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School Construction and Renovation: A Review of Federal Programs and Legislation

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SUMMARY

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School Construction and Renovation: A Review of Federal Programs and Legislation

By some measures, spending on new construction and renovation in public elementary and secondary schools in the United States in FY2017 was over $50 billion. Although there is currently no ongoing federal collection of data on the conditions of schools, a one-time report by the Department of Education in 2014 estimated that the cost of repairs, renovations, and modernization required to bring 2012-2013 public school facilities into good condition was approximately $197 billion, or $4.5 million per school. Additionally, in 2020 the Government Accountability Office estimated that 54% of public school districts need to update or replace multiple building systems or features (e.g., HVAC, structural integrity, roofing) in their schools.

School construction and renovation have traditionally been considered to be primarily state and local responsibilities. Nonetheless, the federal government has established a role in financing school construction and renovation. The federal government provides both indirect support for school construction (mainly by exempting from federal income taxation the interest on state and local governmental bonds used to finance school construction and renovation) and direct support via grants and loans. Few federal programs focus specifically on supporting school infrastructure. However, numerous federal programs provide financial support that may be used, at least to some extent, for school construction, renovation, or repair.

Federal programs that provide support for school construction and renovation may be categorized according to their availability. For instance, some sources of federal support are broadly and consistently available; others are available only episodically, such as in the aftermath of a disaster. Additional programs are targeted toward specific geographic areas or populations, while still others are available for specific institutions or types of institutions.

In the 116th Congress, five bills related to school construction and renovation have been acted upon as of the cover date of this report. H.R. 865, the Rebuild America's Schools Act of 2019, would authorize $70 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. H.R. 762 and S. 253, both entitled the Streamlining Energy Efficiency for Schools Act, would require the Secretary of Energy to establish a clearinghouse to disseminate information regarding available federal programs and financing mechanisms that may be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retrofitting projects for schools. P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), authorizes the Secretary of Education to grant a deferment during a qualifying emergency to an institution that has a loan under the Historically Black College and University Capital Financing Program. Finally, H.R. 2, the Moving Forward Act, would authorize $100 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities.

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Introduction

According to U.S. Department of Education (ED) data for FY2017, the most recent data available, $45.7 billion was expended on construction and $4.5 billion was expended on land and existing structures for public elementary and secondary education and other related programs.[1] According to College Planning & Management, U.S. colleges and universities completed $12.0 billion worth of new construction, additions, and retrofits in 2014, the most recent year for which data are available.[2]

School construction and renovation have traditionally been considered to be primarily state and local responsibilities. Nonetheless, the federal government has established a role in financing school construction and renovation. The federal government provides both indirect support for school construction (mainly by exempting from federal income taxation the interest on state and local governmental bonds used to finance school construction and renovation) and direct support via grants and loans for unique schools and populations. Few federal programs focus specifically on supporting school infrastructure. However, numerous federal programs provide financial support that may be used, at least to some extent, for school construction, renovation, or repair.[3]

This report examines estimates of school infrastructure needs and discusses the federal role in financing early childhood facilities, elementary and secondary (K-12) public school infrastructure, and postsecondary educational facilities. Federal programs that provide support for school construction and renovation are organized in this report according to characteristics associated with their availability. For instance, some sources of federal support are broadly and consistently available; others are available only episodically, such as in the aftermath of a disaster. Additional programs are targeted toward specific geographic areas or populations, while still others are available for specific institutions or types of institutions. The report concludes with a description of legislation acted upon in the 116th Congress as of the date of publication.

School Infrastructure: Current Conditions and Needs

National data on the condition of school infrastructure and the need for infrastructure investment are limited and difficult to assess in part because of the wide variation of potential assumptions and definitions regarding both conditions and needs. In addition, there is substantial complexity associated with gathering and compiling data for which there is currently no central repository.

Studies of K-12 School Facilities

At present, there is no ongoing federal collection of data on the conditions of schools. However, in response to concerns about the physical condition of schools and a congressional mandate, ED issued a one-time study in 2000 that contained estimates of the costs of needed modernizations,

[1] Stephen Q. Cornman, et al. *Revenues and Expenditures for Public Elementary and Secondary School Districts: FY 17* (NCES 2020-303). U.S. Department of Education. Washington, DC: National Center for Education Statistics. Retrieved August 11, 2020, from http://nces.ed.gov/pubsearch.

[2] The comparable figure for 2012 was $9.7 billion. Paul Abramson, *2015 College Construction Report*, College Planning & Management, February 2015.

[3] Department of Education regulations prohibit grantees from using funds for construction unless specifically permitted by the authorizing statute or implementing regulations for the program (34 C.F.R. §75.533).

renovations, and repairs to K-12 public school buildings and/or building features.[4] In 2000, ED estimated the cost of bringing K-12 school facilities into good condition[5] in 1999 at $127 billion.[6] ED more recently followed the 2000 report with a 2014 report.[7] The estimated cost of repairs, renovations, and modernization required to bring 2012-2013 public school facilities into good condition was approximately $197 billion or $4.5 million per school.[8]

In June 2020, the Government Accountability Office (GAO) published a report in which it estimated that 54% of public school districts need to update or replace multiple building systems or features (e.g., HVAC, structural integrity, roofing) in their schools.[9] The most common building systems or features in need of updating or replacement were heating, ventilation, and air conditioning (HVAC) systems, with an estimated 41% of school districts needing to update or replace HVAC systems in at least half of their schools.[10] Additionally, GAO estimated that over 25% of school districts need to update or replace interior light fixtures, roofing, or safety and security building features in at least half of their schools.[11]

The GAO report also addressed the frequency of data collection concerning the condition of public schools. An estimated 65% of school districts conducted a facilities condition assessment at their public schools in the last 10 years,[12] while 11 states reported having conducted a statewide facilities condition assessment at public schools in the last 10 years.[13]

School infrastructure needs are affected not only by the age and physical condition of a school, but also by shifts in the student population or changes in school policies and by changes in expectations, technology, and school instructional practices. For example, implementing smaller class sizes may require additional floor space and walls. Preferences or requirements for energy

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[4] L. Lewis, K. Snow, E. Farris, B. Smerdon, S. Cronen, and J. Kaplan, Project Officer: B. Greene, *Condition of America's Public School Facilities: 1999*, (NCES 2000-32), U.S. Department Of Education, Washington, D.C. (Hereinafter referred to as ED, *Condition of America's Public School Facilities*.)

[5] ED defined good condition to mean that only routine maintenance or minor repair was required.

[6] These data are based on surveys of school officials rather than on direct, independent assessment of needs and costs. GAO estimated the unmet need for school construction and renovation in 1994 at $112 billion. U.S. Government Accountability Office, *School Facilities: Condition of America's Schools*, GAO/HEHS 95-61, Washington, DC, 1995.

[7] D. Alexander and L. Lewis, *Condition of America's Public School Facilities: 2012–13* (NCES 2014-022), U.S. Department of Education, Washington, DC: National Center for Education Statistics, 2014. Retrieved November 5, 2015, from http://nces.ed.gov/pubsearch.

[8] The estimates were based on a mix of professional judgment of surveyed school personnel, recent facilities inspection(s)/assessment(s), and capital improvement/facilities plans.

[9] GAO conducted a survey of a nationally representative sample of K-12 public school districts from August to October 2019. U.S. Government Accountability Office, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*, GAO-20-494, June 2020. (Hereinafter referred to as GAO, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*.)

[10] GAO, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*, p. 9.

[11] GAO, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*, p. 9.

[12] 16% of surveyed school districts reported that they had not conducted such an assessment, while 19% reported that they did not know if such an assessment had been conducted in the last 10 years. GAO, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*, p. 18.

