

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP**

DATE 7-28-72

TO: Mr. Fred Fielding

FROM: Wilf Rommel

REMARKS:

A handwritten signature, possibly "File", is written in dark ink. It consists of a large, stylized capital 'F' followed by a cursive 'ile'. Below the signature are several diagonal lines, possibly indicating a stamp or a signature block.

OMB FORM 38
REV SEPT 70

Department of Justice
Washington, D.C. 20530

JUL 28 1972

MEMORANDUM FOR THE HONORABLE JOHN W. DEAN, III
Counsel to the President

Re: Constitutionality of Federal Disaster Assistance
to Nonprofit Private Educational Institutions.

A. Introduction

This is in response to your July 25, 1972, memorandum requesting the views of this Office on the constitutionality of providing federal disaster relief to nonprofit, private educational institutions at all levels, presumably including church-related schools, that were damaged by Hurricane Agnes.

While your principal concern is whether, as a general principal of constitutional law, disaster relief to church-related schools would violate constitutional provisions, you have provided four alternative draft bills which typify the general proposals being considered. Alternative 1 would authorize the Department of Health, Education, and Welfare to make grants for construction and for equipment and supplies to any nonprofit, private educational institution damaged by the hurricane. Alternative 2 is similar except that the grants would be limited to construction costs. Alternative 3 is in the form of a private relief bill for construction and for equipment and supplies to specifically named private institutions. Alternative 4 is similar except that, as in Alternative 2, relief is provided only for construction costs.

The principal constitutional issue raised by these proposals is whether government financial support to church-related schools, especially at the elementary and secondary levels, under these circumstances violates the First Amendment restriction that "Congress shall make no law respecting an establishment of religion . . ." U.S. Const. Amend. I.

While concrete predictions regarding the constitutionality of proposals in this rather murky area of constitutional law are hazardous, we believe that disaster relief under present circumstances can be undertaken in a constitutional fashion. Some proposals, however, are more defensible than others from a constitutional standpoint, and all can be somewhat improved to enhance the prospects that they will receive judicial approval.

In the limited time available we are not able to examine all facets of Establishment Clause doctrine. A few points, however, need to be stressed. The first is a caveat that the cases involving aid to church-related schools are not entirely consistent. The Supreme Court has candidly acknowledged that it "can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law." Lemon v. Kurtzman, 403 U.S. 602, 612 (1971). This is principally because the First Amendment prohibition is not absolute and the courts have necessarily embarked on a line-drawing process to distinguish the permissible from the prohibited. As the Chief Justice recently noted:

"Our prior holdings do not call for a total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." Lemon v. Kurtzman, supra, at 602, 614 (1971).

B. Significance of the Emergency Situation

A significant circumstance in the present instance, we believe, is the emergency and temporary nature of the aid. Apart from the constitutional doctrine which governs normal church-state relationships, the natural disaster has created

an emergency for all educational institutions, public and private, which necessarily will influence the Court. It is clear, for example, that in other emergencies, such as the Depression and World War II, the Court has approved certain governmental conduct that in the absence of emergency probably would not have been permitted under then-existing constitutional doctrine. E.g., Hirabayashi v. United States, 320 U.S. 81 (1943) (curfew on West Coast persons of Japanese ancestry); Korematsu v. United States, 323 U.S. 214 (1944) (Japanese exclusion program); Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934) (two-year mortgage foreclosure moratorium). It is clear that these cases were decided in large part, as the Court expressly stated in Korematsu, because of a "[p]ressing public necessity." 323 U.S. at 216.

We believe that the emergency situation created by the extraordinary hurricane damage can be relied upon to constitutionally enhance the present aid proposals. To take full advantage of this situation we suggest that the legislation contain findings which relate the nature of the emergency, the damage and destruction to all schools, including church-related schools, the need for repair, and, significantly, the burden that might be placed on public schools if the church-related schools are not assisted.

It is also of vital significance that the federal aid, while triggered by an emergency, is temporary in nature and fixed in duration. Only the harm caused by a single national disaster is covered. It is difficult to consider such a temporary and self-limiting distribution of largesse as an "establishment of religion" falling within the ban of the First Amendment.

In Blaisdell, supra, Chief Justice Hughes noted that "[w]hile emergency does not create power, emergency may furnish the occasion for the exercise of power." 290 U.S. at 426. What he meant by this is that reliance need not be placed on a separate emergency power to support the constitutional underpinnings of legislation. Instead, the factual

circumstances of an emergency add additional factors that permit justification within existing constitutional doctrine. We believe that this reasoning is applicable in the present instance: In light of known facts, the present constitutional tests for determining the validity of aid to church-related schools appear to support a disaster relief program.

C. Application of Three Establishment Clause Tests

Briefly, the Court has developed three independent tests to determine whether aid to church-related schools is permissible. First, the legislative purpose in adopting a particular program must be secular. Second, the primary effect of such aid must neither advance nor inhibit religion. Third, the aid program must avoid an excessive government entanglement with religion. See Lemon v. Kurtzman, supra, at 612-13.

1. Secular purpose.

In none of the cases decided to date has the Court held that aid to church-related schools violated the purpose test. The test is relatively easy to satisfy. In Board of Education v. Allen, 392 U.S. 236 (1968), the Court noted "that religious schools pursue two goals, religious instruction and secular education." Id. at 245. The state, it held, has a proper interest in determining "the manner in which these schools perform their secular educational function." Id. at 297. Since the purpose of the present aid is apparently the permissible one of fostering secular education, we do not foresee any difficulty in satisfying the purpose test in this instance. A general declaration of congressional intent to restore secular educational programs to private school students would probably be sufficient to satisfy the purpose test.

2. "Primary effect" test.

The reach of the second test--that the primary effect of aid must neither advance nor inhibit religion--is not clear.

It has been a significant factor in only one case, Tilton v. Richardson, 403 U.S. 672 (1971), and there it was largely overshadowed by consideration of the entanglement issue. Moreover, the Supreme Court has noted that any general assistance program may make it more likely for children to attend church-related schools, but such an incidental effect as accrues from providing free bus transportation or free textbooks to parochial school children has nevertheless survived constitutional scrutiny. Everson v. Board of Education, 330 U.S. 1, 17 (1947); Board of Education v. Allen, 392 U.S. 236, 244 (1968).

