



# Education-Related Regulatory Flexibilities, Waivers, and Federal Assistance in Response to Disasters and National Emergencies

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## Summary

The 21<sup>st</sup> century has seen the operation of elementary, secondary, and postsecondary educational institutions and the education of the students they enroll disrupted by natural disasters, such as hurricanes and floods, and by national emergencies, such as the terrorist attacks of September 11, 2001. This report is intended to inform Congress of existing statutory and regulatory provisions that may aid in responding to future disasters and national emergencies that may affect the provision of or access to education and highlight the actions of previous Congresses to provide additional recovery assistance.

The majority of federal aid for disaster management is made available from the Federal Emergency Management Agency (FEMA) under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288). Under the Stafford Act, public school districts, charter schools, private nonprofit educational institutions, public institutions of higher education (IHEs), and federally recognized Indian tribal governments are eligible to receive assistance for activities such as debris removal, infrastructure and equipment repair and replacement, hazard mitigation, and temporary facilities. The Stafford Act also authorizes federal agency heads to waive administrative, but not statutory, requirements to expedite assistance.

In addition to the assistance available through the Stafford Act, assistance is available through numerous provisions in education laws. At the elementary and secondary level, there are several existing provisions that may be helpful in providing assistance in response to a disaster. The Elementary and Secondary Education Act (ESEA) grants the Secretary of Education authority to issue waivers of any statutory or regulatory requirement of the ESEA for a state educational agency (SEA), local educational agency (LEA), Indian tribe, or school that receives funds under an ESEA program and requests a waiver. In response to recent disasters, waivers have been granted to address funding flexibility issues and accountability requirements. The Individuals with Disabilities Education Act (IDEA) grants the Secretary of Education authority to waive state maintenance of effort (MOE) requirements and requirements to supplement, not supplant, federal funds under certain circumstances. The Secretary is not, however, able to waive all statutory and regulatory requirements with respect to the acts. For example, under the ESEA the Secretary may not waive civil rights requirements or prohibitions against the use of funds for religious worship or instruction. Under IDEA, for example, the Secretary may not grant waivers from the right to a free appropriate public education.

At the postsecondary level, various provisions exist to ensure continuity of operations and continuity of federal funding following a disaster. Under the Higher Education Act (HEA), the Secretary of Education has authority to waive several of the requirements for aid recipients, IHEs, and financial institutions when a disaster has been declared. In particular, waivers have been provided from various requirements related to the disbursement, repayment, and administration of federal student aid. Under Title 38 of the U.S. Code, the Department of Veterans Affairs (VA) may extend payment of veterans educational assistance benefits to cover periods when enrollment is interrupted.

In response to the Gulf Coast hurricanes, Congress enacted legislation that provided short-term programs or temporary allowances in order to aid recovery from 2005 to 2009. Additional funds were appropriated to help affected institutions restart, replace equipment, or renovate. Funds were appropriated to support the recruitment, retention, and compensation of elementary and secondary school staff. Funds were also appropriated to provide grants to postsecondary students and

support the enrollment of students displaced or made homeless by the disaster. Congress allowed the Secretary of Education to waive or modify the statutory and regulatory requirements of some programs on a temporary basis to ensure funds were targeted to affected populations and institutions at the postsecondary level and to ease the associated financial and accountability burden at the elementary and secondary levels.

As of the date of this report, Congress had not enacted legislation to specifically support education as a result of and in the aftermath of Hurricane Sandy, which primarily affected areas of the mid-Atlantic and northeast in October 2012.

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## Introduction

Since 2001, hundreds of thousands of elementary, secondary, and postsecondary education students have been adversely affected by natural disasters, such as hurricanes and floods, and by national emergencies, such as the September 11, 2001, terrorist attacks. To assist Congress in responding to catastrophic events, this report provides a general overview of existing statutory and regulatory authorities, flexibilities, and programs that are available to assist students and educational institutions affected by a major disaster or a national emergency. The report also reviews several no-longer-authorized temporary provisions that were enacted by Congress to provide additional assistance to support recent education-related disaster recovery.

The federal government has responded in various ways to disasters that have affected the provision of education. These responses have included the provision of financial support, waivers of existing statutory and regulatory provisions, and the creation of new programs. The majority of federal aid for disaster management is made available from the Federal Emergency Management Agency (FEMA) under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288). In addition to the assistance authorized by the Stafford Act, a wide range of disaster aid is provided by other federal agencies under statutory authority that specifically refers to disaster assistance, as well as under general assistance provisions.<sup>1</sup>

In addition to FEMA assistance, the U.S. Department of Education (ED) has also supported education-related disaster recovery efforts. In many areas, ED is able to use existing statutory authority to provide assistance to states, local educational agencies (LEAs), institutions of higher education (IHEs), schools, and students. In several specific instances, Congress has also enacted new legislation to provide additional forms of assistance.

This additional federal assistance has been provided to address a variety of different problems. Some of the initial education-related problems that may need to be addressed following a disaster relate to utilities outages, displaced students, homeless students, damage to buildings and school property, and school closures. Additionally, at the elementary and secondary education level, schools, LEAs, and states have needed assistance in complying with various accountability requirements included in the Elementary and Secondary Education Act (ESEA) and in meeting fiscal requirements. At the postsecondary education level, institutions of higher education (IHEs) have needed assistance complying with the statutory requirements pertaining to the disbursement and the reimbursement of federal student aid, and students have needed assistance in securing, maintaining eligibility for, and repaying federal student aid. In some instances, funds were provided to IHEs to defray the expenses incurred by these IHEs that were forced to close or relocate or whose operations were adversely affected by the disaster.

The first part of this report briefly describes education-related federal assistance provided by FEMA in the aftermath of disasters. This is followed by an examination of education-related disaster recovery and issues related to elementary and secondary education and then postsecondary education. The report also includes an appendix summarizing education-related disaster appropriations administered by ED since the Gulf Coast hurricanes of 2005.

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<sup>1</sup> CRS Report RL31734, *Federal Disaster Recovery Programs: Brief Summaries*, by Carolyn V. Torsell.

## FEMA and the Stafford Act

The principal authority governing federal assistance for emergencies and major disasters in the United States is the Robert T. Stafford Relief and Emergency Assistance Act (Stafford Act; P.L. 93-288).<sup>2</sup> Under the Stafford Act, the primary federal agency responsible for coordinating the federal response is the Federal Emergency Management Agency (FEMA), located within the Department of Homeland Security (DHS).<sup>3</sup>

The Stafford Act authorizes the President to issue major disaster or emergency declarations in response to catastrophes in the United States that overwhelm state and local governments. Such declarations result in the distribution of a wide range of federal aid to states, local governments, owners of certain private nonprofit facilities, individuals and families, certain nonprofit organizations, and public agencies. Congress appropriates money to the Disaster Relief Fund (DRF), through both annual appropriations and supplemental appropriations, to fund disaster assistance authorized by the Stafford Act.<sup>4</sup> The types of assistance made available typically vary from one disaster to another and among eligible applicants within a state, commensurate with decisions by FEMA officials on the extent of damage and the eligibility of applicants.

### Stafford Act Assistance for Schools

The following are examples of Stafford Act assistance for which public school districts, charter schools,<sup>5</sup> private nonprofit educational institutions,<sup>6</sup> public and private nonprofit institutions of higher education (IHEs), federally recognized Indian tribal governments, and the school libraries of otherwise eligible institutions may be eligible. Eligible institutions may receive assistance for debris removal and emergency work to provide such services as access to the building and communications. Funds for repair, restoration, and replacement of damaged facilities may be available through the Stafford Act's Public Assistance (PA) program.<sup>7</sup> Eligible institutions may also apply for funding to reduce risks and damages that might occur in future disasters through hazard mitigation grants.<sup>8</sup> In addition, eligible institutions may receive assistance for the provision of temporary facilities.<sup>9</sup>

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<sup>2</sup> For detailed information on the Stafford Act, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Francis X. McCarthy.

<sup>3</sup> FEMA was incorporated into DHS by the Homeland Security Act of 2002 (P.L. 107-296). DHS Secretary has re-delegated Stafford Act authority to the Administrator of FEMA.

<sup>4</sup> For more information on funding of the DRF, see CRS Report R40708, *Disaster Relief Funding and Emergency Supplemental Appropriations*, by Bruce R. Lindsay and Justin Murray.

<sup>5</sup> For more information on the eligibility of charter schools, see FEMA, U.S. Department of Homeland Security, *Eligibility of Charter Schools*, Recovery Policy (Interim) RP9521.5, June 16, 2006.

<sup>6</sup> For more information on the eligibility of private nonprofit educational institutions, see FEMA, U.S. Department of Homeland Security, *Private Nonprofit (PNP) Facility Eligibility*, DAP9521.3, July 18, 2007.

<sup>7</sup> Private nonprofit educational facilities, excluding charter schools, must first apply to the Small Business Administration (SBA) before FEMA may provide any assistance under the PA program.

<sup>8</sup> For information on hazard mitigation grants, see CRS Report R40471, *FEMA's Hazard Mitigation Grant Program: Overview and Issues*, by Natalie Keegan; and CRS Report RL34537, *FEMA's Pre-Disaster Mitigation Program: Overview and Issues*, by Francis X. McCarthy and Natalie Keegan.

<sup>9</sup> Relocation assistance is not eligible to ancillary school facilities such as parking garages, athletic stadiums, faculty and student housing, administration buildings, hospital laundry facilities, research facilities unless the active research program supports an educational or medical function, warehouse facilities, and student union buildings. Source: (continued...)