[13] The 50 states plus the District of Columbia were included in GAO's survey of states. Illinois and Mississippi did not respond. GAO, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement*, p.19.

efficiency may require retrofitting or renovations. Increased focus on STEM education may require new or additional laboratory and workshop facilities.

Postsecondary Facilities

Land and facilities are major tangible assets of postsecondary education institutions. Appropriate facilities are required to support increases in enrollment and changes in technological expectations.[14] Aside from the need for new facilities, regular maintenance and renovation of the facilities are required for institutions to fulfill their research, educational, and other missions. One estimate suggests that facilities at research universities require an endowment equal to the cost of construction to maintain the facilities over their lifetime.[15] According to the National Science Foundation's (NSF's) biennial study of science and engineering research facilities at colleges and universities, 21% of research space required renovation or replacement in FY2017.[16] The costs for new construction, repair, and renovation of science and engineering research space in academic institutions started in FY2016 or FY2017 were $11.3 billion, and the cost of deferred projects was estimated to be $20.7 billion in FY2017.[17]

History of Federal Assistance for Educational Facilities

This section describes the historical role of the federal government in the construction and renovation of school facilities.

Federal Tax Treatment of State and Local Bonds

The Revenue Act of 1913 (38 Stat. 114) excluded from federal income tax the interest income earned by holders of state and local government debt obligations. This exclusion has been retained through subsequent revisions of the Internal Revenue Code (IRC). Almost all state and local governments sell bonds to finance public projects and certain qualified private activities. Bonds issued for certain purposes are tax-exempt because the interest payments are not included in the bondholder's (purchaser's) federal taxable income. This exemption allows these bonds to be issued at lower interest rates but still provide competitive returns.[18] In the past, the Internal Revenue Code had also authorized state and local governments to issue tax credit bonds, which allow the holder to claim a federal tax credit equal to a percentage of the bond's par value (face value) for a limited number of years. Meanwhile, issuers of tax credit bonds would typically pay no interest to bondholders. Thus, tax credit bonds could deliver a larger federal subsidy to the issuing state or local government than tax-exempt bonds.

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[14] APPA, *Thought Leaders Series 2019: Innovation in an Age of Disruption*, Alexandria, VA 2019.

[15] Scott Carlson, "As Campuses Crumble, Budgets Are Crunched," *The Chronicle of Higher Education*, vol. 54, no. 37 (May 23, 2008), p. A1.

[16] National Science Foundation, National Center for Science and Engineering Statistics, *Science and Engineering Research Facilities: Fiscal Year 2017*. Data Tables, available at https://ncsesdata.nsf.gov/datatables/facilities/2017/. (Hereinafter referred to as NSF, National Center for Science and Engineering Statistics, *Science and Engineering Facilities: FY2017*.)

[17] NSF, National Center for Science and Engineering Statistics, *Science and Engineering Facilities: FY2017*.

[18] For an in-depth discussion of tax-exempt bonds, including issues regarding costs (revenue loss), see CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*.

Elementary and Secondary Schools

As far back as the Great Depression, the federal government provided funding to support K-12 school infrastructure. The Works Progress Administration (WPA) financed 4,383 new schools and renovated thousands of additional schools between 1935 and 1940. WPA was intended to support economic recovery following the Great Depression. In 1950, Title I of P.L. 81-815 authorized funds to assist states in surveying school construction needs. Also in 1950, Impact Aid programs were enacted under P.L. 81-815, P.L. 81-874, and P.L. 81-875 to fund school construction in areas affected by federal activities and facilities damaged by major disasters. From FY1989 through FY2001, in response to Supreme Court rulings regarding the provision of equitable services to private school students, local educational agencies (LEAs) received federal assistance for capital expenses, including mobile educational units (20 U.S.C. §7279 et seq.).[19]

Attempts to increase federal assistance for needed improvements to school infrastructure continued in the 1990s. The Education Infrastructure Act of 1994 was enacted as Title XII of the Elementary and Secondary Education Act (ESEA) by the Improving America's Schools Act of 1994 (P.L. 103-382) to provide direct federal assistance for the renovation and construction of public elementary and secondary schools, among other things. The program was never funded.

The Federal Emergency Management Agency (FEMA) has administered the primary disaster assistance program since 1992, through which the federal government supports reconstruction following disasters. In response to specific natural disasters, Congress has enacted additional legislation to create temporary programs to meet the needs of students, schools, LEAs, and states, including modernizing, renovating, or repairing school buildings.

The Consolidated Appropriations Act for FY2001 (P.L. 106-554) appropriated $1.2 billion in FY2001 to be used for emergency school renovation and repair activities, as well as activities under part B of the Individuals with Disabilities Education Act (20 U.S.C. §1411 et seq.) and technology activities. Over 75% of the $1.2 billion was designated for school facilities, and the appropriations act ensured distribution to LEAs in the outlying areas, LEAs enrolling significant numbers of children connected to federal lands or low-rent public housing, high poverty LEAs, and rural LEAs. The program was not permanently authorized and did not receive funding in subsequent years.

The Consolidated Appropriations Act for FY2001 (P.L. 106-554) also authorized and appropriated the first federal funds for charter school facilities. The act created the Charter School Facilities Financing Demonstration Program, which authorized ED to award competitive grants to various entities (e.g., a public entity, a private nonprofit entity, or a consortium of each) to assist public charter schools in the acquisition, construction, or renovation of facilities by enhancing the availability of loans or bond financing. The No Child Left Behind Act of 2001 (P.L. 107-110) amended the ESEA to authorize two programs specifically aimed at providing financial assistance for public charter school activities. These programs, the State Charter School Facilities Incentive Grants Program and the Credit Enhancement for Charter School Facilities Program, are further discussed in the "Charter School Facilities" subsection of this report.

Most recently, in 2009, Congress provided a one-time appropriation that could be used for renovation and construction, among other purposes. The American Recovery and Reinvestment

[19] The 1985 Supreme Court decision in *Aguilar v. Felton* (473 U.S. 402 (1985)) held that the provision of ESEA Title I services by public school teachers to children attending parochial schools on the premises of such schools was unconstitutional. The 1988 Title I amendments (P.L. 100-297) authorized a grant program providing additional "capital expenses" to help public schools serve nonpublic school pupils. The 1997 Supreme Court decision in *Agostini v. Felton* (521 U.S. 203 (1997)) overturned its 1985 decision.

Act of 2009 (ARRA; P.L. 111-5) authorized a $54 billion State Fiscal Stabilization Fund (SFSF). ARRA was intended to support economic recovery following a recession which began in December 2007. States were required to use at least 81.8% of their share of the SFSF to restore support of public elementary, secondary, and postsecondary schools, and, as applicable, early childhood education programs and services. Among the allowable uses of restoration funds were modernization, renovation, or repair of public school facilities. States were required to use the remaining 18.2% of their share of the SFSF for education, public safety, and other government services, which included modernization, renovation, or repair of public school and public or private college facilities, depending on the criteria that the governor used to allocate the funds. ED issued guidance specifically allowing the SFSF to be used for the construction of K-12 schools but not institutions of higher education.[20]

Postsecondary Facilities

Federal support for higher education facilities also has a long history. Since the 1857 Act[21] to incorporate the Columbian Institution for the Instruction of the Deaf and Dumb and the Blind (later renamed Gallaudet University), Congress has appropriated funds for construction and operation of the university. In 1928, Congress authorized the appropriation of funds for Howard University to aid in its construction, development, improvement, and maintenance.[22] In 1965, the National Technical Institute for the Deaf Act (P.L. 89-36) established the National Technical Institute for the Deaf and authorized the appropriation of funds for its operation and construction.

