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SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Looks like I can put my SBIR/STTR reauthorization story in storage for another year. Earlier this year, I reported on yet another attempt to provide for a long-term renewal of the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) program. Two weeks ago, I reported that the Senate had reached an impasse not over the merits of reauthorization, but over whether the reauthorization bill should resemble a Christmas tree with non-germane bulbs. Turn out the lights on that Christmas tree. The Senate quietly passed a one-year reauthorization bill by unanimous consent late last week. The House will vote on it this week, since the current short-term extension expires on May 31st.

To refresh memories, the SBIR program provides federal research and development funding to small businesses to develop products and services that fulfill the federal government's research priorities but that also can eventually be commercialized. The program was created in 1982. Each year,

eleven federal departments and agencies are required by SBIR to reserve a portion (2.5 percent) of their R&D funds for awards to small business.

The STTR program uses federal innovation research and development funding for joint venture opportunities for small business and nonprofit research institutions. Each year, five federal departments and agencies are required by STTR to reserve a portion (.3 percent) of their R&D funds for award to small business/nonprofit research institution partnerships.

Ever since the SBIR program was created in 1982, there have been struggles to reauthorize the program whenever it has expired. Some federal agencies have resisted any effort to divert their research dollars. In addition, they have resisted having their discretion to manage the program limited. The program's last long-term reauthorization expired in 2008. It has been extended ten times for shorter terms since. In recent years, there has been some "in fighting" that has plagued the effort to reauthorize the program on a long-term basis. Firms owned by venture capital companies were not eligible

for the awards. There was resistance by the community of small businesses that received the funding over the years from letting such firms into the program. The fear was they would be more successful in winning the funds and the funding pie was small to begin with.

Ironically, when Senators attempted to load up the Christmas tree with extra tinsel, the one that apparently broke the bough was an amendment Senator Olympia Snowe (R-ME) wanted to offer. The amendment would make a variety of (innovative and useful, in my opinion) changes to another small business institution - the Regulatory Flexibility Act and its progeny, the Small Business Regulatory Enforcement Fairness Act. The Majority Leader balked and down went the SBIR/STTR bill.

Senator Snowe will be looking for other vehicles to which she can attach the RFA and SBREFA amendments. I will have more on that another day.

RFA AND SBREFA

For the moment, here's a brief refresher of RFA and SBREFA.

The Regulatory Flexibility Act (RFA), enacted in September 1980,

requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The RFA applies to a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

The Small Business Regulatory Enforcement Fairness Act (SBREFA), enacted in March 1996, amended the RFA and provided additional tools to aid small business in the fight for regulatory fairness. The most significant amendments made by SBREFA were:

- Judicial review of agency compliance with some of the RFA's provisions.
- Requirements for more detailed and substantive regulatory flexibility analyses.
- Expanded participation by small businesses in the development of rules by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) by requiring those agencies to convene Small Business Advocacy Review panels composed of representatives from the agency, OMB's Office of Information and Regulatory Affairs (OIRA) and the Small Business Administration's (SBA) Chief Counsel for Advocacy. The panels must collect the advice and recommendations of representatives of affected small entities about the potential impact of the draft rule. (The recently passed Dodd-Frank financial reform law added the Consumer Financial Protection Bureau to the list of agencies that have to convene small business panels)