## **Prohibition Against Duplication of Benefits**

FEMA is prohibited from approving funds for work that is covered by any other source of funding, including funding provided by the general public, private institutions, and federal and state agencies. For example, FEMA funds may not be provided for damages specifically covered by insurance proceeds. However, FEMA funds may supplement assistance from other sources such that they may be used to cover the remainder of unmet costs for a particular activity.

## **Authorization of Administrative Waivers by Other Federal Agencies**

Once a disaster declaration has been made under the Stafford Act, federal agency heads may waive administrative, but not statutory, requirements to expedite assistance. Therefore, the Secretary of Education (the Secretary), for example, has broad authority to waive regulatory requirements, upon request. Because the provision applies to “administrative conditions for assistance,” the statutory language implies that regulatory, but not statutory, requirements may be waived.

## **Elementary and Secondary Education**

The federal government has provided support for elementary and secondary education for decades. The funding that the federal government provides for K-12 education represents less than 10% of the nation’s overall K-12 education budget. For FY2012, about \$38 billion was appropriated for elementary and secondary education programs administered by ED.<sup>10</sup>

The Elementary and Secondary Education Act (ESEA) was enacted to provide financial support and guidance for K-12 education. The ESEA, as most recently amended by the No Child Left Behind Act (NCLB; P.L. 107-110), represents the major federal commitment to the nation’s elementary and secondary schools.<sup>11</sup> The single largest K-12 program administered by ED is Title I-A of the ESEA, funded at \$14.5 billion in FY2012. This program provides supplementary educational services for disadvantaged students.

As a condition of receiving funds under Title I-A, state educational agencies (SEAs) must agree to adopt and implement specific educational accountability requirements. Key features of required educational accountability systems include the development of content and performance standards and aligned assessments in reading/language arts, mathematics, and science; and annual testing of students in grades 3-8 and once in high school to gauge students’ progress toward

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(...continued)

FEMA, U.S. Department of Homeland Security, *Provision of Temporary Relocation Facilities*, Response and Recovery Directorate Policy Number: 9523.3, July 16, 1998 and FEMA, U.S. Department of Homeland Security, *Research-related Equipment and Furnishings*, DAP9525.16, May 4, 2007.

<sup>10</sup> This includes funding for career and technical education. The majority of the funds for career and technical education are made available for formula grants to states. States have the discretion to determine how much funding will be directed to elementary and secondary education versus higher education.

<sup>11</sup> For more information on the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner.

meeting standards in reading/language arts and mathematics. The results of these assessments are used to make complex annual adequate yearly progress (AYP) determinations for each public school and LEA. A series of increasingly substantial consequences must be applied to schools and LEAs that fail to make AYP for two consecutive years or more. Accountability requirements also extend to virtually all public school teachers and aides with respect to their qualifications. The ESEA also contains fiscal accountability requirements.

In addition to the ESEA, another important source of federal funding for elementary and secondary education is the Individuals with Disabilities Education Act (IDEA). IDEA is both a grants statute and a civil rights statute. The act provides federal funding for special education and related services for children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE).<sup>12</sup> The statute also contains detailed due process provisions to ensure the provision of FAPE, and fiscal accountability provisions. Total IDEA funding for FY2012 was \$12.6 billion.

This section provides an overview of existing general statutory and regulatory authorities for elementary and secondary education that enable the Secretary of Education (hereinafter referred to as the Secretary) to waive or modify various requirements. This is followed by a discussion of temporary authorities that have been provided to the Secretary by Congress in response to various disasters. The next part of this section examines temporary elementary and secondary education programs that were created by Congress in response to various disasters and administered by ED. This is followed by a discussion of other actions taken in response to disasters affecting elementary and secondary education. It should be noted that with respect to elementary and secondary education, the education-related disaster recovery efforts examined in this report are primarily related to the Gulf Coast hurricanes, Hurricanes Ike and Gustav, and natural disasters that occurred in 2008, including flooding in the Midwest. As of the date of this report, Congress had not enacted legislation to specifically support education as a result of and in the aftermath of Hurricane Sandy, which primarily affected areas of the mid-Atlantic and northeast in October 2012.

## **Current Waiver Authority and Flexibility**

Existing statutory and regulatory requirements provide the Secretary with some authority and flexibility to respond to a disaster without need for additional legislation. This section examines waiver authority available to the Secretary under ESEA. The subsequent text illustrates how waivers were used in response to recent disasters to address funding flexibility issues and accountability requirements under the ESEA. Other forms of flexibility that are available to the Secretary are also discussed. The extent to which the Secretary has flexibility under IDEA and recent use of that flexibility following a disaster are described. In addition, it examines flexibility with respect to the use of funds that is available to states and LEAs.

### **Section 9401 Waiver Authority under the ESEA**

Section 9401 of the ESEA grants the Secretary broad authority to issue waivers of any statutory or regulatory requirement of the ESEA for an SEA, LEA, Indian tribe, or school (through an

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<sup>12</sup> For more information on IDEA and FAPE, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, by Ann Lordeman.

LEA) that receives funds under an ESEA program and requests a waiver. The following discussion begins by presenting waiver request procedures and then describing the limitations on what may be waived.

A waiver request must

- identify the federal programs affected by the requested waiver;
- describe the statutory or regulatory requirements to be waived and how the waiving of these requirements will increase the quality of student instruction and improve student academic achievement;
- describe for each school year the “specific, measurable education goals” in accordance with ESEA, Section 1111(b), for the SEA and for each LEA, Indian tribe, or school that would be affected by the waiver and the methods that would be used to measure annual progress toward meeting such goals and outcomes;
- explain how the waiver will assist the SEA and each affected LEA, Indian tribe, or school in reaching the state goals; and
- describe “how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.”

The Secretary is prohibited from waiving any statutory or regulatory requirement related to the following requirements:

- allocation of funds to states or LEAs (or other grant recipients);
- maintenance of effort (MOE) requirements for LEAs or SEAs to maintain their level of spending for specified educational services;<sup>13</sup>
- comparability of services, which requires states and LEAs to provide a level of state and local funding that is comparable in all schools of an LEA;
- the use of federal aid only to supplement, and not supplant, state and local funds for specified purposes;<sup>14</sup>
- equitable participation of private school students and teachers (ESEA §9501);
- parental participation and involvement;
- applicable civil rights requirements;
- the requirement for a charter school under the Public Charter Schools program (Title V-B-1);
- prohibitions against consideration of ESEA funds in state school finance programs (ESEA §9522);

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<sup>13</sup> To comply with MOE requirements, LEAs must provide, from state and local sources, a level of funding (either aggregate or per pupil) in the preceding year that is at least a specified 90% of the amount provided in the second preceding year.

<sup>14</sup> Federal program funds must be used to supplement, and not supplant, state and local funds that would otherwise be available for the specific services or activities for which federal funds may be used under the program in question.

- prohibitions against use of funds for religious worship or instruction (ESEA §9505);
- certain prohibitions against use of funds for sex education (ESEA §9526); and
- certain ESEA Title I-A school selection requirements.

A waiver granted under the authority of ESEA Section 9401 may not exceed four years, except that it may be extended if the Secretary determines that the waiver has contributed to improved student achievement and is in the public interest. In contrast, a waiver is to be terminated if the Secretary determines that student performance or other outcomes are inadequate to justify continuation of the waivers, or if the waiver is no longer necessary to achieve its original purposes. The Secretary is required to publish a notice of the decision to grant a waiver in the *Federal Register*. Since FY2002, the Secretary has been required to submit to Congress annual reports on the effects and effectiveness of waivers that have been granted.

### **Use of Section 9401 Waiver Authority in Response to Disasters**

As previously discussed, the Secretary has the authority to approve or deny waivers requested by SEAs, LEAs, Indian tribes, or schools (through an LEA) under the requirements of Section 9401. Statutory requirements do not specify that these requests be made in response to a natural or man-made disaster, financial issues, or other circumstances. While many of the waiver requests that have been approved by the Secretary since enactment of NCLB have focused on ESEA Title I-A accountability requirements, funding issues, general administrative requirements, and issues related to the American Recovery and Reinvestment Act (ARRA; P.L. 111-5), waivers have also been granted in response to natural disasters. Thus, SEAs, LEAs, Indian tribes, or schools interested in obtaining a waiver in response to a natural disaster or other circumstances, such as an incident of school violence, could also submit a waiver request for consideration by the Secretary.

From 2005 through 2009,<sup>15</sup> the Secretary used the authority available under ESEA Section 9401 to grant 28 waivers in response to natural disasters.<sup>16</sup> Of these waivers, 18 were granted in either 2005 or 2006, 4 were granted in 2007, 4 were granted in 2008, and 2 were granted in 2009. The majority of the waivers (17) addressed funding flexibility issues, while the others addressed accountability requirements under the ESEA. Nearly half (13) of the waivers were granted to Louisiana, which was disproportionately affected by disasters during the time period compared to other states. **Table 1** is a brief summary of the number of waivers received by each state and the purposes of the waivers.

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<sup>15</sup> Data on waivers provided beyond the 2009 calendar year have not yet been published.

<sup>16</sup> The Secretary used the authority available under ESEA §9401 to grant other types of waivers, such as waivers related to ESEA accountability requirements. For more information about these waivers, see CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Jody Feder.