Our best indication of the Court's view on whether a particular grant has the effect of either advancing or inhibiting religion is that the Court will look to see whether the effect is either primary or incidental. In our view the effect here is incidental. The effect of disaster aid is only to restore the church-related schools to their prior status. They will not obtain additional facilities and supplies nor will they be able to admit more students than would have been possible in the absence of the hurricane and the ensuing aid.

Another important factor with respect to the effect test is whether the aid given is generally applicable to all schools. Of the cases decided to date, the programs upheld have all been directed to aiding all schools, or all students, alike, whether public or private. Everson v. Board of Education, 330 U.S. 1 (1947) (bus transportation); Board of Education v. Allen, 392 U.S. 236 (1968) (textbooks); Tilton v. Richardson, 403 U.S. 672 (1971) (higher education construction grants). In the two cases in which aid was disapproved, the programs involved only assistance to private schools. Lemon v. Kurtzman and Earley v. Di Censo, 403 U.S. 602 (1971) (purchase of secular educational services; teacher salary supplements).

The importance of having the aid be uniform cannot be overemphasized. The Justices frequently allude to this factor. Mr. Justice Brennan, for example, in concurring in the Lemon and Tilton decisions, stated:

"[A]lthough the federal subsidy, similar to the Everson and Allen subsidies, is available to both public and nonpublic colleges and universities, the Rhode Island [Earley] and Pennsylvania [Lemon] subsidies are restricted to nonpublic schools, and for practical purposes to Roman Catholic parochial schools." 403 U.S. at 644.

From a constitutional standpoint, therefore, it would be better for legislation to include aid to both private and public schools. We assume that the reason for legislating solely with respect to private schools is that public institutions are adequately covered by existing legislation. 20 U.S.C. § 241-1 (1970) (disaster assistance to public agencies operating elementary or secondary schools); 20 U.S.C. § 758 (1970) (disaster assistance to public institutions of higher learning). Under these circumstances we believe that the legislation should contain a finding that points out the aid now given to public institutions and should state that the present proposal is intended to treat private institutions similarly. Likewise, if the aid given and the conditions under which it is given are made comparable to that now existing for public schools, the proposal would be more satisfactory from a constitutional standpoint.

For similar reasons, we do not believe that Alternatives 3 and 4 are as constitutionally defensible as Alternatives 1 and 2. By specifically enumerating certain private schools for aid, there is the possibility that if some religious schools were included and others not, the legislation could be viewed as discriminating among educational institutions that are church-related. Similarly, the legislation would be plainly unconstitutional if nonsectarian schools were to be excluded. If aid is generally available to all private institutions under the same standards the legislation lacks this discriminatory appearance and consequently makes it easier for the legislation to surmount the effect test.

3. The entanglement test.

The third Establishment Clause standard, the "entanglement" test, was first suggested in Walz v. Tax Commission,

397 U.S. 664 (1970), and in view of recent decisions appears to be the most significant one for the present Court. In Walz the Court upheld tax exemptions for churches, primarily because they are an indirect form of aid. It pointed out that direct aid encompasses "sustained and detailed administrative relationships" which can lead to "excessive government entanglement with religion." Id. at 674-75.

This test was then adopted in Lemon and Tilton to judge the validity of aid to church-related schools. In Lemon the Pennsylvania program involved a reimbursement to church-related schools for the cost of providing educational services for secular subjects. The reimbursement included costs for teachers' salaries, textbooks, and educational materials. In Earley v. Di Censo, decided with Lemon, a Rhode Island statute provided supplemental salary payments to teachers of secular subjects in church-related schools. In both programs there were provisions to assure that the funds did not support sectarian teaching. The enforcement of these restrictions, the Lemon Court held, unconstitutionally entangled government and church interests:

"A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment respected These prophylactic contacts will involve excessive and enduring entanglement between state and church." 403 U.S. at 619.

We do not believe that the present proposals suffer from the same defects as those found in Lemon and Earley and, consequently, have a good probability of surmounting this entanglement test. In this connection it is appropriate to examine the following three factors that the Lemon Court stated were pertinent in determining compliance with the entanglement test:

"In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the

institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." 403 U.S. at 615.

Naturally some of the institutions aided will be church-related. However, by tying this program to the aid program for public schools, as suggested earlier, the proposed legislation will differ somewhat from the Lemon aid in being more uniformly applicable.

The nature of the aid in the present instance differs significantly from that in Lemon. Here the aid is disaster relief designed expressly "to replace or restore facilities" destroyed or damaged by Agnes. It will not put church-related schools in a better position than they would have been in the absence of Agnes. Moreover, the type of aid is of a different character. It will not be used to pay teachers' salaries, that aspect of the Lemon and Earley program which was particularly criticized by the Court. Here the aid will be solely for the replacement or restoration of physical plant and, in two of the draft bills, of equipment and supplies. Construction grants have been given specific approval, at least with respect to higher education, in Tilton v. Richardson, 403 U.S. 672 (1971). We note parenthetically at this point that the most defensible aid, constitutionally, would be that which is restricted to construction grants and further limited to higher education. However, we believe that under the emergency and temporary circumstances here involved that aid for equipment and supplies to elementary and secondary schools can also be supported.

The third factor mentioned by the Lemon Court as significant in determining any violation of the entanglement test is concerned with the "resulting relationship between the government and the religious authority." The present proposals are in a much better position on this score than either the federal aid upheld in Tilton or the State aid struck down in Lemon and Earley. In the latter cases, the programs required a deep and continuing state surveillance. Here the aid involves the Federal Government only in a one-time audit function to determine whether the funds were spent for the purposes for which they were granted. The Tilton case involved

not only this audit function for a particular grant but the possibility of continuing applications and grants over a period of years to a sectarian educational institution. Here the aid, even more than in Tilton, which involved a continuing governmental program, will be a one-shot affair requiring no substantial government surveillance over the years.

D. Conclusion

Thus, we conclude that in theory aid to private institutions as contemplated could successfully meet the constitutional requirements as set forth in recent decisions by the Court. There may, however, be constitutional problems that could arise in practice under this legislation. For example, if the aid was channeled only to religious institutions or only to religious schools of one belief, the program would be constitutionally suspect. Or if the federal aid were unrestricted and it was used by church-related institutions only to replace such sectarian facilities or equipment as a damaged chapel, religious textbooks, or religious objects the courts might well determine that the primary effect of the aid is to advance religion.

