

# CRS Report for Congress

## Education-Related Hurricane Relief: Legislative Action

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# Education-Related Hurricane Relief: Legislative Action

## Summary

Following the destruction wrought on the Gulf Coast by Hurricane Katrina and Hurricane Rita in 2005, the initial federal response to providing education-related disaster relief was primarily in the form of waivers issued by the Secretary of Education. With the passage of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (P.L. 109-148), \$1.6 billion was made available to aid in providing education-related disaster relief at the elementary, secondary, and postsecondary levels. An additional \$285 million was subsequently authorized by Title II, Chapter 6 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234). Most recently, an additional \$60 million was authorized by Title IV, Chapter 7 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28).

This report provides an overview of the waivers that have been granted by the Department of Education in response to the Gulf Coast hurricanes; three public laws that have been enacted, specifically to provide financial relief to postsecondary students and institutions of higher education (P.L. 109-66, P.L. 109-67, and P.L. 109-86); and education-related hurricane relief funding provisions included in FY2006 defense appropriations (P.L. 109-148), FY2006 supplemental appropriations (P.L. 109-234), and FY2007 supplemental appropriations (P.L. 110-28). The report concludes with a detailed analysis of how funds made available through P.L. 109-148 have been allocated to states.

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

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# Education-Related Hurricane Relief: Legislative Action

Following the destruction wrought on the Gulf Coast by Hurricane Katrina and Hurricane Rita in August and September 2005, the initial federal response to providing education-related disaster relief was primarily in the form of waivers issued by the Secretary of Education (Secretary). Additional relief was also provided by the Federal Emergency Management Agency (FEMA) in the form of portable classrooms and other types of immediate aid to support the education of students displaced by the storms. With the passage of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (P.L. 109-148, hereafter referred to as FY2006 defense appropriations), \$1.6 billion has been appropriated to aid in providing education-related disaster relief at the elementary, secondary, and postsecondary levels.<sup>1</sup> An additional \$285 million was subsequently authorized for education-related hurricane recovery efforts by Title II, Chapter 6 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (P.L. 109-234, hereafter referred to as FY2006 supplemental appropriations). Most recently, an additional \$60 million was authorized by Title IV, Chapter 7 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28, hereafter referred to as FY2007 supplemental appropriations).

This report provides an overview of the waivers that have been granted by the Department of Education (ED) in response to the Gulf Coast hurricanes, public laws that have been enacted to provide financial relief to institutions of higher education (P.L. 109-66, P.L. 109-67, and P.L. 109-86), and education-related hurricane relief funding provisions included in FY2006 defense appropriations, FY2006 supplemental appropriations, and FY2007 supplemental appropriations. The report concludes with a detailed analysis of how funds made available through FY2006 defense appropriations have been allocated to states. This report complements the detailed discussion of several issues related to major disasters and education included in CRS Report RL33089, *Education and Training Issues Related to Major Disasters*, coordinated by Charmaine Mercer.

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

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

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

### K-12 Education

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

**State Academic Assessment System.** The Secretary is authorized to grant states a waiver of the requirement to implement a system of academic content and achievement standards in reading/language arts, mathematics, and science in each of grades 3 through 8 and in high school by the end of the 2005-2006 school year if the state demonstrates that it has been affected by exceptional or uncontrollable circumstances, such as a natural disaster. The Secretary has granted

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

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

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

Mississippi a one-year waiver to permit it to implement its state academic assessment system during the 2006-2007 school year.<sup>5</sup>

**Adequate Yearly Progress.** The Secretary has provided to states two options for flexibility in the administration of academic assessments and the determination of adequate yearly progress (AYP) as required under Title I-A of the ESEA.<sup>6</sup> Under the first option, for schools or LEAs that have been impacted by either Hurricane Katrina or Hurricane Rita as a result of enrolling large numbers of displaced students or other factors, the Secretary considered the approval of waivers allowing for a delay in the implementation of the school and LEA improvement, corrective action and restructuring requirements of Title I-A.<sup>7</sup> Under the second option, the Secretary considered the granting of flexibility in how displaced students are accounted for in the determination of AYP. For the 2005-2006 school year only, a displaced student subgroup may be established for AYP purposes, and students counted in that subgroup need not be counted in any other subgroups into which they might otherwise qualify, including the “all students” group.<sup>8</sup>

In April and May of 2006, the Secretary approved requests for flexibility agreements under the second option for five states — Alabama, Arkansas, Georgia, Tennessee, and Texas.<sup>9</sup> The Secretary conditioned approval of the flexibility agreements on the following requirements:

- States must include the displaced students subgroup in the 2005-2006 AYP calculations for participation at the school, LEA, and state levels;
- States must report achievement information for the displaced student subgroup at the LEA and state levels the same as for other subgroups on LEA and state report cards; and

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<sup>5</sup> Department of Education, “Mississippi Assessment Letter,” June 30, 2006, available online at [<http://www.ed.gov/admins/lead/account/nclbfinalassess/ms.html>].

<sup>6</sup> Letter from Margaret Spellings, U.S. Secretary of Education, to Chief State School Officers, September 29, 2005, available online at [<http://www.ed.gov/policy/elsec/guid/secletter/050929.html>], visited May 26, 2006.

<sup>7</sup> For additional information on these requirements, see CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*, by Gail McCallion, et al. ESEA Title I-A already provides that in instances where a *school* is affected by a major disaster or a precipitous decline in financial resources, LEAs may delay for one year their implementation of the requirements for a second year of school improvement, corrective action, or restructuring (ESEA § 1116(b)(7)(D)); and if an *LEA* is affected by a major disaster or a precipitous decline in financial resources, states may delay implementation of the requirements of corrective action (ESEA § 1116(c)(10)(F)).

<sup>8</sup> For more information on AYP requirements, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle.

<sup>9</sup> Department of Education, Hurricane Help for Schools, Policy Letters on Hurricane Katrina, at [<http://hurricanehelpforschools.gov/letters/5-states.html>], visited May 30, 2006.

- States must provide remedial education assistance for displaced students who score below the proficient level on 2005-2006 assessments.<sup>10</sup>

As part of the flexibility agreement with Texas, the Secretary also agreed to allow it to waive AYP determinations for schools or LEAs that were closed for more than seven days as a result of Hurricanes Katrina or Rita and that are located in a county designated by FEMA as a disaster area. As a condition for this flexibility, Texas is required to provide ED the opportunity to review AYP data for displaced students from schools and LEAs that fail to make AYP solely due to the displaced student group prior to the public release of these data.

Two significant effects appear possible as a result of allowing states to create a separate subgroup for displaced students and to exclude displaced students from all other subgroups, including the “all students” subgroup. First, given the minimum group size ( $n$ ) for the reporting of academic achievement data, as shown in **Table 1**, it appears that information on the academic achievement of displaced students will be made available at the school and LEA levels in areas that experienced even a modest influx of displaced students. If a separate subgroup were not created for displaced students, it could be very difficult to determine if their level of academic performance was any different than that of the subgroup(s) with which they share membership. By excluding displaced students from the “all students” subgroup, one also may be able to make inferences of relative performance by comparing the achievement levels of displaced students with the “all students” subgroup, which would represent only non-displaced students.

**Table 1. Minimum Group Size for Reporting and for Making AYP Determinations in States with Approved Flexibility Agreements**

State	Minimum Group Size ( $n$ )	
	Reporting	AYP Determination
Alabama	$n = 10$	$n = 40$
Arkansas	$n = 10$	$n = 40$ , if $\leq 800$ total students; or $n = 5\%$ (up to 200), if $>800$ total students
Georgia	$n = 10$	$n =$ the greater of 40, or 10% (up to 75)
Tennessee	$n = 10$	$n =$ the greater of 45, or 1%
Texas	$n = 5$	$n = 50$ , if $\geq 10\%$ of all students; or $n = 200$ if $< 10\%$ of all students

**Source:** Department of Education, “Approved State Accountability Plans,” at [<http://www.ed.gov/admins/lead/account/stateplans03/index.html>], visited May 30, 2006.

**Note:** Under the approved state accountability plans of these states, a student is considered to be enrolled for a full academic year, and thus counted for accountability purposes, if he or she is continuously enrolled from October (varying dates) through the day of testing.

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<sup>10</sup> Ibid.



