



U.S. Small Business  
Administration

# **Guide to Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Eligibility**

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**U.S. Small Business Administration**

This document is published by the U.S. Small Business Administration as the official compliance guide for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). SBREFA requires that agencies publish compliance guides for all rules with a significant small business impact. These guides must explain in plain language how the firms can comply with the regulations.

SBIR/STTR size and ownership regulations were revised on December 27, 2012, effective January 28, 2013. This guide incorporates and explains these changes as well as addresses other changes to the eligibility regulations since January 28, 2013.

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# Guide to SBIR/STTR Program Eligibility

This guide has no legal effect and does not create any legal rights. Compliance with the procedures described in this guide does not establish compliance with the rule or establish a presumption or inference of compliance. The legal requirements that apply are governed by SBA's SBIR/STTR size and eligibility regulations, which control if there is any inconsistency between the rules and the information in this guide.

## 1. OVERVIEW

The SBIR/STTR programs are designed to support small, for-profit, independent, U.S. business concerns. To ensure that these types of firms receive program funds, all awardees are required to certify at the time of award that the awardee firm meets the size, ownership, and control requirements of the programs. These requirements are stated in the [Code of Federal Regulations](#), the SBIR/STTR Policy Directive (pdf available at [www.sbir.gov/about/policies](http://www.sbir.gov/about/policies)), and the periodic solicitations for proposals issued by the participating agencies (available at <https://www.sbir.gov/apply>).

This guide is intended to help small businesses (1) understand the programs' eligibility requirements, (2) determine if they will be eligible at the time of award, and (3) accurately complete the necessary certification(s). This guide explains the *ownership and control requirements* and provides illustrative examples. It also explains the 500 employee *size limit* and how a firm's *affiliates* are determined when measuring its size. The guide does not address other certifications required in the program application and award process such as those concerning the *performance of work requirements*. Guidance on these other certifications is provided in the program SBIR/STTR Policy Directive and agency solicitations.

## 2. REGISTER YOUR COMPANY

### Who must register?

- All applicants to the SBIR or STTR programs must register on [SBIR.gov](http://SBIR.gov) (click Register). This includes all small businesses that are *majority-owned by multiple venture operating*



*companies (VCOCs), hedge funds (HFs) or private equity firms (PEFs) and are applying for an award from an agency using the authority provided at section 9(dd) of the Small Business Act; 15 U.S.C. § 638(dd).*

- The Company Registry is an element of the SBIR/STTR data system and application process. Once you have registered, your company will be given an SBIR.gov Control ID number that you will use when applying to any SBIR/STTR agency solicitation.
- After registering, you will print out the completed proof of registration form and provide it when responding to SBIR/STTR solicitations. **This form needs to be updated every 6 months to ensure accurate information.**

## When must I register my company?

- You must register prior to submitting an application.

# 3. CERTIFY THAT YOUR COMPANY MEETS THE REQUIREMENTS

## When must I certify regarding my firm's eligibility?

At the time of award. All awardees must sign a certification form at the time of award stating that the firm meets the program eligibility requirements. This will be after the business concern is notified of the award and before you receive the award. Agency solicitations and the SBIR/STTR Policy Directive contain the required certification form.

- With the application. Some agencies may require a certification at the time of application or offer stating that the applicant *intends to meet* all program size, ownership, and other eligibility requirements at the time of award.
  - **All applicants that are majority-owned by multiple venture capital operating companies (VCOC), hedge funds (HF) or private equity firms (PEF),** and are applying for an award from an agency that allows applications from such entities by relying on the authority at 15 U.S.C. § 638(dd); 13 C.F.R. section 121.702(a)(1)(ii), must complete the certification **prior to submitting an application** and must include the certification with the application or submission. This certification is not required from concerns that certify eligibility in accordance with 13 C.F.R. § 121.702(a)(1)(i) or (b)(1)(i) and in particular, *SBA clarifies that this certification is NOT necessary for entities which are more than 50% owned*



*and controlled by a single VCOC, HF, or PEF that is a small business concern that itself is more than 50% directly owned and controlled by U.S. citizens or permanent resident aliens (13 C.F.R. § 121.702(a)(2)).*

- **Other times during the award.** Some agencies may require you to recertify your firm’s continued eligibility at other points in the award life-cycle. An awardee is required to recertify its size status in a number of situations, including when the awardee has been merged or acquired by another business, or if the award exceeds five years. Please see 13 C.F.R. § 121.704(b) for more information on all events that trigger a required size recertification and the process for such recertification.

