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**Non-Regulatory Guidance on Flexibility  
and Waivers for Grantees and Program  
Participants Impacted by Federally  
Declared Disasters**

**U.S. Department of Education**

N/A

**September 25, 2017**

**Ruling**

This document generally discusses waivers and other forms of relief from Federal requirements in order to provide schools, SEAs, state lead agencies, LEAs, local early intervention service programs and providers, state vocational rehabilitation agencies, the Department of the Interior's Bureau of Indian Education -funded schools, Tribes, and postsecondary institutions with the operational flexibility necessary to continue operations as they recover from extended school or program closures due to a disaster.

**Full Text**

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**Introduction**

The U.S. Department of Education (Department) is issuing this guidance to help Department grantees and program participants restore teaching and learning environments and resume services following Federally declared disasters<sup>1</sup> (including Hurricanes Harvey, Irma and Maria) that impact the 2017 2018 academic school year. We recognize your challenges and want to express our concern and extend our support during this process of recovery and resumption of normal business operations.

This document generally discusses waivers and other forms of relief from Federal requirements in

order to provide schools, State educational agencies (SEAs), State lead agencies (LAs), local educational agencies (LEAs), local early intervention service (EIS) programs and providers, State Vocational Rehabilitation (VR) agencies, the Department of the Interior's Bureau of Indian Education -funded schools,<sup>2</sup> Tribes, and postsecondary institutions with the operational flexibility necessary to continue operations as they recover from extended school or program closures due to a disaster. The guidance addresses flexibility on reporting deadlines, timelines for grant-funded activities, and maintenance of fiscal effort or matching requirements, where applicable; proposes potential alternatives and strategies for providing program services after disruption; and suggests methods for ensuring continuity of services and communication with program participants. In addition, the document covers a variety of topics specific to various program areas.

We strongly encourage all interested parties to contact the Department with any requests for assistance beyond the scope of this document. We are committed to collaborating with impacted parties, as well as other Federal, state and local agencies, to remove barriers and expedite the work necessary to respond to and recover from the recent hurricanes. As necessary, we will update this guidance with answers to additional questions.

It is important to emphasize that this guidance addresses only Federal requirements and flexibilities, and that only State and local officials can address State and local requirements and flexibilities.

Each section addresses the implications of a prolonged school or program closure or other disruptions in the educational and other services to students and other program participants; legal questions that may arise for school or program administrators when faced with extended closures due to the disaster's impact; and the possibility of waiving requirements or finding other flexibility in Federal laws and regulations.

**A. General Discretionary and Formula**

## Grant Issues

This section discusses the waivers and other forms of relief that the Department may provide to grantees and grant applicants regarding Federal grant requirements following a disaster.

A-1. How will the Department provide flexibility to entities applying for discretionary grants?

To the greatest extent possible, the Department will postpone discretionary grant competitions and extend application and other filing deadlines for institutions affected by a disaster when permissible under the law. Appropriations Acts generally provide funds for specific programs, purposes, and activities. The Department has very limited authority to redirect funds appropriated for one program or purpose to another program or purpose. The Department will:

- Ensure that any funds that have been statutorily authorized for relief efforts are awarded to eligible recipients; and

- Determine on a program-by-program basis whether a regular grant competition schedule should be suspended.

A-2. How will an extended closure due to a disaster affect a grantee's receipt of funds?

Until a Department official has obligated Federal program funds to a grantee, no binding commitment exists with regard to these funds. If delays in Federal obligations are caused by a disaster, the Department staff will work with grantees on the obligations to the extent permitted by law, and warranted by the conditions and effects of the disaster, and consider using the "pre-award period" to negotiate a delay of the grant start-up date, and to authorize pre-award costs.

A-3. Will a grantee be able to draw grant funds to pay for grant activities during the recovery period following a disaster?

The Department is committed to making every effort to have its existing electronic infrastructure available so that grantees can continue to draw funds for allowable grant expenditures that are consistent

with their progress on the project. Grantees are cautioned that they should draw down grant funds only at the rate that they are able to carry out grant activities. Grantees should refer to 2 CFR § 200.305 for further information.

A-4. What if a grantee has difficulty fulfilling grant activities because it is affected by a disaster?

During the recovery period from a disaster, grantees are expected to notify the relevant Department program office as soon as they are aware that they may have difficulty fulfilling grant activities. The Department is committed to working with its grantees to provide them with the maximum flexibility in making changes to project activities and timelines that might become necessary as a result of a disaster. For example, discretionary grantees that have partners or participants in areas affected by a disaster should alert the program offices as quickly as possible to make changes to the project activities and timelines. Additionally, with regard to formula grant programs, State VR agencies and grantees should contact their Office of Special Education and Rehabilitative Services (OSERS)/Rehabilitation Services Administration (RSA) State liaisons to address issues resulting from the disaster to renegotiate and/or redirect the scope of their work plans, as needed. LEAs should work through their SEAs to renegotiate and/or redirect the scope of their work plans, as needed. Grantees should refer to 2 CFR § 200.308 for further guidance.

A-5. Generally, is another entity allowed to perform activities related to a grantee's project, if the grantee is unable to do so?

The Department may allow another entity to perform activities for a grantee in some situations. As a part of their response and recovery efforts, grantees are encouraged to develop a backup plan for the operation of their grants that includes sharing project responsibilities and activities with other entities in the event that the grantee is not able to perform them. When the backup plan needs to be invoked, the grantee should seek approval from the Department to revise the grant in accordance with 2 CFR § 200.308.

Grant backup plans might include, for example:

- Entering into arrangements and agreements with other organizations in the region to ensure the continuity of grant operations during recovery, including sharing or loaning of staff, facilities, space, materials, and supplies (contracting work to a third party has to comply with the procurement requirements set out in 2 CFR §§ 200.316 to 200.326);

- Shifting various activities and responsibilities to other members of an already approved partnership or consortium; or

- Transferring an entire grant to another entity (such a transfer has to be approved by the Department and implemented according to Department policies).

For more specific information regarding the transfer of State-administered grants and discretionary grants, see questions A-6 and A-7 below.

A-6. For State-administered grants, is another entity allowed to perform activities related to a grantee's project, if the grantee is unable to do so?

Yes, but States and their subgrantees, when applicable, will continue to be legally responsible for the administration of the grants and subgrants, as well as the monitoring of contracts. States have some discretion to make changes to their grants without prior approval by the Department under 2 CFR § 200.308. If a change requires prior approval, however, 2 CFR § 200.308 sets forth the procedures States follow to request prior approval from the Department. The Department will consider these requests on an expedited basis and will generally approve those that are consistent with the State plan or application that was filed and approved by the Department and reasonable in light of the specific circumstances of a disaster.

