

JOSEPH I. LIEBERMAN, CONNECTICUT, CHAIRMAN

CARL LEVIN, MICHIGAN
DANIEL K. AKAKA, HAWAII
THOMAS R. CARPER, DELAWARE
MARK L. PRYOR, ARKANSAS
MARY L. LANDRIEU, LOUISIANA
CLAIRE MCCASKILL, MISSOURI
JON TESTER, MONTANA
ROLAND W. BURRIS, ILLINOIS
PAUL G. KIRK, JR., MASSACHUSETTS

SUSAN M. COLLINS, MAINE
TOM COBURN, OKLAHOMA
JOHN MCCAIN, ARIZONA
GEORGE V. VOINOVICH, OHIO
JOHN ENSIGN, NEVADA
LINDSEY GRAHAM, SOUTH CAROLINA
ROBERT F. BENNETT, UTAH

MICHAEL L. ALEXANDER, STAFF DIRECTOR
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

February 26, 2010

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

As the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs (the Committee) and as the Chairman and Ranking Member of the Ad Hoc Subcommittee on Disaster Recovery, we are writing to provide comments on the draft National Disaster Recovery Framework (NDRF). We ask that our letter be treated as a response to the request for comments in FEMA Docket ID FEMA-2010-0004 (75 Fed. Reg. 6681 (February 10, 2010)) and included as part of the public record in that matter. While we enthusiastically support the efforts of the Federal Emergency Management Agency (FEMA) to provide both strategic and operational guidance to recovery partners, we would like to raise some concerns about the draft NDRF and ask that you address our comments in the final NDRF.

In investigating the failed response to Hurricane Katrina, the Committee found that the Department of Homeland Security (DHS), and especially FEMA, was unprepared for a catastrophic event. In response to the Committee's investigation and subsequent recommendations, Congress passed the Post-Katrina Emergency Management Reform Act of 2006 (the Act), which President Bush signed into law in October 2006. The Act created a new FEMA - with responsibilities, missions, capabilities, and resources far exceeding those of FEMA at the time of Hurricane Katrina - by vesting greater autonomy and elevating the status of FEMA and its leaders within the Department. In addition, the Act gave FEMA and its Administrator elevated and expanded roles in leading the nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of disasters.

Section 682 of the Act dealt specifically with FEMA's role in disaster recovery by requiring FEMA, within 270 days of the Act's implementation, to develop a National Disaster Recovery Strategy. We have long been disappointed by FEMA's failure to meet this requirement given our great need to improve our nation's ability to recover from disasters. Administrator Fugate informed us in a September 16, 2009 letter that FEMA was launching the development of the National Disaster Recovery Framework, which would address all of section 682's requirements.

The Honorable Janet Napolitano

February 26, 2010

Page 2

The need for this framework is even more clearly illustrated given that the recovery from Hurricane Katrina has been a long, hard struggle. We believe that a well-developed recovery plan is necessary to ensure that, in the future, communities will be able to better recover from disasters. We would like to congratulate DHS for undertaking this serious endeavor. We understand that this draft framework was produced in a short amount of time and with the engagement of stakeholders.

We are pleased that the draft addresses a wide range of entities involved in recovery, from governments and nonprofits, to the private sector and individuals. As the document recognizes, each of these groups must be ready and equipped to perform their critical roles. We are also glad to see that recovery preparedness was discussed in the draft NDRF. We believe that current preparedness efforts of the federal government, as well as many state, local, and tribal governments, fail to focus adequately on recovery issues or otherwise fall short of what is necessary.

While we applaud your efforts to attempt to write a recovery plan, we believe that the draft Framework falls short of meeting section 682's requirements and have several concerns with the content of the draft.

Ambiguity in leadership, roles, authorities, and responsibilities: Section 682 of the Post-Katrina Act requires that the recovery strategy clearly define the roles, authorities, and responsibilities of each federal agency that may provide assistance in the recovery from major disasters. However, in the chapters on roles and responsibilities and planning for a successful recovery in the NDRF, the draft simply gives roles and responsibilities to the "federal government" instead of specifically stating which federal agency or federal official has such roles and responsibilities.

