



ML Strategies Regulatory Update

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Alex Hecht
ANHecht@mlstrategies.com

Abby Matousek
Amatousek@mlstrategies.com

ML Strategies, LLC
701 Pennsylvania Avenue, N.W.
Washington, DC 20004 USA
202 296 3622
202 434 7400 fax
www.mlstrategies.com

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SBA Proposed Rule on Venture Capital Participation in the SBIR/STTR Program

On May 15, the U.S. Small Business Administration (SBA) published a [proposed rule](#) to amend regulations governing size and eligibility for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

The proposed rulemaking would implement provisions of the SBIR/STTR Reauthorization Act of 2011, which was included as part of the FY12 National Defense Authorization Act (NDAA). The new law reauthorizes the SBIR program for six years and includes language permitting small firms that are majority-owned by multiple venture capital operating companies (VCOCs), hedge funds or private equity firms to compete for up to 25 percent of SBIR funds at the National Institutes of Health, National Science Foundation and the Department of Energy. For other participating agencies, the threshold is 15 percent.

The reauthorization required the SBA to publish proposed regulations within 120 days of enactment, and promulgate final regulations within one year to determine: what constitutes a small business; eligibility and size standards; domestic ownership; and “affiliation” –the process by which the SBA determines whether an entity qualifies as a small business.

Currently, the SBA’s size regulations do not allow the participation of small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms. The proposed rule amends regulations related to determinations of affiliation, ownership and control, and size and addresses domestic ownership of program participants.

Highlights include:

- The proposed rule defines a “domestic business concern” as a venture capital operating company, hedge fund, private equity firm, or portfolio company.
- The proposed rule clarifies that an SBIR applicant must be more than 50% owned and controlled by U.S. citizens, permanent resident aliens, or domestic business concerns or majority-owned by multiple venture capital operating companies (VCOCs), hedge funds, or

private equity firms.

- The rulemaking clarifies how the SBA will make determinations on SBIR eligibility, and updates regulations pertaining to who and on what timeline requests and protests of formal size determination may be made.

The SBA is accepting comments on the proposed rule through July 16, 2012. In addition to soliciting public comments, the SBA will be conducting public outreach sessions, such as town hall meetings and webinars, to gather input on these statutory provisions and the SBA's proposed implementation. Thus far, the SBA has [scheduled](#) a webinar on May 24th, a roundtable discussion in Washington, DC on June 8th, and a roundtable in Austin, Texas on June 19th.

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