Second, it appears that the academic achievement of displaced students will only have any impact on the AYP determinations of schools or LEAs if there are sufficient numbers of displaced students to qualify the displaced student subgroup as a counted category — generally, 40 or more displaced students in a school or LEA, as shown in **Table 1**. By excluding displaced students from all other categories, including the “all students” category, the enrollment of displaced students in a school or LEA would not push any subgroup above the minimum group size threshold for being counted, nor would it have any effect in raising or lowering the AYP level for any single group, other than the new displaced student subgroup. Thus it appears that, under these state flexibility agreements, the performance of displaced students will be reported in most cases, but their performance will have an impact on AYP determinations only in schools and LEAs that have enrolled large numbers of displaced students.

**Charter Schools Program.** On September 12, 2005, the Secretary announced that requests would be considered for waivers of statutory or regulatory requirements related to the Charter Schools Program (CSP, ESEA Title V, Part B, Subpart 1).<sup>11</sup> The CSP program provides planning, implementation, and dissemination grants to charter schools nationwide. In the aftermath of the hurricanes it was determined that ED had approximately \$20 million in FY2005 funds still available under the CSP that would be targeted for Hurricane Katrina relief. Louisiana subsequently received a \$20.9 million grant through the CSP to: help reopen charter schools damaged by Hurricane Katrina and Hurricane Rita; help create 10 new charter schools; and expand existing charter schools to accommodate displaced students.<sup>12</sup>

## Higher Education

The Secretary exercised available authority to provide waivers of various provisions under the Higher Education Act of 1965 [HEA (20 U.S.C. 1001)].<sup>13</sup> For

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<sup>11</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>12</sup> Department of Education, “Louisiana Awarded \$20.9 Million No Child Left Behind Grant to Assist Damaged Charter Schools, Create New Charter Schools,” September 30, 2005, available online at [<http://www.ed.gov/news/pressreleases/2005/09/09302005.html>]. An application for these funds is available from the Louisiana Board of Elementary and Secondary Education (BESE) at [<https://www.doe.state.la.us/lde/uploads/8321.pdf>]. The state BESE has assumed control over 102 of the 117 campuses in the Orleans Parish school system. Under the state take-over, it is expected that as schools reopen, many will reopen as charter schools. (Brian Thevenot, “Added Hurdles Toughen Resolve,” *The Times-Picayune*, January 9, 2006.)

<sup>13</sup> Most of these authorities were enacted in response to the hurricanes that occurred in Florida in 2003. ED issued a general distribution letter detailing the authority being exercised by the Secretary and providing guidance for IHEs dealing with the effects of a major disaster, at [<http://ifap.ed.gov/dpccletters/attachments/GEN0404.pdf>]. Higher education waiver provisions are discussed in greater detail in CRS Report RL33089,

example, in a letter dated September 30, 2005, the Secretary stated that all institutions of higher education (IHEs) in Alabama, Louisiana and Mississippi that were affected by Hurricane Katrina would be permitted to reduce their academic year from 30 weeks of instructional time to 26 weeks of instruction.<sup>14</sup> The Secretary indicated that she would continue to address this issue on a case-by-case basis for IHEs affected by Hurricane Rita.<sup>15</sup> In addition, in a notice issued on November 1, 2005, student borrowers who lived in an area affected by the hurricane were granted an automatic six-month loan-payment forbearance through February 26, 2006.<sup>16</sup> Further IHEs were granted extensions of various reporting and filing requirements pertaining to reporting the disbursement of Title IV funds and the reimbursement of Title IV funds based on student enrollment, attendance, and the institution's academic calendar.<sup>17</sup> Additionally, three public laws were enacted providing hurricane relief for higher education (see discussion below).<sup>18</sup>

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

This section provides an overview of education-related hurricane relief legislation that has been enacted since September 2005. As with the previously discussed actions taken by ED, the three public laws discussed below primarily focus on providing waivers of existing provisions included in the HEA. Two of the three statutes provide financial relief to students. The third law provides the Secretary with authority to waive institutional matching requirements and redirect funds for campus-based student aid programs<sup>19</sup> to assist IHEs affected by Hurricanes Katrina and Rita. FY2006 supplemental appropriations are discussed in subsequent sections.

### **Pell Grant Hurricane and Disaster Relief Act, P.L. 109-66**

The Pell Grant Hurricane and Disaster Relief Act (P.L. 109-66) provides the Secretary with authority to waive the amount of Pell Grant aid required to be returned

<sup>13</sup> (...continued)

*Education and Training Issues Related to Major Disasters*, coordinated by Charmaine Mercer.

<sup>14</sup> The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneKatrinaEA6.html>].

<sup>15</sup> The full text of the notice is available at [<http://www.ifap.ed.gov/eannouncements/0930HurricaneRitaEA2.html>].

<sup>16</sup> The full text of this notice is available at [<http://www.ifap.ed.gov/eannouncements/1101HurricaneKatrinaEA07.html>].

<sup>17</sup> The full text of this notice is available at [<http://www.ed.gov/legislation/FedRegister/announcements/2005-3/090905a.html>].

<sup>18</sup> ED guidance for Title IV participants affected by a disaster is available, in a letter dated February 2004 (GEN-04-04), at [<http://ifap.ed.gov/dpcletters/GEN0404.html>].

<sup>19</sup> HEA, Title IV. Also see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

by students who withdrew or whose attendance was interrupted for students who resided in, were employed in, or attended an IHE in an area that has been declared a major disaster by the President in accordance with § 401 of the Robert T. Stafford Disaster Relief and Emergency Act (hereafter referred to as the Stafford Act, 42 U.S.C. 5121 et seq.). The Pell Grant program provides portable grants to low-income undergraduate students under HEA Title IV, student financial aid programs.<sup>20</sup> Under current law, when a student withdraws from an IHE, the IHE and/or the student may be required to return Pell Grant aid to ED.<sup>21</sup> P.L. 109-66 eliminates the requirement that students repay their portion of the Pell Grant when they withdraw from an IHE due to a major disaster. It does not, however, eliminate the requirement that the IHE return funds to ED. Thus, while students attending IHEs in Louisiana and Louisiana residents attending out-of-state IHEs may have benefitted from this new provision, IHEs in affected areas were still required to return Pell Grant funds.<sup>22</sup>

### **Student Grant Hurricane and Disaster Relief Act, P.L. 109-67**

The Student Grant Hurricane and Disaster Relief Act (P.L. 109-67) grants the Secretary authority to waive the amount of student aid required to be returned by students who withdrew if the students resided in, were employed in, or attended an IHE in an area that has been declared a major disaster by the President in accordance with § 401 of the Stafford Act, or who withdrew because their attendance was interrupted due to the impact of the disaster. This pertains to all non-Pell Grant aid authorized under Title IV of the HEA. As with P.L. 109-66, this provision waives the return of grant aid for students but not for IHEs required to return grant aid.<sup>23</sup>

### **Natural Disaster Student Aid Fairness Act, P.L. 109-86**

The Natural Disaster Student Aid Fairness Act (P.L. 109-86) grants the Secretary authority to waive certain requirements for the campus-based student financial aid programs.<sup>24</sup> Among other provisions, under current law the terms of the

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<sup>20</sup> For more information on Pell Grants, see CRS Report RL31668, *Federal Pell Grant Program of the Higher Education Act: Background and Reauthorization*, by Charmaine Mercer.

<sup>21</sup> This return of funds requirement is applicable to other student financial aid programs, also.

<sup>22</sup> For more information on requirements related to the return of Title IV grant aid, see CRS Report RL31926, *Institutional Eligibility to Participate in Title IV Student Aid Programs Under the Higher Education Act: Background and Issues*, by Rebecca R. Skinner. (Hereafter cited as CRS Report RL31926, *Institutional Eligibility*.)

<sup>23</sup> For more on requirements related to the return of Title IV grant aid, see CRS Report RL31926, *Institutional Eligibility*.