In this connection we believe that it may be desirable to consider placing restrictions on the use to which the aid can be put. While such restrictions contributed to the constitutional difficulties in Lemon under the entanglement test, the absence of such restrictions will engender difficulties under the primary effect test. The restrictions in the Higher Education Facilities Act of 1963 were expressly approved in Tilton. That Act provides construction grants to private and public institutions of higher education, expressly prohibiting, however, the use of federal funds for "any facility used or to be used for sectarian instruction or as a place for worship," or "any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity." 20 U.S.C. § 751(a)(2)(C), (D) (1970). We suggest that consideration be given to adopting similar restrictions in the legislation for disaster relief.

However, we would note that Pub. L. No. 92-209 provides for relief for private, nonprofit medical care facilities which are damaged or destroyed by a major disaster. These medical care facilities include, presumably, those operated by religious organizations. And while there are obvious differences between the missions of hospitals and schools, this Act may serve not only as precedent for the present proposals but also as support for an approach which does not include restrictions excluding sectarian facilities and equipment as, for example, a school chapel.

In conclusion we believe that there is general constitutional support for the disaster relief legislation under consideration. For the reasons stated above, we prefer a legislative approach which involves general grants to the approach in the form of a private relief bill. While a federal enactment involving construction grants for institutions of higher learning was upheld in Tilton, and therefore provides a direct precedent in support of disaster relief involving construction grants, we do not think that supplies and equipment need be excluded. The inclusion of clearly sectarian facilities, whether they are physical facilities such as a chapel or supplies such as religious books in a library, raises the same problem of whether primarily sectarian facilities or supplies should not be excluded by an appropriate restriction. But scientific equipment in a laboratory or nonsectarian books in a library are clearly as closely related to the secular and public aspects of the educational mission as the laboratory or library that would be covered by construction grants.

We believe that all of these proposals can be constitutionally defended with the addition of certain findings and other provisions as discussed above. We would be happy to comment on any specific legislation that may be proposed or to provide other assistance.



Roger C. Cramton
Acting Assistant Attorney General
Office of Legal Counsel

JUL 24 1972

Skidmore
4870

NOTE FOR HONORABLE FRANK R. CARLUCCI
DEPUTY DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

Attached, as you requested, are draft bills to take care of the private schools damaged by Agnes. These drafts have not yet been reviewed (as you requested) with respect to Congressional and policy implications. Steve Kurzman will be contacting you on these matters as soon as possible.

We have prepared four alternative drafts. Alternative 1 would authorize HEW to make grants for construction and for equipment and supplies to any nonprofit private elementary or secondary school or nonprofit private institution of higher education damaged by Agnes. Alternative 2 is the same except that the grants would be only for construction purposes. Alternative 3 is in the form of a private relief bill for construction and equipment and supplies costs for named nonprofit private schools damaged by Agnes (the names would have to be filled in). Alternative 4 is the same as alternative 3 except that the relief is only for construction costs. Please note the footnotes on the drafts.

WHL
Wilmot R. Hastings
General Counsel

Attachments

See take to OEP.

*Quell
Fischer
M. M. M.
Kobler*

A B I L L

To authorize the Secretary of Health, Education, and Welfare to provide assistance to nonprofit private schools destroyed or damaged by Hurricane and Tropical Storm Agnes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONSTRUCTION ASSISTANCE

Section 1. The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") may make grants (upon such conditions as he may determine) to nonprofit private elementary or secondary schools or nonprofit private institutions of higher education to pay all or part of the cost of construction necessary to replace or restore facilities destroyed or damaged during calendar year 1972 as a result of Hurricane and Tropical Storm Agnes.

EQUIPMENT AND SUPPLIES

Sec. 2. The Secretary may also make grants (upon such conditions as he may determine) to nonprofit private

elementary or secondary schools or nonprofit private institutions of higher education to pay all or part of the cost of instructional or maintenance supplies, equipment, or materials (including textbooks) necessary to replace or restore such supplies, equipment, and materials destroyed or damaged during calendar year 1972 as a result of Hurricane and Tropical Storm Agnes.

DEFINITIONS

Sec. 3. For purposes of this Act--

(1) the term "construction" means construction as defined by section 15(8) of Public Law 81-815, in the case of an elementary or secondary school, or section 782(2) of the Higher Education Act of 1965, in the case of an institution of higher education.

(2) the term "elementary school" means an elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965.

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(2) the term "elementary school" means an elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965.

(3) the term "facilities" means, in the case of an institution of higher education, academic facilities* as defined by section 782(1) of the Higher Education Act of 1965, or, in the case of an elementary or secondary school, school facilities as defined by section 15(9) of Public Law 81-815.

(4) the term "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965.

(5) the term "nonprofit" means nonprofit as defined by section 1201(c) of the Higher Education Act of 1965.

(6) the term "secondary school" means a secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965.

* This term does not cover dormitories, cafeterias, or gymnasia; i.e., it does not go beyond what HEW can do in the way of disaster relief for public colleges. We understand that OEP can reconstruct dormitories, cafeterias, and gymnasia for public colleges.

(3) the term "facilities" means, in the case of an institution of higher education, academic facilities* as defined by section 782(1) of the Higher Education Act of 1965, or, in the case of an elementary or secondary school, school facilities as defined by section 15(9) of Public Law 81-815.

(4) the term "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965.

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A B I L L

For the relief of nonprofit private schools destroyed or damaged by Hurricane and Tropical Storm Agnes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That
the Secretary of the Treasury is directed to pay to

(1) [names of institutions]

(2)

(3) , and

(4)

such sums as may be certified to him by the Secretary of Health, Education, and Welfare as being necessary to* restore or replace facilities of each of such schools damaged or destroyed during calendar year 1972 as a result of Hurricane and Tropical Storm Agnes.

EQUIPMENT AND SUPPLIES

Sec. 2. The Secretary of the Treasury is also directed to pay to

(1) [names of institutions]

(2)

(3) , and

(4)

such sums as the Secretary of Health, Education, and Welfare

may certify to him as being necessary to replace or restore instructional or maintenance supplies, equipment, or materials (including textbooks) destroyed or damaged during calendar year 1972 as a result of Hurricane and Tropical Storm Agnes.

