prioritized patent exam-
 11 ination program established under this para-
 12 graph.

13 “(3) OUTREACH.—The Administrator shall co-
 14 ordinate with the Director to provide outreach re-
 15 garding the Pro Se Assistance Program of, and
 16 scam prevention services provided by, the USPTO.”.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Research Advancing to*
 19 *Market Production for Innovators Act”.*

20 **SEC. 2. IMPROVEMENTS TO COMMERCIALIZATION SELEC-**
 21 **TION.**

22 (a) *IN GENERAL.*—Section 9 of the Small Business Act
 23 (15 U.S.C. 638) is amended—

24 (1) in subsection (g)—

1 (A) in paragraph (4)(B)(i), by striking “1
2 year” and inserting “180 days”;

3 (B) in paragraph (16), by striking “and”
4 at the end;

5 (C) in paragraph (17), by striking the pe-
6 riod at the end and inserting “; and”; and

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

8 “(18) with respect to peer review carried out
9 under the SBIR program, to the extent practicable,
10 include in the peer review—

11 “(A) the likelihood of commercialization in
12 addition to scientific and technical merit and
13 feasibility; and

14 “(B) not less than 1 reviewer with commer-
15 cialization expertise who is capable of assessing
16 the likelihood of commercialization.”;

17 (2) in subsection (o)—

18 (A) in paragraph (4)(B)(i), by striking “1
19 year” and inserting “180 days”;

20 (B) in paragraph (20), by striking “and”
21 at the end;

22 (C) in paragraph (21), by striking the pe-
23 riod at the end and inserting “; and”; and

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

1 “(22) with respect to peer review carried out
2 under the STTR program, to the extent practicable,
3 include in the peer review—

4 “(A) the likelihood of commercialization in
5 addition to scientific and technical merit and
6 feasibility; and

7 “(B) not less than 1 reviewer with commer-
8 cialization expertise who is capable of assessing
9 the likelihood of commercialization.”;

10 (3) in subsection (cc)—

11 (A) by striking “During fiscal years 2012
12 through 2025, the National Institutes of Health,
13 the Department of Defense, and the Department
14 of Education” and inserting the following:

15 “(1) IN GENERAL.—During fiscal years 2024
16 and 2025, each Federal agency with an SBIR or
17 STTR program”; and

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

19 “(2) LIMITATION.—The total value of awards
20 provided by a Federal agency under this subsection in
21 a fiscal year shall be—

22 “(A) except as provided in subparagraph
23 (B), not more than 10 percent of the total funds
24 allocated to the SBIR and STTR programs of
25 the Federal agency during that fiscal year; and

1 “(B) with respect to the National Institutes
 2 of Health, not more than 15 percent of the total
 3 funds allocated to the SBIR and STTR pro-
 4 grams of the National Institutes of Health dur-
 5 ing that fiscal year.

6 “(3) *EXTENSION.*—During fiscal year 2025, each
 7 Federal agency with an SBIR or STTR program
 8 may continue phase flexibility as described in this
 9 subsection only if the reports required under sub-
 10 section (tt)(1) have been submitted to the appropriate
 11 committees.”;

12 (4) in subsection (hh)(2)(A)(i), by striking “sim-
 13 plified and standardized procedures and model con-
 14 tracts” and inserting “a simplified and standardized
 15 application process and requirements, procedures, and
 16 model contracts”; and

17 (5) by adding at the end the following:

18 “(yy) *TECHNOLOGY COMMERCIALIZATION OFFICIAL.*—
 19 Each Federal agency participating in the SBIR or STTR
 20 program shall designate a Technology Commercialization
 21 Official in the Federal agency, who shall—

22 “(1) have sufficient commercialization experi-
 23 ence;

1 “(2) *provide assistance to SBIR and STTR pro-*
2 *gram awardees in commercializing and transitioning*
3 *technologies;*

4 “(3) *identify SBIR and STTR program tech-*
5 *nologies with sufficient technology and commer-*
6 *cialization readiness to advance to Phase III awards*
7 *or other non-SBIR or STTR program contracts;*

