

Members of the New York Delegation
US House of Representatives
Washington, DC 20515

September 2003

Dear Congressman/Congresswoman:

The members and board of directors of the New York Biotechnology Association (NYBA) wish to express our **opposition to the U.S. Small Business Administration's (SBA) Proposed Rule to modify the small business eligibility requirements for receiving Small Business Innovation Research Program (SBIR) funding** (68 FR 33412) published on June 4, 2003.

Current SBIR regulations require that to be eligible for SBIR grants, companies must have fewer than 500 employees and at least 51 percent owned and controlled by one or more individuals. The modification in the Proposed Rule would continue to apply the 51 percent requirement but would clarify that a company may be eligible for SBIR funding if it is 100 percent owned by an entity, which, in turn, is 51 percent or more owned by individuals (who are U.S. residents).

This modification creates a serious problem for biotechnology companies with venture capital (VC) backing. VC-backed companies are usually more than 51 percent owned by VCs but they are never 100 percent owned by VCs. Also, VCs, as entities, are not 51 percent or more owned by U.S. "individuals." Put simply, this proposed rule would exclude VC-backed private companies—that is, the vast majority of all U.S. biotechnology companies—from receiving SBIR grants.

Very few, if any, biotechnology companies are able to fund the clinical and preclinical work needed to validate a technology without venture investment. The cost of developing new technologies is simply too high (usually hundreds of millions of dollars) to be sustained by individual investors.

Congress' intent when implementing the SBIR program was to stimulate small U.S.-owned firms to produce innovative technologies. Congress viewed the SBIR program as providing the necessary "proof of concept" research to encourage venture capital investment in promising small businesses. Attracting outside capital investment is the clear intent of the SBIR program and implementing the SBA's new proposed rule would exclude the very companies that were intended to benefit from the original SBIR legislation.

In 2002 alone, NYBA members raised over \$9,000,000 through the SBIR program. Any changes that make this program unavailable to the start-up companies it was intended for damages the growth of the biotech industry everywhere. The New York Biotechnology Association (NYBA), along with our colleagues at the Biotechnology Industry Organization (BIO) strongly recommends that the SBA amend to the Proposed Rule to exclude ownership by venture capital firms as a factor in determining SBIR eligibility. NYBA urges your office to oppose any changes to SBIR eligibility requirements that exclude VC-back companies. Amending the Proposed Rule is the only way to ensure that the companies that are intended to benefit from the SBIR program have equal opportunity to apply for and benefit from these grants.

Sincerely,

The New York Biotechnology Association (NYBA)