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## **Issues Raised by Hurricane Katrina: A Focus on Education and Training**

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# Issues Raised by Hurricane Katrina: A Focus on Education and Training

## Summary

It is estimated that more than 400,000 elementary/secondary school children have been displaced by Hurricane Katrina. In addition, it is estimated that approximately 30 institutions of higher education (IHEs) in these areas have been severely damaged, and nearly 100,000 postsecondary students have been displaced as a result. Many of these individuals will not likely return to their homes, jobs, and/or schools within the 2005-2006 academic year. It is likely that numerous program regulations and statutes will need to be revisited to address the needs of the students and families affected by Katrina, as well as financial issues of the institutions that help make education possible for many of these individuals.

After a discussion of the applicability of the Stafford Act to education and training facilities, this report provides a general overview of the federally funded programs administered by the Department of Education (ED) that might be used to help those affected by this disaster, and the existing statutory and regulatory authorities available to assist individuals who have been affected by a major disaster, where applicable. Training programs administered by the Department of Labor (DOL) are also included. Specifically, training programs for youth, adults and dislocated workers are discussed. The report includes a discussion of legislative and funding options that might be considered for providing additional relief to the victims of this major disaster.

Several existing program requirements under the Elementary and Secondary Education Act (ESEA) will likely need to be addressed — maintenance of effort, adequate yearly progress, and highly qualified teachers requirements — to assist many of the schools and states in the affected areas. In addition, programs such as the Education for Homeless Children and Youth and Project SERV could be used to assist these students and schools, if additional funding were provided.

The Secretary of Education has authority to waive several of the requirements for aid recipients, institutions of higher education, and financial institutions when a disaster has been declared. Similar to the ESEA, several provisions might need to be revisited — 50% rules relating to distance education programs, student loan forbearance period, and the “Return of Title IV Funds” calculation — to provide students and IHEs with additional relief.

The Workforce Investment Act (WIA) authorizes employment and training opportunities for youth, adults, and dislocated workers. These programs are particularly pertinent for the individuals recently affected by the hurricane, because homeless individuals are automatically considered low income and are granted priority for intensive training and services.

This report will be updated as warranted by major legislation or other relevant developments.

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# Issues Raised by Hurricane Katrina: A Focus on Education and Training

## Introduction

It is estimated that more than 400,000 elementary/secondary school children have been displaced by Hurricane Katrina (Katrina).<sup>1</sup> In addition, it is estimated that approximately 30 institutions of higher education (IHEs) in the areas affected by Hurricane Katrina have been severely damaged, and nearly 100,000 postsecondary students have been displaced as a result.<sup>2</sup> According to estimates provided by the Congressional Budget Office, Hurricane Katrina may also result in the loss of 400,000 jobs by the end of the year.<sup>3</sup> Many of these individuals will likely not return to their homes, jobs, and/or schools within this academic year. It is likely that numerous program regulations and legislation will need to be revisited to address the needs of the students and families affected by Katrina, as well as the financial needs of the institutions that help make education possible for many of these individuals.

This report provides a general overview of the federally funded programs administered by the Department of Education (ED) that can be used to help those affected by this disaster, and the existing statutory and regulatory authorities available to assist individuals who have been affected by a major disaster, where applicable. Training programs administered by the Department of Labor (DOL) are also included. Specifically, training programs for youth, adults and dislocated workers are discussed. Description of each program, program requirements, and regulations, where applicable, is then followed by a discussion of possible legislative and funding options that might be considered for providing additional relief to the victims of this major disaster. The federal Stafford Act and its applicability to education and training facilities is discussed first.

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<sup>1</sup> See, for example, Sarah Sparks and David Hubler, "Ed Promises Assistance, but Is Short on Details," *Education Daily*, vol. 38, no. 164, Sept. 15, 2005.

<sup>2</sup> Please see the American Council on Education website, [<http://www.acenet.edu/AM/Template.cfm?Section=HENA&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=11807>].

<sup>3</sup> See Congressional Budget Office, "*Macroeconomic and Budgetary Effects of Hurricane Katrina*," Sept. 6, 2005, available online at [<http://www.cbo.gov/ftpdocs/66xx/doc6627/09-06-ImpactKatrina.pdf>].

## The Robert T. Stafford Disaster Relief Act and Education Disaster Relief

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, 42 U.S.C. 5121 et seq.) authorizes the President to issue major disaster declarations upon which federal agencies are authorized to provide assistance to areas affected by disasters.<sup>4</sup> An executive order issued by the President provides the Secretary of the Department of Homeland Security (DHS) with responsibility for administering most of the Stafford Act.<sup>5</sup> The act is authorized to provide assistance to individuals, families, state and local governments, and certain nonprofit entities. Appropriations for the Disaster Relief Fund (DRF) are used to provide this assistance.

### Eligibility for Assistance

Both public facilities and private nonprofit facilities, under certain circumstances, are eligible for assistance under the Stafford Act.<sup>6</sup> Public elementary and secondary schools and postsecondary institutions qualify for disaster relief assistance as public facilities used for educational purposes. Non-profit private elementary and secondary schools and postsecondary institutions that are open to the general public may also qualify for assistance as non-profit institutions providing essential services. Section 406(a)(3), however, requires private nonprofit facilities to apply for a disaster loan under Section 7(b) of the Small Business Act (15 USC 636) prior to receiving support through the Stafford Act.<sup>7</sup> If the owner or operator of the facility is determined to be ineligible for the loan or has obtained a loan in the maximum amount for which the Small Business Administration has determined the facility is eligible, the facility may be eligible to receive support through the Stafford Act. The Stafford Act does not provide assistance to for-profit institutions providing educational services. Thus, proprietary (i.e., for-profit postsecondary) institutions are *not eligible* to receive disaster relief assistance through the Stafford Act.

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<sup>4</sup> For general information about the Stafford Act, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea. Also see the Stafford Act (42 U.S.C. 5121 et seq) and related regulations in 44 CFR 206.

<sup>5</sup> Executive Order 13286, issued Feb. 28, 2003, assigned responsibility to administering most provisions of the Stafford Act to the Secretary of DHS. This superceded previous executive orders that provided the Federal Emergency Management Agency (FEMA) with responsibility for administering most provisions of the Stafford Act. FEMA is part of DHS and continues to play a critical role in the actual implementation of the Stafford Act.

<sup>6</sup> To be eligible for assistance, private non-profit organizations generally must provide essential services of a governmental nature to the general public.

<sup>7</sup> Private nonprofit facilities providing critical services in the event of a major disaster are eligible for support under the Stafford Act without first applying for a loan through the Small Business Act. Critical services include power, water, sewer, wastewater treatment, communications, and emergency medical care.

## Available Benefits

For schools that are eligible for public assistance through the Stafford Act, a variety of emergency work and permanent work services may be available.<sup>8</sup> For example, schools would be eligible for debris removal assistance and emergency work to provide such services as access to the building and communications. Support is also provided for the temporary relocation of essential services, such as school classrooms, government facilities, and private nonprofit critical health facilities. Under the permanent work category, FEMA is to address needs related to buildings and equipment. Schools would be eligible for the repair or replacement of buildings and their contents.<sup>9</sup> Contents includes furnishings and equipment. Assistance may also be requested to replace supplies and inventory and library books and publications.

The initial deadlines for completing debris removal and emergency work is six months from the time a major disaster is declared. These deadlines may be extended by the state for an additional six months for extenuating circumstances. The deadline for completion of permanent work (e.g., repairs) is 18 months from the declaration date of a major disaster, but this deadline may be extended by the state for an additional 30 months for extenuating circumstances.

