

Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including Executive Order 12958 of April 17, 1995, as amended [50 U.S.C. 435 note].

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

**§ 638a. GAO study with respect to venture capital operating company, hedge fund, and private equity firm involvement**

Not later than 3 years after December 31, 2011, and every 3 years thereafter, the Comptroller General of the United States shall—

- (1) conduct a study of the impact of requirements relating to venture capital operating company, hedge fund, and private equity firm involvement under section 638 of this title; and
- (2) submit to Congress a report regarding the study conducted under paragraph (1).

(Pub. L. 112-81, div. E, title LI, §5142, Dec. 31, 2011, 125 Stat. 1854.)

CODIFICATION

Section was enacted as part of the SBIR/STTR Reauthorization Act of 2011, and also as part of the National Defense Authorization Act for Fiscal Year 2012, and not as part of the Small Business Act which comprises this chapter.

**§ 638b. Reducing vulnerability of SBIR and STTR programs to fraud, waste, and abuse**

**(a) Fraud, waste, and abuse prevention**

**(1) Amendments required for fraud, waste, and abuse prevention**

Not later than 90 days after December 31, 2011, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

**(2) Content of amendments**

The amendments required under paragraph (1) shall include—

- (A) definitions or descriptions of fraud, waste, and abuse;
- (B) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program;
- (C) a requirement that each Federal agency that participates in the SBIR program or STTR program include information concerning the method established by the Inspector General of the Federal agency to report fraud, waste, and abuse (including any telephone hotline or Web-based platform)—
  - (i) on the Web site of the Federal agency; and
  - (ii) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program; and

(D) a requirement that each applicant for and small business concern that receives funding under the SBIR program or the STTR program shall certify whether the applicant or small business concern is in compliance with the laws relating to the SBIR program and the STTR program and the conduct guidelines established under the SBIR Policy Directive and the STTR Policy Directive.

**(3) Consultation**

The Administrator shall develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for the certification set forth under paragraph (2)(D) after providing notice of and an opportunity for public comment on such procedures and requirements.

**(4) Certification**

The certification developed under paragraph (3) may—

- (A) cover the lifecycle of an award to require certifications at the application, funding, reporting, and closeout phases of every SBIR and STTR award;
- (B) require the small business concern to certify compliance with the “principal investigator<sup>1</sup> primary employment” requirement, the “small business concern” definition requirement, and the “performance of work” requirements as set forth in the Directive applicable to the award;
- (C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and
- (D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and

- (D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

**(5) Inspectors General**

The Inspector General of each Federal agency that participates in the SBIR program or STTR program shall cooperate to prevent fraud, waste, and abuse in the SBIR program and the STTR program by—

- (A) establishing fraud detection indicators;
- (B) reviewing regulations and operating procedures of the Federal agency;
- (C) coordinating information sharing between Federal agencies, to the extent otherwise permitted under Federal law; and
- (D) improving the education and training of and outreach to—

- (i) administrators of the SBIR program and the STTR program of the Federal agency;

<sup>1</sup> So in original. Probably should be “investor”.