8 “(4) *coordinate with the Technology Commer-*
9 *cialization Officials of other Federal agencies to iden-*
10 *tify additional markets and commercialization path-*
11 *ways for promising SBIR and STTR program tech-*
12 *nologies;*

13 “(5) *submit to the Administration an annual re-*
14 *port on the number of technologies from the SBIR or*
15 *STTR program that have advanced commercializa-*
16 *tion activities, including information required in the*
17 *commercialization impact assessment under sub-*
18 *section (aaa);*

19 “(6) *submit to the Administration an annual re-*
20 *port on actions taken by the Federal agency, and the*
21 *results of those actions, to simplify, standardize, and*
22 *expedite the application process and requirements,*
23 *procedures, and contracts as required under sub-*
24 *section (hh) and described in subsection (aaa)(1)(E);*
25 *and*

1 “(7) carry out such other duties as the Federal
2 agency determines necessary.”.

3 (b) *REPORT*.—Not later than 1 year after the date of
4 enactment of this Act, the Administrator of the Small Busi-
5 ness Administration shall submit to the Committee on
6 Small Business and Entrepreneurship of the Senate and
7 the Committee on Small Business of the House of Represent-
8 atives a report summarizing the metrics relating to and an
9 evaluation of the authority provided under section 9(cc) of
10 the Small Business Act (15 U.S.C. 638(cc)), as amended
11 by subsection (a), which shall include the size and location
12 of the small business concerns (as defined in section 3 of
13 the Small Business Act (15 U.S.C. 632)) receiving awards
14 under the SBIR or STTR program.

15 **SEC. 3. IMPROVEMENTS TO TECHNICAL AND BUSINESS AS-**
16 **SISTANCE; COMMERCIALIZATION IMPACT AS-**
17 **SESSMENT; PATENT ASSISTANCE.**

18 Section 9 of the Small Business Act (15 U.S.C. 638),
19 as amended by section 2, is amended—

20 (1) in subsection (q)—

21 (A) in paragraph (1), in the matter pre-
22 ceding subparagraph (A)—

23 (i) by striking “may enter into an
24 agreement with 1 or more vendors selected
25 under paragraph (2)(A) to provide small

1 *business concerns engaged in SBIR or*
 2 *STTR projects with technical and business*
 3 *assistance services” and inserting “shall au-*
 4 *thorize recipients of awards under the SBIR*
 5 *or STTR program to select, if desired, tech-*
 6 *nical and business assistance provided*
 7 *under subparagraph (A), (B), or (C) of*
 8 *paragraph (2) with respect to SBIR or*
 9 *STTR projects”;*

10 (ii) by inserting “cybersecurity assist-

11 *ance,” after “intellectual property protec-*

12 *tions,”; and*

13 (iii) by striking “such concerns” and

14 inserting “such recipients”;

15 (B) in paragraph (2), by adding at the end

16 *the following:*

17 “(C) *STAFF*.—A small business concern

18 *may, by contract or otherwise, use funding pro-*

19 *vided under this section to hire new staff, aug-*

20 *ment staff, or direct staff to conduct or partici-*

21 *pate in training activities consistent with the*

22 *goals listed in paragraph (1).”;*

23 (C) in paragraph (3), by striking subpara-

24 graphs (A) and (B) and inserting the following:

1 “(A) *PHASE I.*—A Federal agency described
2 in paragraph (1) shall authorize a recipient of
3 a Phase I SBIR or STTR award to utilize not
4 more than \$6,500 per project, included as part
5 of the award of the recipient or in addition to
6 the amount of the award of the recipient as de-
7 termined appropriate by the head of the Federal
8 agency, for the services described in paragraph
9 (1)—

10 “(i) provided through a vendor selected
11 under paragraph (2)(A);

12 “(ii) provided through a vendor other
13 than a vendor selected under paragraph
14 (2)(A);

15 “(iii) achieved through the activities
16 described in paragraph (2)(C); or

17 “(iv) provided or achieved through any
18 combination of clauses (i), (ii), and (iii).