Eligible entities needing assistance following a major disaster must apply for support. Eligible applicants include state government agencies, local governments, Indian tribes, and private nonprofit organizations and institutions that provide specific services. Based on these applications, a determination is made as to how much support an applicant will be receiving from FEMA. It is up to the applicant to determine the priorities for the uses of funds. That is, state and local communities must determine which structures to rebuild or repair first. In some communities, for example, priority may be given to hospitals, while in other communities, priority may be given to schools. As this decision is made on a community-by-community basis, it is impossible to determine how quickly schools may receive needed repairs and renovation.

## Duplication of Benefits

The Stafford Act prohibits entities suffering losses as a result of a major disaster, such as Hurricane Katrina, from receiving duplicate benefits for the same project (42 USC 5155). That is, if funds are appropriated to provide the same types of benefits that may already be provided through the Stafford Act, the result may be considered a duplication of benefits. Payments from insurance companies are

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<sup>8</sup> For more information about specific support available through the Stafford Act, see, *Public Assistance Guide*, FEMA Publication 322, Oct. 1999, available at [<http://www.fema.gov/rrr/pa/paguided.shtm>].

<sup>9</sup> A variety of special provisions apply to the repair and replacement of buildings. For example, FEMA may pay for upgrades required by codes and standards. FEMA is to rebuild structures to have the same capacity as the original building, but will make changes to the design if the standard for space per occupant has changed since the original building was constructed.

considered duplication of benefits, and FEMA is required to reduce the amount of assistance provided by any actual or anticipated insurance payments. Thus, if Congress acted to provide separate funding to schools affected by Hurricane Katrina through other federal agencies, such as the Department of Education (ED), this would be considered a duplication of benefit, unless Congress made an exception to the provision. Alternatively, recipients of aid through a separate ED program could be prohibited from receiving benefits under the Stafford Act and vice versa. The premise of a separate funding source assumes that the ED funding would provide for repair or reconstruction of the facility and its contents, just as the Stafford Act already does. An advantage an ED program might have would be to get aid to schools more quickly than may occur under the Stafford Act. In addition, to the extent that existing ED programs could support recovery efforts, duplication of benefits with the Stafford Act would not be an issue.<sup>10</sup>

## Waiver of Administrative Conditions

The Stafford Act provides for waivers of administrative conditions (42 USC 5141). The provision reads as follows:

Any federal agency charged with the administration of a federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

This provision provides the Secretary of Education (Secretary) with broad authority to waive regulatory requirements, upon request. Because the provision applies to “administrative conditions for assistance,” the statutory language implies that regulatory, but not statutory, requirements may be waived. Currently, the Secretary has already taken several actions to waive various administrative requirements pertaining to elementary, secondary, and higher education.<sup>11</sup> Whether the Secretary will use this authority to grant additional waivers is unclear.

## Other Authorities

Other federal authorities can be activated in response to major disasters or emergencies. Most notably the National Emergencies Act of 1976 (NEA; P.L. 94-412).<sup>12</sup> The current disaster related to Hurricane Katrina has not resulted in the President declaring a national emergency under the NEA. If a national emergency were declared, Title II of the National Emergencies Act requires the President to indicate the specific powers and authorities being activated in response to the national emergency. For example, with respect to higher education, the President could specifically choose to activate the Higher Education Relief Opportunities for

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<sup>10</sup> See, for example, discussion of “The Impact Aid program” and “Fund for the Improvement of Education,” that appear later in this report.

<sup>11</sup> See discussion in subsequent sections on waivers granted by ED.

<sup>12</sup> more information about national emergencies, see CRS Report 98-505, *National Emergency Powers*, by Harold C. Relyea.



Students Act of 2003 (HEROS Act; P.L. 108-7). The HEROS Act provides the Secretary with waiver authority of statutory and regulatory requirements that apply to the Higher Education Act, Title IV student financial aid programs. The act can only be implemented, however, in connection with a war or other military action or national emergency. As a national emergency under the NEA has not been declared in response to Hurricane Katrina, the HEROS Act does not apply.

## **Elementary and Secondary Education**

The Elementary and Secondary Education Act of 1965 (ESEA) was initially enacted to provide financial support and guidance for K-12 education. The ESEA (P.L. 107-110) as amended by the No Child Left Behind Act of 2001 (NCLBA); represents the major federal commitment to the nation's elementary and secondary schools. The funding that the federal government supplies to K-12 education represents less than 10% of the nation's K-12 education budget. For FY2005, over \$38 billion was appropriated for elementary and secondary education programs. The single largest program authorized by the ESEA is Title I-A, funded at \$12.7 billion for FY2005. This program provides funding for supplementary educational services for disadvantaged children.

In addition to the ESEA, another important source of federal funding for elementary and secondary education is the Individuals with Disabilities Education Act (IDEA). IDEA is both a grants statute and a civil rights statute. The act provides federal funding for special education and related services for children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Total IDEA funding for FY2005 was \$11.7 billion.

The following section provides an overview of the Secretary's existing general statutory and regulatory authorities for elementary and secondary education programs. In addition, select programs and program requirements that pertain to individuals and institutions affected by the hurricane are also included. Finally, each of the programs and the requirements are followed by possible legislative and funding options for responding to Hurricane Katrina.

### **General Waiver Authority**

In administering ESEA programs, the Secretary has authority under ESEA Title IX-D to waive most statutory and regulatory requirements under the ESEA for a state education agency (SEA), local education agency (LEA), Indian tribe, or school that receives funding through an ESEA program and which requests a waiver. The entity requesting the waiver must submit a request to the Secretary stating: the program affected by the request; the requirements to be waived and how the waiving of the requirements will increase the quality of student instruction and student academic achievement; specific measurable goals for the entity and how progress toward meeting those goals will be measured; how the waiver will assist in meeting those goals; and how populations served under programs for which waivers are requested

will continue to be served. Among the requirements that may not be waived are statutory or regulatory requirements relating to the procedures for allocating or distributing funds, the requirement that federal funds must supplement and not supplant non-federal funds, the equitable participation of private school students and teachers, and applicable civil rights requirements.

The Secretary has no general waiver authority under IDEA. The recent IDEA reauthorization (P.L. 108-446, Section 609) does authorize a paperwork reduction pilot program, which permits the Secretary to waive for up to four years for as many as 15 states statutory or regulatory requirements (*except civil rights requirements*) that applying states link to excessive paperwork or other non-instructional burdens. Since recent proposed IDEA regulations<sup>13</sup> do not include implementation language for this pilot program, it is unclear whether the Secretary is currently prepared to exercise this authority.

## Program Requirements

The NCLBA contains a number of new requirements related to pupil assessments for SEAs and LEAs participating in Title I-A, Education for the Disadvantaged, of the ESEA. Many of the provisions of NCLBA focus on pupil assessment, adequate yearly progress (AYP) requirements, program improvement and corrective actions for schools and LEAs, allocation formulas, flexibility, and services to private school pupils, staff and parents. Each of these provisions as they pertain to Hurricane Katrina is discussed below.

**Maintenance of Effort.** For some ESEA programs (Title I-A, Education for the Disadvantaged; Title V-A, Innovative Programs Block Grants; and Title VIII, Impact Aid), LEAs are required to maintain a fiscal effort of at least 90% of the previous year's amount, as measured on a per-pupil basis. While maintenance of effort requirements may not be waived under ESEA Title IX-D, in the case of a major disaster or a precipitous decline in the financial resources of an LEA, the Secretary is permitted to waive the maintenance of effort requirements for one year only. States and LEAs that have been impacted by an influx of students displaced by Hurricane Katrina may need to have the maintenance of effort requirements waived if funds available for expenditures on education do not increase in proportion to the increase in students.