A-7. May a discretionary grant be transferred to another eligible entity if the grantee is unable to perform project activities due to a disaster?

Yes, in limited circumstances a discretionary grant may be transferred from one entity to another. The transfer, however, requires formal approval by

the Department, and the grantee must follow procedures to ensure that the grant continues to serve the same or a very similar population, and is of the same scope and meets the objectives as approved by the Department. The entity to which a grant is transferred must be an eligible recipient. To ensure that proposed changes are within the scope and objectives of the grant as approved, amendments to grant awards require formal approval by the Department under 2 CFR § 200.308.

A-8. Must a grantee follow the various administrative requirements related to a grant (e.g., meeting reporting deadlines and obtaining administrative approvals) if it is affected by a disaster?

Generally, yes, but the Department understands that grantees may need to make administrative changes to grant projects if they are affected by a disaster. Grantees have flexibility under 2 CFR § 200.308 and 34 CFR § 75.261 to make some changes without Department approval. Any relief from regulatory requirements provided to all grantees during the recovery period will be posted on the Department's website.

A-9. In the event that grant-related activities are not being implemented because schools or program offices have been closed or staffing resources are not available, will the Department provide relief from meeting evaluation requirements?

Yes, in such cases, the Department will consider modifying the project evaluation requirements, if appropriate; however, once grant activities resume, a proper evaluation of the project will need to be completed.

A-10. If a grantee is required to provide services to partners, how can these partners receive grant management and grant administrative information needed to maintain their grant-related activities?

Grantees are encouraged to establish communication systems with partner organizations, such as contractors and consortium members, and develop strategies based on the impact and estimated

recovery period. Such planning may require establishing a backup strategy that will be operational throughout the recovery period. Grantees should coordinate such planning with their partners to make sure all affected entities have access to grant-related information.

Grantees can view examples of local plans at the following web address: [www.ed.gov/admins/lead/safety/emergencyplan/pandemic/sampleplans/index.html](http://www.ed.gov/admins/lead/safety/emergencyplan/pandemic/sampleplans/index.html).

A-11. If a grantee is required to provide equitable services to private school students and teachers, how will private schools be notified of the availability and delivery of such services during the recovery period?

Grantees should, during the required consultation process with private school officials under sections 1117(b) and 8501(c) of the ESEA and under section 612(a)(10)(A)(iii) of the IDEA, establish procedures and strategies, including a communication process, that the entity will implement in the event of an extended school closure. Planning for this effort may require establishing a backup strategy that will be operational throughout the recovery period. Grantees should coordinate such planning with private school officials to make sure that all appropriate private schools have access to information related to Federal education equitable services provided to their private school students and teachers. Grantees and private school officials may also consider enlisting the assistance of the designated ESEA State ombudsman regarding ESEA equitable services assistance. See questions B-4 and C-7 in this guidance for additional program-specific guidance on the provision of equitable services.

A-12. Discretionary grantees have specific performance targets that are approved in their applications. Will the Department renegotiate performance targets due to delays in project implementation, school closings, or reduced staff capacity?

Yes. In general, the Department expects grantees to strive to achieve performance targets as stated in

their approved grant applications; however, the Department understands that grantees may experience delays in achieving performance targets as the result of a disaster. If necessary, grantees may request approval from the Department to adjust project timelines so that approved performance targets can be met, but at a later date than originally planned. In addition, grantees may exercise the administrative flexibility in 34 CFR § 75.261 and initiate a one-time extension of up to one year without prior approval to complete unfinished project activities, and thereby meet approved performance targets in accordance with revised project timelines.

A-13. What does the Department expect with regard to the treatment of institutional employees who are supported by Federal higher education grants or other employees paid with Federal education program funds?

Institutional employees who are supported with Federal grants awarded by the Department, including grants authorized by the Higher Education Act (HEA), and the other programs discussed in this guidance such as the IDEA, and Title I of the ESEA, should be treated the same as similarly situated employees of the institution. In the case of programs serving K-12, Federally funded employees should be treated the same as similarly situated State and locally funded employees. This means that if the institution's policy or State and local law and policies provide for similarly situated employees to be paid during an extended closure due to a disaster, those supported with Federal grants would also be paid. These employees should return to the duties for which the grant funds were provided as soon as possible and, to the extent practicable, should work on project activities during the time the school is closed. Employees supported with Federal grant funds who are intended to provide direct services to students may maintain contact with students during the recovery period, through appropriate methods such as telephone, videophone, and email.

## **B. Elementary and Secondary Education Issues -- The Elementary and Secondary**

### Education Act (ESEA)

This section discusses potential legal issues that school administrators may face when responding to and recovering from extended school closures and otherwise addresses disruption in elementary and secondary educational services funded under the ESEA. Specifically, this section discusses waivers and other forms of relief from elementary and secondary (K-12) Federal education requirements and other flexibilities the Department may provide.

B-1. May the Department provide flexibility to SEAs, LEAs, and Indian Tribes with regard to Federal K-12 requirements governed by the ESEA in response to a disaster?

Yes, to the extent permissible under law, the Department may provide SEAs (as well as LEAs and schools through their SEA) and Indian Tribes with flexibility as necessary to appropriately address the impact a natural disaster has had upon the normal functioning or delivery of educational services. Section 8401 of the ESEA (20 U.S.C. § 7861) permits the Secretary to grant waivers of most ESEA requirements to SEAs, (as well as LEAs and schools through their SEA) and Indian Tribes that receive ESEA funds and that request such waivers. Specifically, if warranted due to the impact of a disaster that impedes functioning or delivery of educational services in a State, LEA, or school, the Department may, upon request by SEAs or Indian Tribes, grant waivers as it determines appropriate of most ESEA statutory and regulatory requirements.

B-2. Which entity/entities is/are responsible for requesting a waiver related to Federal K-12 requirements or deadlines?

Only SEAs and Indian Tribes that receive funds under a program authorized by the ESEA may request a waiver, consistent with the provisions in section 8401. If an LEA would like to request a waiver, section 8401 requires that it submit a waiver request to its SEA, which may then submit it to the Department if the SEA determines the waiver to be appropriate. Similarly, an elementary or secondary

school may submit a waiver request to its LEA, which may then submit it to the SEA if the LEA determines the waiver to be appropriate. The SEA may then submit the request to the Department, if the SEA determines the waiver to be appropriate. To clarify this process, SEAs may choose to provide guidance and a process for LEAs and schools to submit a waiver request to the SEA.

