

# CRS Report for Congress

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## Education-Related Hurricane Relief: Legislative Action

**January 12, 2006**

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# Education-Related Hurricane Relief: Legislative Action

## Summary

Following the destruction wrought on the Gulf Coast by Hurricane Katrina and Hurricane Rita, the initial federal response to providing education-related disaster relief was primarily in the form of waivers issued by the Secretary of Education. With the passage of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (P.L. 109-148, hereafter referred to as FY2006 defense appropriations), \$1.6 billion has been appropriated to aid in providing education-related disaster relief at the elementary, secondary, and postsecondary levels.

This report provides an overview of the waivers that have been granted by the Department of Education in response to the Gulf Coast hurricanes; three public laws that have been enacted, specifically to provide financial relief to postsecondary students and institutions of higher education; and education-related hurricane relief provisions included in FY2006 defense appropriations. For K-12 education, the latter provides several waivers of existing requirements and appropriates \$1.4 billion, primarily to restart school operations in affected areas and to provide emergency impact aid grants to schools serving displaced students. For higher education, P.L. 109-148 provides waivers of existing requirements and makes available \$200 million to provide assistance under various HEA programs.

This report complements the detailed discussion of issues related to major disasters and education included in CRS Report RL33089, *Education and Training Issues Related to Major Disasters*, coordinated by Charmaine Mercer. This report will be updated as warranted by legislative action.

# Contents

Waivers and Other Actions Taken by the Department of Education .....	1
K-12 Education .....	2
Higher Education .....	3
Public Laws Providing Education-Related Hurricane Assistance .....	4
Pell Grant Hurricane and Disaster Relief Act .....	4
Student Grant Hurricane and Disaster Relief Act .....	5
Natural Disaster Student Aid Fairness Act .....	5
FY2006 Defense Appropriations .....	6
Subtitle A: Elementary and Secondary Education Hurricane Relief .....	7
General Waiver Authority for K-12 Education .....	7
Hold Harmless Provision .....	7
Highly Qualified Teachers Provisions .....	7
Assistance for Homeless Youth .....	8
Immediate Aid to Restart School Operations .....	8
Temporary Emergency Impact Aid for Displaced Students .....	9
Subtitle B: Higher Education Hurricane Relief Act of 2005 .....	9
General Authority to Grant Waivers or Modifications .....	9
Modification of Teacher Quality Enhancement Grants for States and Partnerships .....	10
Modification of TRIO, GEAR-UP, Title III Part A or B, and Other Competitive Grants .....	10
Use of \$200 Million for Higher Education .....	10
Subtitle C: Education and Related Programs Hurricane Relief .....	11
Waivers of IDEA Deadlines .....	11

# Education-Related Hurricane Relief: Legislative Action

Following the destruction wrought on the Gulf Coast by Hurricane Katrina and Hurricane Rita in August and September 2005, the initial federal response to providing education-related disaster relief was primarily in the form of waivers issued by the Secretary of Education (Secretary). Additional relief was also provided by the Federal Emergency Management Agency (FEMA) in the form of portable classrooms and other types of immediate aid to support the education of students displaced by the storms. With the passage of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (P.L. 109-148, hereafter referred to as FY2006 defense appropriations), \$1.6 billion has been appropriated to aid in providing education-related disaster relief at the elementary, secondary, and postsecondary levels.<sup>1</sup>

This report provides an overview of the waivers that have been granted by the Department of Education (ED) in response to the Gulf Coast hurricanes, public laws that have been enacted, and education-related hurricane relief provisions included in FY2006 defense appropriations. It complements the detailed discussion of several issues related to major disasters and education included in CRS Report RL33089, *Education and Training Issues Related to Major Disasters*, coordinated by Charmaine Mercer.

## Waivers and Other Actions Taken by the Department of Education

Prior to passage of the FY2006 defense appropriations, the primary form of hurricane relief support provided by ED to states affected by Hurricanes Katrina and Rita was waivers of statutory and regulatory requirements. Since the first hurricane occurred, the Secretary has made a series of announcements regarding the availability of waivers, modifications, and flexibility for elementary, secondary, and postsecondary education. The following section briefly discusses the waivers and modifications by education level. A detailed discussion of the Secretary's authority to grant various waivers and issues surrounding the provision of waivers in K-12 and postsecondary education is included in CRS Report RL33089, *Education and Training Issues Related to Major Disasters*.