<sup>24</sup> The Federal Supplemental Educational Opportunity Grant (FSEOG) program (HEA Title IV, Part A, Subpart 3), the Federal Work-Study (FWS) program (HEA Title IV, Part C), and the Federal Perkins Loan program (HEA Title IV, Part E) are commonly referred to as the campus-based student financial aid programs. For additional information on the campus-based student financial aid programs, see CRS Report RL31618, *Campus-Based Student*

campus-based programs generally require participating IHEs to provide matching funds equal to one-third of the amount of federal funds received.<sup>25</sup> In addition, IHEs that neither use funds during the year for which they are allocated nor the subsequent year are required to return them to ED for reallocation to other eligible IHEs; and IHEs that return more than 10% of their allocation as unused will have subsequent allocations reduced.

P.L. 109-86 provides the Secretary with authority through October 7, 2006 to waive certain components of the campus-based programs for IHEs that are located in areas affected by Hurricane Katrina and Hurricane Rita or that have accepted for enrollment any students affected by a Gulf hurricane disaster. First, with respect to funds made available for the 2004-2005 and 2005-2006 academic years, the Secretary must waive the institutional matching requirement for affected IHEs, and (after considering an IHE's student population and existing resources) may waive the institutional matching requirement for IHEs that have accepted for enrollment any affected students. Second, with respect to affected IHEs and IHEs that have accepted for enrollment any affected students, the Secretary shall: (a) reallocate to those IHEs any funds returned as unused from the 2004-2005 award year; and (b) waive any allocation reduction that would otherwise apply to the IHE for award year 2006-2007 for returning more than 10% of its allocation. Finally, the availability of funds that would otherwise expire on September 30, 2005 is extended for one additional year; and the Secretary is granted authority to recall any funds that would lapse on September 30, 2005 for reallocation to eligible IHEs.<sup>26</sup>

## **FY2006 Defense Appropriations, P.L. 109-148**

While other efforts by Congress and ED to provide education-related hurricane relief have primarily relied on waivers, Division B, Title IV of the FY2006 defense appropriations provides \$1.6 billion, as well as additional waivers and waiver authority, to meet the educational needs of individuals and institutions affected by the hurricanes in the Gulf of Mexico.<sup>27</sup> The act provides support for elementary and secondary education, as well as higher education. This section provides a summary of the main contents of Division B, followed by a more detailed analysis of the changes made by various sections contained in Division B.

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<sup>24</sup> (...continued)

*Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

<sup>25</sup> There are exceptions to the one-third matching requirement. For a discussion, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

<sup>26</sup> On November 7, 2005, the Secretary published a notice regarding the reallocation of campus-based aid and waivers of statutory and regulatory provisions pursuant to the Natural Disaster Student Aid Fairness Act in the *Federal Register*.

<sup>27</sup> For the purposes of K-12 and postsecondary education hurricane relief, "hurricanes in the Gulf of Mexico" only include Hurricane Katrina and Hurricane Rita.

For K-12 education, Subtitle A (Elementary and Secondary Education Hurricane Relief) provides several waivers of existing requirements and appropriates \$1.4 billion for new programs to meet the needs of states, LEAs, and students. With the exception of waivers granted under Title IV, § 105 (see below for discussion), all K-12 education-related hurricane provisions initially expired on August 1, 2006. However, P.L. 109-234 (discussed later) extended the period of obligation until September 30, 2006, but only for expenses incurred during the 2005-2006 school year.

For higher education, Subtitle B (Higher Education Hurricane Relief Act of 2005) primarily provides waivers of existing requirements and makes available \$200 million specifically to provide assistance under various HEA programs. These funds must be used: (1) to provide assistance to students attending IHEs that are located in an area in which a major disaster has been declared in accordance with § 401 of the Stafford Act related to the 2005 Gulf of Mexico hurricanes and who are eligible for assistance under the Federal Supplemental Educational Opportunity Grants [FSEOG (HEA Title IV, Part A, Subpart 3)], the Leveraging Educational Assistance Partnership Program [LEAP (HEA Title IV, Part A, Subpart 4)], and Federal Work Study Programs [FWS (HEA Title IV Part C)];<sup>28</sup> (2) to provide assistance to IHEs located in areas affected by these hurricanes and forced to close, relocate, or significantly curtail their operations as a result of direct damage caused by such hurricanes;<sup>29</sup> and (3) to provide payments to IHEs to help defray unanticipated expenses associated with enrolling displaced students from IHEs at which operations were disrupted due to the hurricanes in the Gulf of Mexico. The Secretary's authority to issue waivers or modifications under this subtitle expired at the end of the 2005-2006 academic year. It is unclear whether this means that the waivers or modifications granted prior to the end of the 2005-2006 academic year also expired at the same time.

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

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

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

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<sup>28</sup> Funds appropriated for the Mississippi Institutes of Higher Learning (public colleges and universities in Mississippi) must be used to provide student assistance to students meeting these criteria.

<sup>29</sup> Funds appropriated for the Louisiana Board of Regents must be used for these purposes.

or modifications of MOE for FY2006 will not reduce the level of effort required for FY2007. Any waivers issued under this authority are effective for FY2006 only.

Congress, however, subsequently passed the “act to extend the waiver authority for the Secretary of Education under Title IV, Section 105, of P.L. 109-148,” which extended the Secretary’s authority to provide regulatory and financial relief via waivers through September 30, 2007 (P.L. 109-323). The waivers of maintenance of effort requirements granted for FY2006 or FY2007, however, may not reduce the level of effort for the respective succeeding fiscal year.

**Hold Harmless Provision.** Section 103 provides that for LEAs serving areas which, in accordance with § 401 of the Stafford Act, the President has declared that a major disaster related to a Gulf hurricane disaster exists, the amount of funding received under the four ESEA Title I-A allocation formulas for FY2006 shall not be less than the amount received for FY2005. This provision applies only for FY2006 and expired on August 1, 2006. It appears that this hold harmless provision may have been enacted as a means of preventing impacted LEAs from experiencing a decrease in funding specifically due to a loss of students displaced by the Gulf Coast hurricanes. However, funds are allocated under the ESEA Title I-A formulas based on data that are collected several years prior.

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. For FY2006, total funds appropriated for basic grants decreased by 1.8%, while appropriations for concentration grants remained the same, and appropriations for targeted grants and education finance incentive grants increased by 2.3%. Implementation of the 100% hold harmless authorized under § 103 likely will have the effect of limiting any increases in allocations for LEAs that may have experienced gains in the number formula children for FY2006.

Counts of children aged 5-17 living in poverty — the largest group of formula children — are estimated by the U.S. Census Bureau annually through the Small Area Income Poverty Estimates (SAIPE).<sup>30</sup> However, there is a considerable delay between the year for which child counts are estimated and the year for which those estimates are used in the allocation of funds. The SAIPE survey is administered in March of the year following the income year that is being estimated. These data are then matched with population data for July 1 of that year (i.e., the year after the income year) and typically made available several years later. For example, 2002 SAIPE data were used in the allocation of Title I-A funds for the 2005-2006 school year. These data provide an estimate, as of July 1, 2003, of the number of children aged 5-17 from families that reported in the March, 2003 survey that they were living in poverty in 2002. The 2005 SAIPE was conducted in March 2006 and the data are to be matched with population data as of July 1, 2006; it is the first SAIPE survey conducted after the 2005 Gulf Coast hurricanes. The 2005 SAIPE data likely will

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<sup>30</sup> For additional information, see U.S. Census Bureau at [<http://www.census.gov/hhes/www/saipe/>].

first be available for use in allocating funds for the 2008-2009 school year (FY2008), two years after the § 103 hold harmless expires.

