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

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Summary

The 21st 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. This report reflects the most recently available guidance, as of the date of publication, related to education-related disaster response and flexibilities. It will be updated should new or additional statutes be enacted or guidance be issued.

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.

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 (the Secretary) 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 past disasters, waivers have been granted to address funding flexibility issues and accountability requirements. The Individuals with Disabilities Education Act (IDEA) grants the Secretary authority to waive state maintenance of effort (MOE) requirements and requirements to supplement, not supplant, federal funds under certain circumstances. The Carl D. Perkins Career and Technical Education Act grants the Secretary authority to waive certain accountability metrics and provides some flexibility with regard to MOE requirements. The Secretary is not, however, able to waive all statutory and regulatory requirements with respect to the acts. Under the ESEA, for example, 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 addition, various provisions exist to provide flexibilities in other Department of Education-administered programs. The Adult Education and Family Literacy Act (AEFLA) and accompanying regulations grant the Secretary the authority to waive state MOE and reporting requirements for AEFLA state grants due to uncontrollable circumstances such as natural disasters. The Rehabilitation Act of 1973, as amended, and accompanying regulations grant the

Secretary the authority to waive state MOE and reporting requirements for state vocational rehabilitation grants due to uncontrollable circumstances, such as natural disasters.

In response to the multiple hurricanes and tropical storms in 2017, Congress enacted the Hurricanes Harvey, Irma, and Maria Education Relief Act of 2017, P.L. 115-64, which amended the ESEA to make private schools eligible for funds under the Project School Emergency Response to Violence Program, a program that provides funds to help schools recover from violent or traumatic events in which the learning environment has been disrupted. The act also provided short-term authority for the Secretary to waive or modify statutory or regulatory requirements to ensure funds were targeted to affected populations and institutions at the elementary, secondary, and postsecondary levels. On February 9, 2018, the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-123) was enacted. It included FY2018 supplemental appropriations for disaster relief for, among other things, education-related programs and activities for "covered disasters or emergencies," which include the aforementioned hurricanes and tropical storms and also the California wildfires of 2017.

On June 6, 2019, in response to Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods occurring in calendar years 2018 and 2019, Congress enacted the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (P.L. 116-20). Title VIII of the act provides $165 million in supplemental appropriations for education-related disaster relief programs to remain available through FY2020.

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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 education-related disaster recovery.

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. To address such problems, 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 assistance for disaster management is made available from the Federal Emergency Management Agency (FEMA), as authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act: P.L. 93-288).[1] The public assistance available under the Stafford Act largely provides funds for disaster relief activities such as debris removal, emergency protective measures, and the repair, replacement, or restoration of public facilities damaged during the disaster. On several occasions, Congress has also enacted legislation to create temporary targeted assistance programs to support Department of Education (ED) administered programs at the elementary, secondary, and postsecondary education levels. Such assistance was authorized to meet the needs of students, schools, and states during specific disasters. For example, temporary programs have provided funds to restart school operations, reopen schools, and re-enroll students.

In addition to the assistance authorized by the Stafford Act and temporary targeted assistance programs, a wide range of disaster aid is provided by ED under statutory authority that specifically refers to disaster assistance, as well as under general assistance provisions.[2]

At the elementary and secondary education level, schools, local educational agencies (LEAs), and states have needed assistance in complying with various educational accountability requirements included in the Elementary and Secondary Education Act (ESEA) and in meeting fiscal requirements. A number of statutory flexibilities can be triggered to provide adjustment to, and in some instances exemptions from, such requirements during periods of disaster.

At the postsecondary education level, institutions of higher education (IHEs) have needed assistance complying with the statutory requirements pertaining to the disbursement and reimbursement of federal student aid (e.g., Pell Grants and Direct Loan program loans), and students have needed assistance in securing, maintaining eligibility for, and repaying federal student aid. Where federal student aid is concerned, relief has been provided related to the interruption or cancelation of periods of study and ensuing challenges associated with

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[1] For more information on FEMA disaster assistance and the Stafford Act, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay; and CRS Report R43990, *FEMA's Public Assistance Grant Program: Background and Considerations for Congress*, by Jared T. Brown and Daniel J. Richardson.

[2] CRS Report RL31734, *Federal Disaster Assistance Response and Recovery Programs: Brief Summaries*, by Carolyn V. Torsell and Jared C. Nagel.

reimbursement of funds for the federal government from IHEs and/or students and portability of aid should students need to be relocated.

The first part of this report briefly describes recent education-related developments in response to numerous disasters in 2017, 2018, and 2019. It then describes education-related federal assistance provided by FEMA in the aftermath of disasters generally. This is followed by an examination of education-related disaster recovery and issues related to elementary and secondary education, postsecondary education, and various ED-administered programs typically serving adult learners. The report also includes an appendix summarizing education-related disaster appropriations administered by ED from between 2005 and 2010.

Recent Developments

In August and September of 2017, the United States experienced several major hurricanes and tropical storms in quick succession. In response to Hurricane and Tropical Storm Harvey, President Trump issued a major disaster declaration for Texas[3] and an emergency declaration for Louisiana[4]; in response to Hurricane Irma, President Trump issued emergency declarations for Florida,[5] the U.S. Virgin Islands,[6] and Puerto Rico;[7] and in response to Hurricane Maria, President Trump issued major disaster declarations for Puerto Rico[8] and the U.S. Virgin Islands.[9] In December 2017, California experienced multiple wildfire incidents.[10] The scope of the adverse effects from these natural disasters is extensive. Included among the currently known and expected adverse effects are physical damage to local elementary, secondary, and postsecondary schools, possible school closures, and temporary or permanent displacement of students.[11]

As of the date of this report, legislation has been enacted in response to the 2017 hurricanes to provide the Secretary of Education (the Secretary) with waiver authority for certain statutory provisions, which relates to the Higher Education Act of 1965 (HEA; P.L. 89-329) Title IV campus-based student aid programs, and to permanently make private schools eligible for funding under the Project School Emergency Response to Violence Program (Project SERV),[12] as authorized under the ESEA.[13] In addition, ED has released updated guidance for elementary and secondary schools, for IHEs and students related to the federal student aid programs authorized

3 Federal Emergency Management Agency (FEMA), "Texas Hurricane Harvey (DR-4332)," https://www.fema.gov/disaster/4332.

4 FEMA, "Louisiana Tropical Storm Harvey (EM-3382)," https://www.fema.gov/disaster/3382.

5 FEMA, "Florida Hurricane Irma (EM-3385)," https://www.fema.gov/disaster/3385.

6 FEMA, "U.S. Virgin Islands Hurricane Irma (EM-3383), https://www.fema.gov/disaster/3383.

7 FEMA, "Puerto Rico Hurricane Irma (EM-3384)," https://www.fema.gov/disaster/3384.

8 FEMA, "Puerto Rico Hurricane Maria (DR-4339)," https://www.fema.gov/disaster/4339.

9 FEMA, "U.S. Virgin Islands Hurricane Maria (DR-4340)," https://www.fema.gov/disaster/4340.

10 FEMA, "Disasters," https://www.fema.gov/disasters.

11 See, for example, Lea Wilson and Jake Reiner, "How aftermath of Hurricane Harvey greatly impacts area schools," *KRPC Houston*, September 6, 2017, https://www.click2houston.com/news/how-aftermath-of-hurricane-harvey-greatly-impacts-area-schools; Ariana Figueroa, "U.S. Schools Brace for an Influx of Students from Puerto Rico," *National Public Radio*, September 27, 2017, http://www.npr.org/sections/ed/2017/09/27/553714097/u-s-schools-brace-for-an-influx-of-students-from-puerto-rico; and David Begnaud, "Many students leaving Puerto Rico as schools struggle without power," *CBS News*, November 19, 2017.

12 ESEA §4631. Project SERV funds can be used by LEAs and IHEs to help them and their students recover from violent or traumatic events in which the learning environment has been disrupted.