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<sup>1</sup> The \$1.6 billion is not subject to a 1% across-the-board cut as specified in Division B, Title III, Chapter 8 of the FY2006 defense appropriations, as it has been designated as an emergency requirement pursuant to Section 402 of H.Con.Res. 95, the concurrent resolution on the budget for FY2006.

## K-12 Education

Upon request, the Secretary agreed to consider granting waivers and flexibility related to K-12 education provisions primarily under the existing waiver authority available in the Elementary and Secondary Education Act of 1965 [ESEA (20 U.S.C. 6301 et seq.)], as amended by the No Child Left Behind Act of 2001 [NCLBA (P.L. 107-110)].<sup>2</sup> Examples of specific waivers that would be considered included waivers of maintenance-of-effort (MOE) requirements, modifications of allowable uses of grant funds, and waivers of fiscal and administrative requirements under the Education Department General Administrative Regulations (EDGAR). The Secretary also announced that ED would work with affected states and local educational agencies (LEAs) to determine whether flexibility was needed with respect to meeting highly qualified teacher requirements<sup>3</sup> and whether federal funds could be transferred from program to program or otherwise reallocated to provide assistance.<sup>4</sup>

In a subsequent announcement, the Secretary noted that the ESEA, as amended by NCLBA, does not require schools or LEAs to continue to meet their school improvement timeline if the reason for failing to make adequate yearly progress (AYP) is “due to exceptional or uncontrollable circumstances, such as a natural disaster...” [ESEA Title I, Section 1116(b)(7)(D) and Section 1116(c)(10)(F)].<sup>5</sup> The Secretary indicated that several counties or parishes, such as Orleans and St. Bernard in Louisiana, would meet this criterion without needing to request a waiver. Requests for waivers from other LEAs or schools adversely affected by Hurricanes Katrina and Rita would be considered. The Secretary announced that waivers of subgroup requirements under NCLBA requirements for annual assessments would also be considered.<sup>6</sup>

The Secretary also announced that requests for waivers of statutory or regulatory requirements related to the Charter Schools Program (CSP, ESEA Title V, Part B, Subpart 1) would be considered.<sup>7</sup> The CSP program provides planning,

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<sup>2</sup> Department of Education (September 7, 2005), “Key Policy Letters Signed by the Education Secretary or Deputy Secretary.” Available online at [<http://www.ed.gov/print/policy/guid/secletter/050907.html>].

<sup>3</sup> ESEA, Section 1119. For more information on highly qualified teacher criteria, see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James B. Stedman.

<sup>4</sup> Department of Education (September 7, 2005), “Key Policy Letters Signed by the Education Secretary or Deputy Secretary.” Available online at [<http://www.ed.gov/print/policy/guid/secletter/050907.html>].

<sup>5</sup> Department of Education (September 29, 2005), “Key Policy Letters Signed by the Education Secretary or Deputy Secretary.” Available online at [<http://www.ed.gov/print/policy/guid/secletter/050929.html>].

<sup>6</sup> For more information on AYP requirements, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne Riddle.

<sup>7</sup> Department of Education (September 12, 2005), “Key Policy Letters Signed by the  
(continued...)

implementation, and dissemination grants to charter schools nationwide. In the aftermath of the hurricanes it was determined that ED had approximately \$20 million in FY2005 funds still available under the CSP that would be targeted for Hurricane Katrina relief. Louisiana subsequently received a \$20.9 million grant through the CSP to: help reopen charter schools damaged by Hurricane Katrina and Hurricane Rita; help create 10 new charter schools; and expand existing charter schools to accommodate displaced students.<sup>8</sup>