FACILITIES

Sec. 3. For purposes of this Act, the term "facilities" means, in the case of institutions referred to in clause [1] and [2] of section 1, academic facilities as defined by section 782(1) of the Higher Education Act of 1965, or in the case of institutions referred to in clause [3] and [4] of section 1, school facilities as defined by section 15(9) of Public Law 81-815.

*Should this be after subtracting the proceeds of insurance on the facilities and any other financial assistance available from State and local public and private sources for restoration or repair?

A B I L L

For the relief of nonprofit private schools destroyed
or damaged by Hurricane and Tropical Storm Agnes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled, That
the Secretary of the Treasury is directed to pay to

(1) [names of institutions]

(2)

(3) , and

(4)

such sums as may be certified to him by the Secretary of
Health, Education, and Welfare as being necessary to*
restore or replace facilities of each of such schools damaged
or destroyed during calendar year 1972 as a result of
Hurricane and Tropical Storm Agnes.

FACILITIES

Sec. 2 For purposes of this Act, the term "facilities"
means, in the case of institutions referred to in clause [1]
and [2] of section 1, academic facilities as defined by section
782(1) of the Higher Education Act of 1965 , or in the case

of institutions referred to in clause [3] and [4] of section 1,
school facilities as defined by section 15(9) of Public
Law, 81-815.

*/ Should this be after subtracting the proceeds of
insurance on the facilities and any other financial
assistance available from State and local public and
private sources for restoration or repair?

July 25, 1972

MEMORANDUM FOR: ROGER C. CRAMTON
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

FROM: JOHN W. DEAN, III
COUNSEL TO THE PRESIDENT

SUBJECT: Federal Grants to Nonprofit Private
Educational Institutions

Consideration is being given to several draft bills which would provide for federal grants to private nonprofit schools which suffered damage from Hurricane Agnes.

Attached are four alternative bills that might be used to accomplish this purpose. As you will note, Alternative 1 would authorize HEW to make grants for construction and for equipment and supplies to any nonprofit private elementary or secondary school or nonprofit private institution of higher education damaged by the hurricane. Alternative 2 is the same except that the grants would be limited to construction costs. Alternative 3 is in the form of a private relief bill for construction and equipment and supplies to specifically named private institutions, and Alternative 4 is the same except that it relates only to construction costs.

Although such legislation is still in the preliminary proposal stage, the concept would have to be acted upon quickly if it is to be considered by the Congress this year and in time to be of real value to the damaged educational institutions. However, a preliminary issue to be resolved is whether any such grant legislation would be violative of the constitutional separation of church and state, or otherwise an improper use of federal funds.

- 2 -

Since this question goes to the very basis of any such legislative proposal and is critical to any further planning, we would appreciate receiving your opinion on the issue in the immediate future, and if possible by close of business on Thursday, July 27, 1972.

If you have any questions regarding the above, or if we can supply any additional information relating thereto, please so advise.

Thank you.

Attachment

JWD:FFF:bav

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO	Mr. Carlucci, DO	Take necessary action	☐
	Mr. Wilmot Hastings, HEW	Approval or signature	☐
	Mr. Fred Fielding, White House	Comment	☐
	Mr. Ellis Veatch, NSP	Prepare reply	☐
	Mr. William Fischer, HRP	Discuss with me	☐
	Mr. James McAleer, OEP	For your information	☐
		See remarks below	☐
FROM	William Kidmore	DATE	July 27, 1972
REMARKS			

I have redrafted the HEW proposal #1 to do
the following:

- (a) include my own and OEP comments on the draft;
- (b) include South Dakota;
- (c) make the draft as close as possible to the draft we went up as the "Disaster Recovery Act of 1972".

A B I L L

To authorize the Secretary of Health, Education, and Welfare to provide assistance to nonprofit private educational institutions which incurred loss destruction or damage by Hurricane and Tropical Storm Agnes and by the South Dakota flood disaster and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Schools Disaster Recovery Act of 1972."

PURPOSE

SEC. 2. The Congress hereby finds and declares that the untold disruption of the educational facilities of many communities resulting principally from flooding, high waters, and wind-driven waters associated with Hurricane and Tropical Storm Agnes, and the devastating flood disasters which struck the State of South Dakota in the month of June 1972, compels enactment of special measures designed to aid the victims of these catastrophes in their efforts to restore and rehabilitate devastated institutions and disordered community life.

CONSTRUCTION ASSISTANCE

Sec. 1. The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") may make grants (upon such conditions as he may determine) to nonprofit private elementary or secondary schools or nonprofit private institutions of higher education located in an area declared a major disaster area by the President or a disaster area by the Administration of the Small Business Administration or a natural disaster area by the Secretary of Agriculture for loss, destruction, or damage incurred by such institution as a result of Hurricane or Tropical Storm Agnes or the South Dakota flood disaster in the month of June 1972 and to the extent such loss, destruction, or damage is not compensated for by insurance or otherwise of up to:

"(1) 100 per centum of the net cost of repairing, restoring, reconstructiong, or replacing any such facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards; or

"(2) in the case of any such facility which was under construction when so damaged or destroyed, 50 per centum of the net cost of restoring such facility substantially to its condition prior to such disaster, and of completing construction not performed prior to such disaster to the extent that the cost of completing such construction is increased over the original construction cost due to changed conditions resulting from such disaster."

EQUIPMENT AND SUPPLIES

Sec. 2. The Secretary may also make grants (upon such conditions as he may determine) to such institutions as defined in Section 1 hereof to pay all or part of the cost of instructional or maintenance supplies, equipment, or materials (including textbooks) necessary to replace or restore such supplies, equipment, and materials lost, destroyed, or damaged as a result of Hurricane and Tropical Storm Agnes or the South Dakota flood disaster during June 1972 ~~and~~ ^{to} the extent that such loss, destruction, or damage is not compensated by insurance or otherwise.

DEFINITIONS

Sec. 3. For purposes of this Act--

(1) the term "construction" means construction as defined by section 15(8) of Public Law 81-815, in the case of an elementary or secondary school, or section 782(2) of the Higher Education Act of 1965, in the case of an institution of higher education.

(2) the term "elementary school" means an elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965.