13 P.L. 115-56, Hurricanes Harvey, Irma, and Maria Education Relief Act of 2017.

under Title IV of the Higher Education Act, and for other programs administered by ED, including general guidance on grants administration.[14] Finally, ED awarded Project SERV Grants to various state and territory departments of education to assist with hurricane recovery efforts.[15]

On February 9, 2018, the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018; P.L. 115-123) was enacted. It included FY2018 supplemental appropriations for disaster relief for "covered disasters or emergencies" (i.e., Hurricanes Harvey, Irma, and Maria, or wildfires in 2017 for which a major disaster or emergency has been declared under Sections 401 or 501 of the Robert T. Stafford Disasters Relief and Emergency Assistance Act), including for education-related programs and activities. P.L. 115-123 included the following education-related disaster relief provisions:

- $2.5 billion for immediate aid to restart school operations and for temporary emergency impact aid for displaced K-12 students. These programs are identical to disaster relief programs passed in response to the 2005 hurricane season and authorized under P.L. 109-148.[16] Funds are targeted to schools that have been damaged by a covered disaster or emergency and to states and LEAs that have enrolled students displaced as a result of a covered disaster or emergency. Funds under the temporary emergency impact aid program were to be distributed to the states and LEAs based on the numbers of displaced students enrolled. Extra funds were provided to schools for displaced students with disabilities and displaced students who are English Learners.
- Up to $35 million of the total funds appropriated for the Department of Education under P.L. 115-123 for the Project SERV program, authorized under Section 4631(b) of the ESEA, for education-related services to help students in affected areas recover from the trauma associated with natural disasters.
- $25 million for assistance to LEAs serving homeless children and youths displaced by a covered disaster or emergency, consistent with the Education for Homeless Children and Youth program authorized under Section 723 of the McKinney-Vento Homeless Assistance Act.[17]
- $100 million for the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Federal Work-Study (FWS) program,[18] and the Fund for the Improvement of Postsecondary Education (FIPSE). Funds were provided for IHEs located in areas affected by a covered disaster or emergency and students

[14] U.S. Department of Education, "Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters," September 2017, https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.docx; and Kathleen A. Smith, Acting Assistant Secretary for Postsecondary Education, *Guidance for helping Title IV participants affected by a major disaster*, U.S. Department of Education, DCL ID GEN-17-08, Guidance for helping Title IV participants affected by a major disasters, August 29, 2017, https://ifap.ed.gov/dpcletters/GEN1708.html.

[15] U.S. Department of Education, "US Department of Education Awards $8 Million in Project SERV Grants to Hurricane-Impacted States, Territories," press release, November 9, 2017, https://content.govdelivery.com/accounts/USED/bulletins/1c385ba.

[16] See sections titled *Immediate Aid to Restart School Operations* and *Temporary Emergency Impact Aid* in the **Appendix** of this report for a description of the original programs.

[17] 20 U.S.C. 11431-11435. For more information on the McKinney-Vento Homeless Assistance Act, see CRS Report RL30442, *Homelessness: Targeted Federal Programs*, coordinated by Libby Perl.

[18] For more information on the FWS and FSEOF programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by Joselynn H. Fountain.

enrolled in such institutions. Matching requirements under FSEOG and FWS were waived for IHEs receiving such funds. Funds were authorized to be used for a variety of expenses including student financial assistance, staff salaries, student supplies and equipment, or any other purpose authorized under the HEA.

- Up to $75 million of the total funds appropriated for the Department of Education under P.L. 115-123 for IHEs to help defray the unexpected expenses associated with enrolling students displaced from IHEs at which operations have been disrupted by a covered disaster or emergency.
- Authorization for the Secretary to waive, modify, or provide extensions for any statutory or regulatory provisions applicable to the HEA Title IV programs or student eligibility or institutional eligibility provisions in the HEA for affected individuals, students, and IHEs in covered disaster or emergency areas, if the Secretary deemed such waiver, modification, or extension necessary in connection with a covered disaster or emergency.[19]
- Authorization for the Secretary to modify required and allowable uses of funds under the various minority-serving grant programs authorized under HEA Title III, Parts A and B, and under the TRIO and GEAR-UP programs.
- Authorization for the Secretary to forgive any outstanding balance owed to ED under the HBCU Hurricane Supplemental Loan program established under P.L. 109-234 and in response to the 2005 hurricane season.[20]
- $4 million to ED's Office of the Inspector General for carrying out administrative and oversight activities.

More recently, in 2018 and 2019, the United States experienced Hurricanes Florence[21] and Michael,[22] Typhoon Mangkhut,[23] and Super Typhoon Yutu,[24] as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods. As with other relatively recent natural disasters, the scope of the adverse effects from these events is extensive. Included among the currently known and expected effects are physical damage to local elementary, secondary, and postsecondary schools; possible school closures; and temporary or permanent displacement of students. In response to these disasters, on June 6, 2019, Congress enacted the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (P.L. 116-20). Title VIII of the act provides $165 million in supplemental appropriations to remain available through FY2020 for assistance

[19] Authorized flexibilities mirror those authorized following the 2005 hurricane season under the Higher Education Hurricane Relief Act of 2005 (P.L. 109-148).

[20] Under this provision, four HBCUs—Dillard University, Southern University at New Orleans, Xavier University, and Tougaloo College—are eligible to have their loans forgiven. It is reported that these four schools borrowed a total of $361 million in loans capped at a 1% interest rate to be repaid over 30 years. They have repaid approximately $12.4 million of the loans since borrowing them. Melissa Korn, "Loan Program for Black Colleges Struggles With Oversight, Repayment; Some of the $2 billion in loans ends up more a burden than a help to the schools," *Wall Street Journal*, July 17, 2017.

[21] FEMA, "Virginia Hurricane Florence (EM-3403)," https://www.fema.gov/disaster/3403; FEMA, "North Carolina Hurricane Florence (EM-3401), https://www.fema.gov/disaster/3401; FEMA, "South Carolina Hurricane Florence," (EM-3400), https://www.fema.gov/disaster/3400.

[22] FEMA, "Florida Hurricane Michael (DR-4399)," https://www.fema.gov/disaster/4399; FEMA, "Georgia Hurricane Michael (EM-3406)," https://www.fema.gov/disaster/3406#.

[23] FEMA, "Northern Mariana Islands Typhoon Mangkhut (DR-4396), https://www.fema.gov/disaster/4396; FEMA, "Guam Typhoon Mangkhut (DR-4398), https://www.fema.gov/disaster/4398

[24] FEMA, "Northern Mariana Islands Super Typhoon Yutu (DR-4404), https://www.fema.gov/disaster/4404.

provided through any of the above-described education-related disaster relief programs authorized under the Hurricane Education Recovery section of the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (P.L. 115-123, as amended by P.L. 115-141). These programs include immediate aid to restart school operations, temporary emergency impact aid for displaced students, Project SERV, FSEOG, FWS, FIPSE, funds to IHEs to help defray the unexpected expenses associated with enrolling students displaced from IHEs at which operations have been disrupted by a covered disaster or emergency, and assistance to LEAs serving homeless children and youth. The act also provided appropriations of $2 million for ED Inspector General oversight activities and $1 million for program administration.

In addition, at the June 5, 2019, hearing of the Subcommittee on Early Childhood, Elementary, and Secondary Education of the House Committee on Education and Labor, Assistant Secretary for Elementary and Secondary Education at ED Frank T. Brogan mentioned the creation of a Disaster Recovery Unit housed within the Office of Elementary and Secondary Education. According to Brogan, this unit would consist of a director and a team of three full-time employees tasked with managing ED's disaster response efforts.[25]

This report reflects the most recently available information on laws and guidance related to education-related disaster response and flexibilities. It will be updated should new or additional statutes be enacted or guidance be issued.

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, 42 U.S.C. 5121 et seq.). The Federal Emergency Management Agency of the Department of Homeland Security (DHS) has been given the responsibility of administering almost all of the President's Stafford Act authorities through other law, a series of Executive Orders, and a DHS delegation.[26] If a major disaster or emergency has been declared by the President under the authority of the Stafford Act,[27] federal assistance can be made available to the declared tribal governments, states, local governments, owners of certain private nonprofit facilities, and individuals and families.

If located in a declared disaster area, public educational institutions, and certain private nonprofit institutions, may receive disaster assistance grants through FEMA's Public Assistance (PA) Program.[28] PA grants may assist educational institutions with a range of disaster assistance needs, including, but not limited to, the repair and reconstruction of damaged facilities, debris removal, the provision of temporary school facilities, and the replacement of certain necessary equipment and supplies (e.g., books and desks).[29] The specific eligibility of private nonprofit educational

[25] Frank T. Brogan's testimony from this hearing is available at https://edlabor.house.gov/hearings/this-is-not-a-drill-education-related-response-and-recovery-in-the-wake-of-natural-disasters-.