## Higher Education

The Secretary exercised available authority to provide waivers of various provisions under the Higher Education Act of 1965 [HEA (20 U.S.C. 1001)].<sup>9</sup> For example, in a letter dated September 30, 2005, the Secretary stated that all institutions of higher education (IHEs) in Alabama, Louisiana and Mississippi that were affected by Hurricane Katrina would be permitted to reduce their academic year from 30 weeks of instructional time to 26 weeks of instruction.<sup>10</sup> The Secretary indicated that she would continue to address this issue on a case-by-case basis for IHEs affected by Hurricane Rita.<sup>11</sup> In addition, in a notice issued on November 1, 2005, student borrowers who lived in an area affected by the hurricane were granted an automatic six month loan-payment forbearance through February 26, 2006.<sup>12</sup> Further IHEs were granted extensions of various reporting and filing requirements pertaining to reporting the disbursement of Title IV funds and the reimbursement of Title IV funds based on student enrollment, attendance, and the institution's

<sup>7</sup> (...continued)

Education Secretary or Deputy Secretary.” Available online at [<http://www.ed.gov/print/policy/guid/secletter/050912.html>].

<sup>8</sup> Department of Education (September 30, 2005), “Louisiana Awarded \$20.9 Million No Child Left Behind Grant to Assist Damaged Charter Schools, Create New Charter Schools.” Available online at [<http://www.ed.gov/news/pressreleases/2005/09/09302005.html>]. An application for these funds is available from the Louisiana Board of Elementary and Secondary Education (BESE) at [<https://www.doe.state.la.us/lde/uploads/8321.pdf>]. The state BESE has assumed control over 102 of the 117 campuses in the Orleans Parish school system. Under the state take-over, it is expected that as schools reopen, many will reopen as charter schools. (Brian Thevenot, “Added Hurdles Toughen Resolve,” *The Times-Picayune*, January 9, 2006.)

<sup>9</sup> Most of these authorities were enacted in response to the hurricanes that occurred in Florida in 2003. ED issued a general distribution letter detailing the authority being exercised by the Secretary and providing guidance for IHEs dealing with the effects of a major disaster. This document is available online at [<http://ifap.ed.gov/dpccletters/attach,emts/GEN0404.pdf>]. Higher education waiver provisions are discussed in greater detail in CRS Report RL33089, *Education and Training Issues Related to Major Disasters*.

<sup>10</sup> The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneKatrinaEA6.html>].

<sup>11</sup> The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneRitaEA2.html>].

<sup>12</sup> The full text of this notice is available at [<http://www.ifap.ed.gov/announcements/1101HurricaneKatrinaEA07.html>].

academic calendar.<sup>13</sup> Additionally, three public laws were enacted providing hurricane relief for higher education (see discussion below).<sup>14</sup>

## **Public Laws Providing Education-Related Hurricane Assistance**

This section provides an overview of education-related hurricane relief legislation that has been enacted since September 2005. As with the previously discussed actions taken by ED, the three public laws discussed below primarily focus on providing waivers of existing provisions included in the HEA. Two of the three statutes provide financial relief to students. The third law provides the Secretary with authority to waive institutional matching requirements and redirect funds for campus-based student aid programs<sup>15</sup> to assist IHEs affected by Hurricanes Katrina and Rita. FY2006 defense appropriations are discussed in a subsequent section.

### **Pell Grant Hurricane and Disaster Relief Act**

The Pell Grant Hurricane and Disaster Relief Act (P.L. 109-66) provides the Secretary with authority to waive the amount of Pell Grant aid required to be returned by students who withdrew or whose attendance was interrupted for students who resided in, were employed in, or attended an IHE in an area that has been declared a major disaster by the President in accordance with Section 401 of the Robert T. Stafford Disaster Relief and Emergency Act (hereafter referred to as the Stafford Act, 42 U.S.C. 5121 et seq.). The Pell Grant program provides portable grants to low-income undergraduate students under HEA Title IV, student financial aid programs.<sup>16</sup> Under current law, when a student withdraws from an IHE, the IHE and/or the student may be required to return Pell Grant aid to ED.<sup>17</sup> P.L. 109-66 eliminates the requirement that students repay their portion of the Pell Grant when they withdraw from an IHE due to a major disaster. It does not, however, eliminate the requirement that the IHE return funds to ED. Thus, while students attending IHEs in Louisiana and Louisiana residents attending out-of-state IHEs may have benefitted from this new provision, IHEs in affected areas were still required to return Pell Grant funds.<sup>18</sup>

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<sup>13</sup> The full text of this notice is available at [<http://www.ed.gov/legislation/FedRegister/announcements/2005-3/090905a.html>].