If an SEA or Indian Tribe believes a waiver may be needed, the Department requests that, if possible, the entity contact the Department to receive technical assistance before requesting the waiver. The Department will then assist the SEA or Indian Tribe in requesting a waiver.

B-3. What is the general process for applying for a waiver of ESEA requirements?

To obtain a waiver, the ESEA requires that an SEA, LEA (through its SEA), Indian Tribe, or school (through its LEA and SEA or Indian Tribe) submit a request to the Secretary. Section 8401(b) of the ESEA requires an SEA (on behalf of the SEA or on behalf of, and based on the requests of, LEAs in the State) or Indian Tribe (on behalf of schools operated by the Tribe) to include in its waiver request a plan that:

- Identifies the Federal program(s) affected by the requested waiver;
- Describes which Federal statutory or regulatory requirements are to be waived;
- Describes how the waiving of such requirements will advance student academic achievement;
- Describes the methods the SEA, LEA, school, or Indian Tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the waiver;
- Includes only information directly related to the waiver request; and
- Describes how schools will continue to assist the same populations served by the program for which the waiver is requested.

Before submitting the waiver request to the

Department, an SEA must:

- Provide the public and any interested LEA in the State, to the extent the request impacts the LEA, with notice and a reasonable opportunity to comment and provide input on the request in the manner in which the SEA customarily provides similar notice and opportunity to comment; and

- Submit the comments and input to the Department with a description of how the SEA addressed any comments and input. (Section 8401(b)(3)(A) of the ESEA).

An SEA may also describe what may occur if it does not receive a waiver.

In the case of a waiver request submitted by an LEA, the request must be reviewed and approved by the SEA in accordance with section 8401(a)(2) before being submitted to the Secretary. The LEA must also provide notice and a reasonable opportunity to comment on the waiver request to the SEA and the public in the manner in which the LEA customarily provides similar notice and opportunity to comment to the public. (Section 8401(b)(3)(B) of the ESEA). Any comments received from the SEA and public must accompany the request when submitted to the Department.

The Department encourages any SEA, LEA, school, or Indian Tribe that intends to seek a waiver to review section 8401 of the ESEA, which may be accessed at the following web address: <https://www2.ed.gov/documents/essa-act-of-1965.pdf>.

Affected agencies or schools may also contact the Department's Office of Elementary and Secondary Education with questions about ESEA waivers by calling (202) 401-0113.

B-4. If an LEA is required to provide equitable services to private school students under an ESEA program, how should the LEA communicate with officials of these private schools during an extended school closure due to a disaster?

The Department suggests that an LEA, during the required consultation process with private school representatives or officials under sections 1117(b) and

8501(c) of the ESEA, establish a communication process for use throughout a closure necessitated by a disaster. For example, the LEA may establish an emergency call tree to ensure any needed information can be shared within the LEA and from the LEA to private schools, as needed. The LEA may also establish procedures for how equitable services will be impacted in the case of closure due to a disaster and share those procedures with the private school representatives or officials. It will be helpful for LEAs to coordinate such planning with appropriate private school officials to make sure that they have access to information related to equitable services for their eligible students and, as applicable, their teachers and families. Grantees and private school officials may also consider enlisting the assistance of the designated State ombudsman regarding ESEA equitable services matters. As noted under the answer to B-7, the equitable participation of private school students and teachers may not be waived under section 8401(c) of the ESEA.

B-5. Does the ESEA allow for any flexibility with respect to meeting maintenance of effort (MOE) without waiver approval?

Yes. There is some flexibility in the MOE provisions in the ESEA.

It is important to understand the delay in when the current year's expenditures are taken into account for MOE determinations. For example, expenditures in school year 2017-2018 (fiscal year (FY) 2017 funds) will not affect MOE determinations until school year 2019-2020 (FY 2019 funds). In 2019-2020, the "preceding fiscal year" for MOE determinations will be expenditures for school year 2017-2018; likewise, expenditures in school year 2017-2018 will be the "second preceding fiscal year" for MOE determinations for school year 2020-2021 (FY 2020 funds). Under the MOE provisions in section 8521(b)(2) of the ESEA, an LEA that does not maintain effort during school year 2017-2018 (i.e., based on expenditures during the July 1, 2017 to June 30, 2018 period) would not be penalized with a reduction in Federal FY 2019 (school year

2019-2020) ESEA funds unless the LEA also failed to maintain effort in one or more of the five fiscal years preceding July 1, 2017. If an LEA faces a reduction in FY 2019 ESEA funds, the LEA (or the SEA on the LEA's behalf) may request an MOE waiver under section 8521(c)(1), which gives the Department the authority to waive the MOE requirements in the case of a natural disaster or another exceptional or uncontrollable circumstance.

Finally, we note that, under 34 CFR § 299.5(d)(2)(i), an SEA excludes from an ESEA MOE determination supplemental expenditures of State and local funds made as a result of a Presidentially declared disaster. Therefore, if an LEA's expenditures increase significantly in school year 2017-2018 due to increased spending in response to such a disaster, the SEA will exclude these expenditures from MOE calculations, which will decrease the possibility that a one-time increase in school year 2017-2018 expenditures will cause an LEA to fail to maintain effort in school year 2018-2019 (affecting allocations for the 2020-2021 school year) when expenditures from school year 2018-2019 are compared to school year 2017-2018 expenditures.

B-6. How should SEAs and LEAs identify and serve students who may be residing in homeless situations as a result of a disaster?

The Education for Homeless Children and Youth (EHCY) program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) (McKinney-Vento Act). The purpose of the McKinney-Vento Act is to ensure that homeless children and youth have equal access to the same free, appropriate public education as provided to other children and youth. (See section 721 of the McKinney-Vento Act). Under section 725(2)(A) of the McKinney-Vento Act, a child or youth is considered homeless if he or she lacks "a fixed, regular, and adequate nighttime residence." This includes children and youth who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the

lack of alternative adequate accommodations; are living in emergency or transitional shelters, cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings. (Section 721(b) of the McKinney-Vento Act).

Under the McKinney-Vento Act, each SEA has a State Coordinator for the Education of Homeless Children and Youths (EHCY). (See section 722(f) of the McKinney-Vento Act). In addition, each LEA also has a staff person who is designated to serve as the local liaison for homeless education. (See section 722(g)(1)(J)(ii) of the McKinney-Vento Act). In the event of a disaster, State Coordinators and local liaisons will want to work together to coordinate and facilitate services to children and families made homeless by the disaster.

To facilitate identification of homeless students, local liaisons may choose to display posters or distribute brochures on McKinney-Vento rights in places where people affected by the disaster are likely to assemble. Local liaisons should also notify social services, housing, and other types of agencies working with individuals and families affected by the disaster to assist with identification.