**Table I. Summary of Waivers Granted to States  
in Response to Disasters Pursuant to Section 9401  
of the Elementary and Secondary Education Act (ESEA):  
2005–2009**

State	Number of Waivers Granted by Year	Purpose of waivers
Alabama	1 – 2006	Waiver was related to accountability requirements, specifically creating a separate subgroup for displaced students for making adequate yearly progress (AYP) determinations. <sup>a</sup>
Arkansas	1 – 2006	Waiver was related to accountability requirements, specifically creating a separate subgroup for displaced students for making AYP determinations. <sup>a</sup>
Georgia	2 – 2006	Both waivers were related to accountability requirements. The first waiver permitted the state to create a separate subgroup for displaced students for making AYP determinations. <sup>a</sup> The second waiver permitted a local educational agency (LEA) to allow schools to offer supplemental educational services (SES) after failing to make AYP for two consecutive years and offer school choice after failing to make AYP for a third year. <sup>b</sup>
Louisiana	3 – 2005 5 – 2006 2 – 2007 1 – 2008 2 – 2009	Waivers were related to both accountability requirements and funding issues: permitting the state to create a separate subgroup for displaced students for making AYP determinations; <sup>a</sup> providing LEAs and schools that were closed for 18 or more days and located in a declared disaster area with greater flexibility in making AYP determinations; permitting LEAs to allow schools to offer SES after failing to make AYP for two consecutive years and offer school choice after failing to make AYP for a third year; <sup>b</sup> extending the period of availability of various funds that would have expired by a certain date; enabling the state to waive Title I-A fund carryover requirements for its LEAs; <sup>c</sup> and waiving requirements with respect to the use of funds under the Educational Technology program (Ed Tech; ESEA Title II-D). <sup>d</sup>
Mississippi	2 – 2005 1 – 2006 2 – 2007 2 – 2008	Waivers were related to both accountability requirements and funding issues. With respect to accountability, the first waiver permitted the state to create a separate subgroup for displaced students for making AYP determinations. <sup>a</sup> With respect to funding flexibility, four waivers extended the period of availability of various ESEA funds that would have expired by a certain date. Another waived requirements with respect to the use of funds under Ed Tech. <sup>d</sup> A sixth waiver enabled the state to waive Title I-A fund carryover requirements for its LEAs. <sup>c</sup>
Tennessee	1 – 2006	Waiver was related to accountability requirements, specifically creating a separate subgroup for displaced students for making AYP determinations. <sup>a</sup>
Texas	2 – 2006 1 – 2008	Two of the three waivers were related to accountability requirements. The first waiver permitted the state to create a separate subgroup for displaced students for making AYP determinations. <sup>a</sup> The second waiver provided seven LEAs that were closed for seven or more days and located in a declared disaster area with greater flexibility in making AYP determinations. The third waiver extended the period of availability of ESEA funds provided under the Reading First program (ESEA Title I-B-1). <sup>e</sup>

**Source:** Table prepared by CRS, October 2011, based on CRS examination of U.S. Department of Education, “Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act, as Amended,” 72 *Federal Register* 10990-10996, March 12, 2007; U.S. Department of Education, “Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act, as Amended,” 73 *Federal Register* 19056-19058, April 8, 2008; U.S. Department of Education, “Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act, as Amended,” 74 *Federal Register* 22909-22913, May 15, 2009; and U.S.

Department of Education, "Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act, as Amended," 75 *Federal Register* 56833-56856, September 16, 2010; as well as reports submitted to Congress on the waivers granted under Section 9401 that were submitted in April 2007, April 2008, June 2009, and December 2010; available at <http://www2.ed.gov/nclb/freedom/local/flexibility/waiverletters/index.html>.

**Notes:** For detailed information about ESEA accountability requirements, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Erin D. Lomax.

- a. Provided minimum group sizes are met, data must be disaggregated for economically disadvantaged students, limited English proficient students, students with disabilities, and students in major racial and ethnic groups as determined by the state in order to determine whether a school or LEA has met AYP. These specified demographic groups are often referred to as subgroups. For reporting purposes, if minimum group sizes are met, data must be disaggregated for the aforementioned subgroups as well as by gender and migrant status.
- b. In the absence of a waiver, the ESEA requires states to identify LEAs and schools that fail to meet AYP standards for two consecutive years for improvement. Students attending these schools must be provided with options to attend other public schools that make AYP. If a Title I-A school fails to meet AYP standards for a third year, students from low-income families must be offered the opportunity to receive instruction from a SES provider of their choice. SES is often provided in the form of afterschool tutoring.
- c. LEAs may only carryover up to 15% of their Title I-A funds from one fiscal year to another. An SEA is only permitted to waive this requirement once every three years for a given LEA.
- d. Ed Tech authorizes grants to SEAs and LEAs to increase access to educational technology, support the integration of technology into instruction, enhance technological literacy, and support technology-related professional development of teachers. Ed Tech also authorizes support for national activities related to educational technology; authorizes the Ready-to-Learn Television program, under which support is provided to one or more public telecommunications entities to support the production and distribution of educational programs; and requires LEAs or schools receiving aid under Part D to establish and implement Internet safety policies.
- e. The Reading First program is intended to improve reading programs for students in grades K-3 in schools that either have percentages of students from low-income families that are among the highest in the LEA or have been identified for improvement under Title I-A. This program is not currently funded.

More recently, the Secretary has acted to use the waiver authority available under ESEA Section 9401 to offer states an *ESEA flexibility package* that includes waivers of various accountability requirements, teacher-related requirements, and funding flexibility requirements in exchange for states agreeing to comply with four principles.<sup>17</sup> These waivers, not issued in response to a disaster, will apply through the 2013-2014 school year, and states may request a one-year extension of the waivers. As many of the waivers included in the ESEA flexibility package address issues for which states have sought waivers in response to previous disasters, it is possible that states receiving the ESEA flexibility package may not seek the same types of waivers in the event of a subsequent disaster. However, states may consider requesting different waivers depending on the specific accountability plan that they developed in response to the ESEA flexibility package. If this were to occur, the Secretary could consider whether to grant any waiver requests using existing waiver authority under Section 9401.

## **Other Flexibilities Related to Elementary and Secondary Education**

Beyond the authority available to the Secretary under Section 9401 of the ESEA, other flexibilities that may be exercised by the Secretary, SEAs, or LEAs also exist. Some of these

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<sup>17</sup> For a detailed discussion of the ESEA flexibility package, see CRS Report R42328, *Educational Accountability and Secretarial Waiver Authority Under Section 9401 of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Jody Feder.

flexibilities are contained in the ESEA, while other flexibility authority is provided outside of the ESEA. It should be noted that none of the flexibility provisions discussed below are specific only to disasters. Rather, these flexibilities may be provided in response to a disaster or for other reasons, such as a “precipitous decline in the financial resources” of an entity.

### ***Other ESEA Flexibilities***

There are several additional provisions included in the ESEA that may be helpful in providing assistance in response to a disaster, including flexibility related to MOE requirements, charter schools, and funding flexibility.

While the Secretary is specifically prohibited from waiving MOE requirements using authority available under Section 9401, Section 9521(c) of the ESEA permits the Secretary to waive MOE requirements for LEAs in the case of “exceptional or uncontrollable circumstances, such as a natural disaster” or due to a “precipitous decline in the financial resources” of an LEA.

The Charter Schools Program (CSP; ESEA Title V-B) provides grants to SEAs or, if a state’s SEA chooses not to participate, charter school developers, to support the development and initial implementation of public charter schools. CSP also includes general provisions for allocations to charter schools under ESEA and other federal formula grant programs. Under Section 5204(e) of the CSP, the Secretary has the authority to waive statutory and regulatory requirements if the Secretary determines that granting such a waiver will promote the purpose of the program. The Secretary has used this authority to provide funding specifically to support existing charter schools and to create new charter schools in areas affected by disasters.<sup>18</sup>

Of the other flexibility authorities included in the ESEA, only two are extensively used. ESEA Section 6211 provides flexibility to small, rural LEAs to use funds received for “applicable programs” for local activities authorized under several ESEA programs.<sup>19</sup> Also included in ESEA Title VI is authority that allows most LEAs to transfer up to 50% of their formula grants among four ESEA programs.<sup>20</sup> Similar authority allows SEAs to transfer up to 50% of their funds among various programs.<sup>21</sup>

### ***Flexibilities Available Under ED-Flex***

The Education Flexibility Partnership Act of 1999 (ED-Flex; P.L. 106-25) transfers from ED to SEAs the authority to grant waivers similar to those authorized under ESEA Section 9401. Thus,

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<sup>18</sup> Department of Education, “Key Policy Letters Signed by the Education Secretary or Deputy Secretary,” September 12, 2005, available online at <http://www.ed.gov/policy/elsec/guid/secletter/050914.html>.

<sup>19</sup> Applicable programs include those under Title II-A (Teacher Quality), Title II-D (Ed Tech), Title IV-A (Safe and Drug-Free Schools and Communities State Grants), and Title V-A (Innovative Programs). Funds received under these programs may be used for any local activities authorized under any applicable program or under Title I-A, English Language Acquisition program (Title III-A), or 21<sup>st</sup> Century Community Learning Centers (Title IV-B).

<sup>20</sup> The four ESEA programs include Title II-A (Teacher Quality), Title II-D (Ed Tech), Title IV-A (Safe and Drug-Free Schools and Communities State Grants), and Title V-A (Innovative Programs). LEAs may also transfer funds into, but not out of, Title I-A.

