U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

February 25, 2015

The Honorable Rob Portman
United States Senate
Washington, DC 20510

Dear Senator Portman:

Administrator Contreras-Sweet has asked me to respond to your recent letter regarding the statutory requirement that a small business concern meet the minimum performance requirements for the transition from Phase I to Phase II in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs. In that letter, you noted your concern as to whether the U.S. Small Business Administration (SBA) adequately communicated the details of this requirement to the affected small businesses and asked four specific questions regarding implementation.

Below, I address each of the questions in your letter.

1) Does the SBA provide advance notice to SBIR grant recipients about changes to the rules and requirements governing the program? If so, how much prior notice does SBA provide?

In general, SBA provides advance notice to the public about changes to the rules and requirements governing the SBIR program. SBA has provided at least 60 days of notice and opportunity to comment on the transition rate benchmarks.

I note that § 5165 of the 2011 SBIR/STTR Reauthorization Act, Public Law 112-81, Section 5001, Division E of the Defense Authorization Act, requires agencies to establish minimum performance standards, or transition rate benchmarks, to measure the success of Phase I awardees in receiving Phase II awards. SBA implemented the framework for the benchmarks at § 4(a) of the Policy Directives. This section of the Policy Directive states the time period over which a firm's transition rate is assessed, the threshold number of Phase I awards that an awardee must have received during this time period for the transition rate benchmark to be applicable, and the consequences for not meeting the benchmarks. As required by Section 5165 of the Reauthorization Act, 15 U.S.C. § 638(qq)(2)(B), the consequence of failing to meet the transition rate benchmark is ineligibility to receive new SBIR or STTR Phase I awards for a period of 1 year.

The responsibility for establishing the minimum requirement regarding transition from Phase I to Phase II was given to the participating agencies subject to approval by SBA. In an effort to minimize the complication and participant burden caused by this requirement, all participating agencies have elected to use the same standard.

An agency may, subject to SBA's approval, revise its requirement at any time.

Currently, the Phase I to Phase II transition rate requirement applies only to SBIR and STTR Phase I awardees that have received more than 20 Phase I awards over the past 5 fiscal years, excluding the most recently-completed fiscal year. The transition rate for a company is calculated by dividing the number of Phase II awards received over the past 5 fiscal years, by the number of Phase I awards received over the past 5 fiscal years excluding the most recently completed fiscal year. These rates are calculated using a company's awards across all the agencies. The minimum transition rate (ratio of Phase II awards to Phase I awards) is currently set at 0.25.

SBA first implemented this statutory provision in the Federal Register at 77 Fed. Reg. 46806 (August 6, 2012) by setting forth the framework for the benchmarks in its policy directives. SBA requested comments from the public on the directives. Next, SBA issued a notice regarding the transition rate benchmarks established by the SBIR and STTR participating agencies in the Federal Register at 77 Fed. Reg. 63410 (October 16, 2012), with an effective date of December 17, 2012. This notice requested comments on all information presented. SBA then issued another notice regarding amendments to the transition rate benchmarks in the Federal Register at 78 Fed. Reg. 30951(May 23, 2013), with an effective date of July 22, 2013, which also requested comments from the public. In response to the comments received and input from the participating agencies, SBA published amendments and clarifications of the Policy Directives in the Federal Register at 79 Fed. Reg. 1303, 1309 (January 8, 2014).

All companies participating in the SBIR/STTR Programs must register on www.sbir.gov. The current transition rate and the most recent annual assessed transition rate are displayed on the login/welcome page of the SBIR Company Registry. Companies can therefore view their progress as their award information for the most recent year is updated. To further assist firms in preparing for the results of the next assessment, SBA conducts a warning assessment on April 1st of each year to identify and notify companies with current rates that, at that time, do not meet the required minimum transition rate benchmark.

In addition to the above, SBA posts information on the transition rate benchmark requirements on www.sbir.gov under the *Solicitations/Performance Benchmarks Requirements* tab.

2) Why does the SBA use only the transition rate as an index of commercialization ability, instead of the market-oriented Commercialization Achievement Index (CAI) used by some DoD agencies?

SBA does not use only the transition rate as an index of commercialization ability. Section 5165 of the Reauthorization Act requires that SBA implement two standards of progress towards commercialization: (1) the transition rate, as measured by the success of Phase I awardees in receiving Phase II awards; and, (2) the commercialization rate, as measured by the success of Phase II awardees in commercializing the results of their research. SBA has implemented both of these standards.

3) How does the SBA take into account the effects of delayed awards in calculating this transition rate?

SBA counts awards for purposes of the transition rate calculation in the fiscal year that the participating agency issues the award.

4) How does the SBA envision a company returning to the SBIR Phase I status if it is barred from applying for Phase I grants for one year?

On June 1st of each year, the 5-year time periods used to calculate the transition rate advance by one year. Therefore, companies can return to Phase I eligibility as the number of their Phase I awards included in the calculation falls, or as the number of Phase II awards included in the calculation increases, or both. A firm that pursues Phase II awards during its period of non-compliance may satisfy the transition rate benchmark for the following year, depending on the number of Phase I awards included in the calculation. Even if the firm does not receive any new Phase II awards, it will inevitably return to Phase I eligibility due to the annual advance of the benchmark assessment time periods. This process is explained in more detail in Section 4(a) of the SBIR Policy Directive available to all SBIR participants and the public at www.sbir.gov under the *About* tab.

I appreciate your questions and concerns regarding the implementation of these requirements. Since this is only the second year of the implementation of the transition rate requirement and the first year for the commercialization rate requirement, we are still in the process of analyzing the policy and procedures. The central issue that you highlight in your letter—the need to continuously and effectively inform small business awardees of these requirements—is a key element that we are looking at closely. We want to be sure that participating firms do not spend their resources preparing proposals for awards for which they will not be eligible.

We appreciate your support of SBA, the SBIR and STTR Programs, and the Ohio small business community. If you or your staff have any questions, please contact the SBA Office of Congressional and Legislative Affairs at (202) 205-6700. A similar letter is being sent to Representative Turner.

Sincerely,

Javier Saade
Associate Administrator
Office of Investment and Innovation