[26] See 6 U.S.C. §314, Executive Order 12148, 44 FR 43239 (1979), as amended most recently by Executive Order 13286, 68 FR 10619 (2003), and DHS Delegation 9001.1. The President exclusively retains the authority to declare a major disaster or emergency under the Stafford Act §401, 42 U.S.C. §5170, and the Stafford Act §501, 42 U.S.C. §5191, Section 501 of the Stafford Act, respectively.

[27] For information on the Stafford Act disaster declaration process, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*, by Bruce R. Lindsay.

[28] For information on the PA Program, see CRS Report R43990, *FEMA's Public Assistance Grant Program: Background and Considerations for Congress*, by Jared T. Brown and Daniel J. Richardson.

[29] FEMA is prohibited from approving funds for work that is covered by any other source of funding, including funding

facilities is outlined in FEMA policy, but generally includes accredited primary, secondary, and higher education institutions.[30] Eligible institutions may also apply for funding to reduce risks and damages that might occur in future disasters through hazard mitigation grants.[31]

Elementary and Secondary Education

The federal government has provided support for elementary and secondary education for many decades. Federal support for public elementary and secondary education accounts for less than 10% of the nation's overall K-12 education revenues.[32] For FY2019 about $40 billion was appropriated for elementary and secondary education programs administered by ED.[33] The majority of these funds are provided under the Elementary and Secondary Education Act, the Individuals with Disabilities Education Act (IDEA), and the Carl D. Perkins Career and Technical Education Improvement Act (Perkins).

The ESEA represents the major federal commitment to the nation's elementary and secondary schools and was last comprehensively reauthorized by the ESSA on December 10, 2015.[34] The Title I-A program is the largest grant program authorized under the ESEA and is funded at $15.9 billion for FY2019. Title I-A of the ESEA authorizes aid to LEAs for the education of disadvantaged children. Title I-A grants provide supplementary educational and related services to low-achieving and other students attending prekindergarten through grade 12 schools with relatively high concentrations of students from low-income families. Title I-A has also become a vehicle to which a number of requirements affecting broad aspects of public K-12 education for all students have been attached as conditions for receiving Title I-A grants. Other ESEA programs include Improving Teacher Quality, 21st Century Community Learning Centers, Rural Education, English Language Acquisition Grants, Charter Schools Grants, and Impact Aid, collectively funded at $9.2 billion in FY2019.

In addition to the ESEA, another important source of federal funding for elementary and secondary education is the IDEA. The act provides federal funding for special education and related services for children with disabilities and requires the provision of a free appropriate

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provided via insurance proceeds and other federal or state agencies. 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. The Stafford Act §312,42 U.S.C. §5155.

[30] Prior to revisions made to the Stafford Act in the Post-Katrina Emergency Management Reform Act (P.L. 109-295, Title VI), private nonprofit education institutions (but not public institutions) were first required to apply for assistance from the Small Business Administration before applying for and receiving any repair and reconstruction grants under the PA Program. P.L. 109-295 §689h. For additional guidance on the eligibility of private nonprofit educational facilities, see Federal Emergency Management Agency, *Public Assistance Program and Policy Guide*, FP-104-009-2, January 2016, pp. 9-18, at https://www.fema.gov/media-library/assets/documents/111781.

[31] The Stafford Act §404, 42 U.S.C. §5170c. In addition, the Stafford Act allows the heads of federal agencies, such as the Secretary of Education, to modify or waive certain administrative conditions for receiving existing grant funding from their agencies if state or local authorities requesting the waiver are unable to meet those conditions as a result of a major disaster. The Stafford Act §301, 42 U.S.C. §5141.

[32] U.S. Department of Education, National Center for Education Statistics, *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2015-16 (Fiscal Year 2016), First Look*, December 2018, p. 2, http://nces.ed.gov/pubs2015/2015301.pdf.

[33] 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.

[34] For more information on the ESSA, see CRS Report R44297, *Reauthorization of the Elementary and Secondary Education Act: Highlights of the Every Student Succeeds Act*.

public education (FAPE)[35] as a condition for the receipt of such funds. The statute also contains detailed due process provisions to ensure the provision of FAPE and fiscal accountability provisions. Total IDEA funding for FY2019 equaled $13.5 billion.

The Perkins Career and Technical Education Act (Perkins Act) is a federal law supporting the development of career and technical education skills among students in secondary and postsecondary education. The bulk of funds under the Perkins Act are distributed via a formula to the states, which then distribute funds to local recipients, such as LEAs and community colleges. The Perkins Act was most recently comprehensively reauthorized in 2018 by the Strengthening Career and Technical Education for the 21st Century Act (P.L. 115-224). Total Perkins funding for FY2019 was $1.3 billion.[36]

This section of the report provides an overview of existing general statutory and regulatory authorities for elementary and secondary education that enable the Secretary of Education (the Secretary) to waive or modify various education requirements. This section also discusses temporary authorities that have been provided to the Secretary by Congress in response to various disasters. Additionally, it examines temporary elementary and secondary education programs that were created by Congress in response to various disasters and administered by ED. The section concludes with a discussion of other actions taken in response to disasters affecting elementary and secondary education. With respect to elementary and secondary education, the education-related disaster recovery efforts examined in this report are primarily related to the 2005 Gulf Coast hurricanes (Katrina and Rita), 2008 Hurricanes Ike and Gustav, and natural disasters that occurred through 2010, including flooding in the Midwest in 2008. ED has not issued waivers or new funding related to disasters that occurred subsequent to this time period.

While the ESEA was recently reauthorized by the ESSA, this report discusses relevant ESEA provisions both prior to and following the enactment of the ESSA.

Current Waiver Authority and Flexibility

Existing statutory and regulatory requirements provide the Secretary with some authority and flexibility to respond to a disaster without the need for additional legislation. This section begins with an examination of waiver authority available to the Secretary under the 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 Perkins is also described.

Waiver Authority under the ESEA as Amended by the ESSA

Existing statutory and regulatory waiver authorities under ESEA are intended to support state and local educational agencies and schools that receive ESEA funds and are located in areas affected by disasters. Typical waiver requests that have been granted by ED in the past have focused on relief from accountability requirements, such as counting displaced students as a separate subgroup when making annual yearly progress determinations, and on relief from certain fiscal

[35] 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*.

[36] For more information about Career and Technical Education and the Perkins Act, see CRS Report R45446, *Reauthorization of the Perkins Act in the 115th Congress: The Strengthening Career and Technical Education for the 21st Century Act*.

requirements, such as extending the period of availability of various ESEA funds that would have expired by a certain date.

Under the ESEA, as amended by the ESSA, secretarial waiver provisions are included in Section 8401.[37] Under Section 8401, the Secretary has broad authority to issue waivers of a number of statutory or regulatory requirements of the ESEA for a state education agency (SEA); local education agency, through an SEA; an Indian tribe; or a school, through an LEA that receives funds under an ESEA program and requests a waiver.

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

- allocation or distribution 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;[38]
- comparability of services;[39]
- the use of federal aid only to supplement, and not supplant, state and local funds for specified purposes;[40]
- equitable participation of private school students and teachers;
- parental participation and involvement;
- applicable civil rights requirements;
- the requirement for a charter school under the Public Charter Schools program (Title IV-C);
- prohibitions against consideration of ESEA funds in state aid to LEAs;[41]
- prohibitions against use of funds for religious worship or instruction;[42]
- certain prohibitions against use of funds for sex education;[43] and
- certain ESEA Title I-A school selection requirements.

The Secretary is prohibited from disapproving a waiver request based on conditions outside the scope of such request. Waivers may be approved by the Secretary for a period not to exceed four years, but may be extended if the state demonstrates that the waiver was effective in enabling the

[37] Prior to the enactment of the ESSA, these provisions were included in Section 9401 of the ESEA.

[38] 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. For more information about fiscal accountability requirements, see CRS In Focus IF10405, *Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)*, by Rebecca R. Skinner.

[39] For more information about fiscal accountability requirements, see CRS In Focus IF10405, *Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)*, by Rebecca R. Skinner.

[40] 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. For more information about fiscal accountability requirements, see CRS In Focus IF10405, *Fiscal Accountability Requirements That Apply to Title I-A of the Elementary and Secondary Education Act (ESEA)*, by Rebecca R. Skinner.

[41] ESEA §8522.

[42] ESEA §8505.

[43] ESEA §8526.

state to carry out the activities for which the waiver was requested, the waiver contributed to improved student academic achievement, and extension of the waiver is in the public interest.