## How do I certify regarding my firm’s eligibility?

- Each *agency solicitation* contains a copy of the required certification form and provides information about how the form must be completed and where it must be submitted.
- Program certification forms are set forth in Appendix I to the SBIR/STTR Policy Directive. Click [here](#) to access the SBIR/STTR Policy Directive and certification form that must be completed at the time of award.
- Be sure to read each statement in the certification form carefully and have an officer of the business sign and date the form.
  - *Note: any intentional or negligent misrepresentation within the certification may result in criminal, civil or administrative sanctions.*

## 4. DETERMINE IF YOUR FIRM IS ELIGIBLE

***What is the purpose and intent of the eligibility regulations?*** SBIR/STTR program eligibility requirements are in place to ensure that small, for-profit, independent, U.S. business concerns benefit from these programs. The regulations include restrictions on: (1) the type of firm; (2) its ownership structure; and (3) the firm’s size in terms of the number of employees. The purpose of the requirement regarding ***type of firm*** is to target the awards to firms with an economic interest in developing the idea or research into a commercial application. The purpose of the ***ownership and control*** requirement is to limit the program to firms owned and controlled by US citizens or permanent resident aliens as a way of maximizing the likelihood that the funding will stimulate innovative activity within the US economy. The purpose of the ***size*** restriction (number of



employees of the firm and its affiliates) is to limit program funding to small business concerns which have a unique capacity for innovation and are more likely to be constrained by lack of access to such funding.

The requirements are presented here under the headings: Type of Firm, Ownership & Control, and Size.

## TYPE OF FIRM

- An SBIR/STTR small business awardee must be a business concern – it must be organized as a **for-profit concern** and meet all the other requirements for a “business concern” in 13 C.F.R. §

121.105. Non-profit entities are not eligible (except as research institution partners with an otherwise eligible applicant concern under the STTR Program).

- If an awardee is a **joint venture**, each party to the joint venture must be a concern that satisfies all program eligibility requirements regarding type, size, ownership, and control. The only exception is for an SBA approved Mentor-Protégé small business joint venture formed in accordance with 13 C.F.R. § 125.9.

## OWNERSHIP & CONTROL

**The ownership requirement:** A majority (more than 50%) of your firms’ equity (e.g., stock) must be directly owned and controlled by one of the following:

- 1) One or more individuals who are citizens or permanent resident aliens of the U.S.,
- 2) Other for-profit small business concerns (each of which is directly owned and controlled by individuals who are citizens or permanent resident aliens of the U.S.).
  - This includes a single VCOC, HF, or PEF that is itself a small business concern which is more than 50% directly owned and controlled by individuals who are U.S. citizens or permanent resident aliens of the U.S.
  - This also includes applicants more than 50% directly owned and controlled by ANCs, NHOs, or Indian Tribes or by a wholly owned subsidiary of an ANC, NHO, or Indian Tribe.



- 3) A combination of the scenarios presented in (1) and (2) above.
- 4) Multiple VCOCs, HFs, PEFs, or any combination of these, so long as no one such firm owns or controls more than 50% of the equity.

**Note: This option is allowed only for SBIR awards from agencies that are using the authority provided in § 5107 of the SBIR/STTR Reauthorization Act (*majority-VC-owned authority*), 15 U.S.C. § 638(dd)(1).**

\*The VCOC, hedge fund or private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

VCOCs, HFs, or PEFs, cannot rely on their affiliates, parent companies, or subsidiaries to meet the definition of a VCOC, HF, or PEF, as those terms are defined at 13 C.F.R. § 121.701, which includes a requirement that the VCOC, HF, or PEF has a place of business located in the United States and is created or organized in the United States, or under the law of the United States or of any State.

If an *Employee Stock Ownership Plan* owns all or part of the concern, each stock trustee and plan member is considered an owner. If a *trust* owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

**Your company's *eligible ownership majority*.** The ownership requirement above states that at least a majority of your firm's equity must be held by certain types of eligible entities (individuals and/or other firms). Therefore, when determining and certifying your firm's eligibility, you must be able to identify an ownership majority (of individuals and/or entities) that is made up of eligible individuals and/or other firms.