Congress authorized several loan or interest subsidy grant programs to help finance the construction, reconstruction, and renovation of housing, academic, and other educational facilities. The College Housing Loan program (Title IV of the Housing Act of 1950; 64 Stat. 77) was intended to alleviate housing shortages on college campuses that resulted from increased enrollments.[23] Following World War II, enrollment at postsecondary educational institutions swelled, driven in large part by veterans utilizing their GI Bill benefits.[24] The Higher Education Facilities Act of 1963 (P.L. 88-204) authorized Loans for Construction of Academic Facilities. A revolving loan fund was established to make higher education academic facilities loans by P.L. 89-429. The Education Amendments of 1972 (P.L. 92-318) established annual interest grants to reduce borrowing costs and academic facilities loan insurance to assist private nonprofit entities in procuring loans for the construction, reconstruction, and renovation of academic facilities.

The Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1963 (P.L. 88-129), authorized grants for the construction, rehabilitation, and replacement of teaching facilities for health personnel and schools of nursing. Authorization for the construction, rehabilitation, and replacement of teaching facilities for allied health professionals was added by the Allied Health Professions Personnel Training Act of 1966 (P.L. 89-751) and repealed by the Health Professions Educational Assistance Act of 1976 (P.L. 94-484). Loan guaranties and

[20] The Education Stabilization Fund, which comprised 81.8% of each state's SFSF allocation, could not be used for the construction of institutions of higher education. The Government Services Fund, which comprised 18.2% of each state's SFSF allocation, could be used for such a purpose. U.S. Department of Education, *Guidance on the State Fiscal Stabilization Fund Program*, Washington, DC, April 2009, pp. 18, 27.

[21] 11 Stat. 161.

[22] 45 Stat. 1021.

[23] U.S. Congress, House Committee on Government Operations, *Department of Education's College Construction Loan Programs*, 98th Cong., 2nd sess., May 15, 1984 (Washington: GPO, 1984), p. 1.

[24] Roger L. Geiger, *American Higher Education Since World War II: A History* (Princeton, NJ: Princeton University Press, 2019).

interest subsidies were authorized in 1971 for the construction, rehabilitation, and replacement of teaching facilities for health personnel and schools of nursing.[25] The Nurse Education Amendments of 1985 (P.L. 99-92) repealed the program of support for nursing school facilities, and the Health Professions Education Extension Amendments of 1992 (P.L. 102-408) repealed federal support of teaching facilities for health personnel.

General U.S. Department of Education-administered facilities grant programs were authorized beginning in 1963. The Higher Education Facilities Act of 1963 (P.L. 88-204) authorized Grants for the Construction of Undergraduate Academic Facilities (Title VII-A of the HEA), Grants for the Construction of Graduate Academic Facilities (Title VII-B of the HEA), and Construction Assistance for Public Higher Education Facilities in Major Disaster Areas (Title VII-D of the HEA). The programs were intended to increase the enrollment capacity of institutions of higher education (IHEs).

The Education Amendments of 1972 (P.L. 92-318) authorized the Establishment and Expansion of Community Colleges program. Funds from the community college program encouraged states to prepare a statewide plan for the expansion and improvement of postsecondary education programs in community colleges. Funds could be used to remodel or renovate existing facilities, to equip new and existing facilities, or to lease facilities.

The Education Amendments of 1976 (P.L. 94-482) amended the programs to provide for reconstruction, renovation, and modernization of existing facilities and authorized a new Reconstruction and Renovation grant program to reduce energy consumption and to make facilities accessible to the physically disabled.

The Education Amendments of 1980 (P.L. 96-374) repealed three of the then-existing facilities programs: the Reconstruction and Renovation grant program, Construction Assistance for Public Higher Education Facilities in Major Disaster Areas, and the Establishment and Expansion of Community Colleges program. However, the 1980 Amendments allowed funds from the remaining facilities programs to be used by undergraduate and graduate postsecondary institutions to economize on the use of energy resources, to make facilities accessible to the physically disabled, to improve research facilities, and to eliminate asbestos hazards.

The Higher Education Amendments of 1986 (P.L. 99-498) expanded the HEA Title VII programs to include, as authorized uses of funds, the acquisition and maintenance of special research and instructional instrumentation and equipment, compliance with federal hazardous waste disposal requirements, more efficient use of energy sources, advanced skill training programs, and preservation of significant architecture. The Higher Education Amendments of 1986 also authorized the establishment of the College Construction Loan Insurance Association (also known as Connie Lee) as a private, for-profit corporation. Connie Lee succeeded the Academic Facilities Loan Insurance program. The function of Connie Lee was to

- guarantee, insure, and reinsure bonds, debentures, notes, evidences of debt, loans, and interests therein, the proceeds of which were to be used for an education facilities purpose;
- guarantee and insure leases of personal, real, or mixed property to be used for an education facilities purpose; and

[25] The Comprehensive Health Manpower Training Act of 1971 (P.L. 92-157) and the Nurse Training Act of 1971 (P.L. 92-158).

- issue letters of credit and undertake obligations and commitments as Connie Lee deemed necessary.

Congress was concerned that deteriorating facilities would affect the quality of higher education and that financially sound postsecondary institutions whose debt was not investment grade did not have the necessary access to long-term capital.[26] Both the U.S. Department of Education and the Student Loan Marketing Association[27] (also known as Sallie Mae) became significant shareholders of Connie Lee. The 1986 Amendments also authorized Sallie Mae (20 U.S.C. §1087-2) to directly or indirectly finance higher education academic facilities.[28] Connie Lee and Sallie Mae were eventually privatized under the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208). There were several explanations for privatizing Connie Lee:

- The federal government's share in Connie Lee was declining.
- Other investors and insurers were providing loans for higher education facilities as a result of the federal government's success.
- The statutory language authorizing Connie Lee prevented it from expanding its market.
- General federal policy encouraged the downsizing and privatizing of previous government operations, as appropriate.
- Partial federal ownership of Connie Lee provided the impression that the federal government would be liable in case of Connie Lee's financial difficulties.[29]

In the late 1980s, the Administration also requested no new monies for the higher education facilities programs except what would be necessary to service previous obligations. The reasons given were that federal support of higher education facilities was inappropriate; the programs displaced the traditional role of state and local governments and private enterprise; the programs were duplicative and complicated; and the programs were too costly.[30] Academic Facilities Construction Grants were last funded in FY1991.

The Higher Education Amendments of 1992 (P.L. 102-325) replaced then-existing grant and loan programs with new programs, which were never funded. The repealed loan programs have not made any new loans since FY1993, but loan collections, property dispositions, and the resolution of defaulted loans may continue through FY2030.[31] The 1992 Amendments also authorized the Historically Black College and University Capital Financing program to provide Historically Black Colleges and Universities (HBCUs) with access to low-cost capital.

As with elementary and secondary schools, institutions of higher education have received disaster assistance through the Federal Emergency Management Agency (FEMA) since 1992.

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[26] U.S. Congress, House Committee on Economic and Educational Opportunities, *Privatization Act of 1995*, Report Together with Minority and Additional Views to Accompany H.R. 1720, 104th Cong., 1st sess., June 22, 1995, H.Rept. 104-153 (Washington: GPO, 1995).

[27] The Education Amendments of 1972 (P.L. 92-318) established the Student Loan Marketing Association as a government sponsored private corporation, financed by private capital, to serve as a secondary market and warehousing facility for insured student loans.

[28] For a description of projects financed by Sallie Mae through 1991, see U.S. General Accounting Office, *School Construction, Sallie Mae Financing*, HRD-93-61, April 13, 1993, http://archive.gao.gov/d44t15/148896.pdf.