Use of Prior ESEA Section 9401 Waiver Authority in Response to Disasters

This portion of the report discusses the use of the ESEA Section 9401 waiver authority, which was the waiver authority in place prior to the enactment of the ESSA. Although no waivers have yet been granted since the enactment of the ESSA, information on waivers granted under the previous Section 9401 may be useful in determining the potential availability of waivers, as the previous Section 9401 waivers were maintained in current Section 8401.

The ESSA maintained the waiver authority previously provided under Section 9401 of the ESEA to the Secretary to approve or deny waivers requested by SEAs, LEAs, Indian tribes, or schools (through an LEA). These statutory requirements did 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 the No Child Left Behind Act of 2001[44] (the comprehensive reauthorization of the ESEA immediately prior to the ESSA) have focused on ESEA Title I-A educational 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. As this waiver authority was maintained under the ESEA as amended by the ESSA, 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.

As detailed in **Table 1**, from 2005 through 2010,[45] the Secretary used the authority available under previous ESEA Section 9401 to grant 33 waivers in response to natural disasters.[46] Of these waivers, 18 were granted in either 2005 or 2006, 4 were granted in 2007, 4 were granted in 2008, 2 were granted in 2009, and 5 were granted in 2010. Of the waivers granted, just over half of the waivers (17) addressed funding flexibility issues, while the others (16) addressed educational accountability requirements under the ESEA. About 40% of the waivers (13 waivers) were granted to Louisiana, which was disproportionately affected by disasters from 2005 to 2010 compared to other states.

Table 1. Summary of Waivers Granted in Response to Disasters and Other Relevant Issues Pursuant to Section 9401 of the Elementary and Secondary Education Act (ESEA): 2005-2010

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.[a]

[44] P.L. 107-110.

[45] Data on waivers provided beyond the 2010 calendar year have not yet been published in the *Federal Register*.

[46] 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 (available to congressional clients upon request).

State	Number of Waivers Granted by Year	Purpose of Waivers
Arkansas	1—2006	Waiver was related to accountability requirements, specifically creating a separate subgroup for displaced students for making AYP determinations.[a]
California	1—2010	Waiver permitted Calexico Unified School District to exclude assessments administered during the 2009-2010 school year when making AYP determinations and to assign the same AYP status to schools as it assigned based on 2008-2009 school year assessments as an earthquake and aftershocks resulted in schools closing for a period of six weeks that coincided with the 2009-2010 assessment administration period.
Florida	1—2010	Waiver allowed Florida to exclude from assessment participation rate calculations used to determine AYP for the 2009-2010 school year, students who enrolled in Florida schools after being displaced as a result of the January 12, 2010, earthquake in Haiti.
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.[a] 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.[b]
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;[a] 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;[b] 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;[c] and waiving requirements with respect to the use of funds under the Educational Technology program (Ed Tech; ESEA Title II-D).[d]
Maryland	1—2010	Waiver allowed Maryland to exclude schools from assessment participation rate calculations for AYP determinations for the 2009-2010 school year due to student absences during the testing period due to the H1N1 flu virus or other flu-like illnesses.
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.[a] 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.[d] A sixth waiver enabled the state to waive Title I-A fund carryover requirements for its LEAs.[c]
New Mexico	1 - 2010	Waiver allowed New Mexico to exclude schools or LEAs from attendance rate as an "other academic indicator" when making AYP determinations for the 2009-2010 school year for a school or LEA that failed to make AYP for the attendance rate due to the H1N1 flu virus or other flu-like illnesses and use data from the prior school year instead.

State	Number of Waivers Granted by Year	Purpose of Waivers
South Carolina	1—2010	Waiver allowed South Carolina to exclude schools or LEAs from attendance rate as an "other academic indicator" when making AYP determinations for the 2009-2010 school year for a school or LEA that failed to make AYP for the attendance rate due to the H1N1 flu virus or other flu-like illnesses and use data from the prior school year instead.
Tennessee	1—2006	Waiver was related to accountability requirements, specifically creating a separate subgroup for displaced students for making AYP determinations.[a]
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.[a] 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).[e]

Sources: Table prepared by CRS, August 26, 2016, 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; 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; and U.S. Department of Education, "Notice of Waivers Granted the Elementary and Secondary Education Act of 1965, as Amended," 78 *Federal Register* 71410-71429, November 27, 2013; 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 prior to the enactment of the ESSA, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner (available to congressional clients upon request).

a. Under ESEA prior to the enactment of ESSA, data had to be disaggregated for a number of subgroups to determine whether a school or LEA met AYP. These subgroups included economically disadvantaged students, limited English proficient students, students with disabilities, and students in major racial and ethnic groups as determined by the state.

b. In the absence of a waiver, the ESEA, prior to the enactment of ESSA, required states to identify LEAs and schools that failed to meet AYP standards for two consecutive years for improvement. Students attending these schools had to be provided with options to attend other public schools that made AYP. If a Title I-A school failed to meet AYP standards for a third year, students from low-income families had to be offered the opportunity to receive instruction from an SES provider of their choice. SES was often provided in the form of afterschool tutoring.

c. Under ESEA, prior to the enactment of ESSA, LEAs were able to only carry over up to 15% of their Title I-A funds from one fiscal year to another. An SEA was only permitted to waive this requirement once every three years for a given LEA. This provision remained unchanged under ESSA.

d. Under ESEA, prior to the enactment of ESSA, the Ed Tech program authorized 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 is not authorized under ESSA.

e. Under ESEA, prior to the enactment of ESSA, the Reading First program was intended to improve reading programs for students in grades K-3 in schools that either had percentages of students from low-income families that were among the highest in the LEA or had been identified for improvement under Title I-A. Reading First is not authorized under ESSA.

Other Flexibilities Related to Elementary and Secondary Education

Beyond the authority currently available to the Secretary under Section 8401 of the ESEA, other flexibilities that may be exercised by the Secretary, SEAs, or LEAs also exist. Some of these flexibilities are contained in the ESEA, while other flexibility authority is provided through other statutes. 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 LEA.

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.

Under the ESEA, the Secretary is specifically prohibited from waiving MOE requirements using authority available under Section 8401. However, Section 8521(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.[47] CRS has been unable to identify examples where this flexibility was used by LEAs.

Under the ESEA, the Charter Schools Program (CSP; ESEA Title IV-C) 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 4303(d)(5) of the ESEA, 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.[48] Prior to the enactment of the ESSA, the Secretary used this authority to provide funding specifically to support existing charter schools and to create new charter schools in areas affected by disasters.[49]

Additional flexibility under the ESEA allows funds received by LEAs under either the Small, Rural School Achievement Program[50] or the Rural and Low-Income School Program[51] to also be used for activities authorized under several other ESEA programs. Finally, Title V-A provides authority that allows most LEAs and SEAs to transfer up to 100% of their formula grants among various ESEA programs.[52]

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[47] The Secretary may also waive MOE due to a change in the organizational structure of an LEA.

[48] The Secretary is prohibited from waiving the elements of a charter school included in the definition of a charter school in Section 4310(2).

[49] 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.

[50] ESEA Title V-B-1.

[51] ESEA Title V-B-2.

[52] The transferability authority permits states to transfer up to 100% of the nonadministrative funds allotted to the state under Title II-A, Title IV-A (block grant program), or 21st Century Community Learning Centers among these programs or to Title I-A, Migrant Education, Neglected and Delinquent, English Language Acquisition, and one other program that is cited in statutory language only as "Part B." Similarly, LEAs can transfer up to 100% of funds under Title II-A or Title IV-A (block grant program) between these programs or to Title I-A, Migrant Education, Neglected and Delinquent, English Language Acquisition, and one other one other program that is cited in statutory language only as "Part B." States and LEAs are prohibited from transferring funds from Title I-A, Migrant Education, Neglected or

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 8401. The SEAs that receive this authority are similarly restricted in terms of waivers they are not permitted to authorize (e.g., waiving maintenance of effort requirements).[53] Thus, an SEA could grant permitted waivers in response to a disaster or for other reasons without having to seek additional authority from the Secretary. Prior to the enactment of the ESSA, 10 states were authorized to participate in ED-Flex.[54] Under the provisions of the ESSA,[55] these 10 states retain their authority to participate in ED-Flex for up to five years pending approval by the Secretary. In addition, other states may apply to receive ED-Flex authority. Under the ESSA, states authorized to participate in ED-Flex may waive statutory or regulatory provisions under the following ESEA programs:

- Title I-A (except provisions in Section 1111),
- Migrant Education (Title I-C),
- Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk (Title I-D),
- Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders (Title II-A), and
- Student Support and Academic Enrichment Grants (block grants, Title IV-A).