One of the key issues in the failed response to Hurricane Katrina was the lack of clearly understood leadership roles and responsibilities. Effective planning requires clearly identified roles and responsibilities, yet the draft NDRF fails to identify who within the federal government will play a leadership role and fails to adequately clarify roles and responsibilities of individual departments, agencies, and officials. While it is essential that all federal agencies with potentially applicable resources and programs assist with recovery in a much more active manner than has generally occurred in previous disasters, without more specificity as to who is in charge of federal efforts and what specific roles and responsibilities individual agencies have, it is unlikely that the framework will operate effectively. In addition, it will be very difficult for state, local, and tribal governments to know who within the federal government to turn to regarding particular recovery issues. The NDRF also must clearly state the responsibilities of state and local governments.

One specific example of the failure to articulate federal roles and responsibilities is the absence of a reference to either FEMA or its Administrator, except to refer families to FEMA as a source for helping them get prepared, in the chapters on roles and responsibilities, recovery coordinators, and planning for a successful disaster recovery. The NDRF simply refers broadly to the "federal government" instead of explicitly stating the roles and responsibilities of FEMA

and the FEMA Administrator. The Act gave FEMA and its Administrator elevated and expanded roles, including in recovery, and the draft fails to implement this statutory role.

Additionally, the draft NDRF provides checklists of items that federal, state, and local government responsibilities “*may* include.” We believe that this language is too deferential and should instead more affirmatively state what the responsibilities of federal, state, and local governments include.

Recovery Support Functions: The draft NDRF also includes a chapter of six Recovery Support Functions (RSFs) that the draft says are designed to bring together federal departments and agencies to collaborate and focus on recovery needs. The draft states that the RSFs are meant to co-exist and complement the Emergency Support Functions (ESFs) under the NRF.

As drafted, however, the RSFs are lacking in the level of detail necessary to be operationally effective, including failing to clearly state roles and responsibilities. The RSFs generally include only a short paragraph describing the mission and outcome of the RSF. In addition, some RSFs are unfinished because the proposed coordinating agency has not been named. In contrast, the ESFs in the NRF are on average 10-15 pages and include sections such as an introduction, concept of operations, organization, pre- and post- event actions, and a description of responsibilities for each of the agencies involved in the ESF. The draft is also not clear at what stage the RSFs will be activated; for example the draft does not explain at what stage HUD would take the lead in housing. While we note that the draft NDRF states that each RSF will develop more detailed supporting guidance and tools for members, the draft fails to provide sufficient information as to what additional guidance will be produced and when it will be available. This detail should be included in the RSFs in the final NDRF.

Additionally, the draft is not clear as to who is charged with the overall leadership of the six RSFs. Although the draft states that RSF coordinators will lead each RSF, it does not state who will provide overall federal leadership over the RSFs to ensure that the actions of the individual RSFs are coordinated and effective.

The draft also says that each RSF coordinator has ongoing responsibilities throughout the preparedness, response, and recovery phases to ensure ongoing communication and coordination between primary and support agencies and to coordinate efforts with corresponding tribal, state, NGO, and private-sector organizations, but the draft does not make clear what those preparedness responsibilities are and how they will be carried out.

We are also concerned that the draft NDRF does not articulate the role of FEMA in the RSFs. Although FEMA is currently the coordinator for ESF-14, Long-Term Community Recovery, the draft NDRF does not name FEMA as a coordinating agency for any of the RSFs.

Additionally, we believe it would be useful to consider inclusion of more federal agencies on some of the RSFs in order to more effectively use potential resources. For example, some additional agencies to consider including are the Department of Transportation and the

Environmental Protection Agency in the Community Planning and Capacity Building RSF and the Department of Energy in the Natural and Cultural Resources RSF.

Finally, ESF-14 currently addresses Long-Term Community Recovery, but the draft NDRF does not explain what will happen to ESF-14 once the NDRF is finalized and in effect, and it should.

Federal Recovery Coordinator: The draft NDRF describes responsibilities of the Federal Recovery Coordinator (FRC) as an official who will, when activated, facilitate federal assistance, coordination and collaboration with state, local, and tribal governments, the private sector, and voluntary faith-based and community organizations. As documented by our Committee's review of the response to Hurricane Katrina, confusion about the roles of the Federal Coordinating Officer and Principal Federal Official contributed greatly to the failed response at all levels of government. The Government Accountability Office has also documented confusion regarding the role and authorities of the Federal Coordinator for Gulf Coast Rebuilding. Because we must ensure confusion about the roles of federal officials does not cause problems in future disasters, the section of the draft NDRF on the FRC, which is incomplete and ambiguous, must provide more clarity on the FRC. Just a few of the details that are ambiguous include: (1) when an FRC will be appointed and who appoints the FRC; (2) under what authority the FRC would operate; (3) what qualifications would be required of FRCs; and (4) what the chain of command would be for the FRCs in relation to other federal response and recovery officials.