IDEA has a 100% maintenance of effort requirement for states' financial support of special education. The Secretary has authority to waive this requirement for one year for "exceptional or uncontrollable circumstances such as a major disaster." LEAs also must maintain effort at 100%; however, IDEA provides a broader set of exceptions for LEAs than it does for states. For example, LEAs may reduce spending on special education (that is, reduce effort) if the LEA's number of children with disabilities declines from one year to the next.

**Student Assessments.** States receiving funding under Title I-A must meet a number of requirements with respect to administering academic assessments,

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<sup>13</sup> 70 *Federal Register* 35782-37306, June 21, 2005.

making AYP toward meeting state standards of academic achievement, and reporting on school quality. Beginning in school year 2005-2006, states are required to administer academic assessments in reading/language arts and mathematics at least once in each of grades 3 through 8, and at least once during grades 10 through 12. In the event of exceptional or uncontrollable circumstances, such as a major disaster, the Secretary is authorized to extend the period for implementing this requirement for one additional year.<sup>14</sup> Generally, all students are required to be administered the academic assessments that are component parts of state accountability systems, regardless of how long they have been enrolled or whether the assessment results<sup>15</sup> will be included for accountability purposes.<sup>16</sup>

**Adequate Yearly Progress and Accountability.** Schools and LEAs may be identified for school improvement, corrective action, or restructuring after failing to make AYP toward proficiency on state assessments for two or more years. In instances when schools or LEAs are so identified, they face a series of increasingly severe consequences.<sup>17</sup> In instances where a school is impacted by a major disaster or a precipitous decline in financial resources, an LEA may delay for one year, implementation of the requirements of a second year of school improvement, corrective action, or restructuring. A state may also delay implementation of the requirements of corrective action for an LEA if it is impacted by a major disaster or a precipitous decline in financial resources. In either case, the delay period shall not be taken into account in determining the number of consecutive years of failure to make AYP.<sup>18</sup>

**Highly Qualified Teachers.** Each SEA receiving ESEA Title I, Part A funding must have a plan to ensure that, by no later than the end of the 2005-2006 school year, all teachers teaching in core academic subjects within the state will meet the definition of a highly qualified teacher. Generally speaking this means that all teachers must: have full state certification; not have had any certification requirements waived on an emergency, temporary, or provisional basis; and have at

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<sup>14</sup> For further discussion of requirements for academic assessments, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

<sup>15</sup> The assessment results (i.e., percent tested, and percent at the various proficiency levels: advanced, proficient, basic, and below basic) of all students who are administered assessments are required to be reported on state, LEA, and school report cards.

<sup>16</sup> When states submitted their accountability plans for approval, they were required to outline whether the assessment results of students attending schools less than a full year would be included in determining AYP at the state and LEA levels. Links to approved state accountability plans are available from the Department of Education at [<http://www.ed.gov/admins/lead/account/stateplans03/index.html>].

<sup>17</sup> For detailed information on the requirements of school improvement, corrective action, and restructuring, see U.S. Department of Education, *LEA and School Improvement: Non-Regulatory Guidance*, (Jan. 7, 2004), available at [<http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.doc>].

<sup>18</sup> ESEA, Section 1116(b)(7)(D) and Section 111b(c)(11)(F).

least a bachelors degree.<sup>19</sup> This requirement might make it difficult for receiving schools to fill vacancies and for schools impacted by the hurricane to comply with if they are not fully operational this academic year. The Secretary of Education has previously used authority under the new law to waive and/or create flexibility in these requirements for specific groups of teachers or types of schools (e.g., science teachers and rural schools).

**Title I-A Funding.** Title I-A, Education for the Disadvantaged is the largest K-12 education federal grant program. Funds are allocated to LEAs according to four formulas (basic grants formula, concentration grants formula, targeted grants formula, and education finance incentive grants formula).<sup>20</sup> Each Title I-A allocation formula takes into account a number of different factors; however, the most significant factor is the number children ages 5 to 17 who are at or near the poverty line. More specifically, the number of children ages 5 to 17 who are residing within the boundaries of the LEA who: are from families living below the poverty level; from families above the poverty level, but receiving Temporary Assistance for Needy Families (TANF); are neglected or delinquent youth; or foster children (hereafter these children are referred to as formula children).<sup>21</sup>

As previously discussed, the requirements relating to the allocation and distribution of funds are among the provisions that may not be waived. Due to the considerable displacement and migration of students caused by the effects of Hurricane Katrina, and because Title I-A allocations are based on the number of formula children residing in LEAs *prior to the year for which funds are allocated*, there may be a considerable difference between the number of formula children upon which the allocation of Title I-A funds was based and the number of formula children who enroll in the current school year. Because of the potentially large numbers of students displaced from LEAs impacted by the hurricane and their relocation to LEAs, which in many instances may be across state lines, there may be requests for a redistribution of Title I-A funding. Aside from the general prohibition against waiving provisions related to the allocation and distribution of funds, a number of other concerns may need to be addressed when considering whether and how to reallocate Title I-A funds across impacted states and LEAs. These include deciding

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<sup>19</sup> For additional information about highly qualified teacher requirements see CRS Report RL30834, *K-12 Teacher Quality: Issues and Legislative Action*, by James B. Stedman.

<sup>20</sup> ESEA Title I-A allocation procedures are explained in further detail in CRS Report RL31487, *Education for the Disadvantaged: Overview of ESEA Title I-A Amendments Under the No Child Left Behind Act*, by Wayne Riddle, pp. 23-37.

<sup>21</sup> The procedures for determining children to be counted for ESEA Title I-A allocations are specified in Section 1124(c) of the ESEA. Children aged 5 to 17 from families below the poverty level as determined by the U.S. Census Bureau through its Small Area Income Poverty Estimates (SAIPE) represent the majority of children counted for purposes of allocating Title I-A funding. Children from families above the poverty level who also receive Temporary Assistance for Needy Families (TANF), children living in foster homes, and neglected and delinquent youth also are counted. A brief overview of school district SAIPE estimates is available online at [<http://www.census.gov/hhes/www/saipe/school/sd02over.html>]. There is a time lag of between data collection and when data become available for use in Title I-A funding allocations — typically two years.

whether LEAs that have closed for part or all of the current school year should be permitted to carry over their funds for an additional fiscal year; determining whether current year funds may be reallocated across impacted LEAs, and if so, how this would be accomplished; and determining whether hold-harmless provisions would apply to temporarily closed LEAs in this or subsequent school years. These issues are briefly addressed below.