**Owned by *individuals*.** Each individual you include as part of the eligible ownership majority of your company, must be either a citizen or permanent resident alien of the US. The term "individual" refers only to actual people—it does not refer to companies or other legal entities of any sort. "Permanent resident alien" refers to an alien admitted to the United States as a lawful permanent resident by the

U.S. Citizenship and Immigration Services. If a size determination is conducted of your firm, you may be asked to show proof of this ownership.

**Owned by *other small business concerns*.** If you include other small business concerns as part of the eligible ownership majority of your firm, you should verify that each such



concern is more than 50% directly owned and controlled by individuals who are US citizens or permanent resident aliens.

- This includes a single VCOC, HF, or PEF that is itself a small business concern which is more than 50% directly owned and controlled by individuals who are U.S. citizens or permanent resident aliens of the U.S.
- This also includes applicants more than 50% directly owned and controlled by ANCs, NHOs, or Indian Tribes or by a wholly owned subsidiary of an ANC, NHO, or Indian Tribe.

**How is ownership determined?** *Ownership* refers to direct ownership of stock or equity of the small business. When determining a small business' ownership, control and affiliation for the SBIR/STTR programs, SBA reviews equity ownership on a fully diluted basis. This means that SBA considers the total number of shares or equity that would be outstanding if all possible sources of conversion were exercised, including, but not limited to: outstanding common stock or equity, outstanding preferred stock (on a converted-to-common basis) or equity, outstanding warrants (on an as-exercised- and converted-to-common basis), outstanding options and options reserved for future grants, and any other convertible securities on an as-converted-to-common basis. If a concern has options that have not been exercised and are not assigned to any entity or individual, do not include the options in the overall total of shares considered during the eligibility analysis. If a concern has options that have not been exercised but are assigned to an entity or individual, the options should be considered exercised for purposes of determining eligibility.

- Example: A company has 50,000 shares. The company has also authorized a new issuance of 10,000 shares in stock options. The total number of shares on a fully diluted basis is 60,000.
- Example: The three owners of the company each hold 100 shares. The three owners each also have 100 shares of stock warrants. The total number of shares on a fully diluted basis is 600.
- Example: Individual A has issued 60 shares of Series A Preferred stock (convertible 1 to 1 to common), 30 shares of common stock, and has granted options to buy up to 10 shares to various employees. The total number of shares on a fully diluted basis is 100 (60+30+10 shares exercised pursuant to options).

**Where must control lie?** The purpose of the ownership requirement is to ensure that the awardee firm is controlled directly by individuals who are US citizens or permanent resident aliens or by businesses that are majority-owned by US citizens or permanent resident aliens. Therefore, actual control of the firm must reside within the eligible ownership majority and may not reside outside of that ownership block. One of the following must describe the control of your firm – the company must be more than 50% controlled by:





- One US citizen or permanent resident alien
- More than one US citizen or permanent resident alien
- One other small business that is directly owned and controlled by US citizens or permanent resident aliens
  - This includes a single VCOC, HF, or PEF that is itself a small business concern which is more than 50% directly owned and controlled by individuals who are U.S. citizens or permanent resident aliens of the U.S.
  - This also includes applicants more than 50% directly owned and controlled by ANCs, NHOs, or Indian Tribes or by a wholly owned subsidiary of an ANC, NHO, or Indian Tribe.
- More than one other small business each of which are directly owned and controlled by US citizens or permanent resident aliens
- Any combination of the above.

## May an awardee firm be owned by venture capital operating companies, hedge funds, or private equity firms?

### Yes, but only under the following circumstances:

- An awardee may be majority owned by one or more other concerns (including a VC, hedge fund or private equity firm) that qualify as a small business that is majority owned and controlled by individuals who are citizens or resident aliens of the US.
- For awards issued under §5107 (*majority VC ownership*) authority (see [agencies using this authority](#)), an awardee may be majority owned and controlled by multiple VCOCs, hedge fund or private equity firms, so long as no one such firm owns a majority of the awardee equity.

Note: If any firm with an ownership stake in the awardee qualifies as an affiliate (see below) of the awardee, then its employees must be counted in assessing whether awardee meets the size limit.

