

U.S. SMALL BUSINESS ADMINISTRATION

Statement of Regulatory Priorities

Overview

The mission of the U.S. Small Business Administration (SBA) is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses and by assisting in the physical and economic recovery of communities after disasters. In carrying out this mission, SBA strives to improve the economic environment for small businesses, including those in rural areas and in areas that have significantly higher unemployment and lower income levels than the Nation's averages and those in traditionally underserved markets. SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for those starting or growing a small business. For example, the Agency serves as a guarantor of loans made to small businesses by lenders that participate in SBA's programs, and also licenses small business investment companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA-guaranteed leverage. SBA also funds various training and mentoring programs to help small businesses, particularly businesses owned by women, veterans, minorities, and other historically underrepresented groups, gain access to Federal government contracting opportunities. The Agency also provides management and technical assistance to existing or potential small business owners through various grants, cooperative agreements or contracts. Finally, as a vital part of its purpose, SBA also provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster.

Reducing Burden on Small Businesses

SBA’s regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on the public, in particular the Agency’s core constituents—small businesses. SBA’s regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order 12866, “Regulatory Planning and Review;” Executive Order 13563, “Improving Regulation and Regulatory Review;” and the Regulatory Flexibility Act. SBA’s program offices are particularly invested in finding ways to reduce the burden imposed by the Agency’s core activities in its loan, grant, innovation, and procurement programs.

On January 30, 2017, President Trump issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” (82 FR 9339), which established principles for prioritizing an agency's regulatory and deregulatory actions. Executive Order 13771 was followed by Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” (82 FR 12285, February 24, 2017), which identified processes for agencies to follow in overseeing their regulatory programs. This Agenda was prepared in accordance with both Executive Order 13771 and Executive Order 13777, and SBA will continue to work with the Office of Management and Budget to fully integrate the executive orders and to implement OMB guidance into SBA’s rulemaking processes. As part of that effort, SBA issued a Request for Information in the Federal Register requesting public input on which SBA regulations should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective or burdensome (82 FR 38617, August 15, 2017). The Agency is amending its regulations as appropriate.

Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA routinely solicits comments on its regulations, even those that are not

subject to the public notice and comment requirement under the Administrative Procedure Act. Where appropriate, SBA also conducts hearings, webinars, and other public events as part of its regulatory process.

Regulatory Framework

The SBA Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve months. This Strategic Plan provides a framework for strengthening, streamlining, and simplifying SBA's programs while leveraging collaborative relationships with other agencies and the private sector to maximize the tools small business owners and entrepreneurs need to drive American innovation and strengthen the economy. The plan sets out four strategic goals: (1) Support small business revenue and job growth; (2) Build healthy entrepreneurial ecosystems and create business friendly environments; (3) Restore small businesses and communities after disasters; and (4) Strengthen SBA's ability to serve small businesses. In order to achieve these goals SBA will, among other objectives, focus on:

- Expanding access to capital through SBA's extensive lending network;
- Helping small business exporters succeed in global markets;
- Ensuring Federal contracting and innovation goals are met or exceeded;
- Empowering veterans and military families who want to start or grow their business;
- Delivering entrepreneurial counseling and training services in collaboration with resource partners; and
- Enhancing program oversight and risk management and improving recovery of taxpayer assets.

The regulations reported in SBA's semi-annual regulatory agenda and plan are intended to facilitate achievement of these strategic goals and objectives and further the objectives of

Executive Order 13771. Over the next twelve months, SBA's highest priorities will be to implement the following two regulations.

Executive Order 13771 Designation – Other

1. National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments (RIN: 3245-AH28)

Federal contractors are required to maintain an acceptable subcontracting plan if they are an other than small business (including all subsidiaries and affiliates, both foreign and domestic) and the estimated dollar value of the base contract and all option periods exceeds, or is expected to exceed, \$700,000. Contractors that meet this criteria must establish a subcontracting plan with specific dollar and percent goals for subcontracting to small, HUBZone small, small disadvantaged, small women-owned, Veteran-owned small, and service-disabled Veteran-owned small business firms. This plan must be in place prior to contract award. Section 870 of the National Defense Authorization Act of 2020, Pub. L. 116-92 (NDAA 2020), requires SBA to alter the method and means of accounting for lower tier small business subcontracting. Specifically, the section amends section 8(d) of the Small Business Act (15 U.S.C. 637) to clarify that large prime contractors have the ability to receive subcontracting credit for small businesses at lower tiers; strengthen the Agency's ability to collect and review data regarding prime contractors' achievement of their subcontracting plans; and require the prime contractor to keep and maintain records to demonstrate subcontracting credit claimed.