In addition, SEAs may waive statutory or regulatory provisions under the Perkins Act.

Flexibilities Available Under IDEA

Under IDEA, the Secretary does not have authority comparable to what is available under ESEA Section 8401. However, the Secretary does have authority to waive MOE requirements for states (but not LEAs) under certain circumstances and, unlike provisions under the ESEA, IDEA provisions allow the Secretary 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 a 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

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Delinquent, English Language Acquisition, and one other program that is cited in statutory language only as "Part B" to any other program.

[53] In addition, the SEA must demonstrate that the underlying purposes of the statutory requirements of the program for which a waiver is granted will continue to be met "to the satisfaction of the Secretary."

[54] The 10 states are Colorado, Delaware, Kansas, Massachusetts, Maryland, North Carolina, Oregon, Pennsylvania, Texas, and Vermont.

[55] The Education Flexibility Partnership Act of 1999 Reauthorization was included in ESSA Section 9207. It is not considered part of the ESEA.

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.

Flexibilities Available Under Perkins

Under the Perkins accountability system, a state is required to design and implement a program improvement plan if it does not reach certain targets on its core indicators of performance. If the state fails to attain those improvement plan goals, the Secretary may then withhold a portion of the state's Perkins allotment. The Secretary may waive these sanctions due to "exceptional or uncontrollable circumstances, such as a natural disaster."[56] Similarly, at the local level, a state can waive sanctions for local recipients of Perkins funds due to exceptional or uncontrollable circumstances.[57]

In addition, the Secretary has some flexibility with respect to the MOE provision in Perkins. The Secretary may waive up to 5% of the MOE requirement for states for one year due to exceptional or uncontrollable circumstances. The level of funding allowed under such a waiver may not be used as a basis for calculating MOE requirements for subsequent years. 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.[58]

Temporary Programs Created in Response to Disasters[59]

In response to various natural disasters, Congress has enacted legislation to create temporary programs and give the Secretary temporary authority to issue various waivers and flexibilities 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**. 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 nonpublic schools in enrolling displaced students. The decision about whether a student would attend a public or nonpublic school was made by the displaced student's parents**.**

Most of these temporary programs were authorized in response to Gulf Coast hurricanes between 2005 and 2010. The authorizations of all of these programs have expired. In 2017 and 2018, legislation was enacted that authorized temporary education-related supplemental funds in response to several 2017 natural disasters, including Hurricanes Harvey, Irma, and Maria, and the

56 Perkins §123(a)(3)(B).

57 Perkins §123(a)(4)(B).

58 Perkins §312(b)(2).

59 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.

2017 California wildfires. Most recently, legislation authorizing temporary education-related supplemental funds was enacted on June 6, 2019, in response to natural disasters, occurring in 2018 and 2019, including Hurricanes Florence and Michael, Typhoon Mangkhut, and Super Typhoon Yutu, as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods. The Further Additional Supplemental Appropriations for Disaster Relief Act, 2018

In the 115th Congress, the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-123) was enacted. As it related to elementary and secondary education, the act included FY2018 supplemental appropriations for disaster relief for "covered disasters or emergencies" (i.e., Hurricanes Harvey, Irma, and Maria, or California wildfires in 2017 for which a major disaster or emergency has been declared under Sections 401 or 501 of the Robert T. Stafford Disasters Relief and Emergency Assistance Act). Specifically, the supplemental appropriations for elementary and secondary education included the following:

- $2.5 billion for immediate aid to restart school operations and for temporary emergency impact aid for displaced K-12 students. These programs were identical to disaster relief programs passed in response to the 2005 hurricane season and authorized under P.L. 109-148.[60] Funds were targeted to schools that had been damaged by a covered disaster or emergency and to states and LEAs that had enrolled students displaced as a result of a covered disaster or emergency. Funds under the temporary emergency impact aid program were distributed to the states and LEAs based on the numbers of displaced students enrolled. Extra funds were provided to schools for displaced students with disabilities and displaced students who are English Learners.
- Up to $35 million for the Project SERV Program, authorized under Section 4631(b) of the ESEA, for education-related services to help students in affected areas recover from the trauma associated with natural disasters.
- $25 million for assistance to LEAs serving homeless children and youths displaced by a covered disaster or emergency, consistent with the Education for Homeless Children and Youth program authorized under Section 723 of the McKinney-Vento Homeless Assistance Act.[61]

All of these provisions expired on or before December 31, 2018.

Additional Supplemental Appropriations for Disaster Relief Act, 2019

In the 116th Congress, in response to Hurricanes Florence and Michael, Typhoon Mangkhut, and Super Typhoon Yutu, as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods occurring in calendar years 2018 and 2019, Congress enacted the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (P.L. 116-20) on June 6, 2019. Title VIII of the act provides $165 million in supplemental appropriations for many of the education-related disaster relief programs authorized under P.L. 115-123, to remain available through FY2020. At the elementary and secondary education levels, these include immediate aid to restart school operations, temporary emergency impact aid for displaced students, assistance to LEAs serving homeless children and youth, and funds for Project SERV. The act also provided appropriations of

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[60] See sections titled *Immediate Aid to Restart School Operations* and *Temporary Emergency Impact Aid* in the **Appendix** of this report for a description of the original programs.

[61] 20 U.S.C. 11431-11435; for more information on the McKinney-Vento Homeless Assistance Act, see CRS Report RL30442, *Homelessness: Targeted Federal Programs*, coordinated by Libby Perl.

$2 million for ED Inspector General oversight activities and $1 million for program administration for all of the education-related disaster relief programs authorized.

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 FY2016, nearly $122billion in grant, loan, and work-study aid was made available to 13 million students enrolled in approximately 6,000 institutions of higher education.[62] The HEA also authorizes a series of programs that provide support to IHEs and additional federal student aid. About $91billion was appropriated for these postsecondary programs in FY2018.[63]

The Department of Veterans Affairs (VA) administers entitlement programs providing vocational and educational assistance. The veterans educational assistance programs (GI Bills®)[64] provide eligible servicemembers and veterans and their dependents with financial assistance while enrolled in approved educational and training programs.[65] The Vocational Rehabilitation and Employment (VR&E) program provides education, job training, and related services to veterans with service-connected disabilities.[66] The VA estimates that it will obligate approximately $14 billion in FY2019 for veterans educational assistance and VR&E.[67]

This section provides an overview of the existing statutory and regulatory 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 IHEs to waive or modify various HEA requirements. This is followed by the description of an HEA program that authorizes 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. Finally, a discussion of existing general statutory and regulatory authorities that reduce the negative financial impact of disasters on GI Bill participants follows.

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 the need for additional legislation. This section examines waiver authority and other flexibilities available to the Secretary and IHEs under the HEA.

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[62] U.S. Department of Education, Office of Federal Student Aid, *Annual Report 2018*, November 15, 2018, p. iii.

[63] This includes funding for developing institutions, teacher quality partnership programs, campus-based childcare programs for students, and international and foreign language programs.

[64] GI Bill® is a registered trademark of the U.S. Department of Veterans Affairs.

[65] For more information on veterans educational assistance programs, see CRS Report R42755, *The Post-9/11 GI Bill: A Primer*, by Cassandria Dortch; and CRS Report R42785, *GI Bills Enacted Prior to 2008 and Related Veterans' Educational Assistance Programs: A Primer*, by Cassandria Dortch.

[66] For more information on the VR&E program, see CRS Report RL34627, *Veterans' Benefits: The Vocational Rehabilitation and Employment Program*, by Benjamin Collins.

[67] U.S. Department of Veterans' Affairs, FY2020 Congressional Budget Justifications.

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)[68] and the Direct Loan (DL) program (Title IV-D).[69] 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.[70] 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 student aid 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 student aid programs.
- 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.
- On a case-by-case basis, IHEs may be provided flexibility in meeting 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 records retention in instances where records are lost or destroyed and cannot be reconstructed.
- IHEs may be excepted from requirements for verification of federal student aid (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.

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[68] For a detailed description of the Federal Pell Grant program, see CRS Report R45418, *Federal Pell Grant Program of the Higher Education Act: Primer*, by Cassandria Dortch.

[69] 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.