<sup>21</sup> SEAs may transfer funds among the same four programs among which LEAs may transfer funds, as well as the 21<sup>st</sup> Century Community Learning Centers program (Title IV-B). SEAs may also transfer funds into, but not out of, Title I-A.

an SEA could grant waivers in response to a disaster or for other reasons without having to seek additional authority from the Secretary. Currently 10 states are authorized to participate in ED-Flex.<sup>22</sup> Under P.L. 109-211, these 10 states retain their ED-Flex authority until enactment of legislation to reauthorize ESEA Title I, Part A. However, P.L. 109-211 does not provide authority for ED to extend Ed-Flex authority beyond these 10 states.

### ***Flexibilities Available Under IDEA***

Under IDEA, the Secretary does not have authority comparable to what is available under ESEA Section 9401. However, the Secretary does have authority to waive MOE requirements for states (but not LEAs) under certain circumstances and, unlike ESEA, is also able to waive supplement, not supplant requirements for states (but not LEAs) under certain circumstances.

In general, a state may not reduce the amount of its financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year. In any fiscal year in which a state does not meet this MOE requirement, the Secretary is required to reduce the state's subsequent year grant by the same amount by which the state failed to meet the requirement. The Secretary may grant a waiver for one fiscal year at a time in the case of "exceptional or uncontrollable circumstances" such as a natural disaster or a "precipitous and unforeseen decline in the financial resources of the state." For FY2006, the Secretary used this authority under IDEA Section 612(a)(18)(c) to waive Louisiana's state level MOE requirements. In addition, waivers can be granted if the state can provide "clear and convincing evidence" that FAPE is available for all children with disabilities. If a state does not meet its MOE requirement for any year, including any year for which the state was granted a waiver, the state financial support required in future years is not reduced. That is, the state must provide the amount that would have been required in the absence of failing to meet MOE in the previous year.

Both states and LEAs must use IDEA funds to supplement state, local, and other federal funds and not to supplant them. As with the state MOE requirement, the Secretary has authority to grant a waiver of the state-level supplement, not supplant requirement if the state provides "clear and convincing evidence" that all children with disabilities in the state have FAPE available. If an LEA (or state) maintains its level of local, or state and local, expenditures for special education and related services from year to year, then the LEA has met its MOE and supplement, not supplant requirements.

## **Temporary Waiver and Flexibility Authority Granted to the Secretary in Response to Disasters**

In addition to the waiver and flexibility authority available through existing statutory and regulatory provisions, Congress has also granted additional waiver and flexibility authorities to the Secretary on a temporary basis in response to disasters. Similar to the waivers granted by the Secretary using authority available under Section 9401 of the ESEA, the additional authority provided by Congress has focused on the provision of waivers related to financial issues and accountability requirements.

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<sup>22</sup> The 10 states are Colorado, Delaware, Kansas, Massachusetts, Maryland, North Carolina, Oregon, Pennsylvania, Texas, and Vermont.

## **Fiscal Accountability Requirements**

As discussed earlier, the Secretary has limited authority to waive fiscal accountability requirements. In response to natural disasters, Congress has acted to expand the Secretary's ability to waive or modify fiscal accountability requirements. Congress has provided the Secretary with the temporary authority to waive or modify any requirements related to MOE,<sup>23</sup> 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.<sup>24</sup> The waivers could be provided at the Secretary's discretion 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. It is important to note that the waivers of MOE did not reduce the level of effort required for the subsequent year. It should also be noted that this additional authority to waive fiscal accountability requirements did not permit the Secretary to waive or modify any provision under IDEA.

## **Hold Harmless Provision**

Another financially related issue for which Congress has provided additional support has involved hold harmless provisions related to Title I-A of the ESEA.<sup>25</sup> Hold harmless provisions have the effect of providing protected entities (in this case, LEAs) with funding levels that are greater than the amounts they would otherwise be eligible to receive. As a consequence, less funding remains available for allocation to entities not protected by the hold harmless.

In response to multiple disasters, Congress has required the Secretary to hold affected LEAs harmless at 100% of their prior year grant amount under Title I-A. It appears that these provisions may have been enacted as a means of preventing affected LEAs from experiencing a decrease in funding due to the displacement of students.

Counts of children aged 5-17 living in poverty—the largest group of formula children including in determining Title I-A grants—are estimated by the U.S. Census Bureau annually through the Small Area Income Poverty Estimates (SAIPE).<sup>26</sup> However, there is a two-year delay between the year for which child counts are estimated and the year for which those estimates are used in the allocation of funds. For example, data used to make grants for the 2012-2013 school year (FY2012) are based on data from the 2010 calendar year. Thus, holding LEAs harmless in the short term does not actually reflect student displacement as a result of the disaster. Rather, the effects of student displacement would not affect Title I-A grants until about two years after the disaster has occurred. The hold harmless provisions enacted in response to prior disasters have not taken this into account. At the same time, the implementation of these hold harmless provisions may have limited any increases in the allocations available to LEAs that gained formula children during the calendar year for which counts were used.

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<sup>23</sup> As previously noted, ESEA §9521(c) provides the Secretary with the authority to waive MOE requirements for LEAs under specific circumstances.

<sup>24</sup> For more information, see P.L. 109-148.

<sup>25</sup> For more information, see P.L. 109-148 and P.L. 110-366.

<sup>26</sup> For additional information, see U.S. Census Bureau at <http://www.census.gov/hhes/www/saipe/>.

## **Highly Qualified Teachers Provisions**

Under the ESEA, teachers of core academic subjects are required to meet the highly qualified teacher criteria included in ESEA Section 1119. Section 1119 also includes criteria that paraprofessionals must meet. In response to disasters that have resulted in large number of teachers and paraprofessionals being displaced and seeking employment in different states, Congress has provided waivers of the aforementioned criteria to enable states employing these educators to remain in compliance with ESEA requirements.<sup>27</sup>

## **IDEA**

Congress has also provided the Secretary with the temporary authority to extend certain deadlines under IDEA related to IDEA.<sup>28</sup> For example, the Secretary has been granted the authority to 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. The Secretary has also been authorized to extend the deadline for the initial evaluation of children to determine their eligibility for IDEA. In providing the Secretary with the authority to extend these deadlines, Congress has also included statutory language that clarified that this new authority should not be interpreted as granting the Secretary waiver authority over key IDEA provisions, such as the right to a free appropriate public education or procedural safeguards granted under the act.

## **Temporary Programs Created in Response to Disasters<sup>29</sup>**

In response to various natural disasters, Congress has enacted legislation to create temporary programs at the elementary and secondary education levels to meet the needs of students, schools, LEAs, and states. A brief summary of various programs created in response to disasters is included in the **Appendix**.<sup>30</sup> For example, temporary programs have provided funds to restart school operations, reopen schools, and re-enroll students. They have also made funds available to recruit, retain, and compensate school staff who have committed to work for a certain number of years in areas affected by disasters. Funds have also been provided to replace instructional materials and equipment; support charter school expansion; modernize, renovate, or repair school buildings; and support extended learning time activities. In response to large numbers of students being displaced by a disaster, a temporary program was created to provide funding to assist both public and non-public schools in enrolling displaced students. The decision about whether a student would attend a public or non-public school was made by the displaced student's parents.

## **Other Actions Taken in Response to Disasters**

In response to natural disasters where large numbers of students have been displaced, Congress has provided additional funding through the McKinney-Vento Homeless Assistance Act

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<sup>27</sup> Based on the waiver authority available to the Secretary under ESEA §9401, the Secretary may have been able to waive these provisions without additional legislation. For more information, see P.L. 109-148.

<sup>28</sup> For more information, see section 301 of P.L. 109-148.

<sup>29</sup> The statutory language authorizing these programs is included in P.L. 109-148, P.L. 109-234, P.L. 110-28, and P.L. 111-117.

<sup>30</sup> For more detailed information about these programs, see CRS Report RL33236, *Education-Related Hurricane Relief: Legislative Action*, which is available by contacting the authors of this report.

(McKinney-Vento; 42 U.S.C. 11433 et seq.) to support the education of homeless children and youth.<sup>31</sup> 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. Congress required that the provision of assistance be “consistent with” McKinney-Vento with the exception of specified allocation and application provisions. Funds were required to 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.

## Postsecondary Education

The federal government supports postsecondary education, primarily through programs authorized by the Higher Education Act of 1965, as amended (HEA; P.L. 89-329). The HEA authorizes a broad array of federal student aid programs that assist students and their families with paying for or financing the costs of obtaining a postsecondary education. In FY2012, nearly \$142 billion in grant, loan, and work-study aid was made available to 15 million students enrolled in 6,252 IHEs.<sup>32</sup> The HEA also authorizes a series of programs that provide support to IHEs and additional federal student aid. About \$6.9 billion was appropriated for these postsecondary programs in FY2012.<sup>33</sup>

The Department of Veterans Affairs (VA) provides veterans with vocational and educational assistance. The VA administers veterans educational assistance programs (GI Bills®)<sup>34</sup> that provide eligible servicemembers, veterans, and their dependents with financial assistance while enrolled in approved educational and training programs.<sup>35</sup> The VA also administers the Vocational Rehabilitation and Employment (VR&E) program, which is an entitlement program that provides job training and related services to veterans with service-connected disabilities.<sup>36</sup> The VA estimates that it will obligate over \$12 billion in FY2013 for veterans educational assistance and VR&E.