- Under ESEA Title I-A, LEAs generally may carry over up to 15% of their funding so that it remains available for obligation for one additional fiscal year. Section 1127 of the ESEA permits SEAs to waive the 15% limitation once every three years if it determines that an LEA's request is reasonable and necessary, or because supplemental funding for Title I-A becomes available. In the case of LEAs that temporarily close for an entire year as a result of the hurricane, states may need to consider whether such LEAs still exist for Title I-A purposes, and if so, how much funding they should be permitted to carry over. If an LEA is not operating, it might seek to carry over up to 100% of its funds for one additional year.
- The ESEA contains special allocation procedures that typically are used to adjust Title I-A allocations to LEAs, within states, for the purposes of reserving state administrative funds, allocating funds to charter schools, newly created LEAs, and to small LEAs serving areas with populations of less than 20,000 total residents.<sup>22</sup> In a September 12, 2005, ED policy letter addressing possible responses to the effects of Hurricane Katrina, the Secretary stated:

Under §1126(b) of the ESEA, a State educational agency (SEA) may allocate Title I, Part A funds, without any action by us, among affected LEAs if an LEA provides free public education for children who reside (or resided in) the school district of another LEA. Moreover, under §1126(c), if an LEA determines that the amount of Title I, Part A funds an LEA would receive is more than the agency will use or if other unused Title I, Part A funds are available, the SEA may, without any action by ED, reallocate those funds among districts on the basis of need in accordance with criteria established by the SEA.<sup>23</sup>

- Hold-harmless provisions apply to funds allocated under each of the four previously mentioned allocation formulas. In general, hold-harmless percentages — limiting the amount by which a formula grant may be reduced from one year to the next — are based on the number of formula children aged 5-17 as a percentage of the LEA's

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<sup>22</sup> ESEA, Section 1126(b) (20 U.S.C. 6338(b)). Also, see U.S. Department of Education, *Guidance: State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education* (May 23, 2003). Available at [<http://www.ed.gov/programs/titleiparta/seaguidanceforadjustingallocations.doc>].

<sup>23</sup> U.S. Department of Education, Letter from Secretary of Education Margaret Spellings to Mississippi State Superintendent of Education Hank M. Bounds, dated Sept. 12, 2005, available at [<http://www.ed.gov/policy/elsec/guid/secletter/050912.html>].

total population of children aged 5-17.<sup>24</sup> For the hold-harmless provisions to apply to the applicable formula, an LEA must be eligible in the current year to receive a basic, targeted, or education finance incentive grant, or have been eligible to have received a concentration grant in one of the four previous years.<sup>25</sup> For LEAs that close for a full year, it is unclear whether the hold-harmless provisions would prohibit hold-harmless funds for the current year from being reallocated to other LEAs under Section 1126, especially, if a waiver were granted permitting an LEA to carry over more than 15% of their funds to the next year. This might limit the ability of states to reallocate Title I-A funds across impacted LEAs as discussed in the previous bullet.

## Relevant Programs

The following section discusses the relevant federal programs that are most suitable for addressing the needs of students, schools, LEAs and states that have been affected by the recent disaster. A short description of the program, including the FY2005 appropriation are provided for each program. Possible legislative and funding options are also included where applicable.

**Education for Homeless Children and Youth.** The Education for Homeless Children and Youth program is authorized by Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act. The program provides formula grants to states to ensure that homeless children and youth have access to the same free, appropriate public education and the same services that are provided to other children.<sup>26</sup> Homeless children and youth must be given the opportunity to meet the same academic achievement standards to which all students are held. Participating states must agree to revise state laws, regulations, and policies that may act as barriers to homeless children receiving a free, appropriate public education. Each state must distribute at least 75% of its federal grant to LEAs to be used for the supplementary educational services needed by homeless children and youth.

Under the McKinney Act, states are prohibited from educating homeless children in a separate facility, *except* under specific circumstances. Most applicable to disaster relief would be an exception that permits LEAs to group homeless children away from other children for a short period of time for health and safety emergencies or “to provide temporary, special, and supplemental services to meet the unique needs of homeless children and youths” (Section 723). Meeting the unique needs of a large number of students displaced from their homes and considered

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<sup>24</sup> Hold-harmless percentages are as follows: 95% for LEAs with 30% or more formula children; 90% for LEAs with 15% or more, but less than 30% formula children, and 85% for LEAs with less than 15% formula children.

<sup>25</sup> 34 CFR 200.71 and 200.73.

<sup>26</sup> For additional information about this program and other federal programs for the homeless, see CRS Report RL30442, *Homelessness: Recent Statistics, Targeted Federal Programs and Recent Legislation*, coordinated by Maggie McCarty.

homeless as a result of an event such as a major disaster could result in an LEA placing these students in a separate facility if that would be an efficient and effective way to ensure their education needs were met for a short period of time. This grouping of a cohort of children evacuees appears to be allowed under the McKinney Act as an exception to the general prohibition against homeless student segregation. LEAs could invoke this authority without requiring additional congressional action, at least on a temporary basis.

LEAs serving large numbers of displaced students from Katrina may already be using this authority to provide a free, appropriate education in separate facilities if this is where the LEAs were able to find available space to meet the educational needs of these students. For example, the *Houston Chronicle* reported that the Houston Independent School District is opening two previously closed elementary school campuses to educate up to 1,350 students who have been displaced by Hurricane Katrina.<sup>27</sup>

The Education for Homeless Children and Youth program was funded at \$62.5 million in FY2005. The states are likely to have already distributed these funds to meet previously identified needs of the homeless. The thousands of students that are now considered homeless as a result of the Katrina disaster seem likely to need significant educational services in addition to those provided prior to the hurricane.<sup>28</sup>

**Fund for the Improvement of Education.** The Fund for the Improvement of Education (FIE) is authorized by Title V, Part D of the ESEA. This program provides the Secretary of Education with discretionary authority to support nationally significant programs to improve education at the state and local levels and to help children meet challenging academic content and achievement standards. Funds may be distributed by grants to, or through contracts with, states, LEAs, IHEs, or other public or private entities. Awards may be made competitively or for any meritorious unsolicited proposal. Recipients of these funds may use them for, among other activities, any of the various purposes of the ESEA. The use of FIE funds for construction or remodeling generally is not authorized; however, FIE earmarks have been specified for school repair and modernization.

The FIE is used as the basis to support various K-12 education proposals by the Administration, as well as earmark awards for a variety of K-12 education activities. In fact, earmarks for specific projects or localities have accounted for most of the annual FIE appropriation in recent years. The FIE appears to be suitable to provide educational services for the victims of Katrina, and available for school construction and repair as well if legislative provisions were made for such activities in

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<sup>27</sup> "HISD Enrollment Push Begins," *Houston Chronicle*, Sept. 7, 2005, available at [<http://www.chron.com>].

<sup>28</sup> Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

appropriations language.<sup>29</sup> The FY2005 appropriation for general FIE activities was \$257 million.<sup>30</sup>

**Impact Aid.** The Impact Aid program, currently authorized by Title VIII of the ESEA, provides support to LEAs adversely affected by the presence of the federal government.<sup>31</sup> For example, Section 8003 provides funds to LEAs serving children living on Indian lands or children who have a parent serving in the military with additional support available if these children also have disabilities. These funds are allotted to LEAs through formula grants.<sup>32</sup> In FY2005, the appropriation for Section 8003 was \$1.1 billion.

The Impact Aid program also provides funding for both a formula grant and competitive grant construction program under Section 8007. In FY2005, appropriations for Section 8007 were \$49 million. Of the total funds appropriated for this section, 40% are distributed to LEAs that receive funds through Section 8003 and meet specific criteria. The remaining funds are used to award competitive grants for emergency repair grants and modernization grants. Emergency repair grants may be used to repair or renovate a facility due to health or safety hazards. Modernization grants may be used to alter a facility to alleviate overcrowding or to provide more modern services (e.g., telecommunications). Statutory language currently gives higher priority to emergency repair grants than to modernization grants, and requires emergency repair grants to be awarded based on the severity of the emergency. Construction grants may only be awarded to LEAs that are eligible to receive support under Section 8003. Several LEAs in Louisiana, Florida, Alabama, and Mississippi received Section 8003 grants for FY2004.<sup>33</sup>

**Innovative Programs.** The Innovative Programs State Grants program is authorized by Title V, Part A of the ESEA. It is an education formula block grant program to states. The program is the only federal block grant provided specifically for K-12 education. Most federal education programs focus on targeting limited resources to specific student populations (e.g., Title I funds for disadvantaged students) or to areas with the greatest need (e.g., Impact Aid funds for LEAs

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<sup>29</sup> See the caveat on duplication of benefits under the discussion of the Stafford Act.