**Highly Qualified Teachers Provisions.** Section 104 modifies the highly qualified teacher criteria included in § 1119 of the ESEA and the criteria for qualified paraprofessionals in § 1119(c) of the ESEA. For example, if a teacher were considered highly qualified in a core academic subject in Louisiana on or before August 22, 2005, and seeks a teaching position in another state in the same core subject area, the teacher is to be considered highly qualified in the new state for the 2005-2006 school year, regardless of whether the teacher meets the highly qualified teacher provisions in the new state. Similar provisions exist for special education teachers and paraprofessionals. Section 104 provides a one-year waiver<sup>31</sup> of the requirement that affected states and the LEAs within those states ensure that all teachers meet the highly qualified teacher criteria by the end of the 2005-2006 academic year (§ 1119 of the ESEA), if their failure to comply with this deadline is due to unforeseen circumstances, such as a natural disaster.<sup>32</sup>

**Assistance for Homeless Youth.** The FY2006 defense appropriations provides \$5 million for assistance to LEAs serving homeless children and youth that have been displaced by Hurricane Katrina or Hurricane Rita. The provision of assistance must be “consistent with” the McKinney-Vento Homeless Assistance Act (McKinney-Vento, 42 U.S.C. 11433) with the exception of specified allocation and application provisions. Funds must be disbursed by the Secretary to state educational agencies (SEAs) based on demonstrated need, and disbursed by SEAs to LEAs based on demonstrated need, for the purpose of carrying out § 723 of McKinney-Vento. Section 723 authorizes assistance to LEAs to facilitate the enrollment, attendance, and success in school of homeless children and youth. McKinney-Vento requires states to ensure that homeless children and youth are provided equal access to a free, appropriate public education in the same manner as provided other children and youth. Such education must be provided in a mainstream school environment except for health and safety emergencies and for “temporary, special, and supplemental” services to meet the special needs of homeless children and youth.

**Immediate Aid to Restart School Operations.** Section 102 provides \$750 million to assist with restarting school operations, reopening of schools, and re-enrolling students to LEAs and non-public schools in Louisiana, Mississippi,

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<sup>31</sup> That is, affected states and LEAs will have until the end of the 2006-2007 school year to ensure that all teachers meet the highly qualified teacher criteria. In an October 21, 2005, letter to Chief State School Officers, the Secretary announced that any state failing to meet the 2005-2006 deadline would be granted an additional year if “they are implementing the law and making a good-faith effort” to meet the requirement. Thus, while affected states and LEAs are guaranteed extra time to meet the requirements, other states may be granted extra time at the Secretary’s discretion. The Secretary’s letter is available online at [<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>].

<sup>32</sup> For more information on ESEA, Title I programs, see CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle. For more information on highly qualified teacher criteria, see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James B. Stedman.

Alabama, and Texas, that serve an area in which a major disaster has been declared in accordance with § 401 of the Stafford Act related to Hurricane Katrina or Hurricane Rita. The Secretary is authorized to make payments to SEAs based on criteria the Secretary deems appropriate, taking into account the number of students who were enrolled during the 2004-2005 school year in elementary and secondary schools that were closed on September 12, 2005, or October 7, 2005, as a result of Hurricane Katrina or Hurricane Rita, respectively. SEAs, in turn, are required to make payments to LEAs and non-public schools based on the number of school-aged children served by the LEA or non-public school during the 2004-2005 school year, the severity of the impact of the hurricanes on the LEA or non-public school, and the extent of the needs of the LEA or non-public school, except that the amount of funding made available to non-public schools within each state shall be proportional to the number of non-public schools in relation to the total number of schools in the state. The program expired on August 1, 2006.

Under the Immediate Aid to Restart School Operations program, SEAs may use funds to provide assistance to LEAs and non-public schools for the following purposes:

- (A) recovery of student and personnel data, and other electronic information;
- (B) replacement of school district information systems, including hardware and software;
- (C) financial operations;
- (D) reasonable transportation costs;
- (E) rental of mobile educational units and leasing of neutral sites or spaces;
- (F) initial replacement of instructional materials and equipment, including textbooks;
- (G) redeveloping instructional plans, including curriculum development;
- (H) initiating and maintaining education and support services; and
- (I) such other activities related to the purpose of this section that are approved by the Secretary.<sup>33</sup>

LEAs (including public charter schools that are considered LEAs in accordance with their state charter school law) and non-public schools may apply to the SEA for services or assistance under the program, or they may apply to receive funds from the SEA through subgrants. Public agencies may deliver services directly or may contract for the provision of services and assistance with a public or private entity. Control of funds for services and assistance provided under the program (including such items as hardware and software, instructional materials, equipment, or textbooks) must remain with a public entity; and non-public schools may receive neither funds nor title to materials, equipment, and property purchased under the program.

**Temporary Emergency Impact Aid for Displaced Students.** Section 107 of the FY2006 defense appropriations authorizes the Secretary to award

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<sup>33</sup> FY2006 defense appropriations, Division B, Title VI-A — Hurricane Education Recovery Act, § 102(e)(1).



emergency impact aid<sup>34</sup> grants to SEAs to enable them to award funds to eligible LEAs and Bureau of Indian Affairs (BIA)-funded schools for the education of displaced students.<sup>35</sup> The program is a temporary emergency aid program in which federal funding is made available to LEAs and schools on a per-student basis, irrespective of whether the school in which parents have chosen to enroll their child is a public or nonpublic school. Aid is limited to LEAs and schools serving students displaced by Hurricanes Katrina and Rita. Under the program, the Secretary makes four quarterly payments to SEAs, which in turn award funds to LEAs and BIA-funded schools on a per-student basis. LEAs and eligible BIA-funded schools may use these funds for the purpose of providing services and assistance to elementary and secondary schools enrolling displaced students during the 2005-2006 school year. LEAs serving areas in which displaced students enrolled in nonpublic schools prior to December 20, 2005 must deposit a proportionate amount of funds into student accounts on behalf of such students. Nonpublic schools, in turn, may access funds from student accounts for authorized uses. A maximum of \$6,000 may be made available per displaced student (and up to \$7,500 per displaced student served under IDEA, Part B). The amount to be deposited into each student account may not exceed the cost of tuition and fees at the nonpublic school a student attends. Nonpublic schools also must waive or reimburse tuition in order to access funds from student accounts. For FY2006, \$645 million has been appropriated. The program initially expired on August 1, 2006. However, P.L. 109-234 (discussed later) extended the period of obligation until September 30, 2006, but only for expenses incurred during the 2005-2006 school year.

Under the Temporary Emergency Impact Aid for Displaced Students program, federal funding is made available to LEAs, BIA-funded schools, and non-public schools (including religiously affiliated schools) on a per-student basis. Funds are allocated through SEAs to LEAs and BIA-funded schools on the basis of the number of displaced students enrolled in public and non-public schools operating within the jurisdiction of LEAs. If insufficient funds are available to pay the full amount which an LEA or BIA-funded school is eligible to receive, then awards are proportionately reduced. LEAs are eligible to receive funds on the basis of counts of displaced students, even if such students were displaced from schools located within the same LEA. LEAs are required to deposit funds allocated for displaced students enrolled in non-public schools into student accounts established on their behalf. Funds deposited into student accounts then become available to the non-public schools attended by eligible displaced students.

On March 2, 2006, the Secretary announced grants for the first quarter. A total of 157,743 displaced students were reported as eligible and an initial payment of \$750 was made available per student with no disabilities and \$937.50 per student with disabilities. This initial payment represents approximately one-quarter of the amount expected to be made available per displaced student; however, allocations

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<sup>34</sup> This program is distinct from the Impact Aid program authorized under ESEA, Title VIII.

<sup>35</sup> Under the program, a “displaced student” means a student who enrolled in a different elementary school or secondary school than the student was enrolled in or was eligible to enroll in because the student resided in an area for which a major disaster has been declared related to Hurricane Katrina or Hurricane Rita.

may be revised upward or downward as more complete data become available. Data on payments for additional quarters are discussed in a subsequent section of this report.

LEAs, BIA-funded schools, and eligible non-public schools may use Temporary Emergency Impact Aid for Displaced Students program funds for the following purposes:

- (A) paying the compensation of personnel, including teacher aides, in schools enrolling displaced students;
- (B) identifying and acquiring curricular material, including the costs of providing additional classroom supplies, and mobile educational units and leasing sites or spaces;
- (C) basic instructional services for such students, including tutoring, mentoring, or academic counseling;
- (D) reasonable transportation costs;
- (E) health and counseling services; and
- (F) education and support services.<sup>36</sup>

These funds may not be used for construction or major renovations.

Under the program, neither LEAs nor non-public schools are required to use funds exclusively to serve displaced students. While funds may be used specifically to serve displaced students, they may also be used for activities and services related to serving displaced students, such as educational programs or transportation services that benefit both displaced students and other students.<sup>37</sup>

SEAs must notify parents and guardians of displaced students that they have the option of enrolling their child in a public or non-public school; and that the aid provided under the program is temporary and only available for the 2005-2006 school year. The program contains no prohibition against non-public schools using federal funds received through student accounts to compensate personnel engaged in religious instruction, or to purchase curricular materials and classroom supplies to be used in religious instruction.<sup>38</sup> Funds may be deposited into student accounts only at the request of the parent or guardian of a displaced student and a parent or guardian of a displaced student must be provided the option of having their child opt out of religious worship or religious classes. While students may opt out of religious instruction, there does not appear to be any prohibition against funds made available

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<sup>36</sup> FY2006 defense appropriations, Division B, Title VI-A — Hurricane Education Recovery Act, § 107(e)(1).