[70] For a detailed description of the authority, see Kathleen A. Smith, Acting Assistant Secretary for Postsecondary Education, *Guidance for helping Title IV participants affected by a major disaster*, U.S. Department of Education, DCL ID GEN-17-08, Guidance for helping Title IV participants affected by a major disasters, August 29, 2017, https://ifap.ed.gov/dpcletters/GEN1708.html. See also U.S. Department of Education, "Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters," September 2017, https://www2.ed.gov/policy/gen/guid/disasters/disaster-guidance.docx.

- IHEs may be granted a waiver of the requirement to obtain signed documentation from the parents of dependent undergraduate students of the number of family household members and the number of family household members 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 or student enrollment status must promptly contact and inform their School Participation Team or the National Student Loan Data System Customer Service Center, respectively, about the situation and in certain circumstances may adjust or modify their reporting schedule.
- Upon request, an IHE may receive an extension of the published deadline for reporting final Federal Pell Grant payments.
- 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.[71]
- 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.[72]

Provisions for Student Aid Recipients

Types of support that may be available to help Title IV student aid 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 federal or state disaster aid received by a student or the student's family 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.[73]
- 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)[74] 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.

[71] The campus-based programs—the Federal Supplemental Educational Opportunity Grant (FSEOG) program, the Federal Work-Study 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 Joselynn H. Fountain.

[72] The purpose of the Federal Work-Study 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.

[73] 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.

[74] The COA is a measure of a student's educational expenses for the period of enrollment.

- 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 nonterm 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 specified conditions.
- Students may continue to receive FWS payments, up to the length of the award period, during periods that they are unable to fulfill their FWS employment obligations as a result of a disaster.
- Borrowers of Direct Loan program loans, Federal Family Education Loan (FFEL) program loans, and Perkins Loans who were in an "in-school" status[75] 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 status at the time a disaster occurs and who are unable to make loan payments due to the disaster may be granted forbearance.[76]
- 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 DL program loans, FFEL program loans, and Perkins 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 required consecutive monthly payments.

Waiver Authority under the Higher Education Relief Opportunities for Students Act (HEROES Act)

In addition to the above-listed 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).[77] 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

[75] During "in-school" status, borrowers need not make payments on the principal and interest of their federal student loans.

[76] Under forbearance, borrowers may temporarily cease making payments on their federal student loans. Forbearance is limited to an initial period of three months for FFEL program loans and Perkins Loans.

[77] 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), provided for waiver authority and regulatory flexibility from FY2003-FY2005; it 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.).

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.[78]

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 (and their spouses and dependent children, if applicable), IHEs are excepted from the requirement that financial aid administrators' (FAAs') exercise of professional judgment to make adjustments to the cost of attendance (COA) or to the values of items used in calculating their expected family contribution (EFC) be done on a case-by-case basis.
- With respect to all affected individuals, IHEs are excepted from the requirements to notify affected individuals of a Title IV grant overpayment and the actions that must be taken to resolve the overpayment, to refer a grant overpayment to the Department of Education (ED) under certain conditions, and to deny eligibility for federal student aid to students who do not take action to resolve an overpayment.
- 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 to students who withdraw because they are affected individuals in either the 1st or 2nd 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 1st and 2nd 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 to with written consent, which would otherwise be required.

[78] 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)," 82 *Federal Register* 45465-45471, September 29, 2017. These currently available waivers and modifications will expire on September 30, 2022.

- With respect to the 1st and 2nd 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 are unable to meet the specified Title IV statutory or regulatory requirements because of their status as affected individuals include the following:

- Typically, a student's expected family contribution (EFC) is based on financial information from the second preceding tax year. With respect to all affected individuals, an IHE's FAA may exercise professional judgment to consider more recent measures of income. Specifically, the FAA may base an affected individual's EFC on adjusted gross income plus untaxed income and benefits received in the first calendar year of the award year or based on another annual income that more accurately reflects a family's current financial circumstances. As with all cases of professional judgment, the FAA must document the reasons and supporting facts for any adjustment.
- 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 1st and 2nd categories of affected individuals, students who are eligible for a post-withdrawal loan disbursement must be provided at least 45 days, rather than 14 days, to respond and accept the disbursement.
- With respect to the 1st and 2nd 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 to students who withdraw because they are affected individuals in either the 1st or 2nd 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 1st or 2nd 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 or TEACH Grant.
- Students who are in the 1st or 2nd categories of affected individuals may continue to receive Title IV funds despite not making satisfactory progress in coursework.[79]
- For borrowers of DL program loans, FFEL program loans, and Perkins Loans who are in the 1st or 2nd categories of affected individuals, the initial grace

[79] To be eligible for federal student aid, students must make satisfactory academic progress. That is, they must show satisfactory and timely completion of coursework.

period[80] 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 1st or 2nd 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 1st or 2nd 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 is to pay any interest that accrues on a Subsidized Stafford Loan.
- For borrowers of Perkins Loans who are in the 1st or 2nd 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 who are in the 1st or 2nd categories of affected individuals, borrowers 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 qualifying service, such service will not be considered interrupted by any period during which the borrower is an affected individual in the 1st or 2nd categories or during a three-month transition period.
- With respect to the 1st and 2nd categories of affected individuals, for borrowers of defaulted FFEL 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 1st and 2nd categories of affected individuals, for 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.

[80] The grace period is the period of time after a student graduates, leaves school, or drops below half-time enrollment before he or she must begin repaying his or her federal student loan. Grace periods vary by loan type, but typically are 6-9 months in length.

- With respect to the 1st and 2nd categories of affected individuals, for borrowers of defaulted FFEL 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 aid eligibility.
- With respect to the 1st and 2nd categories of affected individuals, for borrowers who are repaying their FFEL or DL program loans according to the Income-Based Repayment (IBR), Income-Contingent Repayment (ICR), Pay As You Earn (PAYE) or Revised Pay As You Earn (REPAYE) plan and who because of their status as affected individuals are unable to provide information normally required annually 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. This flexibility is made in lieu of having their payment amount adjusted to be based on a standard 10-year repayment plan or an alternative repayment plan, as applicable.
- With respect to students who are dependents of affected individuals in the 1st 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 1st 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 (ISIR) is waived if no responsible parent is available to provide a signature. A student's FAA or high school counselor may sign on behalf of the parent, so long as the applicant provides adequate documentation regarding the parent's inability to provide a signature due to his or her status as an affected individual.

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

The College Access Challenge Grant Program (CACG; HEA Title VII, Part E) fostered partnerships between federal, state, and local governments and philanthropic organizations through matching formula grants that were 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 was required to meet maintenance of effort requirements. According to the MOE requirements, a state was required to annually provide

- for public IHEs in the state, at least the average amount provided for noncapital and nondirect 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 was authorized to 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."[81] The authority to award new CACGs expired at the end of FY2014.

Titles III and V Endowment Funds

Title III, Parts A, B, and 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 that have low educational and general expenditures per students in comparison to similar institutions.[82] 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. In addition, Title III, Part C of the HEA authorizes the Endowment Challenge Grants program, which allows recipients to use their awards to establish or increase an endowment fund. 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.[83]

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

In response to several natural disasters over the years, previous Congresses enacted numerous temporary programs and provisions (e.g., waiver authorities for specific programs) to support education. A brief summary of the various programs and provisions created in response to previous disasters (e.g., Hurricanes Katrina and Rita) is included in the **Appendix**. For example, additional funds were appropriated to IHEs to support recovery efforts and to provide grants to students. In addition, 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 disaster, and 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. Much of the additional funding was provided up through FY2010 and many of the temporary provisions (expired by FY2014). In 2017 and 2018, legislation was enacted that authorized temporary education-related supplemental funds in response to several 2017 natural disasters, including Hurricanes Harvey, Irma, and Maria, and the 2017 California wildfires. Most recently, legislation authorizing temporary education-related supplemental funds was enacted on June 6, 2019, in response to natural disasters occurring in 2018 and 2019, including Hurricanes Florence

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[81] HEA §137.

[82] For additional information on the Title III/V programs, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*, by Alexandra Hegji.

[83] Congress last appropriated funds for the Endowment Challenge Grant Program in FY1995. However, several institutions continue to participate in the program, as they have not yet met the 20-year maintenance date.

and Michael, Typhoon Mangkhut, and Super Typhoon Yutu, as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods.