This section provides an overview of the existing statutory authorities that have been and may be useful in supporting education-disaster recovery. The first section examines the existing general statutory and regulatory authorities that enable the Secretary of Education and institutions of

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<sup>31</sup> For more information, see P.L. 110-329.

<sup>32</sup> U.S. Department of Education, Office of Federal Student Aid, *Federal Student Aid Annual Report for Fiscal Year 2012*, Nov. 16, 2012.

<sup>33</sup> This includes funding for adult education, which provides grants to states to fund local programs of adult education and literacy services, including instruction in reading, numeracy, and GED preparation; workplace literacy services; family literacy services; English literacy programs and integrated English literacy-civics education programs.

<sup>34</sup> GI Bill® is a registered trademark of the United States Department of Veterans Affairs (VA).

<sup>35</sup> For more information on veterans educational assistance programs, see CRS Report R42755, *The Post-9/11 Veterans Educational Assistance Act of 2008 (Post-9/11 GI Bill): Primer and Issues*, by Cassandra Dortch; and CRS Report R42785, *GI Bills Enacted Prior to 2008 and Related Veterans' Educational Assistance Programs: A Primer*, by Cassandra Dortch.

<sup>36</sup> For more information on the VR&E program, see CRS Report RL34627, *Veterans' Benefits: The Vocational Rehabilitation and Employment Program*, by Benjamin Collins.

higher education (IHEs) to waive or modify various HEA requirements. This is followed by the description of an HEA program that funds education disaster and emergency relief loans. The next part of this section examines temporary higher education provisions and programs that were enacted by Congress in response to various disasters and administered by ED. This is followed by a discussion of existing general statutory and regulatory authorities that reduce the negative financial impact of disasters on GI Bill participants.

## **Current HEA Waiver Authority and Flexibility**

Existing statutory and regulatory provisions grant the Secretary of Education and IHEs a degree of authority and flexibility to respond to a disaster without need for additional legislation. This section examines waiver authority and other flexibilities available to the Secretary and IHEs under the HEA.

### **Regulatory Flexibility and Waivers under the HEA Federal Student Aid Programs**

Programs authorized under Title IV of the HEA are the primary source of federal student aid to support postsecondary education. The largest Title IV student aid programs are the Pell Grant program (Title IV-A)<sup>37</sup> and the DL program.<sup>38</sup> Existing statutory and regulatory authorities are intended to support Title IV aid recipients and their families who at the time of the disaster were residing in, employed in, or attending an IHE located in an area designated as a federally-declared disaster area as defined in the Stafford Act.<sup>39</sup> Flexibility is also available to IHEs, lenders, servicers, and guaranty agencies that are located in these areas. In addition, ED has indicated that it will provide assistance, on a case-by-case basis, in addressing concerns related to specific regulatory requirements.

#### *Provisions for IHEs*

Types of support that may be available to help IHEs in the aftermath of a disaster include the following:

- IHEs may temporarily close and reopen without automatically losing eligibility to participate in the Title IV programs.
- On a case-by-case basis, IHEs may be permitted to shorten the length of an academic year without losing eligibility to participate in the Title IV programs.

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<sup>37</sup> For a detailed description of the Federal Pell Grant program, see CRS Report R42446, *Federal Pell Grant Program of the Higher Education Act: How the Program Works, Recent Legislative Changes, and Current Issues*, by Shannon M. Mahan.

<sup>38</sup> For a detailed description of the DL program, see CRS Report R40122, *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, by David P. Smole.

<sup>39</sup> For a detailed description of the authority, see Eduardo M. Ochoa, Assistant Secretary for Postsecondary Education, *Guidance for helping Title IV participants affected by a major disaster*, U.S. Department of Education, DCL ID: GEN-10-16, FP-10-06, August 23, 2010, <http://www.ifap.ed.gov/dpclletters/GEN1016.html>.

- IHEs may be granted flexibility in providing the required data to ED for its Annual Campus Security Report or its Equity in Athletics Disclosure Report by the established deadlines.
- On a case-by-case basis, IHEs may be provided flexibility in complying with some Title IV institutional financial management requirements such as cash management and the filing deadline for the Fiscal Operations Report and Application to Participate (FISAP) for the campus-based programs.
- IHEs may be excepted from requirements related to the retention of records in instances where records are lost or destroyed and cannot be reconstructed.
- IHEs may be excepted from requirements for verification of FSA applicants whose records were lost or destroyed because of a disaster, provided that the IHE has attempted to preserve and reconstruct any applicable records and documents that verification could not be completed due to a disaster.
- IHEs may be granted a waiver of the requirement to obtain signed documentation from the parents of undergraduate dependent students of the number of family members in the household and the number enrolled in postsecondary institutions in instances where neither of the parents can provide signed documentation due to the disaster.
- IHEs that are unable to meet deadlines for reporting federal student aid disbursement records, student enrollment status, and student loan promissory notes must promptly contact and inform their School Participation Team about the situation and in certain circumstances may adjust or modify their reporting schedule.
- Upon request, an IHE may receive an extension to the deadline for reporting final Federal Pell Grant payments if it is unable to meet the published deadline because of a disaster.
- IHEs may be granted a waiver from having their campus-based programs allocations reduced for the second succeeding year due to the under-utilization of funds in the most recent award year if the under-utilization is solely due to a disaster.<sup>40</sup>
- IHEs may be granted a waiver of either or both the Federal Work-Study program (FWS) requirements that IHEs use at least 7% of their FWS allocation to compensate students employed in community service and that they must have at least one tutoring or family literacy project.<sup>41</sup>

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<sup>40</sup> The campus-based programs—the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Federal Work-Study (FWS) program, and the Federal Perkins Loan program—provide federal funding to IHEs for the provision of need-based financial aid to students. For more information on the campus-based aid programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole and Alexandra Hegji.

<sup>41</sup> The purpose of the Federal Work-Study (FWS) program is to provide part-time employment to undergraduate, graduate, and professional students in need of earnings to pursue their course of study; and to encourage student participation in community service activities.

### ***Provisions for Student Aid Recipients***

Examples of support that may be available to help Title IV recipients in the aftermath of a disaster include the following:

- Students may be permitted to continue their program of education at another IHE while receiving Title IV assistance in accordance with agreements between institutions to permit the continuation of study.
- Any disaster aid received by a student or the student's family from a federal or state entity will be excluded from the student's Expected Family Contribution (EFC) and from estimated financial assistance from other sources for purposes of packaging federal student aid.<sup>42</sup>
- An IHE's financial aid administrator (FAA) may use professional judgment to make adjustments on a case-by-case basis (which must be documented) to the cost of attendance (COA)<sup>43</sup> or to the values of the items used in calculating the EFC to reflect a student's special circumstances in such a way as to make the student eligible for more Title IV assistance.
- Students may maintain their eligibility to receive Title IV federal student aid, despite not making satisfactory academic progress if the IHE documents that the failure to maintain satisfactory academic progress was due to a disaster.
- Students may be granted a leave of absence during a clock hour or non-term program and the requirement that a leave of absence must be requested in writing may be waived.
- The requirement that a student must return a Title IV grant overpayment if the student withdraws from the IHE because of a disaster may be waived under certain specified conditions.
- Students may continue to receive Federal Work-Study (FWS) payments during periods that they are unable to fulfill their FWS employment obligations as a result of a disaster, but may do so for no longer than the award period.
- Borrowers of William D. Ford Federal Direct Loan (DL) program loans, Federal Family Education Loan (FFEL) program loans, and Perkins Loans who were in an "in-school" status on the date their attendance was interrupted due to a disaster may remain in that status through the end of the enrollment period in which the disaster occurred.
- Borrowers of DL program loans, FFEL program loans, and Perkins Loans who are in repayment at the time a disaster occurs and who are unable to make loan payments due to the disaster may be granted forbearance.<sup>44</sup>

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<sup>42</sup> The EFC is the amount expected to be contributed by the student and the student's family toward postsecondary education expenses for the upcoming award year.

<sup>43</sup> The cost of attendance (COA) is a measure of a student's educational expenses for the period of enrollment.

<sup>44</sup> Forbearance is limited to an initial period of three months for FFEL program loans and Perkins Loans.

- Collection activities on defaulted DL program loans, FFEL program loans, and Perkins Loans may be suspended for three months for borrowers who have been affected by a disaster.
- Borrowers of defaulted loans who have been affected by a disaster and who are attempting to rehabilitate their loans, consolidate them out of default, or re-establish eligibility for Title IV federal student aid and who fail to make one or more payments while affected by the disaster shall not be considered to have missed any of the stream of required consecutive monthly payments.

### **Waiver Authority Under the Higher Education Relief Opportunities for Students Act (HEROES Act)**

In addition to the aforementioned waiver authority and regulatory flexibility for Title IV student aid programs, additional authority is provided through the Higher Education Relief Opportunities for Students Act (HEROES Act).<sup>45</sup> The HEROES Act can only be implemented, however, in connection with a war or other military action or a national emergency declared by the President of the United States. The HEROES Act provides the Secretary with authority to waive or modify statutory and regulatory requirements that apply to the HEA Title IV student aid programs in an effort to help affected individuals. There are three categories of affected individuals:

1. Individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency;
2. Individuals who reside or are employed in an area that is declared a disaster area by any federal, state, or local official in connection with a national emergency; and
3. Individuals who suffered direct economic hardship as a direct result of a war or other military operation or national emergency.<sup>46</sup>

### ***Provisions for IHEs***

Examples of support that may be available under the HEROES Act to IHEs in the aftermath of a war or other military action or national emergency declared by the President of the United States include the following:

- With respect to all categories of affected individuals, IHEs are excepted from the requirement that when financial aid officers exercise professional judgment to make adjustments to the cost of attendance (COA) or to the values of items used

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<sup>45</sup> The provisions were originally enacted by the Higher Education Relief Opportunities for Students Act of 2001 (2001 HEROES Act; P.L. 107-122; 20 U.S.C. 1070 note) with an expiration date of September 30, 2003. The Higher Education Relief Opportunities for Students Act of 2003 (2003 HEROES Act; P.L. 108-76; 20 U.S.C. 1070 note) ceased to be effective on September 30, 2005, was extended by P.L. 109-78 to September 30, 2007, and finally made permanent by P.L. 110-93 (20 U.S.C. 1098aa et seq.).