<sup>14</sup> ED has also published guidance for helping Title IV participants affected by a disaster. The letter dated February 2004 (GEN-04-04), is available online at [<http://ifap.ed.gov/dpcletters/GEN0404.html>].

<sup>15</sup> HEA, Title IV. Also see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

<sup>16</sup> For more information on Pell Grants, see CRS Report RL31668, *Federal Pell Grant Program of the Higher Education Act: Background and Reauthorization*, by Charmaine Mercer.

<sup>17</sup> This return of funds requirement is applicable to other student financial aid programs also.

<sup>18</sup> For more information on requirements related to the return of Title IV grant aid, see CRS (continued...)

## Student Grant Hurricane and Disaster Relief Act

The Student Grant Hurricane and Disaster Relief Act (P.L. 109-67) grants the Secretary authority to waive the amount of student aid required to be returned by students who withdrew if the students resided in, were employed in, or attended an IHE in an area that has been declared a major disaster by the President in accordance with Section 401 of the Stafford Act, or who withdrew because their attendance was interrupted due to the impact of the disaster. This pertains to all non-Pell Grant aid authorized under Title IV of the HEA. As with P.L. 109-66, this provision waives the return of grant aid for students but not for IHEs required to return grant aid.<sup>19</sup>

## Natural Disaster Student Aid Fairness Act

The Natural Disaster Student Aid Fairness Act (P.L. 109-86) grants the Secretary authority to waive certain requirements for the campus-based student financial aid programs.<sup>20</sup> Among other provisions, under current law the terms of the campus-based programs generally require participating IHEs to provide matching funds equal to one-third of the amount of federal funds received.<sup>21</sup> In addition, IHEs that neither use funds during the year for which they are allocated nor the subsequent year are required to return them to ED for reallocation to other eligible IHEs; and IHEs that return more than 10 percent of their allocation as unused will have subsequent allocations reduced.

P.L. 109-86 provides the Secretary with authority through October 7, 2006 to waive certain components of the campus-based programs for IHEs that are located in areas affected by Hurricane Katrina and Hurricane Rita or that have accepted for enrollment any students affected by a Gulf hurricane disaster. First, with respect to funds made available for the 2004-2005 and 2005-2006 academic years, the Secretary must waive the institutional matching requirement for affected IHEs, and (after considering an IHE's student population and existing resources) may waive the institutional matching requirement for IHEs that have accepted for enrollment any affected students. Second, with respect to affected IHEs and IHEs that have accepted

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<sup>18</sup> (...continued)

Report RL31926, *Institutional Eligibility to Participate in Title IV Student Aid Programs Under the Higher Education Act: Background and Issues*, by Rebecca R. Skinner. (Hereafter cited as CRS Report RL31926, *Institutional Eligibility*.)

<sup>19</sup> For more on requirements related to the return of Title IV grant aid, see CRS Report RL31926, *Institutional Eligibility*.

<sup>20</sup> The Federal Supplemental Educational Opportunity Grant (FSEOG) program (HEA Title IV, Part A, Subpart 3), the Federal Work-Study (FWS) program (HEA Title IV, Part C), and the Federal Perkins Loan program (HEA Title IV, Part E) are commonly referred to as the campus-based student financial aid programs. For additional information on the campus-based student financial aid programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

<sup>21</sup> There are exceptions to the one-third matching requirement. For a discussion, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.



for enrollment any affected students, the Secretary shall: (a) reallocate to those IHEs any funds returned as unused from the 2004-2005 award year; and (b) waive any allocation reduction that would otherwise apply to the IHE for award year 2006-2007 for returning more than 10% of its allocation. Finally, the availability of funds that would otherwise expire on September 30, 2005 is extended for one additional year; and the Secretary is granted authority to recall any funds that would lapse on September 30, 2005 for reallocation to eligible IHEs.<sup>22</sup>

## **FY2006 Defense Appropriations**

While other efforts by Congress and ED to provide education-related hurricane relief have primarily relied on waivers, Division B, Title IV of the FY2006 defense appropriations provides \$1.6 billion, as well as additional waivers and waiver authority, to meet the educational needs of individuals and institutions affected by the hurricanes in the Gulf of Mexico.<sup>23</sup> The act provides support for elementary and secondary education, as well as higher education. This section provides a summary of the main contents of Division B, followed by a more detailed analysis of the changes made by various sections contained in Division B.