Local liaisons can be proactive in preparing schools to enroll displaced students and arranging for additional staff to assist with the identification and enrollment process. The McKinney-Vento Act requires homeless students to be immediately enrolled in school, even if the student is lacking documentation normally required for enrollment or has missed enrollment deadlines during any period of homelessness. (Section 722(g)(3)(C) of the McKinney-Vento Act). The LEA and school must also allow a student to remain in his or her school of origin (i.e., the school in which he or she was last enrolled or that he or she attended when permanently housed) if it is in the student's best interest to remain in that school and ensure that the student is provided transportation to and from that school if requested.

(Sections 722(g)(3)(A) and 722(g)(1)(J)(iii) of the McKinney-Vento Act).

For more information on the EHCY program, please see the Department's non-regulatory guidance, which is available at: <https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716update10317.pdf>. In addition, the National Center for Homeless Education has technical assistance products on Disaster Preparation and Response, which are available at: [http://nche.ed.gov/ibt/dis\\_prep.php](http://nche.ed.gov/ibt/dis_prep.php).

B-7. Are there certain Federal K-12 requirements under the ESEA that may not be waived in response to a disaster?

Yes. Section 8401(c) of the ESEA restricts the requirements for which the Department may consider waivers under section 8401. The requirements for which the Department may not grant waivers under this section include:

- (1) The allocation or distribution of funds to States, LEAs, Indian Tribes, or other recipients of funds under the ESEA;
- (2) Maintenance of effort (as noted below, section 8521 of the ESEA gives the Department the authority to waive this requirement under certain circumstances);
- (3) Comparability of services;
- (4) Use of Federal funds to supplement, not supplant, non-Federal funds;
- (5) Equitable participation of private school students and teachers;
- (6) Parental participation and involvement;
- (7) Applicable civil rights requirements;
- (8) The requirement for a charter school under Part C of Title IV of the ESEA;
- (9) The prohibitions --
  - (A) In Subpart 2 of Part F of Title VIII of the ESEA;
  - (B) Regarding use of funds for religious worship or instruction in section 8505 of the ESEA; and
  - (C) Regarding activities in section 8526 of the

ESEA (prohibited uses of funds); and

(10) The selection of a school attendance area or schools under subsections (a) and (b) of section 1113 of the ESEA, except that the Department may grant a waiver to allow a school attendance area or school to participate in funding under Part A of Title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the LEA that meets the requirements of subsections (a) and (b) of section 1113.

In addition, the section 8401 waiver authority does not apply to the Impact Aid Program (Title VII of the ESEA).

### **C. Elementary and Secondary Education Issues -- Part B of the IDEA, Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans With Disabilities Act (ADA)**

Following a disaster, once schools resume, elementary and secondary schools must ensure equal access to educational opportunities for students with disabilities, and provide a free appropriate public education (FAPE). Under IDEA, LEAs where private elementary schools and secondary schools are located must also ensure the provision of equitable services to eligible students with disabilities enrolled by their parents in those private schools. (34 CFR §§ 300.130-300.144). The Department currently has no legal authority to waive IDEA requirements, except for the requirement to maintain State financial support for special education and related services, as explained in question C-9 below. Therefore, the following questions primarily address best practices for SEAs, LEAs, and schools when addressing extended school closures as a result of a disaster.

C-1. Is an LEA required to continue to provide FAPE to students with disabilities during a school closure caused by a disaster?

The IDEA, Section 504, and the ADA do not

specifically address a situation in which elementary and secondary schools are closed for an extended period of time because of exceptional circumstances, such as a disaster.

If an LEA closes its schools because the functioning or delivery of educational services is disrupted, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The Department understands there may be exceptional circumstances that could affect how a particular service is provided. In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).

C-2. In the event of a school closure due to a disaster, how might educational services be provided

to students with disabilities?

Schools should consider ways of ensuring that continuing education activities (i.e., services provided during a school closure) are accessible to students with disabilities when they are provided to the general education population. Technology may afford students, including students with disabilities, an opportunity to have access to high-quality educational instruction during an extended school closure, especially when continuing education must be provided through distance learning. If schools are providing educational opportunities to the general student population, SEAs and LEAs are required to provide the services and accommodations needed for students with disabilities to have an equal opportunity to participate in a distance-learning program. (34 CFR § 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)).

C-3. What must a school do if it cannot provide services in accordance with a student's IEP or Section 504 plan?

If a school continues to provide instruction to the general school population during an extended closure due to a disaster, but is not able to provide services to a student with a disability in accordance with the student's IEP, the student's IEP Team determines which services can be provided to appropriately meet the student's needs. The IEP Team may meet by teleconference or other means to determine if some, or all, of the identified services can be provided through alternate or additional methods. Appropriate personnel responsible under Section 504 must take similar actions regarding a student who has a Section 504 plan. Additionally, under IDEA, eligible students enrolled by their parents in private schools who have services plans would need similar consideration and actions. If there has been an extended school closure, once school resumes, a student's IEP Team, or appropriate personnel under Section 504, must determine whether, and to what extent, compensatory services are needed consistent with the respective applicable requirements. (See Q&A C-5). (34 CFR §§ 300.320-300.324 (IDEA) and 34 CFR §§

104.33-104.35(c) (Section 504)).

C-4. In the event that a school is closed for an extended period of time due to a disaster, would an IEP Team be required to meet? Would an LEA be required to conduct an evaluation of a student with a disability?

IEP Teams are not required to meet in person while schools are closed. IEP Teams may continue to work with parents and students with disabilities during such school closures and offer advice, as needed. If an evaluation of a student with a disability requires a face-to-face meeting or observation, the evaluation would need to be delayed until school reopens. Evaluations and reevaluations that do not require face-to-face assessments or observations may take place while schools are closed, if the parent consents. These same principles apply to similar activities conducted by appropriate personnel for a student with a disability who has a plan developed under Section 504 or who is being evaluated under Section 504.

C-5. What steps must be taken to serve a student with a disability who may have lost skills as a result of an extended absence from school due to a disaster?

The student's IEP Team (or appropriate personnel under Section 504) must make an individualized determination as to whether, and to what extent, it may be necessary to provide compensatory education. (34 CFR §§ 300.320-300.324 (IDEA), and 34 CFR §§ 104.33-104.35 (Section 504)).

Compensatory services may be necessary when there is a decline in the student's skills that occurred as a result of a student not receiving services during an extended closure due to a disaster.