(3) the term "facilities" means, in the case of an institution of higher education, academic facilities* as defined by section 782(1) of the Higher Education Act of 1965, or, in the case of an elementary or secondary school, school facilities as defined by section 15(9) of Public Law 81-815.

(4) the term "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965.

(5) the term "nonprofit" means nonprofit as defined by section 1201(c) of the Higher Education Act of 1965.

*This term does not cover dormitories, cafeterias, or gymnasia; i.e., it does not go beyond what HEW can do in the way of disaster relief for public colleges. We understand that OEP can reconstruct dormitories, cafeterias, and gymnasia for public colleges.

(6) the term "secondary school" means a secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965.

(7) the term "instructional or maintenance supplies" means

(8) the term "private" means

(9) the term "equipment and supplies" means

(10) the term "materials" means

APPLICABILITY OF BENEFITS

Sec. 3. The benefits provided under this Act shall be applicable to all loss, destruction, or damage qualifying hereunder, whether or not the injury has been remedied prior to the enactment of this provision and may be made available in repayment of indebtedness or reimbursement to the institution for expenditures or contracts made so long as insurance or other compensatory benefits on account of the loss were not available.

APPLICABILITY TO DISASTERS

Sec. 8. The provisions of this Act shall apply to loss or destruction or injury occurring on or after June 9, 1972, as a result of Hurricane and Tropical Storm Agnes and the flood disasters which occurred in the State of South Dakota in the month of June 1972, for major disasters determined by the President, or disasters as determined by the Administrator of the Small Business Administration, or natural disasters as determined by the Secretary of Agriculture.

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

(file)

TO Mr. Carlucci
Mr. O'Neill
Mr. Morrill
Mr. Rommel
Mr. Sitrin
Mr. Fischer

Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

Mr. Gifford
Mr. Engman
Mr. Fairbanks
☒ Mr. Fielding

Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

FROM Mr. Skidmore

DATE August 1, 1972
1:00 PM

REMARKS

Attached is a copy of a draft of the private schools disaster aid fact sheet, statement, and proposed bill which incorporates comments received from Mr. Fairbanks, Mr. Fischer, and Mr. Morrill up to noon Tuesday.

The bill has changed little. The fact sheet has been corrected.

To the best of my knowledge at this time it's ready for use.

I understand from Mr. Fairbanks that the attached draft of the statement has already gone forward.

FACT SHEET

Amendment to the "Disaster Recovery Act of 1972"

The proposed amendment would provide disaster relief for nonprofit private institutions of elementary, secondary, and higher education in disaster areas damaged by Tropical Storm Agnes and by the South Dakota flood in June 1972. A number of those institutions were damaged so severely that they will not be able to recover without extraordinary relief. While these institutions are eligible for loans under existing legislation or the Disaster Recovery Act of 1972, this assistance will be inadequate in many cases.

Aid to public schools is through assistance provided directly to local school districts: to finance normal operation of elementary and secondary schools; to repair damaged facilities; to replace or repair equipment; and to provide temporary school facilities. This assistance has top priority for funding and amounts required have first claim on available appropriations. Public institutions of higher education are also eligible for grants for the cost of construction and equipment incident to restoration or replacement of damaged facilities.

Continued operation of both public and nonprofit private schools is essential to reconstruction of the devastated area.

The proposed amendment would provide grants for the rebuilding, repair, or replacement of facilities, equipment, and supplies used for primarily non-sectarian purposes which were lost, damaged, or destroyed by the storms. The relief to be provided would be limited to restoration of facilities as they were before the disaster. It is intended to provide benefits for nonprofit private educational institutions comparable to that available to public educational institutions.

Preliminary estimates indicate that in the affected area, at least thirty-five nonprofit private schools were affected by the floods. Total damages to these institutions is estimated at approximately \$19,000,000. The most critical area, the Wyoming Valley area of Pennsylvania, suffered most of these damages. Wilkes College and Kings College sustained major damage. Public institutions were badly damaged also so that the ability of public facilities to absorb the large numbers of children attending private facilities is substantially lessened.

Don Fairbanks
12:25

August 1, 1972

TO THE CONGRESS OF THE UNITED STATES:

Tropical Storm Agnes caused the most widespread destruction and devastation of any natural disaster in the history of the United States. On July 17, 1972, I sent to the Congress a proposal authorizing special disaster recovery measures which would aid victims of Agnes and also of the flood in Rapid City, South Dakota during June 1972.

As I stated in my transmittal message, the need for prompt enactment of these aid proposals, aimed at short and long-term recovery, is extreme and urgent. I asked the Congress then to consider and enact them within seven days. [Nineteen] days [on Aug 2] have passed without final Congressional action on the Disaster Recovery Act of 1972. I again urge the Congress to act immediately, because the victims of these disasters desperately need the help these measures would provide. And they need it now.

Today, I am transmitting an amendment to the Disaster Recovery Act of 1972 which would make private, non-profit educational institutions eligible for disaster relief grants under the Act. I urge that immediately following enactment of the basic act, the Congress consider and enact promptly this amendment, which would authorize

relief for these institutions comparable to the disaster relief already available to public educational institutions.

The Office of Emergency Preparedness estimates that property loss and damage at private non-profit educational institutions in the storm affected areas has exceeded \$19 million. Many of these institutions have undergone damage so extensive that they would be unable to rebuild facilities or reopen without extraordinary assistance. For example, at one alone, Wilkes College in Wilkes Barre, Pennsylvania, which is not a large or wealthy institution, the storm caused havoc and destruction estimated at several millions of dollars.

The proposal I am transmitting today would provide financial assistance to restore, reconstruct or replace disaster-damaged education facilities, supplies and equipment used primarily for non-sectarian educational purposes. I believe this temporary authority ~~is both pressing and necessary and that it is required~~ if we are to meet our public responsibilities equitably and in a just manner.

Again, I cannot stress too strongly that it is essential that the Congress immediately enact the pending disaster relief legislation I have proposed. It is imperative that this massive recovery program begin at once. Millions of Americans -- individual homeowners,

farmers and city dwellers, small businessmen -- are struggling to rebuild their lives in the wake of these natural disasters. They need their Government's help. And they need it now.