Implementing regulatory language for Credit for Lower Tier Subcontracting will further support the Administration's objectives to better assist small business through subcontracting opportunities. SBA believes that these regulations will increase the use of, and the benefits obtained from, subcontracting plans; strengthen the pre/post award assessment of prime

contractors' compliance with their subcontracting plans; and provide additional oversight and incentives to help ensure that small business subcontractors receive prompt payment for work performed under their subcontracting plans.

2. SBIR/STTR Policy Directive Updates Based on NDAA 2020 Changes and Other Miscellaneous Clarifications (RIN: 3245-AH32)

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are highly competitive programs that encourage domestic small businesses to engage in Federal Research/Research and Development (R/R&D) with the potential for commercialization. Through a competitive awards-based program, SBIR and STTR enable small businesses to explore their technological potential and provide the incentive to profit from its commercialization. By including qualified small businesses in the nation's R&D arena, high-tech innovation is stimulated, and the United States gains entrepreneurial spirit as it meets its specific research and development needs. Central to the STTR program is the partnership between small businesses and nonprofit research institutions. The STTR program requires the small business to formally collaborate with a research institution in Phase I and Phase II. STTR's most important role is to bridge the gap between performance of basic science and commercialization of resulting innovations.

Each year, Federal agencies with extramural research and development (R&D) budgets that exceed \$100 million are required to allocate 3.2% (since FY2017) of this extramural R&D budget to fund small businesses through the SBIR program. Federal agencies with extramural R&D budgets that exceed \$1 billion are required to reserve 0.45% (since FY2016) of this extramural R&D budget for the STTR program. Currently, eleven Federal agencies participate in the SBIR program and five of those agencies also participate in the STTR program.

Each agency administers its own individual program within guidelines established by Congress. These agencies designate R&D topics in their solicitations and accept proposals from small businesses. Awards are made on a competitive basis after proposal evaluation.

SBA serves as the coordinating agency for the SBIR/STTR programs. It directs the agencies' implementation of SBIR/STTR, reviews their progress, and reports annually to Congress on its operation. SBA is also the information link to small businesses for the SBIR/STTR programs.

SBA proposes to incorporate changes to the SBIR/STTR Policy Directive that reflect changes made by the NDAA 2020 to section 9 of the Small Business Act, 15 U.S.C. section 638, which governs the SBA's Small Business Innovation Research and Small Business Technology Transfer Programs. Section 880 of the NDAA 2020 amends 15 U.S.C. section 638(b) and authorizes SBA to consult with personnel from the agencies that participate in the SBIR/STTR programs to assist small business concerns with commercializing research developed under the programs before receiving a funding agreement. Section 880 of NDAA 2020 also amends 15 U.S.C. sections (j) and (p), which require that SBA modify the policy directive to require procurement center representatives (as described at 15 U.S.C. section 644(l)) to consult with personnel from participating agencies to assist SBCs participating in the SBIR/STTR programs, and particularly with Phase III. Section 881 of NDAA 2020 modifies 15 U.S.C. section 638(q), and adds cybersecurity technical assistance as one of the services that small businesses participating in the SBIR/STTR programs may fund with technical and business assistance funding, as detailed in that section. Finally, section 884 of NDAA 2020 authorizes the Department of Defense to establish and administer the Defense Investment Pilot Program, which expands eligibility for SBIR/STTR awards to entities that are owned exclusively by multiple

U.S.-owned venture capital operating companies (VCOCs), hedge funds (HFs), or private equity firms (PEFs). Under this pilot program, eligibility is also expanded to entities that are majority owned by multiple U.S.-owned VCOCs, HFs, and PEFs, if minority foreign ownership is limited to members of the national technology and industrial base, as defined at 10 U.S.C. section 2500. In addition to these updates to the policy directive, which reflect statutory changes to the programs, SBA proposes two miscellaneous clarifications regarding: (1) phase III award eligibility and (2) simplifying the SBIR/STTR certification language. The proposed changes provide small businesses greater clarity, transparency, and consistency for the SBIR/STTR programs across the participating Federal agencies. The costs of this action have not yet been fully assessed.