The student's IEP Team also must review the student's IEP and determine whether any other changes to the IEP are needed as a result of the extended absence from school. (34 CFR § 300.324(b)(1)). An IEP Team may consider using informal assessments to determine whether there have been changes in a student's performance. Similarly,

the appropriate personnel under Section 504 must also review the student's plan developed under Section 504 to determine whether any other changes are needed as a result of a prolonged absence from school. (34 CFR § 104.35(c)).

C-6. What steps must a school district unaffected by a disaster take in order to serve a student with a disability who relocates to that school district? What if the child's family does not have a copy of the child's current IEP in this situation?

During such a difficult time, as schools attempt to locate or preserve records and work to rebuild school facilities, the Department recognizes the challenges associated with serving students who are displaced from their current school as a result of a disaster. For children with disabilities, the requirements under the IDEA related to student transfers do not contain specific exceptions due to disasters or situations where a school is unable to provide educational services to students. IDEA contains specific provisions governing IEPs and services for students with disabilities who transfer to a new school district within the same State or a different State in the same school year. (34 CFR § 300.323(e)-(g)). While different requirements apply to within-State and out-of-State transfers, students with IEPs must receive FAPE through the provision of services comparable to those described in the child's IEP from the previous public agency until, in the case of an in-State transfer, the new school district implements an IEP for the student. In the case of an out-of-State transfer, the new school district conducts an evaluation if determined necessary and implements a new IEP, if appropriate. The new school district must take steps to attempt to obtain the child's records from the previous school district, if such records exist, and the previous school district must attempt to promptly respond to the records request. (34 CFR § 300.323(g)). If a child's family relocates to a new school district in a different State, and the new school district believes that the child has a disability, but the parents cannot provide a copy of the child's IEP or the previous school district has not provided a copy of the

child's IEP, the new school district may provide the child with special education and related services through a temporary IEP, subject to the parent's agreement. Recipient LEAs also are responsible for providing FAPE consistent with the requirements of Section 504 to students with disabilities who are in the jurisdiction of the LEA.

C-7. Is an LEA required to provide equitable services to parentally placed private school students with disabilities during an extended school closure due to a disaster? How should the LEA communicate with these private schools?

LEAs with students with disabilities parentally placed in private schools should have, during the required consultation process with private school officials under section 612(a)(10)(A)(iii) of the IDEA, established procedures and strategies, including a communication process that will be implemented in the event of an extended school closure. Planning for this effort may require establishing a new strategy to be employed during the extended closure. LEAs should coordinate such planning with appropriate private school officials to make sure that they have access to information related to equitable services for their eligible students.

C-8. How should a State impacted by a disaster report data on its FFY 2017 IDEA Part B SPP/APR?

The Department recognizes the damaging effects of disasters on impacted LEAs and their impact on LEAs' ability to report data. In developing the State's FFY 2017 IDEA Part B SPP/APR (which covers the period July 1, 2017 through June 30, 2018), the State should include for each indicator that it is relevant to, information that discusses the extent to which any LEAs that were affected by a disaster were unable to meet applicable timelines or where the collection of valid and reliable data was not possible. Please include any other relevant information for the Office of Special Education Programs (OSEP) to take into account.

C-9. Does the Department have the authority to waive the requirement to maintain State financial

support for special education and related services due to a disaster?

Yes. The Secretary may waive, one fiscal year at a time, the requirement under Part B of the IDEA that States not reduce the amount of State financial support for special education and related services for children with disabilities if doing so would be equitable due to exceptional or uncontrollable circumstances, such as a disaster or unforeseen decline in the financial resources of the State. (34 CFR § 300.163(c)(1)). A State that wishes to seek such a waiver would contact its State Lead in OSEP for technical assistance.

#### **D. Issues Related to Services for Infants and Toddlers Under Part C of the Individuals With Disabilities Education Act (IDEA)**

Part C of the IDEA provides funds to the State LA to make early intervention services available to all eligible infants and toddlers with disabilities and their families living within the State. These services are provided in a variety of settings, including the child's home, daycare, preschools, and community centers. The following questions and answers primarily address the best practices for the State LA and its local EIS programs and providers when faced with unforeseen programmatic circumstances due to a disaster.

D-1. Are the State LA or EIS program or provider required to continue providing early intervention services to infants and toddlers with disabilities under Part C of the IDEA if the offices are closed due to the impacts of a disaster?

If the offices of the State LA or the EIS program or provider are closed, then services under Part C of the IDEA would not need to be provided to infants and toddlers with disabilities and their families during that period of time. If the LA's offices are open but the offices of the EIS program or provider in a specific geographical area are closed due to public health, flooding and/or safety concerns as a result of destruction in the area, the EIS program or provider

would not be required to provide services during the closure.

If the local EIS program or provider's offices remain open, but IDEA Part C services cannot be provided in a particular location (such as in the child's home) by a particular EIS provider, then the LA should take reasonable steps to identify alternatives for continuing services. For example, services may be provided in an alternate location, using a different EIS provider, identifying other parent or community resources, or through alternate means, such as through teleconference or consultative services to the parent (if feasible).

D-2. What steps must be taken if early intervention services are not provided for an extended period of time to an infant or toddler with a disability under Part C of the IDEA?

Once the offices re-open and/or EIS programs and providers are able to provide services, the service coordinator and EIS providers for each child must resume providing the services on the child's Individualized Family Service Plan (IFSP) as soon as possible. (20 U.S.C. 1435(a)(4) and 1436; 34 CFR § 303.342(e)). For children who did not receive early intervention services for an extended period of time, once services resume, the service coordinator and EIS providers must determine if the child's service needs have changed, determine whether the IFSP Team should review the child's IFSP to identify whether any changes are needed, and consider whether compensatory services are needed. (20 U.S.C. 1436; 34 CFR § 303.342(b)). The IFSP team may meet by teleconference or other means to review the IFSP if conditions warrant or if the family requests a periodic review. *Id.*

D-3. What steps can be taken to resume the provision of early intervention services after a family has been displaced and has relocated, and what can be done if early intervention records cannot be located or accessed?

The Department recognizes the disruption to families and challenges to providers in continuing to

provide early intervention services to families who are in a new location as a result of a natural disaster. Once early intervention services can be provided, if a family is in a new location, the first step is to contact the EIS program or provider where the child was receiving IDEA Part C services to obtain a copy of the child's early intervention record and most recent IFSP (with parent consent, if needed under 34 CFR § 303.414). If the child's records cannot be located or accessed due to circumstances relating to a disaster, a State may provide IDEA Part C services if parental consent is obtained by using an interim IFSP under 20 U.S.C. 1436(c) and 34 CFR § 303.345, until such time as the records establishing eligibility and the child's IFSP are available or, in the case of no records being available or a new family initially referred to IDEA Part C, such time as an evaluation and assessment can be conducted to determine eligibility.