19 “(B) *PHASE II.*—A Federal agency de-
20 scribed in paragraph (1) shall authorize a re-
21 cipient of a Phase II SBIR or STTR award to
22 utilize not more than \$50,000 per project, in-
23 cluded as part of the award of the recipient or
24 in addition to the amount of the award of the re-
25 cipient as determined appropriate by the head of

1 *the Federal agency, for the services described in*
 2 *paragraph (1)—*

3 “(i) *provided through a vendor selected*
 4 *under paragraph (2)(A);*

5 “(ii) *provided through a vendor other*
 6 *than a vendor selected under paragraph*
 7 *(2)(A);*

8 “(iii) *achieved through the activities*
 9 *described in paragraph (2)(C); or*

10 “(iv) *provided or achieved through any*
 11 *combination of clauses (i), (ii), and (iii).”;*
 12 *and*

13 *(D) by adding at the end the following:*

14 “(5) *TARGETED REVIEW.—A Federal agency*
 15 *may perform targeted reviews of technical and busi-*
 16 *ness assistance funding as described in subsection*
 17 *(mm)(1)(F).”; and*

18 *(2) by adding at the end the following:*

19 “(zz) *I-CORPS PARTICIPATION.—*

20 “(1) *IN GENERAL.—Each Federal agency that is*
 21 *required to conduct an SBIR or STTR program with*
 22 *an Innovation Corps (commonly known as ‘I-Corps’)*
 23 *program shall—*

1 “(A) provide an option for participation in
2 an I-Corps teams course by recipients of an
3 award under the SBIR or STTR program; and

4 “(B) authorize the recipients described in
5 subparagraph (A) to use an award provided
6 under subsection (q) to provide additional tech-
7 nical assistance for participation in the I-Corps
8 teams course.

9 “(2) COST OF PARTICIPATION.—The cost of par-
10 ticipation by a recipient described in paragraph
11 (1)(A) in an I-Corps course may be provided by—

12 “(A) an I-Corps team grant;

13 “(B) funds awarded to the recipient under
14 subsection (q);

15 “(C) the participating teams or other
16 sources as appropriate; or

17 “(D) any combination of sources described
18 in subparagraphs (A), (B), and (C).

19 “(aaa) COMMERCIALIZATION IMPACT ASSESSMENT.—

20 “(1) IN GENERAL.—The Administrator shall co-
21 ordinate with each Federal agency with an SBIR or
22 STTR program to develop an annual commercializa-
23 tion impact assessment report of the Federal agency,
24 which shall measure, for the 5-year period preceding

1 *the report (except with respect to subparagraph*
2 *(A)(x))—*

3 *“(A) for Phase II contracts—*

4 *“(i) the total amount of sales of new*
5 *products and services to the Federal Govern-*
6 *ment or other commercial markets;*

7 *“(ii) the total outside investment from*
8 *partnerships, joint ventures, or other pri-*
9 *vate sector funding sources;*

10 *“(iii) the total number of technologies*
11 *licensed to other companies;*

12 *“(iv) the total number of acquisitions*
13 *of small business concerns participating in*
14 *the SBIR program or the STTR program*
15 *that are acquired by other entities;*

16 *“(v) the total number of new spin-out*
17 *companies;*

18 *“(vi) the total outside investment from*
19 *venture capital or angel investments;*

20 *“(vii) the total number of patent appli-*
21 *cations;*

22 *“(viii) the total number of patents ac-*
23 *quired;*

1 “(ix) the year of first Phase I award
2 and the total number of employees at time
3 of first Phase I award;

4 “(x) the total number of employees, as
5 of October 1 of the year preceding the year
6 in which the report is submitted; and

7 “(xi) the percent of revenue, as of the
8 date of the report, generated through SBIR
9 or STTR program funding;

10 “(B) the total number and value of subse-
11 quent Phase II awards, as described in sub-
12 section (bb), awarded for each particular project
13 or technology;

14 “(C) the total number and value of Phase
15 III awards awarded subsequent to a Phase II
16 award;

17 “(D) the total number and value of non-
18 SBIR and STTR program Federal awards and
19 contracts; and

20 “(E) actions taken by the Federal agency,
21 and the results of those actions, relating to devel-
22 oping a simplified and standardized application
23 process and requirements, procedures, and model
24 contracts throughout the Federal agency for