<sup>37</sup> Department of Education, *Volume I, Revised Frequently Asked Questions, Emergency Impact Aid for Displaced Students*, February 2, 2006, #28, #45, and #46, at [<http://hurricanehelpforschools.gov/proginfo/faq-impact.pdf>], visited March 6, 2006.

<sup>38</sup> This aspect of the program may have the potential to raise issues concerning the separation of church and state under the First Amendment to the United States Constitution depending on whether aid provided through student accounts is interpreted as direct or indirect. For a more thorough discussion of church-state separation issues, see CRS Report RL30165, *Education Vouchers: Constitutional Issues and Cases*, by Angie Welborn.

on a child's behalf (at the request of the child's parent or guardian) being used for religiously oriented activities on a schoolwide basis.

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

**General Authority to Grant Waivers or Modifications.** The bill provides the Secretary with the authority to waive or modify any statutory or regulatory requirement related to HEA Title IV student financial aid programs or any student or institutional eligibility provision in the HEA if such waiver is deemed necessary by the Secretary in connection with a Gulf hurricane disaster<sup>39</sup> to ensure that administrative requirements are minimized to ease the burden on affected students, affected individuals, affected institutions, lenders, guaranty agencies, and grantees without damaging the integrity of the HEA programs. This authority may be exercised to grant temporary relief from requirements that are rendered infeasible or unreasonable as a result of the effects of a Gulf hurricane disaster. The Secretary may also extend or waive various reporting requirements under § 131(a) of the HEA.

**Modification of Teacher Quality Enhancement Grants for States and Partnerships.** At the request of the grantee, the Secretary may modify the requirements for Teacher Quality Enhancement Grants for States and Partnerships authorized under HEA Title II, Part A. Modifications may be made to aid states and LEAs in recruiting and retaining highly qualified teachers in an LEA in an area affected by a Gulf hurricane disaster, and to aid IHEs, located in such an area, in recruiting and retaining faculty needed to prepare teachers and provide professional development.<sup>40</sup>

**Modification of TRIO, GEAR-UP, Title III Part A or B, and Other Competitive Grants.** Upon request by an affected institution or other grantee located in an area affected by a Gulf hurricane disaster, the Secretary has the authority to modify the required and allowable uses of funds under the TRIO and GEAR-UP programs (HEA Title IV, Part A, Subpart 2, Chapters 1 and 2, respectively), programs authorized under Strengthening Institutions (HEA Title III, Part A) or Strengthening Historically Black Colleges and Universities (HEA Title III, Part B), and under any other competitive grant program. The Secretary may not authorize any new construction, renovation, or improvement of classrooms, libraries, laboratories, or other instructional facilities that was not previously authorized under the institution's grant award under part A or B of Title III.<sup>41</sup>

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<sup>39</sup> A Gulf hurricane disaster is defined as a disaster, as declared by the President in accordance with § 401 of the Stafford Act, that was caused by Hurricane Katrina or Hurricane Rita.

<sup>40</sup> For more information on Teacher Quality Enhancement Grants, see CRS Report RL31882, *Teacher Quality Enhancement Grants (Title II, Part A of the Higher Education Act): Overview and Reauthorization Issues*, by Jeffrey J. Kuenzi.

<sup>41</sup> For more information on TRIO and GEAR UP programs, see CRS Report RL31622, *TRIO and GEAR UP Programs: Status and Issues*, Jeffrey J. Kuenzi. For more information on HEA Title III programs, see CRS Report RL31647, *Title III and Title V of the Higher Education Act: Background and Reauthorization Issues*, by Charmaine Mercer.

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

The \$95 million for the Mississippi Institutes of Higher Learning was appropriated to provide assistance to students attending IHEs that are located in an area in which a major disaster has been declared in accordance with § 401 of the Stafford Act related to the 2005 Gulf of Mexico hurricanes and who are eligible for assistance under the FSEOG, LEAP, and FWS.<sup>42</sup> No requirements related to matching, federal share, reservation of funds, or MOE that would otherwise apply are applicable to this funding.

The \$95 million appropriated for the Louisiana Board of Regents was appropriated under the Fund for the Improvement of Postsecondary Education [FIPSE<sup>43</sup> (HEA Title VII, Part B)]. FIPSE is a competitive grant program focused on a broad range of issues related to improving postsecondary educational opportunities. Under current law, entities with a stake in higher education, such as IHEs, SEAs, LEAs, and professional associations, are eligible grantees. Under the FY2006 defense appropriations, the funds provided to Louisiana under the FIPSE program must be used to provide emergency assistance to IHEs located in an area affected by Gulf hurricanes based on demonstrated need, and may be used for student financial assistance, faculty and staff salaries, equipment and instruments, or any purpose authorized under the HEA.

In addition, \$10 million of the \$200 million was reserved for the Secretary to make payments to IHEs that enrolled displaced students from IHEs directly affected by the hurricanes in the Gulf of Mexico. These funds were made available to defray the unanticipated costs of enrolling displaced students. Overall, 99 IHEs in 24 states and the District of Columbia received grants under this program.<sup>44</sup>

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

**Waivers of IDEA Deadlines.** Title IV, § 301 of the FY2006 defense appropriations includes several waivers related to IDEA that the Secretary may provide by entering into an agreement with an eligible entity. The available waivers extend certain administrative deadlines, such as the deadline for submission of an

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<sup>42</sup> It should be noted that statutory language requires students to be eligible for FSEOG, LEAP, and FWS to receive assistance. It is possible that the language may be interpreted to include students receiving assistance under any of these three programs or a combination of these programs as being eligible for assistance.

<sup>43</sup> For more information on the Fund for the Improvement of Postsecondary Education, see CRS Report RS21653, *Fund for the Improvement of Postsecondary Education: Background and Funding*, by Bonnie Mangan.

<sup>44</sup> Based on data available from the Department of Education. Data available online at [<http://www.ed.gov/policy/highered/guid/sp-allocation.pdf>].

annual report on the progress of the state and of children with disabilities in the state.<sup>45</sup> The available waivers also extend the deadline for initial evaluation of children to determine their eligibility for IDEA.<sup>46</sup> Any agreement entered into under § 301 will terminate at the end of the 2005-2006 academic year. Section 301(c) clarifies that nothing in the section shall be interpreted to grant waiver authority over key IDEA provisions, such as the right to a free appropriate public education (FAPE) or procedural safeguards granted under the act.<sup>47</sup>

## **FY2006 Supplemental Appropriations, P.L. 109-234: Additional Education-Related Hurricane Relief**

On February 16, 2006, the Administration submitted two separate requests for FY2006 supplemental appropriations to support ongoing military operations in Iraq and Afghanistan, as well as to provide for recovery and reconstruction activities in hurricane-affected Gulf Coast areas. Despite the inclusion of additional support for areas affected by the Gulf Coast hurricanes in 2005, the Administration did not request additional funding specifically for education. On March 17, 2006, the House passed a supplemental appropriation measure (H.R. 4939; H.Rept. 109-388), which did not include any education-related hurricane relief funding. On May 5, 2006, the Senate approved its version of H.R. 4939 (S.Rept. 109-320). The Senate bill would have provided an additional \$881.5 million for education-related hurricane relief. The H.R. 4939 conference agreement (H.Rept. 109-494) included \$285 million for education-related hurricane relief. The House passed the conference report on June 13, 2006, by a vote of 351-67. The Senate approved the conference report on June 15, 2006, by a vote of 98-1. The President signed the bill, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, into law as P.L. 109-234, on June 15, 2006.<sup>48</sup>

### **K-12 Education**

The Senate bill would have provided an additional \$650 million to support K-12 schools affected by the 2005 Gulf Coast Hurricanes. Of these funds, \$300 million would have been provided for the Temporary Emergency Impact Aid for Displaced Students program authorized by the FY2006 defense appropriations. The remaining

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<sup>45</sup> ED has issued proposed regulations reflecting changes made to IDEA by the 2004 reauthorization (P.L. 108-446). The relevant provision in the proposed regulations is § 300.157(c) (70 *Federal Register* 35851, June 21, 2005).