<sup>30</sup> Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

<sup>31</sup> Under P.L. 81-874, as amended by P.L. 89-313 in 1965, the Impact Aid program had the authority to assist LEAs that were affected by major or pinpoint disasters with current school expenditures and school construction. The authority was repealed when FEMA assumed responsibility for the repair or replacement of school facilities related to disaster relief in FY1992.

<sup>32</sup> For more information about the Impact Aid program, see CRS Report RL31885, *Impact Aid for Public K-12 Education: General Overview and Current Status*, by Rebecca R. Skinner and Richard N. Apling.

<sup>33</sup> Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.



adversely affected by the presence of the federal government). Unlike these types of federal education programs, funding provided through the Innovative Programs State Grants can be used to support any student population in any school.

The Innovative Programs State Grants has an extensive list of allowable uses of funds, including providing teacher training, technology activities, and supplemental educational services. The allowable uses of funds does *not*, however, specifically address the use of funds for disaster relief. Among its allowable uses of funds are activities that could aid in meeting the education needs of displaced students (e.g., support for mental health services), and students returning to their original schools after having been displaced. It does *not*, however, authorize the use of funds for construction or repair. It does allow for the acquisition of instructional materials which may be useful to schools that were damaged by Hurricane Katrina.

This program does not have a history of being used to provide disaster relief, possibly due to the reasons discussed above. Congress could act to alter the program to provide additional support to the areas affected by Hurricane Katrina and serve students displaced as a result of the hurricane by modifying the allowable uses of funds to better align them with education-related disaster relief needs. This change would probably need to be accompanied by increased appropriations, as appropriations for the program were substantially reduced in FY2005.<sup>34</sup> In addition, as this is a formula grant program, changes would need to be made to the funding distribution method to ensure that it is targeted to the states and LEAs most in need of disaster-related assistance.<sup>35</sup>

**Project SERV.** Project SERV is authorized under the Safe and Drug Free Schools and Communities Act of Title IV-A, Subpart 2 of the ESEA. This program was first proposed in FY1999 by the Clinton Administration to provide resources to school districts and communities that experienced a violent or traumatic crisis disrupting the learning environment, such as a school shooting. Project SERV was to act similarly to the Federal Emergency Management Agency in its response to communities struck by hurricanes or other disasters, by making funds available to school districts to reestablish safe learning environments after a traumatic crisis. This program has not received an appropriation since FY2003; however, at present, a \$7.9 million unobligated balance remains for the program.<sup>36</sup>

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<sup>34</sup> In FY2004, the appropriation for Innovative Programs was \$297 million. In FY2005, the appropriation was reduced to \$198 million.

<sup>35</sup> Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

<sup>36</sup> Funds provided under this program may be considered a duplication of benefits under the Stafford Act if funds are used to provide any of the same support services available under the Stafford Act.

## Additional Options for Relief

If additional funds are appropriated to provide aid to states and LEAs impacted by Hurricane Katrina, policies and procedures would need to be developed regarding how funds would be allocated and the authorized uses of funds. A variety of options might be considered, as discussed below.

- Funds could be allocated under amended versions of existing programs, modified to limit eligibility to impacted states and LEAs. Formula grant programs might be modified in a manner to direct funds to those entities serving displaced students or that suffered significant losses and are preparing to reopen to serve students in the future. For example, the Title I-A program might be modified, substituting students displaced by Hurricane Katrina for formula children, and then allocating supplemental funding under one or more of the formulas. If such an option were pursued, consideration also would need to be given to modifying provisions specifying children eligible to be served, such as by adding children displaced by Hurricane Katrina to children otherwise eligible, or by limiting eligibility to such children. Supplemental funding also could be allocated under existing discretionary grant programs, such as Title V-D-2 — Elementary and Secondary School Counseling Program. Eligibility for grants could be limited to LEAs serving significant numbers of students impacted by Hurricane Katrina.
- Funds could be allocated to impacted states or LEAs on a per-pupil basis according to counts of displaced students as of a specified date, or according to a count of students served during a specified time period. Legislation would need to specify the authorized uses of funds and allocation procedures.
- Legislation could be enacted authorizing the Secretary to waive statutory and regulatory requirements that the Secretary is otherwise not permitted to waive, such as those relating to the allocation or distribution of funds to states, LEAs and other entities that the Secretary appears to be prohibited from waiving under ESEA Title IX-D (Section 9401(c)).
- Legislation could be enacted authorizing broader flexibility for the transferability or consolidation of funds than is currently provided for under ESEA Title VI.<sup>37</sup> For example, impacted states or LEAs might be granted authority to consolidate more of the federal funds they receive for purposes of serving displaced students, or may be granted flexibility in designating schools not otherwise eligible as school wide programs under Title I-A.

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<sup>37</sup> For a discussion of current ESEA Flexibility provisions, see CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*, by Wayne Clifton Riddle.

## Higher Education

Most of the federally funded postsecondary programs and activities are authorized by the Higher Education Act of 1965 (HEA), as amended. The programs and activities are primarily organized as follows: student financial aid, support services to help students complete high school and enter and succeed in postsecondary education, aid to strengthen institutions, and aid to improve K-12 teacher training at IHEs. ED's FY2005 appropriation legislation includes about \$16.4 billion for HEA discretionary authorities. This total excludes mandatory federal expenditures for the Federal Family Education Loans (FFELs) and Direct Loans (DLs). Students and their parents were estimated to have secured over \$58 billion in new loans with the help of these two federal programs in FY2005.

The following sections discuss the existing statutory and regulatory relief that are available to students, IHEs, and financial institutions that have been affected by a major disaster. The current regulatory authority primarily applies to all Title IV recipients and borrowers, IHEs, and financial institutions that are located in areas designated as federally-declared disaster areas.<sup>38</sup> The descriptions are arranged as follows: general provisions for all Title IV student aid programs for institutions and students are discussed first, followed by specific information for the relevant federal programs and program requirements that pertain to individuals or institutions affected by the hurricane. Each of the programs and the requirements are followed by possible legislative and funding options for responding to this recent major disaster.

### General Provisions for Institutions

Institutions that have closed because of the disaster are permitted to establish a written agreement with another institution to enable a student to continue his/her academic program and continue to receive Title IV student aid. Section 668.5 of Title 34 of the Code of Federal Regulations (CFR) delineates the guidelines for an institution to establish such an agreement with both Title IV eligible and non-eligible institutions. In a General Distribution letter (hereafter, disaster relief letter) issued by ED, dated February 2004 (GEN-04-04), the Secretary strongly encouraged institutions to establish such agreements with other institutions in the case of major disasters.

Another problem that institutions affected by the disaster may encounter pertains to the length of the academic year. Section 668.2 defines an academic year as, "a period that begins on the first day of classes and ends on the last day of classes or examinations and that is a minimum of 30 weeks of instructional time." Several of these institutions and the students that attend these institutions will not be able to satisfy this requirement. Further, failure to meet this requirement under normal

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<sup>38</sup> Most of these authorities were enacted in response to the numerous hurricanes that occurred in Florida in 2003. Specifically, a General Distribution letter was issued by the Department of Education, dated Feb. 2004 (GEN-04-04), which provided guidance for IHEs for dealing with the affects of a major disaster. This document is available at [<http://ifap.ed.gov/dpcletters/attachments/GEN0404.pdf>].

circumstances results in the loss of Title IV eligibility.<sup>39</sup> The disaster relief letter indicated that the Secretary would work with institutions on a case-by-case basis to assist the institution with continuing their Title IV eligibility as well as providing their students with student aid.

