

## Client Alert.

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January 4, 2012

# SBIR Program Reauthorized with Broadened Availability to Venture-backed Companies

By **Stephen Thau, Richard Vacura, and Gavin McCraley**

The new year is starting with a some extra cheer for start-up companies. On December 31, 2011, President Obama signed the National Defense Authorization Act for Fiscal Year 2012 (the Act), which included provisions reauthorizing the Small Business Innovation Research (SBIR) for an additional six years and expanding the eligibility of venture-backed companies to receive SBIR grants (the Reauthorization).

The SBIR program is an award system for funding small businesses that propose and perform research and development that meet criteria specified by agencies within the federal government. The SBIR program envisions three phases for participant companies: Phase I, with up to \$150,000 in funds (increased from \$100,000 in the Reauthorization) to study feasibility and commercial potential; Phase II, with up to \$1,000,000 in funds (increased from \$750,000 in the Reauthorization) for additional research and development; and Phase III commercialization through non-SBIR money.

Under the Reauthorization, federal agencies that participate in the SBIR program are allowed to provide SBIR awards to enterprises that are majority owned by multiple venture capital operating companies, hedge funds, or private equity firms. However, such agencies may not allocate more than 15% of their SBIR funds (25% of such funds in the case of the National Institutes of Health (NIH), the Department of Energy, and National Science Foundation) for companies falling within the expanded access provisions. Previously, majority venture-backed enterprises were severely limited in gaining access to these awards unless the venture investors themselves met certain stringent criteria, including majority ownership of such funds by individuals.

Among other items included in the Reauthorization are:

- Federal agencies with large (\$100,000,000) outside research budgets (currently, there are 11 such agencies) are directed to incrementally increase the amount of such budgets allocated to SBIR participation from the current floor of 2.5% to 3.2% by 2017;
- Companies may be eligible for an additional Phase II award for continued work on a project that already received a Phase II award;
- Companies may be eligible for a Phase II award from the NIH, Department of Defense, or Department of Education for a project that did not receive a Phase I award; and
- Agencies are directed to provide for increased oversight of SBIR programs and to utilize additional SBIR allocated funds to carry out such oversight.

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The extent of the benefit to venture-backed companies and their eligibility for SBIR grants will likely be determined by the Small Business Administration (SBA) rule-making process. The Reauthorization requires the SBA to issue proposed regulations within 120 days of enactment of the Act to implement the Reauthorization provisions, and to issue final regulations within one year of enactment. We will be following these and other small business issues closely and welcome your questions or inquiries.

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