<sup>46</sup> This deadline is a new requirement resulting from the 2004 reauthorization of IDEA (P.L. 108-446). ED has issued proposed regulations reflecting changes made to IDEA by the 2004 reauthorization. The relevant provision in the proposed regulations is § 300.301(c)(1)(i) (70 *Federal Register* 35862, June 21, 2005).

<sup>47</sup> For more information on IDEA, see CRS Report RS22138, *The Individuals with Disabilities Education Act (IDEA): Overview of P.L. 108-446*, by Nancy Lee Jones and Richard N. Apling.

<sup>48</sup> For more information about P.L. 109-234, see CRS Report RL33298, *FY2006 Supplemental Appropriations: Iraq and Other International Activities; Additional Hurricane Katrina Relief*, coordinated by Paul M. Irwin and Larry Nowels.

funds would have been designated for Innovative Education State Grants (ESEA Title V-A) for the 2006-2007 school year for expenses related to educating students displaced by the Gulf Coast hurricanes of 2005.<sup>49</sup>

The conference agreement included \$235 million to assist elementary and secondary schools serving displaced students during the 2005-2006 school year under the Temporary Impact Aid program. The conference agreement extended the period of time by which SEAs and LEAs may obligate funds under this program from August 1, 2006, to September 30, 2006, provided funds are used only for expenses incurred during the 2005-2006 school year. The agreement did not provide funds for displaced students through ESEA Title V-A, as proposed by the Senate bill.

### **Support for Charter Schools Affected by the Gulf Coast Hurricanes.**

The Senate bill would have required charter schools, as defined in ESEA, § 5210, to be eligible for reimbursement under the Stafford Act for damages incurred to public schools as a result of Hurricane Katrina or Hurricane Rita. The bill specifies that reimbursement shall be accorded to charter schools regardless of whether the facility in which they are housed is privately or publicly owned.<sup>50</sup>

Under the Stafford Act, reimbursement for damages to facilities resulting from the 2005 Gulf Coast hurricanes is available to public facilities. Until recently, this included regular public schools as they were housed in public facilities, but not necessarily charter schools located in facilities privately owned. Charter schools that were located in privately owned facilities were required to apply to the Small Business Administration (SBA) for a loan to support renovation and reconstruction efforts. If the school was denied assistance through the SBA, they might then be eligible for assistance under the Stafford Act.

As of May 11, 2006, FEMA issued a new recovery policy with respect to charter schools that are located in privately owned facilities.<sup>51</sup> Such schools as defined in ESEA § 5210 were recognized as local government applicants for purposes of applying for public assistance under the Stafford Act, thereby eliminating the need for them to first apply to the SBA for assistance. In a letter to Senator Vitter dated May 12, 2006, the Department of Homeland Security described the new policy.<sup>52</sup> It noted that assistance to charter schools would be limited if a third party, such as an

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<sup>49</sup> By authorizing the funds under Title V-A, children enrolled in private schools would have continued to be eligible to benefit from available funds. Title V-A, § 5142 requires that children enrolled in private schools be eligible to participate in the Title V-A program on an equitable basis. The funds may only be used to provide secular, neutral, or nonideological services, materials, and equipment, as well as minor repairs of public facilities. A public agency must administer all program funds and retain ownership of any materials, equipment, or property repaired.

<sup>50</sup> If the charter school vacates the facility and is not replaced by another charter school within five years of the completion of repairs, FEMA funds must be repaid.

<sup>51</sup> Interim FEMA recovery policy documentation obtained directly from FEMA. Available from report author (Rebecca R. Skinner) upon request.

<sup>52</sup> Letter to Senator Vitter obtained directly from FEMA. Available from report author (Rebecca R. Skinner) upon request.

insurance agency or building landlord (other than a local government unit, including a charter school), is responsible for funding repairs to the facility. It stated that existing statutory authority granted by the Stafford Act was sufficient to address the recovery efforts of charter schools, and that based on consultations with ED, the Administration had determined that the aforementioned language included in H.R. 4939 was not necessary to ensure the “fair and equitable treatment of charter schools damaged by Hurricanes Katrina and Rita.”<sup>53</sup>

## Higher Education

The Senate bill would also have provided additional education-related hurricane assistance for higher education. The Senate bill would have provided \$200 million to create a new Education Relief Loan Program that would provide long-term, low-interest direct loans to postsecondary institutions for direct or indirect losses suffered as a result of having to suspend their operations and being unable to reopen in existing facilities due to the effects of Hurricanes Katrina or Rita.<sup>54</sup> The Senate bill would also have modified provisions of the Historically Black College and University Capital Financing Program for historically black colleges and universities (HBCUs)<sup>55</sup> located in an area affected by a Gulf Coast hurricane disaster. While the proposed statutory language did not specify appropriations to support these modifications, a table in the Senate report (S.Rept. 109-230, p. 139) indicates that \$15 million would have been provided for this purpose. The bill would also have provided an additional \$30 million under FIPSE specifically to provide grants to IHEs adversely affected by the 2005 Gulf Coast hurricanes. Finally, the bill would have allowed funds provided to the Mississippi Institutes of Higher Learning under the FY2006 defense appropriations to be used for activities authorized by FIPSE. This would have provided additional flexibility in the use of funds, and provided the Mississippi Institutes of Higher Learning with the same flexibility accorded to Louisiana in the FY2006 defense appropriations.

The conference agreement provided \$50 million under FIPSE to assist IHEs adversely affected by the 2005 Gulf Coast hurricanes. It did not, however, include funding to create a new loan program for IHEs. The conference agreement modified provisions of the HBCUs Capital Financing Program, as proposed by the Senate.<sup>56</sup> The statutory language authorizing these modifications does not specify a level of appropriations to support the modifications. The conference agreement, however, scored this provision at \$15 million, the same as the Senate bill. Finally, the

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<sup>53</sup> The letter asserts that the language included in H.R. 4939 may establish an “unfortunate precedent” and may “unintentionally cause significant implementation issues.”

<sup>54</sup> The bill also would have provided \$300 million for the principal amount of the direct loans.

<sup>55</sup> Eligible institutions must meet the definition of a “part B institution” included in HEA Title III, § 322.

<sup>56</sup> For example, P.L. 109-234 provided the Secretary the authority to waive or modify any statutory or regulatory provisions to ensure that the calculation of financing for an HBCU reflects changes in the financial condition of the institution as a result of the 2005 Gulf Coast hurricanes.

conference agreement provided the Mississippi Institutes of Higher Learning with the additional flexibility proposed in the Senate bill.

## **FY2007 Supplemental Appropriations, P.L. 110-28: Additional Hurricane Disaster Relief and Recovery**

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28). Although the Administration's request for FY2007 supplemental appropriations did not include a request for education-related hurricane relief funding, the final bill includes \$60 million for this purpose. The total appropriation was divided equally between K-12 education and postsecondary education programs.

### **K-12 Education**

P.L. 110-28 provides \$30 million for the Fund for the Improvement of Education (FIE; Elementary and Secondary Education Act, Title V, Part D, Subpart 1) for the states of Louisiana, Mississippi, and Alabama to use for recruiting, retaining, and compensating school staff who commit to work for at least three years in public elementary and secondary schools affected by Hurricanes Katrina or Rita. These funds will remain available until expended. States must apply to receive these funds, and the funds will be allocated based on the number of public elementary and secondary schools that were closed for 19 days or more beginning August 29, 2005, through December 31, 2005, as a result of Hurricanes Katrina or Rita. States will subsequently allocate funds to LEAs with the highest percentages of public elementary and secondary schools that were closed as a result of Hurricanes Katrina or Rita and that remain closed as of the date of enactment of this act, followed by LEAs with the highest percentages of public elementary and secondary schools with a student-teacher ratio of at least 25 to 1. If funds remain available after these distributions, the remaining funds are to be distributed to LEAs with demonstrated need, as determined by the State Superintendent of Education.