The Secretary has the authority to waive documentation requirements for institutions that have lost student records as a result of the disaster. Although institutions are required to attempt to reconstruct financial aid records, they will not be penalized if they are unable to do so.

In addition to the aforementioned provisions, numerous requirements pertain to reporting the disbursement of Title IV funds and the reimbursement of Title IV funds based on student enrollment, attendance, and the institution's academic calendar. Most of these additional requirements pertain to credit balances, excess cash, financial and administrative capability, and student loan funds. The disaster relief letter indicated that the Secretary would also handle these matters on an individual basis. However, it is important to note that if a student withdraws from school as a result of a major disaster the institution is required to perform the "Return of Title IV Funds" calculations in accordance with Section 668.22. Furthermore, the Secretary strongly encourages the institution to provide a full refund of tuition, fees and other charges, or provide a credit for future expenses; however, this is not required and the aforementioned calculation must be done prior to providing an institutional refund.

Section 479A of the HEA grants financial aid administrators (FAAs) the authority to use professional judgment in special circumstances. However, this judgment must be exercised on a case-by-case basis. Extending this authority so that an institution's FAAs can establish a universal policy for any student affected by this disaster might be considered. This would eliminate the need for FAAs who are working with these students to evaluate each student individually.

**50% Rules.** The HEA contains a series of three provisions, collectively known as the 50% rules, governing the use of telecommunications and correspondence courses to provide educational programs.<sup>40</sup> The first rule requires that telecommunications courses be considered correspondence courses if the sum of telecommunications and correspondence courses equals or exceeds 50% of all courses offered by the institution (Section 484(l)). The two remaining rules limit the

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<sup>39</sup> When a recipient of Title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of Title IV grant or loan assistance (not including Federal Work-Study or the non-federal share of Federal Supplemental Educational Opportunity Grant (FSEOG) awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of Section 668.22. For additional information regarding the calculation, see CRS Report RL31926, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, by Rebecca Skinner.

<sup>40</sup> For more information about distance education or the 50% rules, see CRS Report RL32490, *Distance Education and Title IV of the Higher Education Act: Policy, Practice, and Reauthorization*, by Jeffrey J. Kuenzi, Rebecca R. Skinner, and David P. Smole.

percentage of courses an institution may offer by correspondence to 50% or fewer and limit the percentage of students that may be enrolled in correspondence courses to less than 50% (Section 102(a)). If an institution violates either the second or third rule, it loses its eligibility to participate in HEA, Title IV student financial aid programs.

As a result of the recent hurricane, many IHEs have been forced to close for at least a semester, if not a year or longer. Students attending these institutions have either enrolled in another IHE that is able to provide educational programs or postponed their postsecondary education. One possible strategy for IHEs affected by Hurricane Katrina that want to begin providing educational services as quickly as possible is to offer courses online. While it is unknown how many courses a given institution would be able to offer, how many students would be interested in and have access to the technology needed to participate, or how much it would cost in terms of resources and time to establish or expand online programs, it is clear that these institutions could be in violation of the 50% rules if all or most of their educational services were provided online.

The Secretary does not currently have the authority to waive the 50% rules for all IHEs. An across-the board waiver of these rules would require a statutory change.<sup>41</sup> However, included in the HEA Amendments of 1998 was the creation of a Distance Education Demonstration Program (DEDP). IHEs participating in this program are eligible to have the 50% rules as well as other statutory requirements waived. IHEs that have been affected by Hurricane Katrina that are not currently participating in the DEDP could be provided with an emergency application to participate in the DEDP, which would then allow them to have the 50% rules waived. The number of institutions that may participate in the DEDP is capped at 45 institutions, systems of institutions, or consortia of institutions.<sup>42</sup> If the number of new applicants and the number of existing applicants reached this cap, Congress could have to act to increase the number of eligible participants.

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<sup>41</sup> The 109<sup>th</sup> Congress is working to reauthorize the HEA. Both the House bill (H.R. 609) and the Senate bill (S. 1614) await floor action having been ordered to be reported by the relevant committees. Both bills contain provisions that would eliminate the rule that requires telecommunications courses to be considered correspondence courses under certain circumstances and would eliminate the restrictions on the number of courses that could be offered through telecommunications and the percentage of students that could be enrolled in telecommunications courses. Under both bills, the 50% rules would continue to apply to correspondence courses.

<sup>42</sup> During the first year of the DEDP, the Secretary was authorized to select up to 15 institutions, systems, or consortia (Section 486). For the third year of the program, the Secretary was authorized to select up to an additional 35 institutions, systems, or consortia. Currently 24 participants are in the program, accounting for 100 institutions (These data were provided by ED and are available online at [<http://www.ed.gov/programs/disted/index.html>].)

## General Provisions for Students

Section 479A of the HEA grants FAAs the authority to utilize discretion on a case-by-case basis in special circumstances. Special circumstances are defined as “conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students.” This authority would not permit the FAA to adjust the financial aid award for all students as a group; however, it could be done on an individual basis. The February 2004 disaster relief letter strongly encouraged FAAs to utilize professional judgment to determine the financial need of students affected by disasters, but maintained that it must be done on an individual basis.

In addition, the disaster relief letter stated that any financial assistance (federal, state, and other) that is received by a victim of a major disaster shall not be used in the federal need analysis system to calculate a student’s expected family contribution.

To be eligible for Title IV student aid, students must maintain satisfactory academic progress while enrolled in postsecondary education. Satisfactory progress is delineated by policies developed by each participating institution of higher education. If a student fails to meet an institution’s requirement for satisfactory progress and the failure to do so is based on a special circumstance, the institution can waive this requirement (Section 668.34).

The following are possible legislative proposals to provide additional relief to postsecondary students who have been affected by Hurricane Katrina:

- Generally, Title IV aid received by a student must be returned when a student withdraws prior to completing the requisite amount of time in a semester or quarter. Many of these students may have received a portion of their federal student aid award but may not have satisfied the attendance requirement, and would therefore be required to return a portion of the Title IV funds they received. In some instances, a student may have expended some, if not all, of their award, and may be unable to return or repay their award. Students who owe a refund are not able to receive additional federal student aid until all aid owed is repaid. At present, the Secretary does not have the authority to waive the return of these funds.
- Although the expected family contribution (EFC) is based on the prior year’s income, families must use existing resources to pay this amount. Many families may no longer have the necessary resources to pay their EFC for this academic year. Options to allow the EFC for students affected by the disaster to be recalculated might be considered.
- In addition, adjusting next year’s EFC calculation might be considered as well. Most people will have worked for two-thirds of the year, and may have substantial earnings during this period that could affect the calculation of their EFC for the next award year.

## Relevant Programs

The following section includes short descriptions of the relevant federal higher education programs that will most likely impact the postsecondary students and IHEs that have been affected by the hurricane. Each program description includes the FY2005 appropriation and where applicable, legislative and funding options to provide additional relief. With the exception of the fund for the improvement of postsecondary education (FIPSE) (see discussion below), all of the programs discussed are authorized by Title IV of the HEA.

**Pell Grants.** The Pell Grant program provides grants to financially needy undergraduate students. In any year, federal funding is available to ensure that all eligible students attending eligible institutions receive a Pell Grant. Pell Grants are portable, that is, the grant aid follows students to the eligible postsecondary education institution in which they enroll. The size of the grant up to the annual appropriated maximum amount is based, principally, on the financial resources that students and their families are expected to contribute toward postsecondary education expenses. For FY2005, the appropriated maximum grant is \$4,050.<sup>43</sup> The FY2005 appropriation for the Pell Grant program is \$12.3 billion.