D-4. Does IDEA allow for flexibility in meeting the 45-day timeline for conducting a child's initial evaluation, assessment, and IFSP meeting?

While the Department does not have the authority to waive the IDEA Part C 45-day timeline requirement in 34 CFR § 303.310(a), this timeline includes two allowable exceptions. These exceptions apply if the child or parent is unavailable due to exceptional family circumstances or a natural disaster; or if the parent has not provided consent despite documented, repeated attempts by the LA or EIS provider to obtain parental consent. (34 CFR § 303.310(b)). Both of these exceptional circumstances may apply in situations where a family has been displaced as a result of a disaster. In these situations, the LA or EIS program or provider must document application of the exception in the child's early intervention records. (34 CFR § 303.310(c)(1)). In situations such as a natural disaster, when families and providers are displaced and when offices are closed, delays can be expected. States must complete the initial evaluation, assessment, and IFSP meeting as soon as the exceptional family circumstance no longer exists and parental consent is obtained. (34 CFR § 303.310(c)(2)). As mentioned in question D-3,

if appropriate, an interim IFSP may be put into place with parent consent under 34 CFR § 303.345 to provide IDEA Part C services before the evaluation or assessment is completed.

D-5. How should the State report data on its Federal Fiscal Year (FFY) 2017 State Performance Plan/Annual Performance Report (SPP/APR) for IDEA Part C?

The Department recognizes the damaging effects of recent natural disasters on EIS programs and providers and the infants and toddlers and families who are served by those programs. In developing the FFY 2017 SPP/APR (which covers the period July 1, 2017, through June 30, 2018) under Part C of the IDEA, the State should include for each indicator that it is relevant to, information that discusses the extent to which any EIS programs that were affected by the recent hurricanes, were unable to meet applicable timelines or where the collection of valid and reliable data was not possible. Please include under Indicators 1, 7, and 8 any documented exceptional family circumstances and other relevant information for OSEP to take into account.

### **E. Adult Education and Career and Technical Education Program Issues**

E-1. May States receive a one-year waiver of their maintenance of effort (MOE) requirements for adult education and career and technical education programs if a disaster causes a disruption in services?

Yes. Section 241(b)(4) of the Adult Education and Family Literacy Act (AEFLA) authorizes the Secretary to waive a State's MOE requirement for not more than one fiscal year if "the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster." Similarly, section 311(b)(2) of the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) allows the Secretary to waive a State's MOE requirement due to exceptional or uncontrollable circumstances (such as Hurricane Harvey, Hurricane Irma or Hurricane Maria) that affect a State's ability to meet such requirements.

E-2. May States and local recipients renegotiate their agreed-upon performance levels for career and technical education programs if there are extended closures due to a disaster?

Yes, if the devastation from a disaster makes it excessively difficult to meet performance goals. Section 113(b)(3)(A)(vii) of Perkins IV provides the Secretary with the authority to renegotiate annual performance goals if certain unanticipated circumstances arise. (See the Office of Career, Technical, and Adult Education's Questions and Answers Regarding Perkins IV Non-Regulatory Guidance, Version 3 (Questions B-40 through B-45), [https://s3.amazonaws.com/PCRN/docs/Compiled\\_List\\_of\\_QAs-8-8-16](https://s3.amazonaws.com/PCRN/docs/Compiled_List_of_QAs-8-8-16)).

E-3. Will a State be subject to a financial sanction if it is not able to submit its performance report, as required under the Workforce Innovation and Opportunity Act (WIOA), by the report due date because of a disaster?

No. In accordance with WIOA's implementing regulations at 34 CFR § 463.185(b), a State will not be subject to a financial sanction if it does not submit a complete performance report by the report due date as a result of exceptional circumstances outside of the State's control, including a disaster.

In the event that a State is not able to submit a complete performance report by the report due date, the State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its performance report in order to not be considered failing to report. In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the performance report, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with their Departments' procedures. (See 34 CFR § 463.185(c)).

### **F. Postsecondary Education Issues Generally**

This section discusses the waivers and other

forms of relief the Department may provide to postsecondary institutions and other postsecondary program participants regarding Federal education requirements during an extended school closure as a result of a disaster, such as a hurricane, that disrupts the functioning or delivery of educational services. For additional information, see the guidance posted at the following Web address: <https://ifap.ed.gov/ifap/disaster.jsp>.

F-1. What should institutions do if a disaster disrupts the delivery of educational services?

Institutions should have alternatives for the delivery of educational programs for use during an extended closure due to a hurricane or other disaster. These alternatives could include creating or expanding distance learning opportunities, either through existing institutional capacity or through agreements with other institutions. Any written agreements with other institutions should be put in place as soon as possible so that they are available to address the needs of students, including students with disabilities. The requirements for these types of agreements for purposes of Federal Student Aid (FSA) programs can be found in 34 CFR § 668.5.

Because the ADA and Section 504 also prohibit discrimination on the basis of disability, institutions that receive Federal financial assistance or that are covered by the ADA must ensure that students with disabilities have equal access to educational opportunities. This includes plans for distance learning. Institutions should prepare strategies to ensure that students with disabilities have equal access to these programs. These include strategies for providing reasonable accommodations such as auxiliary aids and services and modifications to academic requirements where necessary to enable these students to access distance learning programs. (34 CFR § 104.44; 28 CFR §§ 35.130(b)(7) and 35.160).

Institutions should have plans ready to serve all students residing on campus, or to perform other functions if the campus itself is used for other purposes by the State or local community. Emergency

preparedness and emergency response programs must also be accessible to individuals with disabilities. For additional information, see "An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities," available at the following website:

<http://www.ada.gov/emergencyprepguide.htm>.

F-2. What should an institution do if it is unable to properly administer its Federal student assistance programs under Title IV of the Higher Education Act of 1965 (HEA) due to a disaster?

If an institution determines that it is, or will be, unable to properly administer its Title IV programs (including continuation of its educational programs) as a result of a disaster, it should immediately contact the FSA School Participation Division in the Department for further guidance. The contact information can be found at the following web address:

<https://ifap.ed.gov/ifap/helpContactInformationDetailedList.jsp?contact>

F-3. What steps should institutions take if incoming students are unable to complete high school graduation requirements due to extended closures caused by a disaster and its disruptions to the functioning or delivery of educational services?

Under institutional eligibility requirements for the Department's Federal student financial aid programs (34 CFR §§ 600.4(a)(2), 600.5(a)(3), and 600.6(a)(2)), institutions participating in those programs must admit as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the State in which the institution is physically located. Accordingly, institutions are strongly encouraged to consult with the high school the student was attending to best address a plan for the student to receive the high school diploma or its equivalent. The Department recognizes this may be a difficult task, particularly for students attending high school in a different State from the State in which the institution is located; however, officials at the high school will

be the most aware of any modifications or waivers provided by the SEA or LEA.