*Majority VC ownership authority:* 15 U.S.C. § 638(dd)(1) (also §5107 of the SBIR/STTR Reauthorization Act) gives SBIR agencies the option to use a portion of their SBIR funds to make awards to small businesses that are majority-owned by multiple venture capital operation companies (VCOC), hedge funds or private equity firms. If an agency elects to use this authority, it will secure the authority through the SBA and note this in its solicitations. [Agencies currently using the majority VC ownership authority.](#)

## How are VCOCs, hedge funds, and private equity firms defined?

VCOC has the meaning provided in: 13 CFR 121.103(b)(5)



VCOC means:

- (i) Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 C.F.R. §2510.3-101(d);
- (ii) Investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (15 U.S.C. 80a-1, *et seq.*); and
- (iii) Investment companies, as defined under the 1940 Act, which are not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.

**Hedge fund** and **private equity firm** have the meanings given in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1851(h)(2)). That statute states that the terms “hedge fund” and “private equity fund” mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may determine.

**US location.** For the purposes of the SBIR/STTR programs, a VCOC, hedge fund and private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

VCOCs, hedge funds, and private equity firms, cannot rely on their affiliates and / or subsidiaries to fulfill the requirement that they must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

Table 1 shows several examples of eligible and ineligible ownership structures to illustrate the requirements. Each example is discussed below.



# Table 1. Illustrative Examples of SBIR/STTR Ownership Options

OWNERSHIP SHARES (% of stock)						
Circles identify the majority ownership block that meets the eligibility criteria.						
Ex.	Individual(s) <sup>a</sup>	SB1 <sup>b</sup>	SB2 <sup>b</sup>	VC1 <sup>c</sup>	VC2 <sup>c</sup>	Other: e.g., large co., univ, non-profit
<b>Standard program (agencies not using Sec. 5107 authority)</b>						
1	60	30				10
2	20	20	20	20		20
3		40	20	20		20
4	40			60		
5	20			40	30	10
<b>For those agencies using Sec. 5107 authority)</b>						
6				50	50	
7		49		31	20	
8	10			60	30	
9	30	10	10	20	20	10

<sup>a</sup> Individual(s) who are citizens of or permanent resident aliens in the US. A small business concern applicant may also be eligible under this provision if owned and controlled by an Alaskan Native Corporation (ANC), Indian tribe, or Native Hawaiian Organization (NHO), or an entity owned and controlled by an ANC, Indian tribe, or NHO.

<sup>b</sup> A small business (other than the awardee) that is directly owned and controlled by one or more individuals who are citizens or permanent resident aliens of the US. This includes VCOCs, hedge funds, and private equity firms that are small business concerns that are directly owned and controlled by one or more individuals who are citizens or permanent resident aliens of the US.

<sup>c</sup> Firms specified in Sec. 5107, specifically: a venture capital operating company (VCOC), hedge fund, or private equity firm.



## Explanation of examples in Table 1:

Example 1: The firm is eligible because it is more than 50% owned by one or more individuals who are US citizens or permanent resident aliens.

Example 2: The firm is eligible because it is more than 50% owned by a combination of citizens of or permanent resident aliens in the US and other small businesses owned by citizens of or permanent resident aliens in the US.

Example 3: The firm is eligible because it is more than 50% owned by a combination of other small businesses owned by citizens of or permanent resident aliens in the US.

Example 4: The firm is not eligible because it is not majority owned by citizens of or permanent resident aliens in the US or other small businesses owned by citizens of or permanent resident aliens in the US. Like example 9, this firm would also not be eligible for an award from an agency using section 5107 authority.

Example 5: The firm is not eligible because it is not majority owned by citizens of or permanent resident aliens in the US or other small businesses owned by citizens of or permanent resident aliens in the US and the agency does not use section 5107 authority. However, this firm would be eligible for an award from an agency using section 5107 authority.

Example 6: The firm is eligible for agencies using section 5107 authority because a majority of the stock is owned by multiple VCOCs, hedge funds, or private equity firms and none owns more than 50%.

Example 7: The firm is eligible for agencies using section 5107 authority because, while the other small business “SB1” has the largest share, the firm is more than 50% owned by more than one VCOC, hedge fund, or private equity firm and none has more than 50% ownership.

Example 8: The firm is not eligible for the regular program. It is also not eligible for agencies using section 5107 authority because, although it is more than 50% owned by VCOCs, hedge funds, or private equity firms, one of these firms



owns more than 50%.