The existing program regulations do not provide a significant amount of guidance for institutions participating in the federal Pell Grant program. The February disaster relief letter indicates that the Secretary will work with institutions that have been impacted by a major disaster with respect to the reporting deadlines and disbursement records. There is no reference to Pell Grant recipients who have been affected by a disaster.

**Campus-Based Student Aid Programs.** Three smaller Title IV student aid programs — Federal Supplemental Educational Opportunity Grants (FSEOG), Federal Work-Study, and Federal Perkins Loans — are collectively known as the campus-based programs because their funds are allocated to postsecondary institutions for award to students.<sup>44</sup> Institutions must match a portion of the federal allocation under each of these programs.

These funds are also subject to the return of Title IV funds requirements previously discussed. Unlike other Title IV programs, the HEA requires the Secretary to reallocate any unused funds in excess of 10% of the total amount received that a participating IHE returns. In addition, any IHE that returns more than 10% of their campus-based aid will have their following year's allocation reduced by the amount returned. However, the HEA does grant the Secretary authority not to impose this provision if enforcing it would be against the interest of the program. The disaster relief letter indicated that the Secretary would consider an institution's

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<sup>43</sup> For additional information about the Pell Grant program, see CRS Report RL31668, *Federal Pell Grant Program of the Higher Education Act: Background and Reauthorization*, by Charmaine Mercer.

<sup>44</sup> For additional information about the federal campus-based programs, see CRS Report RL31618, *Campus-Based Student Financial Aid Programs Under the Higher Education Act*, by David P. Smole.

inability to expend all of its campus-based aid due to a major disaster as an acceptable reason for a waiver. The IHE is required to submit a request for this waiver.

Because the campus-based programs are unique in that the programs and the funds are institutionally based, if a student who is affected by the disaster transfers to another institution that does not participate in the campus-based programs he/she will not be able to receive funds from the federal campus-based programs. Options that allow IHEs to transfer some of their campus-based monies to IHEs with which they have established written agreements might be considered.

**Federal Work-Study.** Institutions that participate in the Federal Work-Study program (FWS), a component of the campus-based student aid programs, are generally required to use at least 7% of the total FWS funds for students employed in community service. Comparable to what happens for campus-based programs at-large, if an institution fails to expend the 7% and returns the excess, the Secretary has the authority to reduce the IHEs' allocation for the following year by the amount returned. Again, similar to the campus-based programs at-large, the disaster relief letter indicated that the Secretary would waive this requirement for any institution that is not able to expend the requisite funds due to the disaster. The FY2005 FWS appropriation was \$990 million.

**Federal Perkins Loan Program.** The Federal Perkins Loan program is another component of the campus-based student aid programs. The Secretary has the authority to permit any borrower who had an "in-school" status at the time of the major disaster to maintain this status during the period of the disaster-related non-attendance. Further, this status does not impact a borrower's grace period (Section 674.31). The FY2005 appropriation was \$66 million.<sup>45</sup>

Borrowers who are in repayment status can be granted a forbearance for a period not to exceed three months, if the borrower is not able to continue making timely payments as a result of the disaster. The interest will continue to accrue during this period. Further, this three-month forbearance is counted toward a borrower's three-year maximum limit on loan repayment forbearance. A borrower who wishes to receive a forbearance must request it in writing, but does not have to provide supporting documentation. Congress might consider not counting the three-month forbearance against the three-year total forbearance allowed to provide borrowers with additional relief.

**Loans: Federal Family Education Loans and Direct Loans.** The federal government operates two major student loan programs: the Federal Family Education Loan program (FFEL) and the William D. Ford Direct Loan program (DL). The FFEL program insures and subsidizes loans that private lenders make to students or their parents to help them meet the costs of postsecondary education. FFELs are made by private lenders and are available to undergraduate and graduate students, and their parents. Certain types of FFELs are need-based, others are not. Several types of FFEL program loans are available: federal need-based subsidized

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<sup>45</sup> This represents the amount for loan cancellations.



Stafford loans (under which the government pays the interest while the borrower is in school, during a grace period or deferment); unsubsidized Stafford loans; federal PLUS loans (for parents of undergraduate students); and federal consolidation loans. A common feature of all these loans is that the federal government guarantees lenders against loss through borrower default, death, permanent disability, or, in limited instances, bankruptcy. Unlike FFEL, DLs are made by the federal government to students through their schools, thus eliminating the need for private capital and the guaranty agencies.<sup>46</sup> Schools may serve as direct loan originators or the loans may be originated as well as serviced by contractors working for ED. Loan terms and conditions for DLs are generally the same as those in the FFEL programs.<sup>47</sup> Approximately \$57 billion in loan aid was made available in FY2005.

The waiver requirements for both loan programs are comparable to those discussed for the Perkins Loan program, except that the disaster-related forbearance period is not counted against the student. The other waivers for the loan programs pertain to institutional reporting requirements. Specifically, the Secretary indicated that waivers for the submission of disbursement records, confirmation reports, and promissory notes would be handled on a case-by-case basis.

The following options might be considered to provide student loan borrowers with some additional relief during this time:

- Extend the three-month forbearance to provide borrowers more time to get a new job, return to their homes or otherwise get their lives in order.
- Providing student borrowers in repayment a deferment rather than a forbearance might also be considered. Although this option would add costs to the student aid program because the government would subsidize the interest on subsidized Stafford loans during this period and participating IHEs would subsidize the interest for Perkins loans, it would also provide these individuals with added relief.
- Student aid recipients, especially loan borrowers, are required to enroll for a certain amount of credit hours per semester/quarter to maintain eligibility and to avoid repayment. For example, once a loan borrower drops below half-time enrollment status, he/she goes into repayment. Many of the individuals affected by this disaster may not enroll during this semester/quarter or the following one as they try to rebuild their lives. As a result, these students would be required to begin repaying their loans. Waiving this requirement for student aid recipients affected by the disaster might be considered.

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<sup>46</sup> Guaranty agencies are state agencies created by state governments, or private nonprofit agencies operating only within a state or nationally. Each state has a guaranty agency selected to serve as the “designated” guarantor of FFELs for students going to schools in the state or state residents going to schools elsewhere.

<sup>47</sup> For additional information about the federal student loan programs see, CRS Report RL30655, *Federal Student Loans: Terms and Conditions for Borrowers*, by Adam Stoll.

**Fund for the Improvement of Postsecondary Education.** The Fund for the Improvement of Postsecondary Education (FIPSE) is authorized by Title VII, Part B of the HEA.<sup>48</sup> This program provides the Secretary with discretionary authority to support projects to improve postsecondary education opportunities. Funds may be distributed by grants to, or through contracts with, IHEs and other public and private nonprofit institutions and agencies. Awards may be used for various activities such as the reform, innovation, or improvement of postsecondary education. Current priorities of ED include improvement of postsecondary education through better teacher preparation; promotion of innovative curriculum and instruction from college preparation through graduate levels; increased cost-effectiveness of postsecondary instruction and operations; and new methods of ensuring equal access to postsecondary education, especially for under-represented students. The use of FIPSE funds for construction or remodeling generally is not authorized; however, FIPSE earmarks have been specified for the acquisition of technology, furnishings, and equipment.

FIPSE is used as the basis to support various postsecondary education proposals by the Administration, as well as earmark awards for a variety of postsecondary education activities. In fact, earmarks for specific projects or localities have accounted for most of the annual FIPSE appropriation in recent years. The FIPSE appears to be suitable to provide postsecondary educational services for the victims of Katrina, and available for postsecondary construction and repair as well if legislative provision were made for such activities in appropriations language.<sup>49</sup> The FY2005 appropriation for FIPSE activities was \$163 million.