F-4. What if an institution's accreditation is up for renewal during an extended closure due to a disaster and the accrediting agency cannot complete its work on time?

The Secretary urges accrediting agencies to establish reasonable written policies (if they do not already have such policies) to extend accreditation or pre-accreditation if an institution is closed as a direct result of a disaster. Generally, the Department will consider policies granting extensions of accreditation or pre-accreditation due to expire within three months of a disaster or the deferral of already-pending accreditation actions as reasonable and consistent with good practice. For institutional eligibility purposes, the Department will accept reasonable extensions of existing accreditation or pre-accreditation even if granted by an agency that lacks a plan for extended closures.

F-5. What if an institution's application to be recertified to participate in the FSA program is not submitted timely because of a disaster?

The Department will consider extending the institution's Program Participation Agreement if the institution has been impacted by a disaster. Institutions that need an extension should contact the School Participation Division of FSA.

### **G. Issues Related to the Administration of the Federal Student Aid Programs**

G-1. What if an institution closes for several weeks during an academic year and it is not possible to reschedule instructional time?

If, as a result of a disaster, an institution is temporarily closed for an extended period of time that impacts the length of its academic year, the Department, through the FSA School Participation Division, will assist the institution to determine the continued eligibility of its programs and its students for HEA Title IV assistance. The Secretary may permit institutions with academic years of 30 weeks or longer to shorten their academic years to not less

than 26 weeks, on a case-by-case basis under section 481(a) of the HEA, and 34 CFR § 668.3.

G-2. What can an institution do to mitigate the impact that a disaster may have on the financial aid that students receive?

To reduce the potential impact of a disaster on student financial aid, the Department suggests the following:

- Professional Judgment: Section 479A of the HEA specifically provides the financial aid administrator (FAA) the authority to use professional judgment to make adjustments to the cost of attendance or to the values of the items used in calculating the Expected Family Contribution (EFC) to reflect a student's special circumstances. The Secretary encourages FAAs to use professional judgment to reflect more accurately the financial need of students and families affected by a disaster. The use of professional judgment is discussed in the Department's FSA Handbook, which can be accessed at:

<https://ifap.ed.gov/ifap/byAwardYear.jsp?type=fsahandbook&awardyear>

- Refunds and Re-Enrollment: The Department strongly encourages institutions to provide a full refund of tuition, fees, and other institutional charges, or to provide credit in a comparable amount against future charges, for students who withdraw from school as a direct result of a disaster. The Department also urges institutions to consider providing easy and flexible re-enrollment options to such students.

- Satisfactory Academic Progress: When a student fails to meet the institution's satisfactory academic progress standards due to a disaster, the institution may apply the "other special circumstances" exception provision in 34 CFR § 668.34(a)(9)(ii).

- Return of Title IV Funds: If a student withdraws from school because of a disaster, the institution must perform the return of HEA Title IV funds calculations in accordance with 34 CFR § 668.22, as it must for any student who withdraws. Institutions should not include the days the school

was not offering classes due to the disaster in either the numerator or denominator of the calculation.

- Late Disbursements: The Department's disbursement regulations allow, under certain conditions and within certain time frames, for a late disbursement of Title IV funds when the late disbursement was not the fault of the student. These regulations would permit a disbursement of Title IV funds to accommodate students affected by a disaster (see 34 CFR § 668.164(j)).

G-3. What relief from the requirements in the Student Assistance General Provisions regulations may the Department provide to institutions, and how may institutions go about requesting this relief?

If appropriate, the Department may provide the following relief to institutions:

- Cash Management: The Secretary will work with institutions affected by a disaster to address specific problems arising from regulatory requirements regarding credit balances, notices and authorizations, excess cash, and the handling of Direct Loan Fund Proceeds (see 34 CFR part 668, subpart K). Please contact the FSA School Participation Division for assistance.

- Campus Security Report and Equity in Athletics Disclosure Report: If an institution is unable to provide the Department with its crime and fire statistics or its Equity in Athletics Disclosure Report by the established deadlines because its administrative capability is directly impacted by a disaster, the Department will consider adjusting the reporting deadlines (see 34 CFR §§ 668.41, 668.46, and 668.47). This also includes the dissemination of an Annual Security Report to the school's community by October 1 of each year. Please contact the FSA School Participation Division for assistance.

- Enrollment Reporting: If an institution is unable to report enrollment information to the National Student Loan Data System (NSLDS) according to the established schedule as a direct result of a disaster, it must contact NSLDS Customer Service at 1-800-999-8219 to modify its reporting

schedule.

G-4. What administrative relief can the Department provide to institutions regarding campus-based programs?

Section 413D(d) of the HEA penalizes institutions for underutilization of their campus-based funding. Section 413D(d)(2) of the HEA, however, authorizes the Secretary to waive this penalty for an institution if enforcing the reduction would be contrary to the interest of the program. The Secretary will consider the failure of an institution to expend funds due to a disaster as an appropriate basis for granting a waiver (see 34 CFR § 673.4(d)(3)).

The HEA also requires an institution to use at least seven percent of the total amount of its Federal Work Study (FWS) allocation to compensate students employed in community service (42 U.S.C. 2753(b)(2)(B)). The Secretary may waive this requirement if the Secretary determines that enforcing it would cause a hardship for students at the institution. The Secretary will consider the failure of an institution to expend at least seven percent of its FWS allocation for community service due to a disaster that disrupts the functioning or delivery of educational services as an appropriate basis for a waiver (see 34 CFR § 675.18(g)).

In addition, the Secretary will consider extending the Fiscal Operations Report and Application to Participate reporting deadlines on a case-by-case basis if a disaster affects an institution's ability to meet these required reporting deadlines. To receive such consideration, institutions may contact the FSA School Participation Division.

G-5. What administrative relief can the Department provide to institutions regarding enrollment reporting requirements?

Any borrower who maintains an "in-school" status but who is unable to complete course requirements or enroll in classes because of an issue caused by a disaster will be considered to have maintained his or her "in-school" status during the relevant period of nonattendance until the borrower

withdraws or re-enrolls in the next regular enrollment period (whichever is earlier). The relevant period of nonattendance should not require a borrower to enter or use any of his or her grace period.

This guidance does not affect the way an institution should report a borrower's enrollment status.

G-6. What administrative relief will the Department provide to institutions regarding the Direct Loan program?