<sup>46</sup> For information on the current waivers and modifications issued, see Office of Postsecondary Education, Department of Education, “Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and the Federal Direct Loan Program),” *77 Federal Register* 59311-59318, September 27, 2012.

in calculating their expected family contribution (EFC), such adjustments must be done on a case-by-case basis.

- With respect to all affected individuals, IHEs are excepted from the requirements to notify them of a grant overpayment and the actions that must be taken to resolve the overpayment; and to deny such students eligibility for federal student aid.
- With respect to all affected individuals, IHEs are excepted from the requirement to refer grant overpayments to the Secretary.
- With respect to all affected individuals, IHEs may accept alternative documentation to verify the income and taxes paid by those who are FSA applicants and who are granted an income tax return filing extension by the Internal Revenue Service (IRS). With respect students who withdraw because they are affected individuals in either the 1<sup>st</sup> or 2<sup>nd</sup> categories, IHEs that have attempted to contact an affected student (or the parent of the student) regarding the payment of any Title IV credit balance within 14 days of the Title IV credit balance occurring, are considered to have met the 14-day requirement that applies to the payment of Title IV credit balances.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, IHEs may disburse Title IV funds to a bank account designated to a student or a parent; use Title IV funds to pay charges other than tuition and fees and, as applicable, room and board; or hold Title IV funds on behalf of students on the basis of oral consent, as opposed with written consent, which would otherwise be required.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, IHEs are excluded from the requirement to attempt to collect or recover amounts owed from defaulted Perkins Loans for the period during which the borrower is an affected individual, and during a three-month transition period that follows. (Similar exclusions are granted to guaranty agencies with respect to amounts owed on defaulted FFEL program loans; and the Secretary will act similarly with respect to loans held by ED.)

### ***Provisions for Student Financial Aid Recipients***

Examples of support that may be available under the HEROES Act to Title IV aid recipients who as a result of a war or other military action or a national emergency declared by the President of the United States are unable to meet the specified Title IV statutory or regulatory requirements because of their status as affected individuals include the following:

- With respect to all affected individuals, an IHE's financial aid administrator (FAA) may exercise professional judgment for purposes of substituting an aid applicant's adjusted gross income plus untaxed income and benefits received in the first calendar year of the award year in lieu of the respective items for the prior calendar year for purposes of determining the applicant's expected family contribution (EFC) if such amounts would more accurately reflect his or her financial condition. Such adjustments must be documented.
- With respect to all affected individuals, the requirement that any unearned grant funds must be returned or repaid may be waived.

- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, students who are eligible for a post-withdrawal loan disbursement must be provided at least 45 days to respond and accept the disbursement, instead of the otherwise applicable 14 days.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, the requirement that a leave of absence must be requested in writing may be waived for students who must interrupt their enrollment.
- With respect students who withdraw because they are affected individuals in either the 1<sup>st</sup> or 2<sup>nd</sup> categories, if an IHE has attempted to contact a student regarding the option to have any Title IV credit balance used to reduce the student's Title IV loan debt, the student must be provided up to 45 days to respond to the institution's request.
- Students who are in the 1<sup>st</sup> or 2<sup>nd</sup> categories of affected individuals must be permitted 60 days, rather than 14 days, to request the cancellation of all or a portion of a loan.
- Students who are in the 1<sup>st</sup> or 2<sup>nd</sup> categories of affected individuals may continue to receive Title IV funds despite not making satisfactory progress in coursework.
- For borrowers of DL program loans, FFEL program loans, and Perkins Loans who are in the 1<sup>st</sup> or 2<sup>nd</sup> categories of affected individuals, the initial grace period excludes any period, not to exceed three years, during which a borrower is an affected individual.
- Borrowers of DL program loans, FFEL program loans, and Perkins Loans who were in an "in-school" status but who left school because they became a 1<sup>st</sup> or 2<sup>nd</sup> category affected individual may retain their in-school status for up to three years. During this period, the Secretary will pay any interest that accrues on a Subsidized Stafford Loan.
- Borrowers of DL program loans, FFEL program loans, and Perkins Loans who were in an "in-school" deferment or a graduate fellowship deferment but who left school because they became a 1<sup>st</sup> or 2<sup>nd</sup> category affected individual may retain their deferment for a period of up to three years during which they are affected individuals. During this period, the Secretary will pay any interest that accrues on a Subsidized Stafford Loan.
- For borrowers of Perkins Loans who are in the 1<sup>st</sup> or 2<sup>nd</sup> categories of affected individuals, any forbearance granted on the basis of the borrower's status as an affected student is excluded from the usual three-year limit on forbearance. Also, for these categories of affected individuals, borrowers of Perkins Loans may be granted forbearance based on an oral request and without written documentation for a one-year period and an additional three-month transition period.
- For borrowers of FFEL program loans, DL program loans, and Perkins Loans that may qualify for cancellation on the basis of continuous or uninterrupted service, such service will not be considered interrupted by any period during which the borrower is an affected individual in the 1<sup>st</sup> or 2<sup>nd</sup> categories.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, borrowers of defaulted FFEL program loans or DL program loans seeking to rehabilitate their loans by making 9 on-time payments in 10 consecutive months, and borrowers of defaulted Perkins Loans seeking to rehabilitate their loans by making 9

consecutive on-time payments, any payments missed during the period when the borrowers are affected individuals or during the three-month transition period that follows shall not be considered an interruption of the series of payments required for loan rehabilitation.

- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, borrowers of defaulted FFEL program loans, DL program loans, or Perkins Loans seeking to reestablish eligibility for Title IV federal student aid by making six consecutive on-time payments, any payments missed during the period when the borrowers are affected individuals or during the three-month transition period that follows shall not be considered an interruption of the series of payments required for purposes of reestablishing Title IV eligibility.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, borrowers of defaulted FFEL program loans or DL program loans seeking to consolidate loans out of default, any payments missed during the period when the borrowers are affected individuals or during the three-month transition period that follows shall not be considered an interruption of the series of payments required for purposes of reestablishing Title IV eligibility.
- With respect to the 1<sup>st</sup> and 2<sup>nd</sup> categories of affected individuals, borrowers who are repaying their FFEL or DL program loans according to the Income-Based Repayment (IBR) plan or who are repaying their DL program loans according to the Income-Contingent Repayment (ICR) plan and who, because of their status as affected individuals, are unable to provide information normally required on an annual basis to document their income and family size may maintain their current payment amount for a period of up to three years, including a three-month transition period immediately following instead of having their payment amount adjusted to be based on a standard 10-year repayment plan.
- With respect to students who are dependents of affected individuals in the 1<sup>st</sup> category, the requirement to submit a statement signed by a parent verifying the number of family members in the household and the number enrolled in postsecondary institutions is waived if no responsible parent is available to provide a signature.
- With respect to students who are dependents of affected individuals in the 1<sup>st</sup> category, the requirement for at least one parental signature on the Free Application for Federal Student Aid (FAFSA), the Student Aid Report (SAR), and the Institutional Student Information Record (IRIR) is waived if no responsible parent is available to provide a signature.

### **HEA Maintenance of Effort Requirements for the College Access Challenge Grant Program**

The College Access Challenge Grant Program (CACG; HEA Title VII, Part E) fosters partnerships between federal, state, and local governments and philanthropic organizations through matching formula grants that are intended to increase the number of low-income students who are prepared to enter and succeed in postsecondary education. To maintain eligibility for the CACG, a state must meet maintenance of effort (MOE) requirements. According to the MOE requirements, a state must annually provide

- for public IHEs in the state, at least the average amount provided for non-capital and non-direct research and development expenses or costs in the five preceding academic years and
- for private IHEs in the state, at least the average amount provided for postsecondary student financial aid to such IHEs in the five preceding academic years.

The Secretary may waive the MOE requirements for a state in the event of “exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of a state or state educational agency.”<sup>47</sup>

### **Titles III and V Endowment Funds**

Title III, Part A, Title III, Part B, Title III, Part F, and Title V, Part A of the HEA authorize several programs that provide institutional aid to IHEs that serve a high proportion of low-income students and have low educational and general expenditures per students in comparison to similar institutions. Recipients of awards from the programs, except the Native American-Serving Nontribal Institutions programs, may use a portion of their awards to establish or increase an endowment fund. Title III, Part C of the HEA authorizes the Endowment Challenge Grants program that allows recipients to use their awards to establish or increase an endowment fund.<sup>48</sup> While the endowment fund corpus for each of the programs must be maintained for 20 years, 50% of the accumulated endowment fund income may be used for eligible institutional costs. As a consequence of a financial emergency, a life-threatening situation occasioned by a natural disaster or arson, or unusual occurrence or exigent circumstance, the Secretary may permit an IHE to spend more than 50% of the endowment fund income.