[29] U.S. Congress, House Committee on Economic and Educational Opportunities, *Privatization Act of 1995*, Report Together with Minority and Additional Views to Accompany H.R. 1720, 104th Cong., 1st sess., June 22, 1995, H.Rept. 104-153 (Washington: GPO, 1995), pp. 15-16.

[30] FY1987-FY1990 President's Budget.

[31] FY2021 President's Budget.

Postsecondary educational facilities have also been eligible for various programs and funds enacted in response to specific disasters as well.

Broadly Available Sources of Federal Support

This section of the report addresses sources of federal support for school construction, renovation, and repair that are not limited to specific geographic areas, populations, or institutions. Furthermore, the programs included in this section are generally consistently available. While each of the programs may be used to support school infrastructure, it is not the primary focus of most programs. The appropriations amount listed in this section reflect total program appropriations, and therefore, may not reflect expenditures for school facilities depending on the other uses of program funds.

Public Purpose Tax Exempt Bonds

The federal government exempts interest income earned on bonds issued by state, local, and tribal governments for a "public" purpose from federal income tax.[32] Bonds are considered to be for a public purpose if they satisfy either of two criteria: less than 10% of the proceeds are used directly or indirectly by a non-governmental entity, or less than 10% of the bond proceeds are secured directly or indirectly by property used in a trade or business. Examples of public projects include elementary, secondary, and postsecondary schools; public buildings; and roads. The tax exemption lowers the cost of capital for state and local governments. There is no bond volume cap on state and local government bonds.

New Markets Tax Credit

The New Markets Tax Credit (NMTC) is a nonrefundable tax credit intended to support qualified low-income community investments, including charter schools.[33] The NMTC encourages qualified investment groups to support certified Community Development Entities (CDEs) that operate in eligible low-income communities. While the NMTC is credited through the federal tax code, the Community Development Financial Institutions Fund is responsible for awarding the tax credit allocations to eligible CDEs through a competitive award process. After the CDE is awarded a tax credit allocation, the CDE is authorized to offer the tax credits to private equity investors in the CDE. The tax credit value is 39% of the cost of the qualified equity investment and is claimed over a seven-year credit allowance period. With the funds raised from investors, CDEs then make equity investments in low-income communities and low-income community businesses, all of which must be qualified. The NMTC allocation is currently authorized at $5.0 billion for calendar year 2020.[34]

Qualified Public Educational Facilities (Private Activity Bonds)

State and local governments may issue bonds that are exempt from federal taxation to finance certain qualified private activities, including qualified public educational facilities.[35] Indian tribal

[32] 26 U.S.C. §103. For additional information, see CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*.

[33] 26 U.S.C. §45D. For more information about, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*.

[34] 26 U.S.C. §45D(f)(1)(G).

[35] 26 U.S.C. §142. For additional information about private activity bonds, see CRS Report RL30638, *Tax-Exempt Bonds: A Description of State and Local Government Debt*.

governments generally cannot issue tax-exempt private activity bonds.[36] Private activity bonds benefit state and local governments because the bond buyer is willing to accept a lower interest rate because the interest income is not subject to federal income taxes.[37] A qualified public educational facility is a public elementary or secondary school facility (including a stadium) constructed, rehabilitated, refurbished, or equipped through a public-private partnership agreement. Bonds issued for qualified educational facilities are not counted against a state's private-activity volume cap. However, the qualified public educational facility bonds have their own volume capacity limit equal to the greater of $10 multiplied by the state population or $5 million.[38]

Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA)[39] provides funds to states for the education of children with disabilities. IDEA contains four parts:

- Part A contains General Provisions, including Congressional findings, the purposes of the act, and definitions;
- Part B authorizes the grants-to-states program (Section 611) and the state grants program for preschool children with disabilities (Section 619);
- Part C authorizes the state grants program for infants and toddlers with disabilities; and
- Part D authorizes various national programs and grants.

Although Part B funds are primarily used to support educational services for students with disabilities, with the permission of the Secretary of Education, Part B funds may be used for the acquisition of appropriate equipment, the construction of new K-12 facilities, and the alteration of existing facilities.[40] The appropriations for Part B in FY2020 were $13.2 billion.[41]

Head Start

Head Start is a federal program that has provided comprehensive early childhood development services to low-income children since 1965.[42] Head Start is administered by the Administration for Children and Families (ACF) within the Department of Health and Human Services. Federal Head Start funds are provided directly to local grantees. Programs are locally designed and are administered by a network of roughly 1,600 public and private nonprofit and for-profit agencies. Although grant funds primarily support other services and activities, in certain circumstances,

[36] 26 U.S.C. §7871(c)(2).

[37] Interest income from tax-exempt private activity bonds is included in the calculation of the federal alternative minimum tax (AMT). ARRA temporarily suspended the AMT taxability for the 2009 and 2010 tax years.

[38] 26 U.S.C. §142(k)(5)(A).

[39] 20 U.S.C. §1400 et seq.

[40] For additional information, see CRS Report R41833, *The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*.

[41] Rep. Nita Lowey, "Explanatory Statement Submitted by Mrs. Lowey, Chairwoman of the House Committee on Appropriations, Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," *Congressional Record*, daily edition, vol. 165 (December 17, 2019), p. H11142. (Hereinafter referred to as Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020.")

[42] 42 U.S.C §9801 et seq. For more information, see CRS In Focus IF11008, *Head Start: Overview and Current Issues*.

grantees may apply to use funds to purchase, construct, or make major renovations to a Head Start facility.[43] The FY2020 appropriations were approximately $10.6 billion.[44]

Child Care Access Means Parents in School Program

The Child Care Access Means Parents in School Program,[45] administered by ED, supports the participation of low-income parents in postsecondary education through the provision of child care services. Funds may be used to provide child care and early childhood development services to enable low-income students to pursue postsecondary education. Funds may also be used for minor renovation or repair of facilities to meet applicable state or local health or safety requirements; funds may not be used for new construction.[46] The appropriations were $53.0 million in FY2020.[47]

State Energy Program

The State Energy Program (SEP),[48] established in 1996 and administered by the Department of Energy, provides grants to states and territories to address their energy priorities and to adopt emerging renewable energy and energy efficiency technologies.[49] Each state is required to develop a state energy conservation plan. Funding may be used for a wide variety of energy efficiency and renewable energy initiatives, including projects in schools. The appropriations for FY2020 were $62.5 million.[50]

National Endowment for the Humanities (NEH)

The National Endowment for the Humanities' Office of Challenge Grants[51] strengthens humanities education by supporting long-term institutional development. Funds may be used to purchase equipment, upgrade technology, renovate or construct facilities, add library or museum collections, provide staffing, provide educational programming, and increase or establish endowments. Nonprofit organizations such as museums, tribal centers, libraries, colleges and universities, scholarly research organizations, state humanities councils, public radio and

[43] The rules regarding the use of Head Start funds for this purpose are codified at 45 C.F.R. §1303, Subpart E. For more information, see CRS Report RL30952, *Head Start: Background and Funding*.

[44] P.L. 116-94.

[45] 20 U.S.C. §1070e.

[46] The program website is available at http://www.ed.gov/programs/campisp/index.html.

[47] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020, p. H11147.

[48] https://www.energy.gov/eere/wipo/state-energy-program.

[49] The program is authorized by the Energy Policy and Conservation Act of 1975 (EPCA; P.L. 94-163); the Energy Supply and Production Act of 1976 (ECPA; P.L. 94-385); the National Energy Conservation Policy Act of 1978 (NECPA; P.L. 95-619); the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101-440); the Energy Policy Act of 1992 (EPACT; P.L. 102-486); the Energy Conservation Reauthorization Act of 1998 (P.L. 105-388); the Energy Policy Act of 2005 (EPACT 2005; P.L. 109-58); the Energy Independence and Security Act of 2007 (EISA; P.L. 110-140); and the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).