Generally, institutions are required to submit the Direct Loan promissory note, loan origination record, and initial disbursement record for a loan to the Secretary no later than 15 days following the date of the initial disbursement of the loan. If an institution is severely affected by a disaster, however, the Secretary, through the appropriate FSA School Participation Division, will take steps to address an institution's concerns about meeting these deadlines on a case-by-case basis (see 34 CFR § 685.301(c)).

G-7. What administrative relief can the Department provide to institutions regarding the Federal Perkins Loan program?

In the event that services are severely disrupted or disrupted for an extended period of time due to a disaster, the Secretary, through the appropriate FSA School Participation Division, will consider addressing concerns about the billing and collection activities required on a case-by-case basis (see 34 CFR Part 674, Subpart C). If an institution contracts with a third-party servicer for this activity, that billing and collecting service of prior year borrowers should continue. The Secretary, through the appropriate FSA School Participation Division, will also consider addressing, on a case-by-case basis, concerns about borrowers in initial and post-deferment grace periods (see 34 CFR § 674.42).

The Secretary will consider authorizing the institution to grant forbearance, for a period not to exceed three months, to a borrower who is in repayment, but is unable to continue to repay the loan due to the disaster. A borrower may request this

forbearance orally, or in writing, and is not required to submit documentation to be considered eligible for this forbearance. This period of forbearance will be counted toward the three-year maximum limit on the number of years of forbearance that may be granted to a borrower. In order to receive forbearance beyond the three-month period, the borrower must make a written request to the institution and provide supporting documentation (see 34 CFR § 674.33).

G-8. What administrative relief can the Department provide to loan holders regarding enrollment status requirements for Federal Family Education Loan (FFEL)?

In accordance with the Department's regulations, loan holders may grant an administrative forbearance to FFEL borrowers who have been adversely affected by a disaster. The holder may grant forbearance for up to three months and must document the reasons why it granted the forbearance, but does not need to obtain supporting documentation or a signed written agreement from the borrower (see 34 CFR §§ 682.211(f)(11)). The Secretary believes that it is in the best interest of the student loan programs to consider each Federal Stafford or PLUS loan that is in an "in-school" or in an "in-school" deferment status on the date the borrower's attendance at the institution was interrupted due to a natural disaster to be in an "in-school" status. Each loan should continue in that status until the borrower withdraws or re-enrolls in the next regular enrollment period, whichever is earlier. This period of nonattendance due to a disaster should not result in a borrower entering or using any of his or her grace period on the loan (see 34 CFR §§ 682.209(a) and 682.210).

The Secretary will treat Direct Loan borrowers in accordance with the administrative forbearance guidance discussed above.

G-9. What administrative relief can the Department provide institutions regarding the Federal Pell Grant and Iraq-Afghanistan Service Grant disbursement records?

Normally, an institution must submit to the

Department a Federal Pell Grant and Iraq-Afghanistan Service Grant disbursement record for a student not later than 15 calendar days after the institution makes a payment to the student. In addition, if the institution becomes aware that a previously reported payment or expected payment for a student is no longer accurate, the institution must submit an accurate disbursement record for that student to the Department not later than 15 calendar days after becoming aware of the need to make the change. The Secretary will consider revising these deadlines for institutions affected by a disaster (see 34 CFR § 690.83).

## **H. Vocational Rehabilitation (VR) Program Issues**

This section discusses the forms of relief the Department may provide to State VR agencies, as well as recommendations to ensure the continuity of services during an extended agency/office closure as a result of a disaster that disrupts the program's functioning or delivery of VR services.

H-1. What flexibility can the Department provide regarding program and fiscal reporting?

Understanding that case management systems may be impacted, OSERS' Rehabilitation Services Administration (RSA) fiscal and data staff can assist grantees impacted by disasters by providing flexibility in the reporting of program and fiscal data. VR agencies should contact the OSERS/RSA Fiscal and Data units as issues arise.

H-2. Will a State be subject to a financial sanction if it is not able to submit its performance report, as required under WIOA, by the report due date because of a disaster?

No. In accordance with WIOA's implementing regulations at 34 CFR § 361.185(b), a State will not be subject to a financial sanction if it does not submit a complete performance report by the report due date as a result of exceptional circumstances outside of the State's control, including a disaster.

In the event that a State is not able to submit a complete performance report by the report due date, the State must notify the Secretary of Labor or

Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its performance report in order to not be considered failing to report. In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the performance report, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with their Departments' procedures. (See 34 CFR § 361.185(c)).

H-3. What should VR agencies do if a disaster disrupts the delivery of VR services?

The Department recognizes the challenges associated with serving individuals and youth with disabilities who are displaced as a result of a disaster. As VR agencies attempt to continue to serve individuals with disabilities, including youth with disabilities, who have been displaced, we recommend that VR agencies identify alternative means for delivering VR services for use during an extended closure due to a disaster. These alternatives can include consolidating or expanding responsibilities of local VR offices in order to effectively serve program participants and communicating with community rehabilitation providers to ensure that the VR service needs of individuals with disabilities are not unduly or unnecessarily delayed.

H-4. Does the Department have the authority to waive the maintenance of effort requirement under the State VR program due to a natural disaster?

Yes. A State may request a waiver or modification of the maintenance of effort requirement if it fails to meet that requirement because of certain specific circumstances, such as natural disasters. The Secretary may grant a waiver or modification of the maintenance of effort shortfall when an action would be an equitable response to exceptional or uncontrollable circumstances affecting the State. A State that wishes to seek such a waiver should contact its State liaison in OSERS/RSA for technical assistance.

H-5. Does the Department have the authority to waive the match requirement under the VR State program?

No. Without a legislative change by Congress, the Department is unable to waive the VR match requirement.

<sup>1</sup>The phrase Federally declared disaster or Presidentially declared disaster means a disaster declared by the President to be a major disaster or emergency under section 401 or section 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170, 5191). Throughout this guidance, we use the term disaster to refer to Federally declared disaster, which includes, for example, Hurricane Harvey, Tropical Storm Harvey, Hurricane Irma, and Hurricane Maria.

<sup>2</sup>The BIE has assumed the duties of an SEA under the ESEA with regard to the BIE-funded schools, and may request waivers under section 8401 of the ESEA. BIE-funded schools may submit waiver requests to the BIE as LEAs do under section 8401. Under section 611(h)(2)(A) of Part B of the IDEA and its implementing regulation in 34 CFR § 300.708, the BIE and BIE-funded schools assume the responsibilities of an SEA and LEA, respectively. Thus, references in this document to SEAs and LEAs include BIE and BIE-funded schools as they relate to programs under the ESEA and Part B of the IDEA.