For K-12 education, Subtitle A (Elementary and Secondary Education Hurricane Relief) provides several waivers of existing requirements and appropriates \$1.4 billion for new programs to meet the needs of states, LEAs, and students. With the exception of waivers granted under Title IV, Section 105 (see below for discussion), all K-12 education-related hurricane provisions expire on August 1, 2006.

For higher education, Subtitle B (Higher Education Hurricane Relief Act of 2005) primarily provides waivers of existing requirements and makes available \$200 million specifically to provide assistance under various HEA programs. These funds must be used: (1) to provide assistance to students attending IHEs that are located in an area in which a major disaster has been declared in accordance with Section 401 of the Stafford Act related to the 2005 Gulf of Mexico hurricanes and who are eligible for assistance under the Federal Supplemental Educational Opportunity Grants [FSEOG (HEA Title IV, Part A, Subpart 3)], the Leveraging Educational Assistance Partnership Program [LEAP (HEA Title IV, Part A, Subpart 4)], Federal Work Study Programs [FWS (HEA Title IV Part C)];<sup>24</sup> (2) to provide assistance to IHEs located in areas affected by these hurricanes and forced to close, relocate, or

<sup>22</sup> On November 7, 2005, the Secretary published a notice regarding the reallocation of campus-based aid and waivers of statutory and regulatory provisions pursuant to the Natural Disaster Student Aid Fairness Act in the Federal Register.

<sup>23</sup> For the purposes of K-12 and postsecondary education hurricane relief, “hurricanes in the Gulf of Mexico” only include Hurricane Katrina and Hurricane Rita.

<sup>24</sup> Funds appropriated for the Mississippi Institutes of Higher Learning (public colleges and universities in Mississippi) must be used to provide student assistance to students meeting these criteria. It should be noted that statutory language requires students to be eligible for FSEOG, LEAP, and FWS to receive assistance. It is possible that the language may be interpreted to include students receiving assistance under any of these three programs or a combination of these programs as being eligible for assistance.

significantly curtail their operations as a result of direct damage caused by such hurricanes;<sup>25</sup> and (3) to provide payments to IHEs to help defray unanticipated expenses associated with enrolling displaced students from IHEs at which operations were disrupted due to the hurricanes in the Gulf of Mexico. The Secretary's authority to issue waivers or modifications under this subtitle expires at the end of the 2005-2006 academic year. It is unclear whether this also means that the waivers or modifications granted prior to the end of the 2005-2006 academic year would also expire at the same time.

Under Subtitle C (Education and Related Programs Hurricane Relief), the Secretary is authorized to grant waivers to extend various deadlines of the Individuals with Disabilities Education Act [IDEA (20 U.S.C. 1400 et seq.)].

## **Subtitle A: Elementary and Secondary Education Hurricane Relief**

**General Waiver Authority for K-12 Education.** Section 105 provides the Secretary with authority to waive or modify any requirements related to maintenance of effort (MOE); the use of federal funds to supplement, not supplant, non-federal funds; and any non-federal share or capital contribution required to match federal funds provided under programs administered by the Secretary. These waivers may be provided to ease the fiscal burdens of entities in an affected state in which a major disaster has been declared in accordance with Section 401 of the Stafford Act. Any waivers or modifications of MOE for FY2006 will not reduce the level of effort required for FY2007. In addition, any waivers issued under this authority will be effective for FY2006 only.

**Hold Harmless Provision.** Section 103 provides that for LEAs serving areas in which the President has declared a major disaster exists related to a Gulf hurricane disaster in accordance with Section 401 of the Stafford Act, the amount of funding the LEA receives for FY2006 under the four ESEA, Title I-A allocation formulas shall not be less than what it received for FY2005.<sup>26</sup>

**Highly Qualified Teachers Provisions.** Section 104 modifies the highly qualified teacher criteria included in Section 1119 of the ESEA and the criteria for qualified paraprofessionals in Section 1119(c) of the ESEA. For example, if a teacher was considered highly qualified in a core academic subject in Louisiana on or before August 22, 2005, and seeks a teaching position in another state in the same core subject area, the teacher will be considered highly qualified in the new state for the 2005-2006 school year, regardless of whether the teacher meets the highly qualified teacher provisions in the new state. Similar provisions exist for special

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<sup>25</sup> Funds appropriated for the Louisiana Board of Regents must be used for these purposes.