#

A BILL

To amend the "Disaster Recovery Act of 1972" to provide relief for certain classes of victims not covered therein.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress
assembled,

PURPOSE

Section 1.(a) Section 2 of the Disaster Recovery Act of 1972, hereinafter in this Act referred to as the "Act", is amended by adding at the end thereof the following:

"The Congress hereby further finds and declares that there has been substantial damage to educational institutions as a result of these disasters; that disaster relief for public educational institutions is adequately covered by legislation heretofore enacted; that nonprofit private educational institutions are not provided disaster relief benefits comparable to those provided to public educational institutions; that nonprofit private educational institutions have a secular educational mission; that students attending nonprofit private

educational institutions that have been damaged, or destroyed will have to be provided for in public institutions if the former institutions are not restored; and, that these facts compel enactment of special measures designed to provide nonprofit private educational institutions which were victims of these catastrophes with disaster relief benefits comparable to those provided for public educational institutions."

(b) The Act is further amended by adding at the end thereof the following new section:

"GRANTS TO NONPROFIT PRIVATE EDUCATIONAL INSTITUTIONS

"Sec. 9.(a) To the extent such loss or damage or destruction is not compensated for by insurance or otherwise, the President may make grants to nonprofit private educational institutions for the repair, restoration, reconstruction, or replacement of educational facilities, supplies, or equipment which have been lost, damaged, or destroyed as a result of Hurricane and Tropical Storm Agnes or the disaster which occurred in the State of South Dakota during the month of June 1972, if such facilities, supplies, or equipment were owned on the date of such loss, damage, or destruction by

an organization exempt from taxation under section 501(c), (d), or (e) of the Internal Revenue Code of 1954 and the facilities, supplies or equipment were being used to carry out the exempt purposes of such organization; except that no grant may be made under this section for the repair, restoration, reconstruction, or replacement of any facility for which disaster relief assistance would not be authorized under Public Law 81-815, title VII of the Higher Educational Act of 1965, or the Disaster Relief Act of 1970 if such facility were a public facility.

"(b) The amount of a grant made under this section shall not -

- "(1) exceed 100 per centum of the cost of
 - (A) repairing, restoring, reconstructing, or replacing any facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards; or

(B) repairing, restoring, or replacing
equipment or supplies;

as they existed immediately prior to such disaster;

"(2) in the case of any facility which was under construction when so damaged or destroyed, exceed 50 per centum of the cost of restoring such facility substantially to its condition prior to such disaster, and of completing construction not performed prior to such disaster to the extent that the cost of completing construction is increased over the original construction cost due to changed conditions resulting from such disaster;

"(3) be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; and

"(4) be used to restore or rebuild any facility used or to be used primarily for religious worship; replace, restore or repair any equipment or supplies used or to be used primarily for religious instruction; or restore or rebuild any facility or furnish any equipment

or supplies which are used or to be used primarily in connection with any part of the program of a school or department of divinity.

"(c) For purposes of this section,

"(1) the term educational institution means any elementary school (as defined by section 801(c) of the Elementary and Secondary Education Act of 1965), any secondary school (as defined by Section 801(h) of the Elementary and Secondary Educational Act of 1965), and, any institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965); and

"(2) the term school or department of divinity means a school or department of divinity as defined by section 1201 of the Higher Education Act of 1965."

Sec. 10. Funds appropriated to the President in the appropriation "Disaster Relief" are hereby made available for carrying out the purposes of Section 9 of the Act.

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO Mr. Engman, WH
✓ Mr. Fielding, WH 106
Mr. Gifford, WH
Mr. Rommel, OMB
Mr. O'Neill, OMB
Mr. Morrill, OMB
Mr. Sitrin, OMB
Mr. Fischer, OMB
Mr. Murray, OEP
FROM Mr. Skidmore

Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

DATE July 31, 1972

REMARKS

Attached final draft is in Mr. Carlucci's hands. It includes the comments I received today and some additional factual information supplied by OEP.

**SPECIAL
SERVICE**

OMB FORM 4
REV AUG 70

file

FACT SHEET

Amendment to the "Disaster Recovery Act of 1972"

The proposed amendment would provide disaster relief for nonprofit private institutions of elementary, secondary, and higher education in disaster areas damaged by Tropical Storm Agnes and by the South Dakota flood in June 1972. A number of those institutions were damaged so severely that they will not be able to recover without extraordinary relief. They are not covered by existing legislation or by the Disaster Recovery Act of 1972.

Their continued operation is essential to reconstruction of the devastated area.

The proposed amendment would provide grants for the rebuilding, repair, or replacement of facilities, equipment, and supplies used for primarily non-sectarian purposes which were lost, damaged, or destroyed by the storms. The relief to be provided would be limited to restoration of facilities as they were before the disaster. It is intended to provide benefits for

nonprofit private educational institutions comparable to that available to public educational institutions.

In the affected area, at least thirty-five nonprofit, private schools were affected by the floods. Total damages to these institutions is estimated at \$25,000,000.

The most critical area, the Wyoming Valley area of Pennsylvania suffered twenty million dollars in damages to fourteen or more nonprofit private educational

institutions including \$15 million dollars damage to Wilkes College and \$3 million to Kings College. ^{Public institutions} ~~Public~~ ^{were badly} ~~Public~~ ^{damaged} facilities to absorb the large numbers of children ^{also so} attending private facilities is substantially lessened. ^{that the} ^{ability of}

TO THE CONGRESS OF THE UNITED STATES

On July 17, 1972, I sent to the Congress a draft bill authorizing special aid measures for the victims of Tropical Storm Agnes and the flood in Rapid City, South Dakota during June, 1972.

As I stated in my transmittal message, these storms caused unprecedented damage and suffering and the need for special action by the Federal Government is extreme and urgent. At that time, I asked the Congress to consider and enact the Disaster Recovery Act of 1972 within seven days. Fifteen days have now passed without final Congressional action on that proposal.

The victims of these disasters need help now, and I again urge the Congress to act immediately. As soon as the Congress completes action on the Disaster Recovery Act, I urge consideration and prompt passage of the amendment I am transmitting today.

This amendment would authorize relief for nonprofit private educational institutions. The damage to some of these institutions has been so extensive that they will be unable to rebuild their facilities or reopen without extraordinary assistance. For example, Wilkes College, in Wilkes Barre, Pennsylvania suffered nearly fifteen million dollars in damage and it is not a large or a wealthy institution; Kings College in Pennsylvania suffered three million dollars in damage; it is estimated that total damage to private schools in New York and Pennsylvania may exceed twenty-five million dollars.