## **Department of Labor Employment and Job Training Programs**

The Workforce Investment Act of 1998 (WIA) P.L. 105-220 (29 U.S.C. 2811 et seq.) is the country's major job training legislation. It authorizes employment, training, and related services through a variety of programs.<sup>50</sup> Of special interest to workers affected by Hurricane Katrina are the youth, adult, and dislocated worker programs. The youth program provides services to low-income individuals between the ages of 14 and 21; the adult program provides services to individuals 18 years of age and older; and the dislocated worker program provides services to workers with

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<sup>48</sup> For additional information, please see CRS Report RS21653, *Fund for the Improvement of Postsecondary Education: Background and Funding*, by Bonnie F. Mangan.

<sup>49</sup> See the caveat on duplication of benefits under the discussion of the Stafford Act.

<sup>50</sup> All WIA programs operate on a July 1 to June 30 program year, i.e., appropriations for FY2005 are for Program Year 2005, which is from July 1, 2005, through June 30, 2006. The authorization for WIA programs expired on Sept. 30, 2003; however, Congress has continued to fund the programs through annual appropriations. For more information on WIA, see CRS Report RS20244, *Job Training Under the Workforce Investment Act: An Overview*, and CRS Report RL32778, *The Workforce Investment Act of 1998 (WIA): Reauthorization of Job Training Programs*, both reports authored by Ann Lordeman.

an established work history who have lost their jobs and who are not likely to find new jobs in their former industries or occupations.

Only the youth program requires individuals to be low-income to receive services. However, if funds for the adult programs are limited, as determined by the local workforce investment board (WIB), priority for intensive and training services must be given to recipients of public assistance and other low-income individuals. Of particular note to youth and adults affected by Hurricane Katrina, homeless persons as defined under subsections (a) and (c) of Section 103 of the McKinney-Vento Act,<sup>51</sup> P.L. 100-77, are automatically considered to be low-income.

For FY2005, \$986.3 million was appropriated for the youth program, \$896.6 million for the adult program, and \$1.5 billion for the dislocated worker program. Of the funds appropriated for the dislocated worker program, approximately 80% are for formula grants to states and 20% are for the Dislocated Worker National Reserve.<sup>52</sup> All of the funds appropriated for the youth and adult programs are for formula grants to states, the majority of which are allotted to local areas.<sup>53</sup>

## WIA Waivers

A Governor may request the Secretary of Labor to grant a waiver of some statutory and regulatory WIA provisions for the entire state or one or more local areas to provide flexibility to states and local areas in order to enhance their ability to improve the statewide workforce investment system. For example, the statute permits the Governor to allow local areas to transfer up to 20% of their adult and dislocated worker allotments between the two programs. Some states, however, have waivers so that 100% of the funds can be transferred between the two programs in local areas.<sup>54</sup>

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<sup>51</sup> Under these provisions a homeless person is an individual who lacks a fixed, regular, and adequate nighttime residence; a person who has a nighttime residence that is a supervised publicly or privately operated shelter designed to provide living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A homeless individual does not include any individual imprisoned or otherwise detained pursuant to an act of the Congress or a state law (42 U.S.C. 11302).

<sup>52</sup> The Dislocated Worker National Reserve consists primarily of National Emergency Grants (NEGs) which provide employment and training assistance to workers affected by major economic dislocations, such as plant closures, mass layoffs or disaster relief employment. For more information on NEGs and disaster relief employment, see [<http://www.doleta.gov/Katrina/docs/NEG%209-13-05.swf>].

<sup>53</sup> For allocations for each state's formula grants for youth, adult and dislocated worker activities, see [<http://www.doleta.gov/budget/statfund.cfm>].

<sup>54</sup> For more information on waivers, including areas in which waivers can not be granted, see [<http://www.doleta.gov/waivers>].

## Youth

Services to youth must be provided through grants to providers made on a competitive basis. Services may include (1) tutoring, study skills training, and instruction, leading to completion of secondary school, including dropout prevention strategies; (2) alternative secondary school services; (3) summer employment opportunities that are directly linked to academic and occupational learning; (4) paid and unpaid work experiences, including internships and job shadowing; (5) occupational skill training; (5) supportive services; and (6) comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral. At least 30% of the funds allocated to local areas must be spent on youth activities for out-of-school youth.

## Adults and Dislocated Workers

Three levels of services are associated with adult and dislocated worker programs. Core services, the first level of services, are provided through one-stop centers (see discussion below). Core services include outreach, intake, and orientation to services available under the one-stop system; job search and placement assistance; labor market information that identifies job vacancies, skills necessary for occupations in demand, and employment trends; initial assessment of skills and needs; information on available services and programs; and follow-up services to assist in job retention.

Intensive services are the second level of services. They are available to: (1) unemployed adults who have received at least one core service, are unable to obtain employment through core services and need intensive services to obtain employment; and (2) employed adults who have received at least one core service and need intensive services to obtain or retain employment that leads to self-sufficiency. There is no federally required minimum time period for participation in core services before receiving intensive services. Intensive services include comprehensive assessments, development of individual employment plans, group and individual counseling, case management, and short-term prevocational services.

Training services are the third level of services. They are available to adults who have received at least one intensive service; have been unable to obtain or retain employment through such services; have the skills and qualifications to successfully participate in a selected training program; select training programs that are directly linked to employment opportunities in the local area and are unable to obtain other grant assistance, including Pell Grants; or need assistance above the levels provided by such other grants.

There is no federally required minimum time period for participation in intensive services before receiving training services, although the period of time spent in intensive services should be sufficient to prepare the individual for training or employment. Training includes occupational skills training, on-the-job training, entrepreneurial training, skill upgrading, job readiness training, and adult education and literacy activities in conjunction with other training. Training services are to be provided primarily through “individual training accounts.” The purpose of individual

training accounts is to provide individuals with the opportunity to choose training courses and providers. States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services in a state to accept individual training accounts provided in another state. The one-stop operator is responsible for arranging payment to the training provider.

Local areas can decide whether or not to provide supportive services, such as transportation and child care. If they do provide them, they would be available to individuals who are participating in core, intensive, or training services, and who were unable to obtain them through other programs.

## **One-Stop Centers**

Adults and dislocated workers, and in some cases youths, receive WIA services through a coordinated service delivery system called the “one-stop” system. Each one-stop system in a local area must include at least one physical center, which may be supplemented by affiliated sites. One-stop centers provide services such as job search and placement assistance, determination of eligibility for WIA training, information on providers of WIA youth activities, and information regarding filing claims for unemployment compensation.<sup>55</sup>

To further assist workers and employers affected by Hurricane Katrina, DOL has established a job bank<sup>56</sup> to assist individuals seeking new, full-time employment either in their home state or in a new state; individuals wishing to assist in the clean-up and rebuilding efforts through temporary employment; and, employers who want to list jobs supporting hurricane recovery efforts or want to hire workers impacted by the hurricane.

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<sup>55</sup> For information on the location of one-stop centers, see America’s Service Locator at [<http://www.servicelocator.org/>]. For specific information on the status of one-stop centers located in areas affected by Hurricane Katrina, see [[http://www.servicelocator.org/hurricane\\_katrina\\_info.htm](http://www.servicelocator.org/hurricane_katrina_info.htm)].

<sup>56</sup> Please see *Katrina Recovery Job Connection Site*, at [<http://www.jobsearch.org/katrinajobs>].