

United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510-6350

March 10, 2009

VIA FACSIMILE & FIRST-CLASS MAIL

Mr. Charles E. Johnson
Acting Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

RE: Department of Health and Human Services' Small Business Innovation
Research and Small Business Technology Transfer Programs

Dear Acting Secretary Johnson:

We are writing in regard to the recently enacted American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and its impact on small business firms and our nation's high-tech industry. As you know, the Recovery Act provides \$8.2 billion in additional funding for the National Institutes of Health (NIH) to support scientific research and development and, at NIH's request, exempts the allocations associated with such research from the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. As Chair and Ranking Member of the Senate Committee on Small Business and Entrepreneurship, we are concerned about the detrimental effects on small technology businesses that help our nation stimulate innovation and create jobs.

As you may know, the SBIR and STTR programs allow small research and development firms – our nation's innovation lifeline – to create high-quality jobs and cutting-edge products and therefore are fundamental to our country's economic recovery. Consequently, it is of great concern to us that the NIH maximize the benefits of the Recovery funding and provide not less than the statutory percentages of the Department's extramural research and development funding to the SBIR and STTR programs.

During the past two Congresses, the NIH has objected to increasing the SBIR and STTR allocations of 2.5 and 0.3 percent on the grounds that more research funding for the department would automatically be an increase for small business funding because such firms would get a percentage of the increase. The passage of the Recovery Act, with its exemption for the small business requirement, undermines this argument and raises questions about the NIH's and the Department of Health and Human Services' (HHS) commitment to small, high-tech firms and the success of the SBIR and STTR programs.

While the \$8.2 billion allocated through Title VIII of the Recovery Act is relieved from specifically funding SBIR and STTR projects, the Act does not exempt the HHS from its continued statutory obligation of allocating a minimum of 2.5 percent and 0.3 percent, respectively, of its total extramural budget for research and development for SBIR and STTR projects. Specifically, of the \$8.2 billion allocated to the NIH for extramural research and development, an equivalent amount of 2.8 percent must be allocated for small businesses from this \$8.2 billion or from other HHS extramural research and development funds. At stake is as much as \$229 million.

A similar situation occurred in 2001 when a provision enacted as part of the Fiscal Year 2002 Department of Defense (DoD) appropriations bill exempted certain Missile Defense Agency (MDA) funds from the SBIR program. The provision would have reduced by about half the amount of research dollars awarded to small business. Ultimately, DoD verified to the Committee that it would indeed meet the 2.5 percent statutory requirement, either compensating from other agencies within the Department or from the MDA.

In order to clarify how HHS will meet the required amount of overall research dollars awarded to small businesses and to ensure that the Department complies with the Small Business Act, we respectfully request an analysis of where HHS will make up the difference in its extramural research and development budget equivalent to 2.8 percent of the relevant \$8.2 billion provided in the Recovery Act for extramural research and development. We also ask that you explain to us how much of the \$8.2 billion will be dedicated to extramural research and development. We would appreciate a response, in writing, by the close of business on Tuesday, March 24, 2009.

In moving forward, we respectfully request that HHS specifically consult us when making legislative recommendations that affect these programs that are squarely within our Committee's jurisdiction.

Thank you for working with us on this important small business issue. If you have any questions or need any additional information, please do not hesitate to have your staff contact Ms. Kevin Wheeler (Senator Landrieu) or Mr. Erik Necciai (Senator Snowe), at 202-224-5175.

Sincerely,



Mary L. Landrieu
Chair



Olympia J. Snowe
Ranking Member