[50] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11251.

[51] National Foundation on the Arts and the Humanities Act of 1965, as amended; 20 U.S.C §951.

television stations, and historical societies and historic sites are eligible to receive grants. The Challenge Grants program received $12.5 million in FY2020.[52]

School-Based Health Center Capital Program

The School-Based Health Center Capital (SBHCC) Program,[53] administered by the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), awards grant funds for the physical improvement of school-based health centers, as defined by Section 2110(c)(9)(A) of the Social Security Act, as amended. Program funds may be used for minor alteration or renovation projects as well as the purchase of moveable equipment, trailers, and manufactured buildings. While funds may not be expended for new construction, grant funds may be used to pay the costs associated with expanding and modernizing existing buildings for use as a school-based health center. HRSA awarded $11.2 million in funding in FY2019.[54]

Episodically Available Sources of Federal Support

This section of the report covers sources of federal support for school infrastructure that are generally made available in response to a particular event, such as a major disaster.

Department of Education Disaster Relief

In response to various natural disasters, Congress has enacted legislation to create temporary programs and give the Secretary of Education temporary authority to issue various waivers and flexibilities at the K-12 and higher education levels. Congress has also enacted supplemental appropriations for facilities following certain natural disasters.[55]

Public Assistance Grant Program

The Public Assistance Grant Program (PA Program) is administered by FEMA and combines the authorities of multiple sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended, the Stafford Act).[56] Grants from the PA Program are only available in states and communities that have received a major or emergency disaster declaration through the Stafford Act. Grants may be awarded for a variety of eligible types of assistance, including debris removal, emergency protective measures, or the repair and replacement of damaged buildings and facilities. The primary grantee for all PA grants is the state or tribal government designated by a disaster declaration, but applicants (or subgrantees) can be many types of local governmental entities and private nonprofits, ranging from police departments to homeless shelters, public utilities, civic buildings, etc. Eligible applicants under the PA Program include public and private nonprofit schools and IHEs. School facilities of a church or other religious institution are also generally eligible for grant assistance, so long as the

[52] P.L. 116-94.

[53] 42 U.S.C. §280h-5.

[54] Health Resources & Services Administration, "FY 2019 School-Based Health Center Capital (SBHCC) Program (HRSA-19-073) Grant Awards."

[55] For additional information, see CRS Report R42881, *Education-Related Regulatory Flexibilities, Waivers, and Federal Assistance in Response to Disasters and National Emergencies*.

[56] For more information, see CRS Report R43990, *FEMA's Public Assistance Grant Program: Background and Considerations for Congress*.

primary purpose of the damaged facilities is for secular education.[57] Eligible applicants can also apply for grants to replace certain damaged school supplies and equipment, including the possible repair and replacement of advanced laboratory and research equipment for IHEs. Federal obligations under the PA program totaled approximately $7.1 billion in FY2019, of which $505.1 million were obligated for public buildings projects.[58]

Hazard Mitigation

FEMA's Hazard Mitigation Grant Program (HMGP)[59] provides grants to states and local governments, including school districts; tribal governments; and certain private nonprofit organizations, including IHEs, to implement long-term hazard mitigation measures after a major disaster declaration. While presidential declarations for major disasters specify the designated counties for certain forms of assistance, almost all declarations permit hazard mitigation funds to be used statewide. Allowable activities include acquisition of real property and retrofitting structures and facilities to minimize damages from high winds, earthquakes, floods, wildfires, or other natural hazards. Examples of allowable projects are community safe rooms in schools, dry floodproofing schools, and wildfire mitigation in schools. Funding amounts for HMGP are derived from a percentage of total disaster spending, not to exceed 15%. Eligible projects are cost-shared between FEMA (75%) and non-federal sources (25%).[60]

Federal Support for Targeted Geographic Areas or Populations

This section of the report addresses sources of federal support for school infrastructure that are targeted toward specific geographic areas or populations. These include localities whose tax base is reduced due to federal activity, areas that are economically distressed, and several specified populations.

Compensation for Loss of Local Tax Base

The following programs provide federal funds to local governments and LEAs as compensation for federal activities that reduce local tax revenue.

Department of Education Impact Aid Programs

The Department of Education's Impact Aid program[61] provides funding to certain LEAs to compensate them for lost revenue as a result of federal activities.[62] There are several types of

[57] See the example provided by FEMA of a fictional "Community Church" school at FEMA, *Public Assistance Program and policy Guide*, FP 1004-009-2, April 2018, p. 172, at https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf.

[58] Federal Emergency Management Agency (FEMA), "OpenFEMA Dataset: Public Assistance Funded Projects Details -V1," Accessed May 11, 2020. https://www.fema.gov/openfema-dataset-public-assistance-funded-projects-details-v1. Individual data from the spreadsheet indicate the data has been updated as recently as May 10, 2020.

[59] 42 U.S.C. §5170c.

[60] There is one source of federal funds that may be used for the 25% share of project costs: Community Development Block Grants awarded to states, tribes, or territories by the Department of Housing and Urban Development.

[61] 20 U.S.C. §7001 et seq.; Title VII of the ESEA, as amended.

[62] For additional information, see CRS Report R45400, *Impact Aid, Title VII of the Elementary and Secondary*

Impact Aid payments: payments relating to federal acquisition of real property (section 7002), payments for federally connected children (section 7003), and payments for construction and maintenance of school facilities (section 7007). While the non-construction-related funds are usually used by LEAs for general operating expenses, the payments may also be used for capital expenditures. Impact Aid received an appropriation of $1.5 billion in FY2020.[63]

Payments in Lieu of Taxes

Although federal law authorizes various programs to compensate local governments for reductions to their property tax bases due to the presence of most federally owned land, the most widely applicable program is the "Payments in Lieu of Taxes" program, or PILT, administered by the Department of the Interior.[64] The payments are authorized by the Payment for Entitlement Land chapter of the U.S. Code.[65] The authorized level of PILT payments is calculated under a complex formula. PILT payments are offset by the prior year's payments under several laws, including the Secure Rural Schools (SRS) program for certain lands under the jurisdiction of the Forest Service. Payments made under the law may be used for any governmental purpose, including school facilities. In FY2020, PILT payments totaled $514.7 million.[66]

Secure Rural Schools Payments

The SRS Payments compensate counties for the tax-exempt status of federal lands under the jurisdiction of the Forest Service nationwide as well as certain Bureau of Land Management (BLM) lands in Oregon.[67] Funds are allocated to states by formula and passed through to local governmental entities for use at the county level (but not necessarily to county governments). SRS payments are made by both the Forest Service and the BLM. The Forest Service payments can be spent only on roads and schools in the counties in which the national forests are located. State law dictates which road and school programs are financed with the payments, and the state laws differ widely. In general, 30% to 100% of funds are allocated for school programs, with a few states providing substantial local discretion on how funds are divided between schools and roads.[68] The BLM payments are available for any local governmental purpose. For FY2019, the Forest Service made $225.8 million in total SRS payments,[69] and the BLM made $28.4 million in total SRS payments.[70]

Education Act: A Primer.

[63] P.L. 116-94.

[64] For more information, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*.

[65] 31 U.S.C. §§6901-6907; codified by P.L. 97-258.

[66] U.S. Department of the Interior, "Interior Distributes More Than $514 Million to Communities, Supports Critical Local Services," press release, June 29, 2020, https://www.doi.gov/pressreleases/interior-distributes-more-514-million-communities-supports-critical-local-services.