<sup>26</sup> This provision sunsets August 1, 2006. FY2006 funds become available to LEAs on July 1, 2006. It is not clear what effect, if any, the sunset of the hold harmless provision will have on Title I allocations.

education teachers and paraprofessionals. Section 104 provides a one-year waiver<sup>27</sup> of the requirement that affected states and the LEAs within those states ensure that all teachers meet the highly qualified teacher criteria by the end of the 2005-2006 academic year (Section 1119 of the ESEA), if their failure to comply with this deadline is due to unforeseen circumstances, such as a natural disaster.<sup>28</sup>

**Assistance for Homeless Youth.** The bill provides \$5 million for assistance to LEAs serving homeless children and youth that have been displaced by Hurricane Katrina or Hurricane Rita. The provision of assistance must be “consistent with” the McKinney-Vento Homeless Assistance Act (McKinney-Vento, 42 U.S.C. 11433) with the exception of specified allocation and application provisions. Funds must be disbursed by the Secretary to SEAs based on demonstrated need, and disbursed by SEAs to LEAs based on demonstrated need, for the purpose of carrying out Section 723 of McKinney-Vento. Section 723 authorizes assistance to LEAs to facilitate the enrollment, attendance, and success in school of homeless children and youth. McKinney-Vento requires states to ensure that homeless children and youth are provided equal access to a free, appropriate public education in the same manner as provided other children and youth. Such education must be provided in a mainstream school environment except for health and safety emergencies and for “temporary, special, and supplemental” services to meet the special needs of homeless children and youth.

**Immediate Aid to Restart School Operations.** Section 102 provides \$750 million to assist with restarting school operations, reopening of schools, and re-enrolling students to LEAs and non-public schools in Louisiana, Mississippi, Alabama, and Texas, that serve an area in which a major disaster has been declared in accordance with Section 401 of the Stafford Act related to Hurricane Katrina or Hurricane Rita. The Secretary is authorized to make payments to SEAs based on criteria the Secretary deems appropriate, taking into account the number of students who were enrolled during the 2004-2005 school year in elementary and secondary schools that were closed on September 12, 2005, or October 7, 2005, as a result of Hurricane Katrina or Hurricane Rita, respectively. SEAs will, in turn, make payments to LEAs and non-public schools based on the number of school-aged children served by the LEA or non-public school during the 2004-2005 school year, the severity of the impact of the hurricanes on the LEA or non-public school, and the extent of the needs of the LEA or non-public school, except that the amount of

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<sup>27</sup> That is, affected states and LEAs will have until the end of the 2006-2007 school year to ensure that all teachers meet the highly qualified teacher criteria. In an October 21, 2005, letter to Chief State School Officers, the Secretary announced that any state failing to meet the 2005-2006 deadline would be granted an additional year if “they are implementing the law and making a good-faith effort” to meet the requirement. Thus, while affected states and LEAs are guaranteed extra time to meet the requirements, other states may be granted extra time at the Secretary’s discretion. The Secretary’s letter is available online at [<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>].

<sup>28</sup> For more information on ESEA, Title I programs, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle. For more information on highly qualified teacher criteria, see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James B. Stedman.

funding made available to non-public schools within each state shall be proportional to the number of non-public schools in relation to the total number of schools in the state. On January 5, 2006, the Secretary announced initial funding levels under the program — Louisiana: \$100 million; Mississippi: \$100 million; Alabama: \$3.75 million; and Texas: \$50 million.<sup>29</sup> The program sunsets August 1, 2006.