Efforts to recruit, retain, and compensate school staff may include paying salary premiums, performance bonuses, housing subsidies, signing bonuses, and relocation costs, and providing loan forgiveness. Priority must be given to teachers, school-based principals and other school administrators, and other educators who previously worked or lived in one of the areas affected by Hurricanes Katrina or Rita, are currently employed or become employed in a school in an affected area, and commit to continue their employment in that school for at least three years.

If a state chooses to use the funds to provide performance bonuses, the SEA has no more than 60 days from the date of enactment to develop a plan for a rating system for performance bonuses, developed in collaboration with LEAs, teachers' unions, local principals' organizations, local parents' organizations, local business organizations, and local charter schools organizations. If agreement on a plan cannot be reached, the SEA must notify Congress and no later than 30 days following this notification, the SEA must establish and implement a rating system that is based on classroom observation and feedback conducted at least twice annually by multiple



individuals, and evaluated against research-based rubrics that use planning, instructional, and learning environment standards to assess teacher performance. However, these requirements do not apply to states that enacted a law in 2006 authorizing teacher performance pay.<sup>57</sup>

The funds may also be used for one or more of the following three purposes:

- (1) building the capacity, knowledge, and skill of school staff to provide an effective education, including the design, adaptation, and implementation of high-quality formative assessments;
- (2) establishing partnerships with nonprofit entities with experience in recruiting and retaining outstanding school staff; and
- (3) providing paid release time for teachers and principals to identify and replicate successful practices from the highest performing schools and the fastest improving schools.

The act also authorizes new uses of funds under the Immediate Aid to Restart School Operations program (authorized by P.L. 109-148). Specifically, funds may also be used by Louisiana, Mississippi, Alabama, and Texas for recruiting, retaining, and compensating new and current school staff for school-based positions in public elementary and secondary schools affected by Hurricanes Katrina or Rita, including the use of paying salary premiums, performance bonuses, housing subsidies, signing bonuses, and relocation costs, and providing loan forgiveness. Further, funds may be used for the same three purposes allowed for funds made available under FIE (e.g., to build the capacity, knowledge, and skills of school staff).

## Higher Education

P.L. 110-28 also provides \$30 million to be made available under FIPSE for institutions of higher education affected by Hurricanes Katrina or Rita. The funds may be used to help defray the expenses incurred by institutions that were forced to close, relocate, or reduce their activities due to damage caused by the hurricanes. These expenses may include lost revenue, reimbursement for expenses already incurred, and construction. The funds may also be used by these IHEs to make grants to students enrolled at these institutions beginning on or after July 1, 2006.

## Summary of Education-Related Hurricane Assistance

This section provides an analysis of federal funding provided for K-12 and higher education that is being administered by the Department of Education (ED), including how this funding compares to all federal funding provided in response to the Gulf Coast hurricanes of 2005, and the amount of funding received by specific states (in particular, Louisiana, Mississippi, Alabama, and Texas) affected by the

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<sup>57</sup> Statutory language references 2006 specifically and does not address laws that may have been enacted prior to 2006.

Gulf Coast hurricanes. The detailed analysis is limited to appropriations made available by Congress through the FY2006 defense appropriations.<sup>58</sup>

## **Federal Funding for Disaster-Related Assistance in Response to the Gulf Coast Hurricanes**

A total of \$1.945 billion has been appropriated for education-related disaster assistance through ED.<sup>59</sup> Of these funds, \$1.6 billion was made available by P.L. 109-148. An additional \$285 million for education-related hurricane relief was authorized by P.L. 109-234.<sup>60</sup> Most recently, \$60 million for education-related hurricane relief was authorized by P.L. 110-28.

Overall, a total of \$110.647 billion in FY2006 supplemental appropriations has been made available to support all federal efforts, both for educational and non-educational services, to provide relief in response to the 2005 Gulf Coast hurricanes.<sup>61</sup> Of these funds, \$29.047 billion were made available through the FY2006 defense appropriations. The remaining \$81.6 billion were made available through P.L. 109-61 (\$10.5 billion), P.L. 109-62 (\$51.8 billion), and P.L. 109-234 (\$19.3 billion). Thus, funding provided specifically for education represents about 1.7% of all funding made available for hurricane relief.

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<sup>58</sup> Other education funds have also been made available to assist with hurricane recovery. For example, unused funds under the Campus-Based Student Financial Aid programs (Higher Education Act, Title IV) were re-allocated to institutions of higher education affected by the Gulf Coast hurricanes. Funds re-allocated by ED or otherwise provided for education-related hurricane assistance that were not included in supplemental funding bills passed by Congress are not discussed in this report.

<sup>59</sup> Foreign governments have also provided \$30 million for hurricane relief to institutions of higher education (IHEs). ED will allocate these funds and has identified eight IHEs in Louisiana and five in Mississippi that are eligible to apply for these Hurricane Katrina Foreign Contribution Awards. Applications had to be submitted by August 15, 2006. For more information, see [<http://www.ed.gov/programs/katrinafc/eligibility.html>]. In addition, the non-governmental Bush-Clinton Katrina Fund (BCKF) allocated \$30 million to 33 IHEs in Louisiana, Mississippi, and Alabama. An additional \$35 million was allocated by the BCKF for projects focused on health, housing, education, community, and infrastructure needs in these states. For more information, see [<http://www.bushclintonkatrinafund.org/index.php?src=news&submenu=Media&prid=31&category=Press%20Releases&PHPSESSID=707e3c46b8ef02686d8af418249dc65c>].

<sup>60</sup> For more information about P.L. 109-234, see CRS Report RL33298, *FY2006 Supplemental Appropriations: Iraq and Other International Activities; Additional Hurricane Katrina Relief*, coordinated by Paul M. Irwin and Larry Nowels.

<sup>61</sup> The total includes funding provided through P.L. 109-148 and P.L. 109-234. It does not, however, include the FY2007 supplemental appropriations provided through P.L. 110-28 at this time. For more information about overall funding for hurricane relief, see CRS Report RS22239, *Emergency Supplemental Appropriations for Hurricane Katrina Relief*, by Keith Bea.

## K-12 Education Funding

As previously discussed, the majority of education-related disaster assistance was provided through the FY2006 defense appropriations. A total of \$1.6 billion was made available to meet the educational needs of individuals and institutions affected by the Gulf Coast hurricanes, with \$1.4 billion specifically designated for K-12 education. At the K-12 level, most of the financial assistance was provided for two specific activities:

- Immediate Aid to Restart School Operations: aid to local educational agencies (LEAs) and private schools to restart school operations, reopen schools, and re-enroll students (\$750 million), and
- Emergency Impact Aid for Displaced Students: aid to LEAs and public and private schools serving displaced students (\$645 million).

The remaining \$5 million was provided for assistance to LEAs serving homeless children and youth that were displaced by the hurricanes.

An additional \$285 million was provided through P.L. 109-234 for hurricane education recovery. Similar to the FY2006 defense appropriations, the majority of these funds were also made available for K-12 education. More specifically, an additional \$235 million was made available for Emergency Impact Aid for Displaced Students authorized by the FY2006 defense appropriations.

**Table 2** details the distribution of funds as of June 30, 2006, for the Emergency Impact Aid for Displaced Students program. A total of \$461.1 million has been awarded. Payments are being made on a quarterly basis. The total represents payments for the first three quarters only. Based on data available from ED, Louisiana has received the largest share of the payments, followed by Texas. Data on how much each state will receive of the remaining program funds, including the additional \$235 million provided by P.L. 109-234, are not yet available.