The amendment would provide relief for nonprofit private educational institutions comparable to the relief which is already available for public educational institutions. It would provide grants to restore or replace facilities and equipment used primarily for non-sectarian education purposes that were damaged by the disasters.

I believe this temporary authority is urgently needed and the provision of the proposed relief is equitable and essential to meeting a public responsibility.

I urge the Congress to act on the amendment promptly.

A BILL

To amend the "Disaster Recovery Act of 1972" to provide relief for certain classes of victims not covered therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE

Section 1.(a) Section 2 of the Disaster Recovery Act of 1972, hereinafter in this Act referred to as the "Act", is amended by adding at the end thereof the following:

"The Congress hereby further finds and declares that there has been substantial damage to educational institutions as a result of these disasters; that disaster relief for public educational institutions is adequately covered by legislation heretofore enacted; that nonprofit private educational institutions are not provided disaster relief benefits comparable to those provided to public educational institutions; that nonprofit private educational institutions have a secular educational mission; that students attending nonprofit private

educational institutions that have been damaged, or destroyed will have to be provided for in public institutions if the former institutions are not restored; and, that these facts compel enactment of special measures designed to provide nonprofit private educational institutions which were victims of these catastrophes with disaster relief benefits comparable to those provided for public educational institutions."

(b) The Act is further amended by adding at the end thereof the following new section:

"GRANTS TO NONPROFIT PRIVATE EDUCATIONAL INSTITUTIONS

"Sec. 9.(a) To the extent such loss or damage or destruction is not compensated for by insurance or otherwise, the President may make grants to nonprofit private educational institutions for the repair, restoration, reconstruction, or replacement of educational facilities, supplies, or equipment which have been lost, damaged, or destroyed as a result of Hurricane and Tropical Storm Agnes or the disaster which occurred in the State of South Dakota during the month of June 1972, if such facilities, supplies, or equipment were owned on the date of such loss, damage, or destruction by

an organization exempt from taxation under section 501(c), (d), or (e) of the Internal Revenue Code of 1954 and the facilities, supplies or equipment were being used to carry out the exempt purposes of such organization; except that no grant may be made under this section for the repair, restoration, reconstruction, or replacement of any facility for which disaster relief assistance would not be authorized under Public Law 81-815, title VII of the Higher Education Act of 1965, or the Disaster Relief Act of 1970 if such facility were a public facility.

"(b) The amount of a grant made under this section shall not -

"(1) exceed 100 per centum of the cost of

- (A) repairing, restoring, reconstructing, or replacing any facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards; or
- (B) repairing, restoring, or replacing equipment or supplies;

as they existed immediately prior to such disaster;

"(2) in the case of any facility which was under construction when so damaged or destroyed, exceed 50 per centum of the cost of restoring such facility substantially to its condition prior to such disaster, and of completing construction not performed prior to such disaster to the extent that the cost of completing construction is increased over the original construction cost due to changed conditions resulting from such disaster;

"(3) be used to pay any part of the cost of facilities, supplies, or equipment which is to be used primarily for sectarian purposes; and

"(4) be used to restore or rebuild any facility used or to be used primarily for religious worship; replace, restore or repair any equipment or supplies used or to be used primarily for religious instruction; or restore or rebuild any facility or furnish any equipment or supplies which are used or to be used primarily in connection with any part of the program of a school or department of divinity.

"(c) For purposes of this section,

(1) the term "educational institution" means any elementary school (as defined by section 801(c) of the Elementary and Secondary Education

Act of 1965), any secondary school (as defined by Section 801(h) of the Elementary and Secondary Educational Act of 1965), and, any institution of higher education (as defined by section 1201(a) of the Higher Education Act of 1965); and

(2) "the term "school or department of divinity" means a school or department of divinity as defined by section 1201 of the Higher Education Act of 1965."

AUGUST 2, 1972

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE CONGRESS OF THE UNITED STATES:

Tropical Storm Agnes caused the most widespread destruction and devastation of any natural disaster in the history of the United States. On July 17, 1972, I sent to the Congress a proposal authorizing special disaster recovery measures which would aid victims of Agnes and also of the flood in Rapid City, South Dakota during June 1972.

As I stated in my transmittal message, the need for prompt enactment of these aid proposals, aimed at short and long-term recovery, is extreme and urgent. I asked the Congress then to consider and enact them within seven days. Sixteen days have passed without final Congressional action on the Disaster Recovery Act of 1972. I again urge the Congress to act immediately, because the victims of these disasters desperately need the help these measures would provide. And they need it now.

Today, I am transmitting an amendment which would make private, non-profit educational institutions eligible for disaster relief grants under the Act. I urge that the Congress consider and enact promptly this amendment, which would authorize reconstruction relief for these institutions comparable to the disaster reconstruction relief already available to public educational institutions.

The Office of Emergency Preparedness estimates that property loss and damage at private non-profit educational institutions in the storm affected areas has exceeded \$19 million. Many of these institutions have undergone damage so extensive that they would be unable to rebuild facilities or reopen without extraordinary assistance. For example, at one alone, Wilkes College in Wilkes Barre, Pennsylvania, which is not a large or wealthy institution, the storm caused havoc and destruction estimated at several millions of dollars.

The proposal I am transmitting today would provide financial assistance to restore, reconstruct or replace disaster-damaged education facilities, supplies and equipment used primarily for nonsectarian educational purposes. I believe this temporary authority is required if we are to meet our public responsibilities equitably and in a just manner.

Again, I cannot stress too strongly that it is essential that the Congress immediately enact the pending disaster relief legislation I have proposed. It is imperative that this massive recovery program begin at once. Millions of Americans -- individual homeowners, farmers and city dwellers, small businessmen -- are struggling to rebuild their lives in the wake of these natural disasters. They need their Government's help. And they need it now.

RICHARD NIXON

THE WHITE HOUSE,

August 2, 1972

#

Mr. Fielding

OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO Mr. Bob Wild, Justice
Mr. Gaylon Powers, HEW
Mr. McAleer, OEP
Mr. Gifford, WH
Mr. Lilienthal, OMB
Mr. Sitrin, OMB
Mr. Jackson, OMB
Mr. Fischer, OMB

- Take necessary action ☐
- Approval or signature ☐
- Comment ☐
- Prepare reply ☐
- Discuss with me ☐
- For your information ☐
- See remarks below ☐

FROM MR. William Skidmore

DATE July 31, 1972

REMARKS

Attached is a draft worked up over the weekend.