**Temporary Emergency Impact Aid for Displaced Students.** Section 107 of the FY2006 defense appropriations authorizes the Secretary to award emergency impact aid<sup>30</sup> grants to SEAs to enable them to grant funds to eligible LEAs and Bureau of Indian Affairs (BIA)-funded schools for the education of displaced students. The program is a temporary emergency aid program in which funding is made available to schools on a per-student basis, irrespective of whether the school in which parents have chosen to enroll their child is a public or nonpublic school. Aid is limited to schools serving students displaced by Hurricanes Katrina and Rita. Under the program, the Secretary will make four quarterly payments to SEAs, which in turn award funds to LEAs and BIA-funded schools on a per-student basis. LEAs and eligible BIA-funded schools may use these funds for the purpose of providing services and assistance to elementary and secondary schools enrolling displaced students during the 2005-2006 school year. LEAs serving areas in which displaced students enrolled in nonpublic schools prior to December 20, 2005 must deposit a proportionate amount of funds into student accounts on behalf of such students. Nonpublic schools, in turn, may access funds from student accounts to serve eligible students. Up to \$6,000 may be made available per displaced student (and up to \$7,500 per displaced student served under IDEA, Part B). The amount to be deposited into each student account may not exceed the cost of tuition and fees at the nonpublic school a student attends. Nonpublic schools also must waive or reimburse tuition in order to access funds from student accounts. For FY2006, \$645 million has been appropriated. The program sunsets August 1, 2006.

## **Subtitle B: Higher Education Hurricane Relief Act of 2005**

**General Authority to Grant Waivers or Modifications.** The bill provides the Secretary with the authority to waive or modify any statutory or regulatory requirement related to HEA Title IV student financial aid programs or any student or institutional eligibility provision in the HEA if such waiver is deemed necessary by the Secretary in connection with a Gulf hurricane disaster<sup>31</sup> to ensure that administrative requirements are minimized to ease the burden on affected students, affected individuals, affected institutions, lenders, guaranty agencies, and grantees without damaging the integrity of the HEA programs. This authority may be exercised to grant temporary relief from requirements that are rendered infeasible or unreasonable as a result of the effects of a Gulf hurricane disaster. The Secretary

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<sup>29</sup> U.S. Department of Education, “Secretary Spellings Announces Immediate Funding for Hurricane-Affected Schools,” press release, January 5, 2006.

<sup>30</sup> This program is distinct from the Impact Aid program authorized under ESEA, Title VIII.

<sup>31</sup> A Gulf hurricane disaster is defined as a disaster, as declared by the President in accordance with Section 401 of the Stafford Act, that was caused by Hurricane Katrina or Hurricane Rita.

may also extend or waive various reporting requirements under Section 131(a) of the HEA.

**Modification of Teacher Quality Enhancement Grants for States and Partnerships.** At the request of the grantee, the Secretary may modify the requirements for Teacher Quality Enhancement Grants for States and Partnerships authorized under HEA Title II, Part A. Modifications may be made to aid states and LEAs in recruiting and retaining highly qualified teachers in an LEA in an area affected by a Gulf hurricane disaster, and to aid IHEs, located in such an area, in recruiting and retaining faculty needed to prepare teachers and provide professional development.<sup>32</sup>

**Modification of TRIO, GEAR-UP, Title III Part A or B, and Other Competitive Grants.** Upon request by an affected institution or other grantee located in an area affected by a Gulf hurricane disaster, the Secretary has the authority to modify the required and allowable uses of funds under the TRIO and GEAR-UP programs (HEA Title IV, Part A, Subpart 2, Chapters 1 and 2, respectively), programs authorized under Strengthening Institutions (HEA Title III, Part A) or Strengthening Historically Black Colleges and Universities (HEA Title III, Part B), and under any other competitive grant program. The Secretary may not authorize any new construction, renovation, or improvement of classrooms, libraries, laboratories, or other instructional facilities that was not previously authorized under the institution's grant award under part A or B of Title III.<sup>33</sup>

**Use of \$200 Million for Higher Education.** Of the \$200 million appropriated to provide assistance for higher education, \$95 million was specifically appropriated to the Mississippi Institutes of Higher Learning (public universities and colleges in Mississippi), \$95 million was specifically appropriated for the Louisiana Board of Regents, and \$10 million was specifically appropriated to assist IHEs that enrolled students displaced as a result of Hurricane Katrina or Hurricane Rita.