Federal Programs: Section 682 also requires that the Recovery Strategy describe in detail the programs of each federal agency that may provide assistance in the recovery from major disasters and outline the most efficient and cost-effective federal programs that will meet recovery needs. Although the draft NDRF refers to disasterassistance.gov, a website through which individuals can apply for federal disaster assistance programs, the draft itself does not describe the programs that may provide assistance. While the tool at disasterassistance.gov is potentially useful to individuals seeking disaster assistance, it does not seem to explain federal programs for which state, local, and tribal governments, as well as nongovernmental organizations, may be eligible. Additionally, the draft NDRF fails to meet the Act's requirement to outline the most efficient and cost-effective federal programs that will meet recovery needs. Finally, the draft NDRF fails to meet the Act's requirement to describe in detail any funding issues in the federal programs that may be offered.

Scalability to a catastrophe: As the recovery from Hurricane Katrina has shown and still continues to show us, recovery from a catastrophe is extremely complicated and presents far more challenges than smaller disasters. Although the draft NDRF states that it is designed to be scalable and adaptable to specific disaster requirements, we do not see many aspects of the draft NDRF that specifically address scalability. Indeed, the draft NDRF does not describe any special provisions that would be in place in recovery from catastrophes. We believe the draft needs to more clearly address the special issues that arise in recovery from catastrophes.

Mitigation: Mitigation has proven to be a cost-effective way of reducing loss of life, personal injuries, damage and destruction of property, and disruption of communities and economies from disasters and is one of the most fundamental long-term contributions that can be made to the safe

recovery of a community. Recent studies have found taxpayer savings between three to four dollars for every dollar spent on mitigation. Recovery and rebuilding after disasters offers a critical opportunity for mitigation against potential damages caused by future disasters. We believe that the draft NDRF puts too little emphasis on mitigation and fails to put in place plans and procedures to make the most of these critical mitigation opportunities. We believe more needs to be added to the final NDRF to ensure we maximize mitigation opportunities both before and after disasters.

Private Sector Preparedness: We are pleased that the draft NDRF discusses the role of the private sector because it is an essential player in the recovery process. We believe, however, that the final NDRF should promote PS-Prep, the voluntary private sector preparedness certification program, established by section 901 of the Implementing Recommendations of the 9/11 Commission Act of 2007. This important program can play a vital role in helping the private sector recover from disasters. We believe the NDRF offers an excellent opportunity to encourage the private sector to voluntarily get prepared through the PS-Prep program.

Difficulties in operationalizing the NDRF: While page five of the draft NDRF states that the NDRF “provides operational guidance to all recovery partners,” we disagree. Given the lack of clarity, noted above, in describing responsibilities, capabilities, policies or resources, we have concerns that the framework lacks sufficient detail to make it operationally effective in the recovery from a disaster.

The draft NDRF mentions that supporting guidance and tools will follow the NDRF’s publication, but it is unclear if this will be before or after the NDRF is to be used in disasters. The draft also suggests that there is no current intention to make additional changes to the document and that the framework will only be revised as necessary when responsibilities, capabilities, policies, and resources expand or change (page 6). This statement concerns us since we do not believe that the current draft NDRF adequately describes responsibilities, capabilities, policies, or resources.

Finally, as is axiomatic among those who respond to disasters, to be successful, plans must be reinforced with training and exercises. We believe the draft NDRF fails to adequately emphasize the importance of training and exercises and that it should be changed to address these activities directly and specifically.

The Honorable Janet Napolitano

February 26, 2010

Page 6

We look forward to working with you to improve and finalize the NDRF.

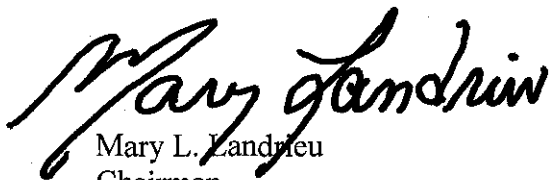
Sincerely,



Joseph I. Lieberman
Chairman
Homeland Security and
Governmental Affairs Committee



Susan M. Collins
Ranking Member
Homeland Security and
Governmental Affairs Committee



Mary L. Landrieu
Chairman
Ad Hoc Subcommittee on Disaster
Recovery



Lindsey O. Graham
Ranking Member
Ad Hoc Subcommittee on Disaster
Recovery