The Hurricanes Harvey, Irma, and Maria Education Relief Act of 2017

In the 115th Congress, in response to multiple 2017 natural disasters, the Hurricanes Harvey, Irma, and Maria Education Relief Act of 2017 was enacted.[84] As it relates to postsecondary education, the act made several modifications to the Federal Work Study (FWS) and Federal Supplemental Educational and Opportunity Grant (FSEOG) programs:

- With respect to funds made available for award years 2016-2017 and 2017-2018, the act required the Secretary to waive nonfederal share requirements of FWS and FSEOG programs[85] for IHEs located in affected areas[86] and authorizes the Secretary to waive such requirements for IHEs not located in an affected area that have enrolled or accepted for enrollment any affected students,[87] after considering such IHE's student population and existing resources.
- The act required the Secretary to reallocate unexpended federal FWS or FSEOG funds that were returned to the Secretary by an IHE for award year 2016-2017[88] to eligible IHEs (with priority given to IHEs located in affected areas) and to waive the FWS and FSEOG allocation reduction[89] for award year 2018-2019 for eligible IHEs.[90]
- The act authorized the Secretary to waive or modify any other statutory or regulatory provision relating to the reallocation of excess FWS or FSEOG funds to ensure that assistance is received by eligible IHEs.

[84] P.L. 115-64.

[85] Under each of the programs, IHEs must provide nonfederal matching funds, typically equal to 25% of program funds. For additional information on the FWS and FSEOG programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by Joselynn H. Fountain.

[86] An affected area is defined as "an area for which the President declared a major disaster or an emergency under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ... as a result of Hurricane Harvey, Hurricane Irma, Hurricane Maria, Tropical Storm Harvey, Tropical Storm Irma, or Tropical Storm Maria." P.L. 115-64.

[87] An affected student is an individual who has applied for or received HEA Title IV student aid and who (1) was enrolled or accepted for enrollment at an IHE located in an affected area on August 25, 2017; (2) is a dependent student who was enrolled or accepted for enrollment at an IHE not located in an affected area on August 25, 2017, but whose parents resided or were employed in an affected area on August 25, 2017; or (3) "suffered direct economic hardship" as a result of Hurricanes Harvey, Irma, or Maria or Tropical Storms Harvey, Irma, or Maria, as determined by the Secretary; P.L. 115-64.

[88] IHEs that participate in the FWS and FSEOG programs may return to ED unexpended program funds for any fiscal year, and the Secretary generally is required to reallocate such funds to other eligible institutions participating in the programs. Reallocation methodologies vary between the programs. See 34 C.F.R. §673.4. ED recently announced it has already reallocated FSEOG funds to IHEs that have been directly affected by the 2017 hurricanes and is reviewing the reallocation process for FWS funds. U.S. Department of Education, Updates Information Related to the 2017-2018 Supplemental Campus-Based Funds Due to 2017 Hurricanes, September 29, 2017, https://ifap.ed.gov/eannouncements/092917UpdateInfoRelate20172018SupplementalCampusBasedFunds2017Hurricanes.html.

[89] Typically, if an IHE returns more than 10% of its FWS or FSEOG allocation in any fiscal year, its allocation for the next fiscal year is reduced by the amount returned.

[90] An eligible IHE is an IHE that participated in the relevant program (i.e., FWS and/or FSEOG) and was located in an affected area or has enrolled or accepted for enrollment affected students in award year 2017-2018.

- The act made available for obligation by the Secretary until September 20, 3018, FWS and FSEOG funds for which the period of availability otherwise expired on September 30, 2017.
- The act authorized the Secretary to recall any FWS or FSEOG funds allocated to an IHE in award year 2016-2017 that are not returned to ED as excess allocations but that otherwise would have lapsed on September 30, 2017, and to reallocate those funds to eligible IHEs.

All of these provisions expired on September 30, 2018.

The Further Additional Supplemental Appropriations for Disaster Relief Act, 2018

Also in the 115th Congress, in response to Hurricanes Harvey, Irma, and Maria and wildfire incidents in California in 2017, the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-123) was enacted. As it relates to postsecondary education, the act included FY2018 supplemental appropriations for disaster relief for "covered disasters or emergencies" (i.e., Hurricanes Harvey, Irma, and Maria, or wildfires in 2017 for which a major disaster or emergency has been declared under section 401 or 501 of the Robert T. Stafford Disasters Relief and Emergency Assistance Act). Specifically, the supplemental appropriations for postsecondary education included the following:

- $100 million for the FSEOG program, the FWS program, and the Fund for the Improvement of Postsecondary Education. Funds were to be used for IHEs located in areas affected by a covered disaster or emergency and students enrolled in such institutions. Matching requirements under FSEOG and FWS were waived for IHEs receiving such funds. Funds were authorized to be used for a variety of expenses including student financial assistance, staff salaries, student supplies and equipment, or any other purpose authorized under the HEA.
- Up to $75 million for IHEs to help defray the unexpected expenses associated with enrolling students displaced from IHEs at which operations were disrupted by a covered disaster or emergency.

In addition, the act authorized several flexibilities in the administration of several HEA programs, including the following:

- Authorization for the Secretary to waive, modify, or provide extensions for any statutory or regulatory provisions applicable to the HEA Title IV programs or student eligibility or institutional eligibility provisions in the HEA for affected individuals, students, and IHEs in covered disaster or emergency areas, if the Secretary deemed such waiver, modification, or extension necessary in connection with a covered disaster or emergency.[91]
- Authorization for the Secretary to modify required and allowable uses of funds under the various minority-serving grant programs authorized under HEA Title III, Parts A and B, and under the TRIO and GEAR-UP programs.

[91] Authorized flexibilities mirror those authorized following the 2005 hurricane season under the Higher Education Hurricane Relief Act of 2005 (P.L. 109-148).

- Authorization for the Secretary to forgive any outstanding balance owed to ED under the HBCU Hurricane Supplemental Loan program established under P.L. 109-234 and in response to the 2005 hurricane season.[92]

Additional Supplemental Appropriations for Disaster Relief Act, 2019

In the 116th Congress, in response to Hurricanes Florence and Michael, Typhoon Mangkhut, and Super Typhoon Yutu, as well as wildfires, earthquakes, volcanic eruptions, tornadoes, and floods occurring in calendar years 2018 and 2019, Congress enacted the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (P.L. 116-20). Title VIII of the act provides $165 million in supplemental appropriations for many of the education-related disaster relief programs authorized under P.L. 115-123, to remain available through FY2020. At the higher education level, these programs include FSEOG, FWS, FIPSE, and funds to IHEs to help defray the unexpected expenses associated with enrolling students displaced from IHEs at which operations have been disrupted by a covered disaster or emergency. The act also provided appropriations of $2 million for ED Inspector General oversight activities and $1 million for program administration for all of the education-related disaster relief programs authorized.

Veterans Educational Assistance

In general, the GI Bills and the Vocational Rehabilitation and Employment program provide individuals with a certain entitlement to educational benefits. For example, under the Post-9/11 GI Bill, individuals are entitled to 36 months of benefits.

Statutory provisions allow the VA to continue paying benefits during interval periods when a school is temporarily closed 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 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, benefits may be extended beyond an eligible person's 26th birthday, but generally not past the 31st birthday.

[92] Under this provision, four HBCUs—Dillard University, Southern University at New Orleans, Xavier University, and Tougaloo College—are eligible to have their loans forgiven. It is reported that these four schools borrowed a total of $361 million in loans capped at a 1% interest rate to be repaid over 30 years. They have repaid approximately $12.4 million of the loans since borrowing them. Melissa Korn, "Loan Program for Black Colleges Struggles With Oversight, Repayment; Some of the $2 billion in loans ends up more a burden than a help to the schools," *Wall Street Journal*, July 17, 2017.

Other Programs Administered by the Department of Education

The Department of Education administers various other programs related to education that are not necessarily classified as serving elementary and secondary education or postsecondary education purposes. Two such programs are state grants authorized under the Adult Education and Family Literacy Act (AEFLA), which support education for adults at the secondary level and below, as well as English language training; and Vocational Rehabilitation State Grants authorized under the Rehabilitation Act of 1973, which support the provision of vocational rehabilitation (VR) services to individuals with disabilities.

This section provides an overview of the authorized statutory and regulatory authorities that may be useful in supporting education-disaster recovery within these programs. Generally, current law permits disaster-affected grantees under these programs to receive a waiver for each program's maintenance of effort requirements and certain timely reporting requirements but does not permit waivers for required state matching funds.

Waiver Authority and Flexibilities for AEFLA State Grants

The Adult Education and Family Literacy Act (AEFLA) provides grants to states to support education for out-of-school adults at the secondary level and below, as well as English language training.