[67] Title I of the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS; P.L. 106-393), as amended (16. U.S.C. §§7101-7153; 16 U.S.C. §500). For more information, see CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

[68] See CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

[69] U.S. Forest Service, ASR 18-3, "Secure Rural Schools Act Titles I, II and III Report," February 27, 2020, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd718565.pdf

[70] U.S. Department of the Interior, "Interior Announces $28.4 Million in Payments to Western Oregon Counties," press release, April 17, 2020, https://www.blm.gov/press-release/interior-announces-284-million-payments-western-oregon-counties.

Economically Distressed Areas

The following program is targeted to provide federal support for public works projects in economically distressed areas.

Public Works and Economic Development

The Economic Development Administration within the Department of Commerce administers the Public Works and Economic Development Facilities Program[71] as one of its Economic Development Assistance Programs. The competitive grant program awards grants to fund public works investments to support the construction or rehabilitation of essential public infrastructure and facilities (e.g., schools) necessary to generate or retain private sector jobs and investments, attract private sector capital, and promote regional competitiveness. Indian tribes, political subdivisions of a state, and nonprofit IHEs are eligible to apply for grants. The area to be impacted by the project must meet certain criteria of economic distress. The program was appropriated $118.5 million in FY2020.[72]

Support for Schools Serving Certain Populations

The following programs provide federal support for schools serving certain populations, including rural communities, military-connected children, Native Americans, Native Hawaiians, and Alaska Natives.

Community Facilities Loans and Grants Program

The U.S. Department of Agriculture (USDA) administers the Community Facilities Loans and Grants program, which provides project grants, direct loans, and guaranteed/insured loans for the construction, enlargement, extension, or other improvement of community facilities providing essential services to rural residents.[73] Community facilities include child care facilities and K-12 and postsecondary education facilities. State and local governments, political and quasi-political subdivisions of states and associations, federally recognized Indian tribes, and nonprofit organizations may apply. The program was appropriated $32.0 million for Community Facilities grants in FY2020.[74] Loan authorization levels for FY2020 are $2.8 billion for direct loans and $500.0 million for guaranteed loans in FY2020.[75]

Public School Facilities on Military Installations

In recent years, Congress has provided funds in Department of Defense (DOD) appropriations acts to construct, renovate, repair, or expand elementary and secondary public schools located on military installations in order to address capacity or facility condition deficiencies at such schools.

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[71] 42 U.S.C. §3141.

[72] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H10961.

[73] 7 U.S.C. §1926; Section 306(a)(1) of the Consolidated Farm and Rural Development Act of 1972. For more information, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*.

[74] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11167.

[75] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11167.

FY2020 funds required a state or local match equal to not less than 20% of the total project cost.[76] The FY2020 appropriation was $315.0 million.[77]

Department of Defense Impact Aid Program

The DOD Impact Aid program—distinct from the ED Impact Aid program—provides funds to LEAs that enroll military-connected children. In recent years, Congress has provided funds through the DOD authorization and appropriation acts to LEAs serving military children. DOD awards funding under three subprograms. The Impact Aid Supplemental program supports LEAs serving significant numbers of military dependent students and allows payments to be used without restriction.[78] The Impact Aid for Large Scale Rebasing (BRAC) program supports LEAs with enrollment changes due to base closures. The Impact Aid for Children with Severe Disabilities program[79] supports LEAs serving children with severe disabilities as reimbursement for eligible costs incurred in providing such children a free and appropriate education (FAPE). For FY2020, $40.0 million was appropriated to the Supplemental program, and $10.0 million was appropriated for children with severe disabilities.[80] No appropriations have been made as a result of base closures in recent years.

Elementary and Secondary Schools for Native Americans

There are 183 BIE-funded elementary and secondary schools and dormitories funded by the Bureau of Indian Education (BIE) in 23 states.[81] Construction activities supported by the BIE include new school facilities, employee and student housing, and facilities improvement and repair. The FY2020 appropriations for education construction were $248.3 million.[82]

Postsecondary Schools for Native Americans

The Tribally Controlled Colleges or Universities Assistance Act (P.L. 95-471, as amended), the Navajo Community College Act (P.L. 92-189, as amended), and the Snyder Act (25 U.S.C. §13), as amended, provide grants for the operation and improvement of tribally controlled colleges and universities and two BIE institutions of higher education to ensure continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. The institutional programs received $107.2 million in FY2020 appropriations.[83]

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[76] P.L. 116-93 and 76 Fed. Reg. 55883 et seq.

[77] P.L. 116-93.

[78] Section 306 of the National Defense Authorization Act for FY1990 and FY1991 (P.L. 101-189) authorized supplementary funds from DOD for LEAs serving military dependent students. Subsequently, the Department of Defense Appropriations Act, 1991 (P.L. 101-511) set the eligibility criteria for this program and appropriated $10 million.

[79] 20 U.S.C. §7703a.

[80] P.L. 116-92.

[81] 25 U.S.C. §13, §2005, §2503(b), and §5301 et seq. For more information, see CRS Report RL34205, *Indian Elementary-Secondary Education: Programs, Background, and Issues*.

[82] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11290.

[83] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11325.

Native Hawaiian Education

The Native Hawaiian Education Act[84] provides competitive grants to Native Hawaiian and other organizations to develop, supplement, and expand innovative education programs to assist Native Hawaiians. The act also authorizes the Native Hawaiian Education Council. The appropriations acts of FY2012-FY2020 contained provisions allowing a portion of the appropriation to be used for elementary and secondary school construction, renovation, and modernization of a facility run by the Department of Education of the State of Hawaii that served a predominantly Native Hawaiian student body. The FY2020 appropriation level was $36.9 million.[85]

Alaska Native Education

The Alaska Native Educational Equity, Support, and Assistance Act[86] provides competitive grants to Alaska Native and other organizations to meet the unique educational needs of Alaska Natives and to support supplemental education programs to benefit Alaska Natives. The appropriations acts of FY2010-FY2020 authorized construction as an allowable use of funds. The FY2020 appropriations were approximately $36.0 million.[87]

Federal Support for Specific Institutions or Types of Institutions

This section of the report addresses sources of federal support for specific institutions or types of institutions, such as historically Black colleges and universities, minority-serving institutions, charter schools, and others.

Historically Black College and University Capital Financing Program

The Historically Black College and University Capital Financing Program[88] provides low-cost capital (loans) to finance improvements to the infrastructure of the nation's historically Black colleges and universities (HBCUs). The Secretary of Education provides financial insurance to guarantee the full payment of principal and interest on qualified bonds issued by a designated bonding authority (DBA). The DBA uses the majority of the bond proceeds to issue loans to HBCUs. HBCUs may use the loans to finance or refinance the repair, renovation, and construction of classrooms, libraries, laboratories, dormitories, instructional equipment, and research instrumentation. The loan and interest volume cap is $1.1 billion according to statutory provisions; however, the appropriations acts of FY2012-FY2020 allow the Secretary to disregard the limitation. The appropriations acts permit the Secretary to guarantee loans of up to $212.1 million in FY2020.[89] The new loan subsidy costs appropriations for FY2020 was $20.2 million.[90]

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[84] 20 U.S.C. §7511 et seq.; Title VI-B of the ESEA, as amended.

[85] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020, p. H11139.

[86] 20 U.S.C §7541 et seq.; Title VI-C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

[87] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11139.

[88] Title III, Part D of the HEA; 20 U.S.C. §1066 et seq.

[89] P.L. 116-94.

[90] P.L. 116-94.