Example 9: The firm is not eligible for the regular program because it is not majority owned by citizens of or permanent resident aliens in the US or other small businesses owned by citizens of or permanent resident aliens in the US, and it is not eligible for agencies using section 5107 authority because it is not majority owned by multiple VCOCs, hedge funds, or private equity firms.

## SIZE

**The size requirement:** An SBIR/STTR awardee, together with its *affiliates*, must not have more than 500 *employees*.

**Is size determined by revenue for SBIR/STTR?** No, for SBIR/STTR, size is determined only by the number of employees. There are no revenue limits.

**What is the definition of an employee?** For the SBIR/STTR programs, an *employee* includes all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. See 13 C.F.R. § 121.106(a).

## How do you calculate the number of employees?

SBA uses the following approach to determining the size of a concern (see 13 C.F.R. § 121.106(b)):

- (1) The *average number of employees* is used (including employees of all domestic and foreign affiliates) based upon the number of employees for each of the pay periods for the preceding completed 12 calendar months.
  - The average number of employees of the business concern is added to the average number of employees of each of its affiliates.
  - If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. This aggregation applies for the entire period of measurement, not just the period after the affiliation arose.



- Employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.
- (2) *Part-time and temporary employees* are counted the same as full-time employees.
  - (3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

***What is an affiliate?*** Concerns and entities are *affiliates* of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the *power to control* exists. When making a size determination, SBA looks at many factors and circumstances that determine where the power to control lies, and this is used to determine a firm’s affiliates. In the size regulations ([13 C.F.R. § 121.702](#)), SBA identifies nine bases for finding affiliation between an awardee and other entities.

Bases for finding affiliation:

(1) Ownership.

- A concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50% of the concern’s voting equity.
- However, SBA may find a concern an affiliate of an individual, concern, or entity that owns or has the power to control 50% or less of voting equity based upon the totality of circumstances.
- SBA notes that there is less of a likelihood of finding affiliation with a minority shareholder holding less than 40% of the equity.
- If no individual, concern, or entity is found to control, SBA will deem the Board of Directors to be in control of the concern.

(2) Options, convertible securities, agreements to merge. In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a *present effect* on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised; with the following exceptions:

- (i) **Agreements** to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered “agreements in principle” and are therefore not given present effect.
- (ii) **Options**, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.
- (iii) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before



actually doing so. SBA will not give present effect to individuals', concerns' or other entities' **ability to divest** all or part of their ownership interest in order to avoid a finding of affiliation.

NOTE: If options are assigned but not exercised, they are considered exercised for the purpose of determining size and are included in the calculation of total shares. If options are unassigned and not exercised, they are excluded from the calculation of total shares.

- (3) Common management. Affiliation arises where the CEO or President of a concern (or other officers, managing members, or partners who control the *management* of the concern) also controls the *management* of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the *board of directors* of one concern also controls the *board of directors or management* of one or more other concerns.
- (4) Identity of interest. SBA may find affiliation among two or more individuals, concerns or other entities with an identity of interest. An individual, concern or entity may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.
- (i) SBA may presume an identity of interest between family members with identical or substantially identical business or economic interests (e.g., where the family members operate concerns in the same or similar industry and in the same geographic area).
  - (ii) SBA may presume an identity of interest based upon economic dependence if the SBIR/STTR awardee relies upon another concern or entity for 70% or more of its receipts.
  - (iii) An SBIR or STTR awardee is *not affiliated* with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, *solely on the basis of one or more shared investors*, though affiliation may be found for other reasons.
- (5) Newly organized concern. Affiliation may arise where former or current officers, directors, principal stockholders, managing members, general partners, or key employees of one concern *organize a new concern* in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, general partners, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise.
- (i) A concern will be considered “new” for the purpose of this rule if it has been actively operating continuously for less than one year.
  - (ii) A “key employee” is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.
  - (iii) A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns.