AEFLA requires states to match a portion of the federal grant and has a maintenance of effort requirement (MOE) that reduces a state's federal grant if the state reduces its nonfederal support. Statute authorizes the Secretary to waive the MOE requirement if "a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or an unforeseen and precipitous decline in the financial resources."[93] Statute specifies that if the Secretary grants a waiver for a given fiscal year, the level of required effort of meet the MOE requirement shall not be reduced in subsequent years because of the waiver. AEFLA does not grant ED the authority to waive states' nonfederal match.

In addition, AEFLA state grantees are required to submit annual performance reports as a condition of receiving funding. AEFLA performance reports are included with reports for other federally supported workforce grant programs. Regulations specify that a state will not be subject to financial sanctions if the state fails to submit a complete and timely report due to exceptional circumstances outside the state's control, including a disaster.[94]

Waiver Authority and Flexibilities for Vocational Rehabilitation State Grants

Under the authorization of the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), ED provides grants to state agencies to provide vocational rehabilitation (VR) services to individuals with disabilities. States may use grant funds to assess clients and help eligible clients develop and carry out an individualized plan for employment.

[93] 29 U.S.C. 3331(b)(4).

[94] See 34 C.F.R. 361.185. This section of regulations also applies to other partner programs.

The Rehabilitation Act requires states to match a portion of the federal grant and has a MOE requirement that reduces a state's federal grant if the state reduces its nonfederal contribution. Statute authorizes the Secretary to waive the MOE requirement if a waiver "is necessary to permit the State to respond to exceptional or uncontrollable circumstance, such as a major natural disaster or serious economic downtown."[95] The Rehabilitation Act does not grant ED the authority to waive states' nonfederal match.[96]

In addition, VR state grantees are required to submit annual performance reports as a condition of receiving funding. VR performance reports are included with reports for other federally supported workforce grant programs. Regulations specify that a state will not be subject to financial sanctions if the state fails to submit a complete and timely report due to exceptional circumstances outside the state's control, including a disaster.[97]

[95] Quoted text from 34 C.F.R. 361.62; MOE requirement and waiver authority are in statute at 29 U.S.C. 731(a).

[96] In some circumstances, Congress has passed legislation to temporarily waive the nonfederal match for states affected by a natural disaster. See discussion of P.L. 109-82 in the **Appendix**.

[97] See 34 C.F.R. 361.185.

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

Between 2005 and 2010, Congress 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. Funding provided for elementary and secondary education and for higher education is 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. In addition, temporary provisions and flexibilities provided for elementary and secondary education, higher education, and the Vocational Rehabilitation State Grant program are described below.

Elementary and Secondary Education[98]

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.[99] 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.

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. Later, Congress appropriated $12 million through P.L. 111-117 for

[98] 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 (prior to enactment of the ESSA) 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.)

[99] 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 nonfederal 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.

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 the funding amounts 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 nonpublic 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 nonpublic 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.[100] Portions of the funds appropriated were provided to 49 states[101] 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.[102] 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.[103] 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.

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

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[100] 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.

[101] Hawaii did not receive any funds through this program.

[102] For a description of existing federal programs enacted by the McKinney-Vento Homeless Assistance Act, see CRS Report RL30442, *Homelessness: Targeted Federal Programs*, coordinated by Libby Perl.

[103] The eight states that received funds were Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, and Texas.

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.[104] 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.

Temporary Flexibilities under the ESEA

P.L. 109-148 provided the Secretary with the authority to grant LEAs certain temporary flexibilities and waivers from fiscal requirements under the ESEA. These included the temporary authority to waive or modify any requirements related to maintenance of effort (MOE)[105]; the use of federal funds to supplement, not supplant, nonfederal funds; and any nonfederal share or capital contribution required to match federal funds provided under programs administered by the Secretary. 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.

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[104] 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.

[105] As previously noted, ESEA §8521(c) provides the Secretary with the authority to waive MOE requirements for LEAs under specific circumstances.

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 of the ESEA.[106] 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.[107]

Temporary Flexibilities under the IDEA

P.L. 109-148 also provided the Secretary with the temporary authority to extend certain administrative deadlines under the IDEA, such as the deadline for submission of an annual report on the progress of the state and of children with disabilities in the state for the 2005-2006 academic year.[108] In addition, the Secretary was authorized to extend the deadline for the initial evaluation of children to determine their eligibility for services under IDEA. In providing the Secretary with the authority to extend these deadlines, Congress 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.

Higher Education

Appropriations to support IHEs following the Gulf Coast hurricanes of 2005 (i.e., Hurricanes Katrina and Rita) were provided in 2005 through P.L. 109-148 ($200 million), in 2006 through P.L. 109-234 ($50 million), and in 2007 through 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.

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 Institute of Higher Learning for hurricane recovery.[109] Subsequently, P.L. 109-234 and P.L. 110-28 provided additional funds for hurricane 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.

[106] For more information, see P.L. 109-148 and P.L. 110-366.

[107] LEA grant allocations under Title I-A of the ESEA are largely based on counts of children aged 5-17 living in poverty. These counts are estimated by the U.S. Census Bureau annually through the Small Area Income Poverty Estimates (SAIPE). 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 2016-2017 school year (FY2016) are based on data from the 2014 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.

[108] P.L. 109-148 §301.

[109] Funds could be spent for a variety of purposes, such as faculty and staff salaries, equipment and instruments, and student financial assistance.

110-28, IHEs also were permitted to use funds to make grants to students enrolled at such institutions on or after July 1, 2006. A total of $80 million was provided for IHEs affected by Hurricane Katrina or Rita under FIPSE for hurricane 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 Hurricane 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.[110] Louisiana and Texas received the largest state grants. This program is no longer authorized.

Higher Education Disaster Relief[111]

P.L. 110-329 provided an additional $15 million[112] 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 affected 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.[113] 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 2005 Gulf hurricane disaster (i.e., Hurricane Katrina or Rita), 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 1),[114] 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.

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110 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.

111 None of these funds were provided in response to the Gulf Coast hurricanes of 2005.

112 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.

113 IHEs in Arkansas, Colorado, Iowa, Illinois, Indiana, and Kentucky also received funds under this program.

114 For more information on the TRIO programs, see CRS Report R42724, *The TRIO Programs: A Primer*, by Cassandria Dortch.

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.[115] The waivers were intended to ensure that IHEs affected by either Hurricane 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.[116] 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 Hurricane Katrina or Rita, and to aid IHEs, located in such an area, in recruiting and retaining faculty needed to prepare teachers and provide professional development.

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 disasters were eligible to apply. The law also relaxed several program financing requirements.[117] The Secretary's authority to waive or modify statutory or regulatory requirements of this program is no longer authorized. In 2018, the Further Additional Supplemental Appropriations for Disaster Relief Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, P.L. 115-123) authorized the Secretary to forgive any outstanding loan balance owed to ED by institutions that secured funding under this program in the wake of the Gulf Cost Hurricanes.

Waiver of Vocational Rehabilitation State Grant Matches

The Assistance to Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005 (P.L. 109-82) provided the Secretary with the authority to waive the nonfederal match requirements for disaster-affected states. The law also gave disaster-affected states preference in claiming VR State Grant funds that were made available for reallocation if a state did not meet its full nonfederal match. The law defined an affected state as "a state that contains an area, or that

[115] The waivers (Section 392(c) of the HEA) were enacted by Section 318 of the Higher Education Opportunity Act (HEOA; P.L. 110-315).

[116] This authority was enacted by the FY2006 Defense Appropriations (P.L. 109-148).

[117] For instance, HBCUs receiving loans under this waiver authority were granted deferments of up to three years. During this time, such HBCUs were not required to make installment payments on loan principal, and interest did not accrue.

received a significant number of individuals who resided in an area, in which the President has declared that a major disaster exists."

Table A-1. Funding Administered by the Department of Education Provided in Response to Natural Disasters: 2005-2010

Dollars in thousands

Department of Education	Alabama	Florida	Louisiana	Mississippi	Texas	All Other States	Total
Elementary and Secondary Education							
Immediate Aid to Restart School Operations	3,750	–	445,604	222,493	78,153	–	750,000
Emergency Impact Aid for Displaced Students[a]	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
Subtotal for elementary and secondary education	40,602	27,501	771,273	334,012	343,724	173,033	1,690,144
Higher Education							
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
Subtotal postsecondary education	658	1,566	154,935	118,206	14,756	4,908	295,028
Total	**41,261**	**29,067**	**926,208**	**452,217**	**358,480**	**177,940**	**1,985,172**

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

Note: 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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