**Table 2. Distribution of Emergency Impact Aid for Displaced Students Funds by State**

State	Cumulative Payments: Quarter 1, Quarter 2, and Quarter 3	Percent of Total
Alabama	\$19,108,250	4.1%
Alaska	\$109,750	0.0%
Arizona	\$1,256,750	0.3%
Arkansas	\$7,991,000	1.7%
California	\$2,343,750	0.5%
Colorado	\$2,269,750	0.5%
Connecticut	\$251,500	0.1%
Delaware	\$121,500	0.0%
District of Columbia	\$205,500	0.0%
Florida	\$14,836,000	3.2%
Georgia	\$28,881,250	6.3%

State	Cumulative Payments: Quarter 1, Quarter 2, and Quarter 3	Percent of Total
Idaho	\$7,125	0.0%
Illinois	\$2,309,250	0.5%
Indiana	\$1,281,500	0.3%
Iowa	\$696,750	0.2%
Kansas	\$910,000	0.2%
Kentucky	\$1,981,500	0.4%
Louisiana	\$148,641,500	32.2%
Maine	\$109,500	0.0%
Maryland	\$2,302,750	0.5%
Massachusetts	\$489,250	0.1%
Michigan	\$2,035,000	0.4%
Minnesota	\$742,250	0.2%
Mississippi	\$56,995,500	12.4%
Missouri	\$3,135,250	0.7%
Montana	\$60,750	0.0%
Nebraska	\$533,000	0.1%
Nevada	\$874,500	0.2%
New Hampshire	\$111,500	0.0%
New Jersey	\$802,750	0.2%
New Mexico	\$297,500	0.1%
New York	\$215,250	0.0%
North Carolina	\$4,493,750	1.0%
North Dakota	\$19,000	0.0%
Ohio	\$1,567,500	0.3%
Oklahoma	\$2,455,250	0.5%
Oregon	\$211,750	0.0%
Pennsylvania	\$1,010,250	0.2%
Rhode Island	\$135,000	0.0%
South Carolina	\$2,190,500	0.5%
South Dakota	\$101,750	0.0%
Tennessee	\$10,086,500	2.2%
Texas	\$131,578,250	28.5%
Utah	\$266,750	0.1%
Vermont	\$32,000	0.0%
Virginia	\$3,331,500	0.7%
Washington	\$822,000	0.2%
West Virginia	\$58,750	0.0%
Wisconsin	\$759,750	0.2%
Wyoming	\$40,000	0.0%
Total	\$461,067,625	100.0%
Total for AL, LA, MS, and TX only	\$356,323,500	77.3%

**Source:** Table prepared by CRS, Aug. 26, 2006, based on data provided by the Department of Education at [<http://hurricanehelpforschools.gov/proginfo/eiap-date.pdf>].

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

Funds for the Immediate Aid to Restart School Operations program were distributed to four states on January 5, 2006, and March 2, 2006. **Table 3** provides an overview of the distribution of funding. Almost 60% of the available funds were provided to Louisiana.

**Table 3. Distribution of Immediate Aid to Restart School Operations Funds by State**

State	Funds Received	Percent of Total Funds
Alabama	\$3,750,000	0.5%
Louisiana	\$445,604,439	59.4%
Mississippi	\$222,492,681	29.7%
Texas	\$78,152,880	10.4%
Total	\$750,000,000	100.0%

**Source:** Table prepared by CRS, Aug. 22, 2006, based on data available from the Department of Education at [<http://www.ed.gov/news/pressreleases/2006/03/03022006.html>].

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

ED has allocated the full \$5 million available for homeless programs. The funds were provided to eight states in the Gulf Coast region with Texas and Louisiana receiving the largest grants; together, these two states account for 65.0% of the funds, as shown in **Table 4**.

**Table 4. Distribution of Assistance for Homeless Youths Funds by State**

State	Funds Received	Percent of Total Funds
Alabama	\$247,065	4.9%
Arkansas	\$107,160	2.1%
Florida	\$196,433	3.9%
Georgia	\$389,087	7.8%
Louisiana	\$1,563,787	31.3%
Mississippi	\$687,357	13.7%
Tennessee	\$122,454	2.4%
Texas	\$1,686,657	33.7%
Total	\$5,000,000	100.0%
Total for AL, LA, MS, and TX only	\$4,184,866	83.7%

**Source:** Table prepared by CRS, Aug. 22, 2006, based on data available from the Department of Education at [<http://www.ed.gov/news/pressreleases/2006/03/03022006.html>].

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

## Higher Education Funding

The FY2006 defense appropriations made available \$200 million to support education-related disaster relief for higher education. Of these funds, \$95 million was made available to the Mississippi Institutes of Higher Learning, \$95 million was made available to the Louisiana Board of Regents, and \$10 million was made available to assist institutions of higher education that enrolled students displaced as a result of Hurricane Katrina or Hurricane Rita. The distribution of the \$10 million by state is detailed in **Table 5**.

**Table 5. Distribution of Funds to Assist Institutions of Higher Education Enrolling Displaced Students by State**

State	Funds Received	Percent of Total Funds
Alabama	\$357,131	3.6%
Arizona	\$45,856	0.4%
Arkansas	\$36,362	0.4%
California	\$224,486	2.2%
Colorado	\$51,947	0.5%
District of Columbia	\$103,892	1.0%
Florida	\$34,285	0.3%
Georgia	\$293,869	2.9%
Illinois	\$239,863	2.4%
Iowa	\$15,584	0.2%
Kentucky	\$18,181	0.2%
Louisiana	\$5,748,159	57.5%
Maryland	\$120,775	1.2%
Massachusetts	\$80,516	0.8%
Michigan	\$41,557	0.4%
Minnesota	\$40,258	0.4%
Mississippi	\$327,262	3.3%
Missouri	\$106,490	1.1%
New Jersey	\$24,674	0.2%
New York	\$101,295	1.0%
Ohio	\$49,349	0.5%
Tennessee	\$94,802	0.9%
Texas	\$1,750,307	17.5%
Utah	\$40,258	0.4%
Virginia	\$55,842	0.6%
Total	\$10,000,000	100.0%
Total for AL, LA, MS, and TX only	\$8,182,859	81.8%

**Source:** Table prepared by CRS, Aug. 22, 2006, based on data provided by the Department of Education at [<http://www.ed.gov/policy/highered/guid/sp-allocation.pdf>].

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

P.L. 109-234 also provided hurricane education recovery assistance for higher education. The act provided an additional \$50 million under the Fund for Improvement in Postsecondary Education (FIPSE, HEA Title VII) to assist institutions of higher education adversely affected by the Gulf Coast hurricanes. Institutions of higher education interested in receiving these funds must submit an application to ED by September 19, 2006.<sup>62</sup> Funds will be awarded by formula taking into consideration factors such as the number of Pell Grant recipients enrolled at the institution, revenue lost as a direct result of the hurricanes, and recovery expenses.<sup>63</sup>

## Education-Related Hurricane Funding: State Summary

**Table 6** summarizes the state allocations made for education-related hurricane relief. Of the \$1.885 billion provided for education-related hurricane relief in P.L. 109-149 and P.L. 109-234, about \$1.416 billion (75.1%) has been distributed to states to date. The majority of the funds distributed have been for K-12 education (85.9%). In addition, over \$1.3 billion (92.5%) of all funds distributed have been provided to Alabama, Louisiana, Mississippi, and Texas. Of these states, Louisiana has received nearly half of all the funds distributed to states (49.2%). Based on current funding patterns, these four states seem likely to receive the majority of the remaining aid made available by P.L. 109-149 and P.L. 109-234 that has not yet been distributed.

**Table 6. Education-Related Hurricane Funding:  
State Allocation Summary**

State	K-12 Funding	Higher Education Funding	Total Funding
Alabama	\$23,105,315	\$357,131	\$23,462,446
Louisiana	\$595,809,726	\$100,748,159	\$696,557,885
Mississippi	\$280,175,538	\$95,327,262	\$375,502,800
Texas	\$211,417,787	\$1,750,307	\$213,168,094
Other states	\$105,559,259	\$1,817,141	\$107,376,400
Total	\$1,216,067,625	\$200,000,000	\$1,416,067,625
Total for AL, LA, MS, and TX only	\$1,110,508,366	\$198,182,859	\$1,308,691,225

**Source:** Table prepared by CRS, Aug. 22, 2005, based on data available from the Department of Education.

**Note:** Details may not add to totals due to rounding. "Other states" refers to all other states except for Hawaii, which received none of these allocations. "Other states" does include the District of Columbia

<sup>62</sup> Department of Defense, "Notice Announcing Availability of Funds and Application Deadline for Hurricane Education Recovery Awards Under Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terrorism and Hurricane Recovery, 2006 (Pub. L. 109-234)," 71 *Federal Register* 47785-47787, August 18, 2006.

<sup>63</sup> Department of Education, *Hurricane Education Recovery Awards: Awards*, available online at [<http://www.ed.gov/programs/hera-ope/awards.html>].