Could we have your comments within an hour or two. Sorry about the timing but it is not clear just when the material is needed and it may be early tomorrow.

What if first time limit

OMB FORM 4
REV AUG 70

FACT SHEET

ON: Amendment to the "Disaster Recovery Act of 1972"

The proposed amendment would provide disaster relief for private non-profit institutions of elementary, secondary, and higher education in disaster areas damaged by Agnes and the South Dakota flood. Many of those institutions were damaged so severely that they could not recover without extraordinary relief. Those institutions are not covered by existing legislation or by the Disaster Recovery Act of 1972. Private educational institutions fulfill a very important public purpose in educating our children and their services are urgently needed. The proposed amendment would provide grants for the rebuilding, repair, or replacement of facilities, equipment, and supplies used for primarily non-sectarian purposes which were lost, damaged, or destroyed by the storms. The relief to be provided would be limited to restoration of facilities as they were before the disaster. The relief is intended to provide benefits for private non-profit educational institutions comparable to that available to public educational institutions.

DRAFT
7/31/72

TO THE CONGRESS OF THE UNITED STATES

On July 17, 1972, I sent to the Congress a draft bill authorizing special aid measures for the victims of Tropical Storm Agnes and the flood in Rapid City, South Dakota during June, 1972.

As I stated in my transmittal message, these storms caused unprecedented damage and suffering, and the need for special action by the Federal Government is extreme and urgent. At that time, I asked the Congress to consider and enact my proposals within seven days. _____ days have now passed without final Congressional action. The victims of these disasters need help now, and I again urge the Congress to act immediately. As soon as the Congress completes action on the Disaster Recovery Act, I urge consideration and prompt passage of the amendment I am transmitting today.

This amendment would authorize relief for non-profit educational institutions. The damage to such educational

institutions has been so extensive that they would be unable to rebuild their capacity or reopen without extraordinary assistance. For example, Wilkes College, in Wilkes Barre, Pennsylvania suffered nearly nine million dollars in damage and it is not a large or a wealthy institution.

The proposal that I am submitting today would provide relief for non-profit, educational institutions comparable to the relief which is already available for public educational institutions.

The authority will provide assistance to restore or replace facilities and equipment used primarily for non-sectarian education purposes that were damaged by the disasters. I believe this temporary authority is urgently needed and the provision of the proposed relief is equitable and essential to meeting a public responsibility. I urge the Congress to act this week knowing that millions of our citizens are desperately awaiting their action.

A BILL

To amend the "Disaster Recovery Act of 1972" to provide relief for certain classes of victims not covered therein

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE

Sec. 1(a). Section 2 of the Disaster Recovery Act of 1972, hereinafter referred to as the "Act", is amended by adding at the end thereof:

"The Congress hereby further finds and declares that there has been substantial damage to educational institutions as a result of these disasters; that disaster relief for public educational institutions is adequately covered by legislation heretofore enacted; that private, non-profit educational institutions are not provided disaster relief benefits comparable to those provided to public educational institutions; that private, non-profit educational institutions have a secular educational mission; that students attending non-profit educational

institutions that have been lost, damaged, or destroyed will have to be provided for in public institutions if the private, non-profit institutions are not restored; and, that these facts compel enactment of special measures designed to provide the private, non-profit educational institutions which were victims of this catastrophe with disaster relief benefits comparable to those provided for public educational institutions."

(b). The Act is further amended by adding at the end thereof the following new section:

"GRANTS TO PRIVATE NON-PROFIT EDUCATIONAL INSTITUTIONS

"Sec. 9.(a) To the extent such loss or damage or injury is not compensated for by insurance or otherwise, the President may make grants to private, non-profit educational institutions for the repair, restoration, reconstruction, or replacement of educational facilities, supplies, or equipment which have been lost, damaged, or destroyed as a result of Hurricane and Tropical Storm Agnes and the disaster which occurred in the State of South Dakota during the month of June 1972, if such

facilities, supplies, or equipment were owned on the date of such loss, damage, or destruction by an organization exempt from taxation under section 501(c), (d), or (e) of the Internal Revenue Code of 1954 and the facilities, supplies or equipment were being used to carry out the exempt purposes of such organization; except that no grant may be made under this section for the repair, restoration, reconstruction, or replacement of any facility for which disaster relief assistance would not be authorized under Public Law 81-815, title VII of the Higher Education Act of 1965, or the Disaster Relief Act of 1970, as amended, if such facility were a public facility.

"(b) The amount of a grant made under this section shall not:

"(1) exceed 100 per centum of the net cost of:

(A) repairing, restoring, reconstructing, or replacing any facility on the basis of the design of such facility as it

existed immediately prior to such disaster and in conformity with applicable codes, specifications, and standards; or (B) repairing, restoring, or replacing equipment or supplies; as they existed immediately prior to such disaster.

"(2) in the case of any facility which was under construction when so damaged or destroyed, exceed 50 per centum of the net cost of restoring such facility substantially to its condition prior to such disaster, and of completing construction not performed prior to such disaster to the extent that the cost of completing construction is increased over the original construction cost due to changed conditions resulting from such disaster;

"(3) be made for loss, damage, or destruction of facilities, supplies, and equipment unless they were and are to be used primarily for non-sectarian purposes;

"(4) be made to restore or rebuild any facility used or to be used primarily for religious worship; replace, restore or repair any equipment or supplies used or to be used primarily for religious instruction; or restore or rebuild any facility or furnish any equipment or supplies which are used or to be used primarily in connection with any part of the program of a school or department of divinity.

"(c) For purposes of this section,

(i) "educational institution" means: any "elementary school" (as defined in section 801(c) of the Elementary and Secondary Education Act of 1965), any "secondary school" (as defined by Section 801(h) of the Elementary and Secondary Educational Act of 1965), and, any "institution of higher education" (as defined by section 1201(a) of the Higher Education Act of 1965);

(ii) "school or department of divinity" means a school or department of divinity as defined by section 1201 of the Higher Education Act of 1965;

"(d) The provisions of sections 7 and 8 of Act are applicable to this section."