- (6) Joint ventures. Concerns submitting an application as a joint venture are affiliated with each other with regard to the application. SBA will apply the joint venture affiliation exception at § 121.103(h)(3)(iii) for two firms approved to be a mentor and protégé under SBA's All Small Mentor-Protégé Program.
- (7) Ostensible subcontractor. A concern and its ostensible subcontractor are treated as joint ventures, and therefore affiliates, for size determination purposes. An *ostensible subcontractor* is a subcontractor or subgrantee that performs *primary and vital requirements* of a funding agreement (i.e., requirements associated with the principal purpose of the funding agreement), or a subcontractor or subgrantee upon which the concern is *unusually reliant*. All aspects of the relationship between the concern and subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the concern and subcontractor or subgrantee (such as bonding assistance or the teaming agreement).
- (8) License agreements. SBA will consider whether there is a license agreement concerning a product or trademark which is critical to operation of the licensee. The license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss.
- (9) Totality of the circumstances. In determining whether affiliation exists, SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

**Exception for portfolio companies.** If a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an awardee is a minority investor in the awardee, the awardee is not affiliated with a portfolio company of the venture capital operating company, hedge fund, or private equity firm, unless:

- (i) The venture capital operating company, hedge fund, or private equity firm owns a majority of the stock of the portfolio company; or
- (ii) The venture capital operating company, hedge fund, or private equity firms holds a majority of the seats of the board of directors of the portfolio company.

**Exception for Small Business Investment Companies (SBICs) Investments.** If SBIR or STTR applicants or awardees receive investment from Small Business Investment Companies (SBICs), they will not be found affiliated with those SBICs in accordance with (13 C.F.R. § 121.103(b)(1)).





***When does SBA determine the size of an SBIR/STTR awardee?*** An SBA size office may make a determination of an applicant or awardee firm if the size is protested. When making a size determination, an SBA Area Office of Government Contracting may identify other individuals or entities it finds to be affiliated with the firm. The employees of these affiliates will be counted when determining the firm's size.

**For the most current SBIR and STTR Size and Eligibility Regulations please visit:**

<https://www.ecfr.gov/current/title-13/section-121.702>.



## Table 2. Summary of Bases for Affiliation for SBIR/STTR Program Eligibility

<i>Category</i>	<i>When affiliation may be found</i>
Ownership	<ul style="list-style-type: none"> <li>An individual, concern, or entity owns or has the power to control more than 50% of voting equity. Note that SBA is less likely to find affiliation when this ownership is less than 40%.</li> </ul>
Options, convertible securities, agreements to merge (given <i>present effect</i> )	<ul style="list-style-type: none"> <li>If an individual or entity has control with the exercise of options and/or convertible securities and agreements to merge.</li> <li>Agreements that are open or merely continue negotiations about a possible merger are not given present effect.</li> </ul>
Common management	<ul style="list-style-type: none"> <li>Officers, managing members, partners who control the management of the concern also control the management of another concern.</li> <li>Individuals or entities that control the board of directors of the concern also control the board or management of another concern.</li> </ul>
Identity of interest	<ul style="list-style-type: none"> <li>SBA may <i>presume</i> identity of interest among two or more persons/entities, and therefore affiliation, such as: <ul style="list-style-type: none"> <li>(a) Between, family members with identical or substantially identical business or economic interests.</li> <li>(b) If a firm relies on another firm for 70% or more of its receipts.</li> </ul> </li> <li>An awardee firm is <i>not affiliated</i> with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, <i>solely on the basis of</i> one or more shared investors.</li> </ul>
Newly organized concern	<ul style="list-style-type: none"> <li>The firm's officers, directors, principal stockholders, managing members, general partners, or key employees <i>organize another concern</i> in the same or related industry or field, and serve in such capacity for the new concern and the one furnishes the other with contracts, or other assistance. This applies only to firms that have actively operated continuously for less than one year.</li> </ul>
Joint ventures	<ul style="list-style-type: none"> <li>Firms apply for award as a joint venture -- all parties to the joint venture are affiliated.</li> </ul>
Ostensible subcontractor	<ul style="list-style-type: none"> <li>The firm is a subcontractor or subgrantee <ul style="list-style-type: none"> <li>(a) that performs primary and vital requirements of a funding agreement or</li> <li>(b) upon which the concern is unusually reliant.</li> </ul> </li> </ul>
License agreements	<ul style="list-style-type: none"> <li>There is a license agreement concerning a product or trademark that is critical to the operation of the licensee, except if the licensee has the right to profit from its efforts with regard to the agreement and bears the risk of loss.</li> </ul>
Totality of the circumstances	<ul style="list-style-type: none"> <li>Based upon the totality of circumstances, SBA determines that affiliation exists.</li> </ul>