Low-Income and Minority-Serving Institutions of Higher Education

ED's Aid for Institutional Development programs, authorized under Title III-A, Title III-B, Title III-F, Title V, Title VII-A-4, and Title VIII-AA of the HEA,[91] provide grants to certain eligible public and private nonprofit institutions of higher education (IHEs) for activities such as the purchase of equipment, faculty development, curriculum development, tutoring, endowment development, and administrative improvements.[92] Although institutional eligibility criteria differ for each of the programs, eligible IHEs must generally enroll a high proportion of needy students and have lower than average educational and general expenditures. Many of the programs also require eligible IHEs to enroll a higher than average proportion of minority students.

To varying extents, the programs allow construction, maintenance, renovation, improvement of instructional facilities, or the acquisition of land on which to construct instructional or campus facilities. The discretionary appropriations for all of the programs were $772.2 million for FY2020.[93] Additional mandatory appropriations of $240.0 million in FY2020 were provided by the SAFRA Act (P.L. 111-152).[94]

Land-Grant Colleges

Land-grant colleges were created in 1862 by the Morrill Act in each state as public IHEs to teach the "agricultural and mechanical arts."[95] In 1890, Congress extended the designation to certain HBCUs, known as the 1890 institutions, and again in 1994 to certain tribal colleges, known as the 1994 institutions. Federal funds provide a major source of funding for public research and extension activities at land-grant institutions, including the 1862, 1890, and 1994 land-grant institutions. Six of the programs for land-grant colleges allow construction or renovation of facilities at the institutions.

- The **Hatch Act of 1887** (7 U.S.C. §301 et seq.), as amended, supports agricultural research and educational activities at the 1862 land-grant colleges.[96] Funds may be used for the purchase and rental of land and the construction, acquisition, alteration, or repair of buildings necessary for conducting research. Appropriations for the Hatch Act were $259.0 million in FY2020.[97]
- The **Payments to 1890 Land-Grant Colleges and Tuskegee University** program (Section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended), also known as the Evans-Allen Research program, allows the purchase and rental of land and the construction, acquisition, alteration, or repair of buildings necessary for conducting

[91] 20 U.S.C. §1057 et seq.; 20 U.S.C. §1060 et seq.; 20 U.S.C. §1067q; 20 U.S.C. §1101 et seq.; 20 U.S.C. §1136a et seq.; and 20 U.S.C. §1161aa, respectively.

[92] For additional information, see CRS Report R43237, *Programs for Minority-Serving Institutions Under the Higher Education Act*.

[93] Department of Education Budget Tables, "FY2020 Congressional Action," https://www2.ed.gov/about/overview/budget/budget20/20action.pdf.

[94] This figure reflects the 6.2% sequester of non-exempt mandatory non-defense programs.

[95] For more information, see CRS Report R45897, *The U.S. Land-Grant University System: An Overview*.

[96] U.S. Department of Agriculture, National Institute of Food and Agriculture, "The Hatch Act of 1887," https://nifa.usda.gov/program/hatch-act-1887.

[97] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11163.

agricultural research, among other activities.[98] Funds are allocated by formula. The appropriations were $67.0 million in FY2020.[99]

- The **1890 Facilities Grants** program (7 U.S.C. §3222b) provides funds to 1890 land-grant institutions, including Tuskegee University and West Virginia State University, for the acquisition and improvement of agricultural and food sciences facilities and equipment, including libraries. The appropriations were $20.5 million in FY2020.[100]
- The **Tribal Colleges Endowment Fund** (7 U.S.C. §301 note.) enhances education in agricultural sciences and related disciplines for Native Americans by building educational capacity at tribal colleges in the areas of curricula design and materials development, faculty development and preparation for teaching, instruction delivery systems, experiential learning, equipment and instrumentation for teaching, and student recruitment and retention. It also funds facility renovation, repair, construction, and maintenance in support of these efforts. At the end of each fiscal year, the earned interest income from the endowment fund is distributed to tribal colleges according to a statutory formula. The appropriations were $11.9 million in FY2020.[101]
- The **Tribal Colleges Education Equity Program** (7 U.S.C. §301 note and 7 U.S.C. §7601 note) supports the institutional capacity of the 1994 institutions to enhance educational opportunities for Native Americans in the food and agricultural sciences. Although funds may not be used to acquire or construct facilities, minor alterations, renovations, or repairs necessary and incidental to the major purpose for which a grant is issued may be allowed with prior approval. The appropriations were $4.0 million in FY2020.[102]
- The **Tribal Colleges Extension Program**, also known as Extension Services at 1994 Institutions (7 U.S.C. §343), supports the capacity of the 1994 institutions to provide culturally relevant extension education programs to the public. Although funds may not be used to acquire or construct facilities, minor improvements, alterations, renovations, or repairs to land, buildings, or equipment necessary and incidental to the major purpose for which a grant is issued may be allowed with prior approval. The appropriations were $8.0 million in FY2020.[103]

Howard University

Howard University is a private doctorate-granting, research university. It was chartered by Congress in 1867 to educate African Americans. The Federal Support for Howard University

[98] U.S. Department of Agriculture, National Institute of Food and Agriculture, "Agricultural Research at 1890 Land-Grant Institutions," https://nifa.usda.gov/program/agricultural-research-1890-land-grant-institutions.

[99] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11163.

[100] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11164.

[101] P.L. 116-94.

[102] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11163.

[103] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11164.

program provides partial support for construction, development, improvement, endowment, and maintenance of the university and the Howard University Hospital. Howard University has discretion in allocating funds for its academic, research, and endowment programs, and for its construction activities.[104] The appropriations for Howard University and the Howard University Hospital were $240.0 million in FY2020.[105]

Schools for the Deaf

Gallaudet University offers traditional undergraduate and graduate programs, continuing education, and programs in fields related to deafness for students who are deaf and those who are not. Gallaudet University operates the Laurent Clerc National Deaf Education Center, which includes the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf. The Kendall Demonstration Elementary School provides an elementary school for children who are deaf, and the Model Secondary School for the Deaf provides secondary education programs for students who are deaf. The Gallaudet University program[106] provides general support for the institutions. Funds may also be used for the construction and maintenance of facilities at those institutions. The appropriations for Gallaudet University were $137.4 million in FY2020.[107]

The National Technical Institute for the Deaf (NTID) is a technical college for students who are deaf or hard of hearing. NTID was established by Congress in 1965 and became a college within the Rochester Institute of Technology, a private university, in 1968. Statutory authorization (20 U.S.C. §4331 et seq.) is provided to support the operation, including construction and equipping, of NTID. The appropriations were $79.5 million for FY2020.[108]

Charter School Facilities

ED administers two programs that provide facilities support to elementary and secondary charter schools. The State Charter Schools Facilities Incentive Grants,[109] also known as the Per-Pupil Facilities Aid Programs, are competitive grants awarded to states that have per-pupil charter school facilities aid programs specified in state law and that annually provide financing on a per-pupil basis for charter school facilities. The program assists charter schools in meeting school facility costs.

The second program, Credit Enhancement Grants for Charter School Facilities,[110] is intended to improve access to capital markets for the financing of charter school facilities. Funds are awarded on a competitive basis to public and nonprofit entities to leverage nonfederal funds that help charter schools obtain school facilities through purchase, lease, renovation, or construction.

These two programs are collectively allocated 12.5 percent of the amount annually appropriated for the Charter Schools program,[111] and at least 50 percent of the allocation must be used for the

[104] Howard University Incorporation Act of 1867, as amended, codified in Title 20, Chapter 8 of the United States Code (20 U.S.C. §121 et seq.). The program website is available at http://www.ed.gov/programs/howard/index.html.

[105] P.L. 116-94.

[106] 20 U.S.C. §4301 et seq.

[107] P.L. 116-94.

[108] P.L. 116-94.