The \$95 million for the Mississippi Institutes of Higher Learning was appropriated to provide assistance to students attending IHEs that are located in an area in which a major disaster has been declared in accordance with Section 401 of the Stafford Act related to the 2005 Gulf of Mexico hurricanes and who are eligible for assistance under the FSEOG, LEAP, and FWS.<sup>34</sup> No requirements related to

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<sup>32</sup> For more information on Teacher Quality Enhancement Grants, see CRS Report RL31882, *Teacher Quality Enhancement Grants (Title II, Part A of the Higher Education Act): Overview and Reauthorization Issues*, by Jeffrey J. Kuenzi.

<sup>33</sup> For more information on TRIO and GEAR UP programs, see CRS Report RL31622, *TRIO and GEAR UP Programs: Status and Issues*, Jeffrey J. Kuenzi. For more information on HEA Title III programs, see CRS Report RL31647, *Title III and Title V of the Higher Education Act: Background and Reauthorization Issues*, by Charmaine Mercer.

<sup>34</sup> It should be noted that statutory language requires students to be eligible for FSEOG, LEAP, and FWS to receive assistance. It is possible that the language may be interpreted to include students receiving assistance under any of these three programs or a combination of these programs as being eligible for assistance.

matching, federal share, reservation of funds, or MOE that would otherwise apply are applicable to this funding.

The \$95 million appropriated for the Louisiana Board of Regents was appropriated under the Fund for the Improvement of Postsecondary Education [FIPSE<sup>35</sup> (HEA Title VII, Part B)]. FIPSE is a competitive grant program focused on a broad range of issues related to improving postsecondary educational opportunities. Under current law, entities with a stake in higher education, such as IHEs, SEAs, LEAs, and professional associations, are eligible grantees. Under the FY2006 defense appropriations, the funds provided to Louisiana under the FIPSE program must be used to provide emergency assistance to IHEs located in an area affected by Gulf hurricanes based on demonstrated need, and may be used for student financial assistance, faculty and staff salaries, equipment and instruments, or any purpose authorized under the HEA.

In addition, \$10 million of the \$200 million will be reserved for the Secretary to make payments to IHEs that enrolled displaced students from IHEs directly affected by the hurricanes in the Gulf of Mexico. IHEs would use these funds to defray the unanticipated costs of enrolling displaced students. The Secretary is authorized to establish criteria for distributing the funds.

## **Subtitle C: Education and Related Programs Hurricane Relief**

**Waivers of IDEA Deadlines.** Title IV, Section 301 of the FY2006 defense appropriations includes several waivers related to IDEA that the Secretary may provide by entering into an agreement with an eligible entity. The available waivers extend certain administrative deadlines, such as the deadline for submission of an annual report on the progress of the state and of children with disabilities in the state.<sup>36</sup> The available waivers also extend the deadline for initial evaluation of children to determine their eligibility for IDEA.<sup>37</sup> Any agreement entered into under Section 301 will terminate at the end of the 2005-2006 academic year. Section 301(c) clarifies that nothing in the section shall be interpreted to grant waiver authority over key IDEA provisions, such as the right to a free appropriate public education (FAPE) or procedural safeguards granted under the act.<sup>38</sup>

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<sup>35</sup> For more information on the Fund for the Improvement of Postsecondary Education, see CRS Report RS21653, *Fund for the Improvement of Postsecondary Education: Background and Funding*, by Bonnie Mangan.

<sup>36</sup> ED has issued proposed regulations reflecting changes made to IDEA by the 2004 reauthorization (P.L. 108-446). The relevant provision in the proposed regulations is §300.157(c) (70 *Federal Register* 35851, June 21, 2005).

<sup>37</sup> This deadline is a new requirement resulting from the 2004 reauthorization of IDEA (P.L. 108-446). ED has issued proposed regulations reflecting changes made to IDEA by the 2004 reauthorization. The relevant provision in the proposed regulations is §300.301(c)(1)(i) (70 *Federal Register* 35862, June 21, 2005).

<sup>38</sup> For more information on IDEA, see CRS Report RS22138, *The Individuals with Disabilities Education Act (IDEA): Overview of P.L. 108-446*, by Nancy Lee Jones and Richard N. Apling.