

Secretary

U.S. Department of Homeland Security

Washington, DC 20528

Homeland Security

January 30, 2008

The Honorable Joseph L. Lieberman
Chairman Committee on Homeland
Security and Governmental Affairs
United States Senate Washington,
D.C. 20510

Dear Chairman Lieberman:

This letter presents the views of the Department of Homeland Security on S. 2445, the SMART RESPONSE Act, as reported by the Senate Homeland Security and Governmental Affairs Committee on December 11, 2007. The Department is committed to the safe repair and rebuilding of communities devastated by the hurricanes of 2005, and to making these communities more resilient to future catastrophes. Unfortunately, the *SMART RESPONSE Act* does not further these goals, and hence, the Department strongly opposes the legislation.

The *SMART RESPONSE Act* proposes to require the Federal Emergency Management Agency (FEMA) to make \$1.17 billion of Hazard Mitigation Grant Program (HMGP) funds available to the Louisiana Recovery Authority's Road Home program by waiving a number of key Stafford Act and HMGP regulatory requirements. This follows Congress' recent appropriation of an additional \$3 billion for the Road Home program. If a bill containing such provisions were presented to the President, his senior advisors would recommend that he veto the bill. Louisiana should continue to work with FEMA to use HMGP as originally intended.

Consistent with the intent of the Stafford Act, the mission and purpose of the HMGP is to remove at-risk property and people from harm's way. The HMGP program accomplishes this objective by allocating funds to worthwhile projects without discriminating based on any characteristic of the property owner, such as age or economic status. Given the public policy objectives of the Stafford Act and other Federal laws that prohibit such considerations under the HMGP, the Department opposes provisions in the bill-as well as in any other legislation-that could waive non-discrimination requirements.

In addition, one apparent purpose of the bill is to allow for the retroactive funding of activities that were initiated prior to FEMA approval. Yet, through administrative action, the Department already has made certain prior mitigation efforts eligible for HMGP funds.

The Department also has the following concerns with the bill:

Section 3 paragraph 4(A) of the *SMART RESPONSE Act* requires funds to be transferred as soon as practicable. Under the HMGP, FEMA does not transfer funds to the State at a pre-determined point in time. Rather, to ensure funds are used in accordance with HMGP requirements, funds are made available as FEMA determines projects to be eligible. The bill would commit more than \$1 billion in Federal taxpayer funds while, at the same time, partially circumventing the current pre-screening process.

The *SMART RESPONSE Act* appears to waive fundamental HMGP eligibility requirements if the State indicates a waiver is needed to facilitate the timely use of funds. However, the language is not clear on the details of what would justify such a waiver, or what alternative requirements could be developed. Also, there is a reference that the State could provide "a guarantee provided under section 404" of the Stafford Act as justification to waive HMGP requirements. It is unclear what type of guarantee this refers to, and the Department is seeking clarification on this point. The Department is opposed to any waiver to fundamental HMGP requirements.

The *SMART RESPONSE Act* appears to provide that, after a project has been approved, the State of Louisiana can make funds immediately available to a recipient so long as the recipient certifies it will use the funds as approved. In addition, this section appears to require that following completion of the project, the recipient certify that funds were used for the intended purpose. Normally, costs are reimbursed to the grantee as costs are incurred and documented. The potential for misuse of funds and the need for recoupment under this provision is significant. Moreover, the provision could lead to a higher incidence of non-compliance, and would cause administrative burdens on FEMA and the State and hardships on recipients, who may not have the funds to reimburse the Federal Government.

These various provisions threaten the integrity of the HMGP program. The result could well be that \$1.17 billion of HMGP money gets spent and yet mitigation measures, designed to make the region more resilient to future storms, simply are not taken.

The Office of Management and Budget advises that there is no objection to the transmittal of this letter from the standpoint of the Administration's program. If you have any questions, please contact my office or the Office of Legislative Affairs at (202) 447-5890. An identical letter has been sent to Senator Collins.

Sincerely,
Michael Chertoff