### **Education Disaster and Emergency Relief Loan Program**

Section 824 of the HEA authorizes the Secretary of Education, in consultation with the Secretary of Homeland Security, to establish an Education Disaster and Emergency Relief Loan Program for IHEs impacted by a major disaster or emergency declared by the President. Funds may be used for construction, replacement, renovation, and operations costs resulting from the disaster or emergency. The program has never been funded.

### **Temporary HEA Provisions Enacted in Response to Disasters**

Congress enacted several temporary programs and provisions to support education in the aftermath of hurricanes after August 2005. A brief summary of the various programs and provisions created in response to disasters is included in the **Appendix**.<sup>49</sup> For example, additional funds were appropriated to IHEs in order to support recovery efforts and to provide grants to students. Congress authorized the Secretary to modify or waive certain program requirements to ensure that IHEs affected by a natural disaster did not lose grant funding as a result of the

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<sup>47</sup> HEA §137.

<sup>48</sup> Congress appropriated funds for the Endowment Challenge Grant Program during fiscal years 1984 to 1995.

<sup>49</sup> For more detailed information about these programs, see CRS report RL33235, *Education-Related Hurricane Relief: Legislative Action*, which is available by contacting the authors of this report.

disaster. The Secretary was given special authority to ensure historically black colleges and universities were able to gain access to capital financing to support their recovery.

## **Veterans Educational Assistance**

In general, the GI Bills and VR&E provide individuals with a certain entitlement to benefits that must be used within a limited time period. For example, under the Post-9/11 GI Bill, individuals are entitled to 36 months of benefits that must be used before the delimiting date—15 years after discharge or release from active duty.<sup>50</sup>

Statutory provisions allow the VA to continue paying benefits during interval periods when a school is temporarily closed under an established policy based on an Executive Order of the President or due to an emergency situation, as long as the aggregate periods do not exceed four weeks during a 12-month period. In the event of mitigating circumstances (circumstances beyond the individual's control that prevent continuous pursuit of a program of education), the VA may pay benefits to an individual for a course from which the individual withdraws. Under normal circumstances, interval payments and payments for withdrawn courses reduce an individual's entitlement. However, the individual's entitlement will not be reduced if an individual requests interruption of benefits for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive Order of the President or due to an emergency situation.

The Survivors' and Dependents' Educational Assistance Program (DEA; Title 38 U.S.C., Chapter 35) pays educational benefits to children after they achieve a high school diploma or its equivalent, or after they reach 18 years of age, but before they reach 26 years of age. In certain situations such as an enrollment suspension due to conditions determined by the VA to have been beyond the individual's control, the delimiting date may be modified or extended beyond an eligible person's 26<sup>th</sup> birthday, but generally not past the 31<sup>st</sup> birthday.

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<sup>50</sup> The 15-year limitation does not include periods when individuals were ineligible for the program but their discharge status was later amended to make them eligible for the program, and periods when individuals were detained by a foreign government or power and any related recovery period in a hospital. Individuals incapable of beginning education as a result of a physical or mental disability can be granted an extension for the period of incapacity.

## **Appendix. Education-Related Federal Disaster Appropriations and Temporary Provisions Administered by the U.S. Department of Education Following Various Natural Disasters**

Since 2005, Congress has appropriated nearly \$2 billion for ED to provide support to local educational agencies (LEAs), schools, and institutions of higher education (IHEs) that were affected by Hurricanes Katrina, Rita, or Gustav and other natural disasters.<sup>51</sup> Funding and temporary provisions provided for elementary and secondary education and for higher education are discussed below. **Table A-1** details how much of this funding was allocated specifically to Alabama, Florida, Louisiana, Mississippi, Texas, and all other states combined, by program.

### **Elementary and Secondary Education<sup>52</sup>**

Following the Gulf Coast hurricanes, funding to support elementary and secondary schools affected by Hurricane Katrina or Hurricane Rita was provided through three public laws: P.L. 109-148 (\$1.4 billion), P.L. 109-234 (\$235 million), and P.L. 110-28 (\$30 million).

- P.L. 109-148 created two new programs: (1) Immediate Aid to Restart School Operations (\$750 million) and (2) Temporary Emergency Impact Aid for Displaced Students (\$645 million), specifically designed to address needs resulting from the hurricanes and to provide support to LEAs through an existing federal education program administered by ED.<sup>53</sup> It also added \$5 million to the McKinney-Vento Homeless Assistance Act to serve homeless children and youth who had been displaced by the Gulf Coast hurricanes.
- P.L. 109-234 provided additional funding of \$235 million for the Temporary Emergency Impact Aid for Displaced Students enacted under P.L. 109-148.
- P.L. 110-28 appropriated \$30 million for elementary and secondary schools affected by the hurricanes through the Hurricane Educator Assistance program to assist in recruiting, retaining, and compensating staff in those schools.

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<sup>51</sup> For a more detailed discussion of federal education-related response to hurricanes prior to June 2007, see CRS Report RL33236, *Education-Related Hurricane Relief: Legislative Action*, by Rebecca R. Skinner et al.

<sup>52</sup> While not provided through education-related legislation enacted in response to a disaster, Louisiana also received \$20.9 million through the Charter School Program authorized under Title V-B-1 of the Elementary and Secondary Education Act specifically 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. (For more information, see U.S. Department of Education, "Louisiana Awarded \$20.9 Million No Child Left Behind Grant to Assist Damaged Charter Schools, Create New Charter Schools," press release, September 30, 2005, <http://www2.ed.gov/news/pressreleases/2005/09/09302005.html>.)

<sup>53</sup> In addition to funding, P.L. 109-148 provided general waiver authority for the Secretary of Education related to maintenance of effort (MOE) requirements; the use of federal funds to supplement, not supplant non-federal funds; and matching contributions for programs administered by the Secretary. It also modified hold harmless provisions for the Elementary and Secondary Education Act (ESEA) Title I-A Grants to Local Educational Agencies program and modified highly qualified teacher provisions contained in ESEA Title I-A.

Congress then appropriated an additional \$15 million through P.L. 110-329 to provide support to LEAs whose enrollment of homeless students increased as a result of hurricanes, floods, or other natural disaster during 2008. Most recently, Congress appropriated \$12 million through P.L. 111-117 for the Gulf Coast Recovery Initiative to improve education in areas affected by Hurricanes Katrina, Rita, or Gustav. A brief description of each of these programs and the amount of funding each received is presented below. **Table A-1** details how much funding various states received under each of the programs.

### **Immediate Aid to Restart School Operations**

The Immediate Aid to Restart School Operations provided support for LEAs and non-public schools in Louisiana, Mississippi, Alabama, and Texas to restart school operations, reopen schools, and re-enroll students. P.L. 109-148 provided \$750 million for this program. This program is no longer authorized.

### **Temporary Emergency Impact Aid for Displaced Students**

The Temporary Emergency Impact Aid for Displaced Students program provided federal funding to assist schools in enrolling students who had been displaced by the Gulf Coast hurricanes. Funds were made available to LEAs and schools based on the number of displaced students that enrolled, irrespective of whether the school in which parents chose to enroll their child was a public or non-public school. P.L. 109-148 appropriated \$645 million for this program. Subsequently, P.L. 109-234 appropriated an additional \$235 million for this program, bringing the total program appropriation to \$880 million.<sup>54</sup> Portions of the funds appropriated were provided to 49 states<sup>55</sup> and the District of Columbia based on the number of displaced students each enrolled. Louisiana, Texas, and Mississippi received the largest proportion of funds. This program is no longer authorized.

### **McKinney-Vento Homeless Assistance Act**

The McKinney-Vento Homeless Assistance Act (P.L. 100-77; 42 U.S.C. 11433 et seq.) provides funding to 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 through the Education for Homeless Children and Youths program.<sup>56</sup> P.L. 109-148 appropriated \$5 million for this program for LEAs serving homeless children and youth who had been displaced by Hurricanes Katrina or Rita. Eight states received funding under this program, with the largest grants provided to Texas and Louisiana.<sup>57</sup> While the McKinney-Vento Homeless Assistance Act continues to provide funding related to the education of homeless students, the provisions enacted specifically in response to the Gulf Coast hurricanes are no longer authorized.

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<sup>54</sup> Of the total appropriation for Temporary Emergency Impact Aid for Displaced Students, only **\$878 million** was distributed, as the remaining funds were not needed by states under this program.

<sup>55</sup> Hawaii did not receive any funds through this program.

<sup>56</sup> For a description of existing federal programs enacted by the McKinney-Vento Homeless Assistance Act, see CRS Report RL30442, *Homelessness: Targeted Federal Programs and Recent Legislation*, coordinated by Libby Perl.

<sup>57</sup> The eight states that received funds included Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Texas.

## **Hurricane Educator Assistance Program**

The Hurricane Educator Assistance Program made federal funding available to Louisiana, Mississippi, and Alabama to use for recruiting, retaining, and compensating school staff who committed to work for at least three years in public elementary and secondary schools affected by Hurricanes Katrina or Rita. States were required to apply to receive funds, and the funds were allocated based on the number of public elementary and secondary schools that were closed for 19 days or more from August 29, 2005, through December 31, 2005. P.L. 110-28 provided \$30 million for these purposes. Funds were provided to Louisiana and Mississippi only. This program is no longer authorized.