1 *Phase I, Phase II, and Phase III SBIR program*
 2 *awards in subsection (hh).*

3 “(2) *REPORTING BY CERTAIN CONCERNS.—For*
 4 *each fiscal year, each small business concern that has*
 5 *received more than 50 Phase II awards on or after*
 6 *October 1 of the ninth fiscal year before that fiscal*
 7 *year shall report to the Administration—*

8 “(A) *the rate of transition of the small busi-*
 9 *ness concern to Federal contracts outside of the*
 10 *SBIR and STTR program; and*

11 “(B) *the gross revenue of the small business*
 12 *concern and the amount of gross revenue derived*
 13 *from SBIR and STTR Phase I and Phase II*
 14 *awards.*

15 “(3) *PUBLICATION.—A commercialization im-*
 16 *pact assessment report described in paragraph (1) of*
 17 *a Federal agency shall be—*

18 “(A) *included in the annual report of the*
 19 *Federal agency required under this section; and*

20 “(B) *published on the website of the Admin-*
 21 *istration.*

22 “(bbb) *PATENT ASSISTANCE.—*

23 “(1) *DEFINITIONS.—In this subsection—*

1 “(A) the term ‘Director’ means the Under
2 Secretary of Commerce for Intellectual Property
3 and Director of the USPTO; and

4 “(B) the term ‘USPTO’ means the United
5 States Patent and Trademark Office.

6 “(2) ASSISTANCE.—

7 “(A) IN GENERAL.—The Administrator
8 shall enter into an interagency agreement with
9 the Director under which the Director shall assist
10 recipients of an award under the SBIR or STTR
11 program (in this paragraph referred to as ‘SBIR
12 and STTR recipients’) relating to intellectual
13 property protection by establishing a prioritized
14 patent examination program for SBIR and
15 STTR recipients.

16 “(B) PROGRAM DETAILS.—The program es-
17 tablished by the Director under subparagraph
18 (A) shall have the following characteristics:

19 “(i) The program shall incorporate all
20 existing (as of the date on which the Direc-
21 tor establishes the program) benefits under
22 the procedures for prioritized examination
23 described in section 11(h) of the Leahy-
24 Smith America Invents Act (35 U.S.C. 41
25 note).

1 “(ii) Under the program, with respect
2 to prioritized examination, an SBIR or
3 STTR recipient shall not be required to pay
4 any prioritized examination fee or proc-
5 essing fee otherwise required under section
6 11(h) of the Leahy-Smith America Invents
7 Act (35 U.S.C. 41 note).

8 “(iii) Under the program, the Director
9 shall ensure that, of the total number of re-
10 quests for prioritized examination accepted
11 by the USPTO in a fiscal year, the greater
12 of the following shall be reserved for
13 prioritized examinations for SBIR and
14 STTR recipients:

15 “(I) 5 percent of the total number
16 of such requests that may be accepted
17 during that fiscal year.

18 “(II) 500 requests for prioritized
19 examination.

20 “(iv) Under the program, the Director
21 may not grant more than 2 prioritized ex-
22 amination requests to any individual re-
23 cipient.

24 “(v) Under the program, the Director
25 may increase the number of requests for

1 *prioritized examination that may be accept-*
2 *ed in any fiscal year (as described in sec-*
3 *tion 1.102(e) of title 37, Code of Federal*
4 *Regulations, or any successor regulation) by*
5 *the number determined under clause (iii)*
6 *for that fiscal year.*

7 “(C) *RULES.—The Director shall issue rules*
8 *to carry out the prioritized patent examination*
9 *program established under this paragraph.*

10 “(3) *OUTREACH.—The Administrator shall co-*
11 *ordinate with the Director to provide outreach regard-*
12 *ing the Pro Se Assistance Program of, and scam pre-*
13 *vention services provided by, the USPTO.”.*

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118TH CONGRESS
1ST Session

S. 1396

A BILL

To improve commercialization activities in the
SBIR and STTR programs, and for other purposes.

JULY 25, 2023

Reported with an amendment