[109] 20 U.S.C. §7221c(k); ESEA §4304(k).

[110] 20 U.S.C. §7221c(a); ESEA §4304(a).

[111] 20 U.S.C. §7221a(b)(1); ESEA §4302(b)(1).

Credit Enhancement Grants program.[112] The Charter Schools program supports planning, design, and initial implementation of charter schools. The Charter Schools program's appropriation for FY2020 was $440.0 million, of which $60.0 million was designated for facilities financing assistance. Of the $60.0 million, not less than $50.0 million was reserved for the Credit Enhancement program, and the remainder was allocated to the Incentive Grants program.[113]

Institute of American Indian and Alaska Native Culture and Arts Development

The Institute of American Indian and Alaska Native Culture and Arts Development[114] is a federally chartered independent nonprofit educational institution that serves as a multi-tribal center of higher education for Native Americans and is dedicated to the study, creative application, preservation, and care of Indian arts and culture. Appropriations may be used for the institution's operation. In addition, a portion of funds may be deposited in a trust account for capital improvements, including the expenses associated with site selection and preparation, site planning and architectural design and planning, new construction, materials and equipment procurement, renovation, alteration, repair, and other building and expansion costs of the institute. The institute was appropriated $10.5 million in FY2020.[115]

Hispanic-Serving Institutions Education Grants Program

The Hispanic-Serving Institutions Education Grants Program,[116] administered by the USDA, supports the ability of Hispanic-serving IHEs to attract, retain, and graduate students pursuing careers in the food and agricultural sciences and natural resources. Although funds may not be used to acquire or construct facilities, minor alterations, renovations, or repairs necessary and incidental to the major purpose for which a grant is issued may be allowed with prior approval. The appropriations were $11.2 million in FY2020.[117]

Department of Defense Education Activity (DODEA)

The Department of Defense operates schools for the children of military members stationed in the United States and abroad. Major construction and replacement projects are funded through the Defense-wide military construction appropriations.

Defense-Operated Institutions of Higher Education

The Department of Defense and service branches operate several institutions of higher education, including the service academies and the Uniformed Services University of the Health Sciences. Defense appropriations support operations, maintenance, and facilities.

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[112] 20 U.S.C. §7221c(a)(1); ESEA §4304(a)(1).

[113] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11081.

[114] 20 U.S.C., Chapter 56.

[115] These funds are forward funded, becoming available on July 1, 2020, and remaining available through September 30, 2021. P.L. 116-94.

[116] 7 U.S.C. §3241.

[117] Rep. Nita Lowey, "Explanatory Statement Regarding H.R. 1865, Further Consolidated Appropriations Act, 2020," p. H11163.

Legislation in the 116th Congress

This section of the report addresses legislation related to school facilities that has, at a minimum, been ordered to be reported out of committee or passed by one chamber during the 116th Congress.

The Rebuild America's Schools Act of 2019

On February 26, 2019, the House Committee on Education and Labor ordered to be reported H.R. 865, the Rebuild America's Schools Act of 2019.[118] The bill would authorize $70 billion in grants and facilitate $30 billion in school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. Funds would be allocated to states proportionally based on their prior-year share of grant allocations under Title I-A of the Elementary and Secondary Education Act (ESEA), a grant program designed to provide educational and related services to low-achieving and other students attending schools with relatively high concentrations of students from low-income families.

States would be directed to award grant funds provided through the bill to local educational agencies (LEAs) with the highest numbers or percentages of students who are *counted* in the formulas used to allocate ESEA Title I-A grants—and among LEAs meeting this criterion, to those prioritizing improvement of facilities of public schools that serve the highest percentages of students who qualify for free or reduced price lunches. Additional consideration in the awarding of grants to LEAs could be given to those with school facilities that pose a severe health or safety threat.

The bill would also require the Institute of Education Sciences to conduct a comprehensive study of the physical conditions of all public schools in the United States at least every five years.

Funds would also be authorized under H.R. 865 for Impact Aid construction for FY2020 through FY2023 at levels substantially higher than current authorization of appropriations levels.

Streamlining Energy Efficiency for Schools Act of 2019

On March 5, 2019, the House passed H.R. 762, the Streamlining Energy Efficiency for Schools Act. The bill would amend the Energy Policy and Conservation Act (42 U.S.C §6371a) to require the Secretary of Energy to establish a clearinghouse to disseminate information regarding available federal programs and financing mechanisms that may be used to help initiate, develop, and finance energy efficiency, distributed generation, and energy retrofitting projects for schools. In the Senate, Senator Murkowski of the Committee for Energy and Natural Resources reported H.R. 762 with an amendment in the nature of a substitute. The amendment strikes the text of H.R. 762 and inserts the text of a related Senate bill, S. 253, as ordered reported by the Committee.[119]

S. 253, also called the Streamlining Energy Efficiency for Schools Act, was reported out of committee on September 19, 2019. The bill would authorize the clearinghouse as in H.R. 762. It would also require the Office of Energy Efficiency and Renewable Energy within the Department of Energy to act as the lead federal agency for coordinating and disseminating information on

[118] An identical companion bill, S. 266, was introduced in the Senate on January 29, 2019, though no action on the bill has been taken as of the date of publication of this report. For more information, see CRS Report R45767, *The Rebuild America's Schools Act of 2019 (H.R. 865/S. 266): In Brief*.

[119] S.Rept. 116-108.

existing federal programs that support energy efficiency, renewable energy, and energy retrofitting projects for schools.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

On March 27, 2020, Congress and the President enacted P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), in response to the national emergency declared by the President on March 13, 2020, concerning the COVID-19 pandemic. The CARES Act authorizes the Secretary of Education to grant a deferment during a qualifying emergency to an institution that has a loan under the HBCU Capital Financing Program. During the period of the deferment, the Secretary is required to pay the required principal and interest due. At the end of the deferment, the IHE is required to repay the Secretary for payments made on its behalf.

Moving Forward Act

On July 1, 2020, the House passed H.R. 2, the Moving Forward Act, which contains a Division K entitled the Reopen and Rebuild America's Schools Act of 2020. Like H.R. 865, H.R. 2 would authorize grants and school infrastructure tax credit bonds to be used toward the construction and repair of public elementary and secondary school facilities. Funds would be allocated to states proportionally based on their prior-year share of grant allocations under Title I-A of the ESEA.

States would be directed to award grant funds provided through the bill to local educational agencies (LEAs) with the highest numbers or percentages of students who are *counted* in the formulas used to allocate ESEA Title I-A grants—and among LEAs meeting this criterion, to those prioritizing improvement of facilities of public schools that serve the highest percentages of students who qualify for free or reduced price lunches. Additional consideration in the awarding of grants to LEAs could be given to those with school facilities that pose a severe health or safety threat. For grants awarded in FY2020, specifically, additional priority would be given to LEAs that would use the grants to improve facilities to support social distancing, personal hygiene, and building hygiene (e.g., HVAC), consistent with guidance issued by the Centers for Disease Control and Prevention.

H.R. 2 would authorize $20 billion in grants for each of fiscal years 2020 through 2024 and facilitate $10 billion in school infrastructure tax credit bonds for each of calendar years 2021 through 2023.

Appendix. Selected Acronyms Used in This Report

ARRA: The American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

BIE: Bureau of Indian Education

DOD: Department of Defense

ED: U.S. Department of Education

ESEA: Elementary and Secondary Education Act

FEMA: Federal Emergency Management Agency

HBCU: Historically Black Colleges and Universities

HEA: Higher Education Act

IHE: Institution of Higher Education

K-12: Kindergarten through grade 12

LEA: Local Educational Agency

P.L.: Public Law

U.S.C.: United States Code

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