## **Homeless Education Disaster Assistance**

P.L. 110-329 provided \$15 million to LEAs whose enrollment of homeless students increased as a result of hurricanes, floods, or other natural disasters that occurred during 2008 and for which the President declared a major disaster under Title IV of the Stafford Act. ED was required to distribute the funds through the McKinney-Vento Homeless Assistance Act based on demonstrated need. These funds provided assistance to LEAs in Gulf Coast states affected by Hurricanes Gustav and Ike, as well as LEAs affected by natural disasters in other parts of the nation, such as flooding in the Midwest. Of the \$15 million provided, \$13.5 million was provided to Florida, Louisiana, and Texas.<sup>58</sup> This program is no longer authorized.

## **Gulf Coast Recovery Initiative**

P.L. 111-117 provided \$12 million for competitive awards to LEAs located in counties in Louisiana, Mississippi, and Texas that were designated by FEMA as counties eligible for individual assistance as a result of damage caused by Hurricanes Katrina, Rita, or Gustav. The funds had to be used to improve education in areas affected by these hurricanes and had to be used for activities such as replacing instructional materials and equipment; paying teacher incentives; modernizing, renovating, or repairing school buildings; supporting charter school expansion; and supporting extended learning time activities. The majority of the funds were provided to LEAs in Louisiana. This program is no longer authorized.

## **Higher Education**

Appropriations to support IHEs following the Gulf Coast hurricanes of 2005 were provided through P.L. 109-148 (\$200 million), P.L. 109-234 (\$50 million), and P.L. 110-28 (\$30 million). P.L. 110-329 subsequently provided another \$15 million for IHEs in areas affected by hurricanes, floods, or other natural disasters in 2008. **Table A-1** details the amount of funding allocated to states under these provisions.

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<sup>58</sup> While data were not available on the specific disasters experienced by the LEAs that received funding, data were available on the specific types of disasters for which IHEs received funds under the Higher Education Disaster Relief program (P.L. 110-329), which also provided aid in response to natural disasters that occurred in 2008. According to these data, all IHEs in Louisiana that received funds were affected by Hurricanes Gustav or Ike. Most IHEs in Texas that received funds were affected by Hurricane Ike. A few IHEs in Texas were affected by Hurricane Dolly, accounting for a relatively small portion of the funds allocated to IHEs in Texas. IHEs in Florida that received funding were affected by Tropical Storm Fay. LEAs in Iowa and Illinois received the remaining funds available to LEAs.

## **Hurricane Education Recovery**

Of the \$200 million provided under P.L. 109-148 for higher education, \$95 million was specifically appropriated for the Louisiana Board of Regents, and \$95 million was specifically appropriated for the Mississippi Institutes of Higher Learning for hurricane education recovery. Subsequently, P.L. 109-234 and P.L. 110-28 provided additional funds for hurricane education recovery under the Fund for the Improvement of Postsecondary Education (FIPSE), authorized by Title VII of the Higher Education Act (HEA), to assist IHEs adversely affected by the 2005 Gulf Coast hurricanes. Under both laws, funds were provided to help defray the expenses incurred by IHEs that were forced to close, relocate, or reduce their activities due to hurricane damage. Under P.L. 110-28, IHEs also were permitted to use these funds to make grants to students enrolled at these institutions on or after July 1, 2006. A total of \$80 million was provided for IHEs affected by Hurricanes Katrina or Rita under FIPSE for hurricane education recovery. The majority of funds appropriated for hurricane education recovery were provided to Mississippi and Louisiana. These activities are no longer authorized.

## **Funds to Assist IHEs Enrolling Displaced Students**

Under P.L. 109-148, \$10 million was appropriated to assist IHEs with unanticipated costs associated with the enrollment of students displaced as a result of Hurricanes Katrina or Rita. Overall, 99 IHEs in 24 states and the District of Columbia received funds related to the enrollment of displaced higher education students.<sup>59</sup> Louisiana and Texas received the largest state grants. This program is no longer authorized.

## **Higher Education Disaster Relief<sup>60</sup>**

P.L. 110-329 provided an additional \$15 million<sup>61</sup> for IHEs that were located in an area affected by hurricanes, floods, and other natural disasters that occurred during 2008 and for which the President declared a major disaster under Title IV of the Stafford Act. Funds provided through the Higher Education Disaster Relief program could be used to defray the expenses incurred by IHEs in these areas that were forced to close or relocate or whose operations were adversely affected by the natural disaster, and to provide grants to students who attended such IHEs for academic years beginning on or after July 1, 2008. The majority of these funds were provided to Louisiana and Texas for hurricane-related education disaster assistance.<sup>62</sup> This program is no longer authorized.

## **Modified Uses of Funds under Various Grant Programs**

Under P.L. 109-148, upon request by an affected institution or other grantee located in an area affected by a Gulf hurricane disaster, the Secretary was given the authority to modify the required and allowable uses of funds under the TRIO programs (HEA Title IV, Part A, Subpart 2, Chapter

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<sup>59</sup> The 24 states in which IHEs received funds included Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Tennessee, Texas, Utah, and Virginia.

<sup>60</sup> None of these funds were provided in response to the Gulf Coast hurricanes of 2005.

<sup>61</sup> Based on data available from ED, \$15.028 million was provided to IHEs. For more information, see <http://www2.ed.gov/programs/disaster-relief/hedr-abstracts2009.pdf>.

<sup>62</sup> IHEs in Arkansas, Colorado, Iowa, Illinois, Indiana, and Kentucky also received funds under this program.

1),<sup>63</sup> Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP; HEA Title IV, Part A, Subpart 2, Chapter 2), programs authorized under Strengthening Institutions (HEA Title III, Part A) or Strengthening Historically Black Colleges and Universities (HEA Title III, Part B), and any other competitive grant program. The Secretary was not authorized to permit 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.

### **Modified Requirements under the Title III-A and Title III-B Programs**

Congress authorized the Secretary to waive certain requirements under the Title III, Part A and Title III, Part B programs related to institutional eligibility, data submissions, and funding allocations.<sup>64</sup> The waivers were intended to ensure that IHEs affected by either Hurricanes Katrina or Rita did not lose funding as a result of the disasters. The waivers were required for FY2009-FY2011 and permitted for FY2012 and FY2013.

### **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.<sup>65</sup> Modifications could 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>66</sup>

### **Additional Capital Financing for Historically Black Colleges and Universities**

Congress helped historically Black colleges and universities (HBCUs) affected by the Gulf Coast hurricanes gain access to low-cost capital financing to assist their recovery efforts through the Historically Black College and University (HBCU) Capital Financing program (Title III-D of the HEA). P.L. 109-234 authorized the Secretary to waive or modify statutory or regulatory provisions to ensure that the calculation of financing for an HBCU reflected changes in the financial condition of the institution as a result of the 2005 Gulf Coast hurricanes and to ensure that those affected institutions that were not receiving assistance under the program before the Gulf hurricane disaster were eligible to apply. The law also relaxed several program financing requirements.

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<sup>63</sup> For more information on the TRIO programs, see CRS Report R42724, *The TRIO Programs: A Primer*, by Cassandra Dortch.

<sup>64</sup> The waivers (Section 392(c) of the HEA) were enacted by section 318 of the Higher Education Opportunity Act (HEOA; P.L. 110-315).

<sup>65</sup> This authority was enacted by the FY2006 Defense Appropriations (P.L. 109-148).

<sup>66</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.

**Table A-1. Funding Administered by the Department of Education Provided in Response to Natural Disasters Since 2005**

Dollars in thousands

Department of Education	Alabama	Florida	Louisiana	Mississippi	Texas	All Other States	Total
<b>Elementary and Secondary Education</b>							
Immediate Aid to Restart School Operations	3,750	–	445,604	222,493	78,153	–	750,000
Emergency Impact Aid for Displaced Students <sup>a</sup>	36,605	27,214	291,717	100,787	250,890	170,931	878,144
McKinney-Vento Homeless Education Assistance Program	247	196	1,564	687	1,687	619	5,000
Hurricane Educator Assistance Program	–	–	22,593	7,407	–	–	30,000
Homeless Education Disaster Assistance	–	91	1,171	–	12,256	1,483	15,000
Gulf Coast Recovery Initiative	–	–	8,624	2,638	739	–	12,000
<b>Subtotal for elementary and secondary education</b>	<b>40,602</b>	<b>27,501</b>	<b>771,273</b>	<b>334,012</b>	<b>343,724</b>	<b>173,033</b>	<b>1,690,144</b>
<b>Higher Education</b>							
Hurricane Education Recovery	301	1,507	145,663	117,878	4,651	–	270,000
Funds to Assist Institutions of Higher Education Enrolling Displaced Students	357	34	5,748	327	1,750	1,783	10,000
Higher Education Disaster Relief Program	–	25	3,524	–	8,354	3,125	15,028
<b>Subtotal postsecondary education</b>	<b>658</b>	<b>1,566</b>	<b>154,935</b>	<b>118,206</b>	<b>14,756</b>	<b>4,908</b>	<b>295,028</b>
<b>Total</b>	<b>41,261</b>	<b>29,067</b>	<b>926,208</b>	<b>452,217</b>	<b>358,480</b>	<b>177,940</b>	<b>1,985,172</b>

**Source:** Table prepared by CRS based on published and unpublished data available from the U.S. Department of Education.

**Notes:** Details may not add to totals due to rounding.

- a. Under the Emergency Impact Aid program, \$1.9 million of the \$880 million appropriated was not allocated to states, as the funds were not needed. Thus, the total appropriated amount is higher than the amount allocated and shown on the table.

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