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MEMORANDUM

January 11, 2006

TO: The Honorable Chair and Members of The School Board of Miami-Dade County, Florida

FROM: Rudolph F. Crew, Superintendent of Schools

SUBJECT: FEDERAL FUNDING SYNOPSIS OF 109TH CONGRESS, 1ST SESSION

School districts will be negatively impacted by the 2006 federal budget for education, adopted in the final days of the 1st Session of the 109th Congress. The bill cuts funding for programs such as Title V Innovative Education, Enhancing Education Through Technology, and Safe and Drug Free Schools. The entire education budget represents a significant cut in relation to annual inflation. For the first time in decades, no earmark funding was provided for Member projects, and, therefore, the pending appropriations requests by Miami-Dade County Public Schools (M-DCPS) will have to be resubmitted for the FY2007 appropriations cycle.

Further, the National School Boards Association (NSBA) reports that even minor increases for Title I and IDEA will be offset by a one percent across-the-board cut to education programs included in a Defense spending bill. The NSBA cited Congressional staff estimates that the \$100 million increase in Title I funding will be offset by a \$128 million cut – leaving funding a net \$28 million below the current level of \$12.7 billion – and special education grants will likewise end up \$7 million below the current FY05 level of \$10.6 billion. A preliminary analysis suggests that the Title I allocation for M-DCPS could be reduced by approximately \$300,000, assuming the District maintains an identical percentage of the national Title I budget.

Congress also passed hurricane relief legislation at the end of session that will provide assistance to both public and private schools. Besides disaster zone funding, the bill authorizes M-DCPS and other districts to receive up to \$6,000 per displaced student (\$7,500 for children with disabilities). However, the NSBA reports that the significantly reduced funding may reduce school district reimbursements depending on the numbers of displaced students and the duration of their enrollment.

Attached please find a synopsis of federal education program actions during the 1st Session, along with a summary of the Hurricane Katrina Relief Package for K-12, each prepared by the District's federal legislative firm Alcalde & Fay.

Should you have any questions or need for assistance, please contact Mr. Alberto M. Carvalho, Associate Superintendent, Office of Intergovernmental Affairs, Grants Administration, and Community Services, at 305 995-2532.

RFC/AMC:mdn/pg

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Attachments

cc: Superintendent's Cabinet
School Board Attorney
Dr. Magaly C. Abrahante
Ms. Iraida R. Mendez-Cartaya
Dr. Linda D. Brown

Katrina Relief Package for K-12 (December 22, 2005)

Funds for Restarting Public and Private Schools

Summary:

- \$750 million to restart public and private schools in impacted areas. (was \$450 million)
- SEA must set aside minimum percentage of funds for private schools based on number of private schools in impacted areas
- Funds may not be used for secular or religious purposes
- All services and support for private schools must be contracted for through LEA

Issues:

- As written, private schools in LA could receive more \$ than public schools even though public schools serve more children
- If we are trying to bring families back to NO and surrounding areas, need to ensure public schools have adequate funds to rebuild since they have to accept all kids

Funds for Schools serving Displaced Children

Summary:

- \$645 million for public and private schools receiving displaced students from LA, MS, AL, TX, FL. (was \$1.2 billion)
- Funds allocated to State in instances where LEA cannot administer funds (LA and MS).
- Provides for quarterly payments to LEAs and schools
- \$6000 per student/\$7500 per student with disabilities
- State is able to retain funds if they have already used state funds to assist LEAs.
- Funds may be used for: compensating personnel; curriculum, classroom supplies, mobile units, instruction services, tutoring, mentoring, academic counseling, transportation, health and counseling services and education and support services
- LEA makes payments to accounts for students in private schools
- Private schools may not discriminate; except for religious private schools may discriminate based on religion
- No prohibition against using funds for non-secular or religious instruction.
- SEA and LEA have 14 days to make payments to LEA and private schools respectively

Issues:

- No prohibition against using funds for non-secular or religious instruction.
- Arbitrary timelines for payments may actually delay payments to LEAs and other schools. If entity misses timeline, the next entity is responsible for making payment thus establishing another administrative hurdle to overcome.
- No enforcement mechanism to ensure that private schools waive or refund tuition and no similar mechanism for refunding funds provided by outside sources for tuition.
- No requirement that parents are provided notice of "opt-out" of religious instruction.

Miscellaneous Provisions

- Impacted states will be "held harmless" for Title I allocations in 2006
- Teachers and paraprofessionals who have been displaced and are "highly qualified" can be designated as "highly qualified" in the state where they have moved.
- Waives "Maintenance of Effort", "Supplement not Supplant" and "Matching" requirements for all programs within the Department of Education for Impacted States.
- \$5 million for the McKinney-Vento Homeless Education Act. (was \$10 million)

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Miami-Dade County Public Schools 109th Congress: First Session Synopsis

Fiscal Year 2006 Education Appropriations

Using Senate procedural tactics, on December 21, 2005, Senate leaders attached the Fiscal Year (FY) 2006 Labor, Health and Human Services, and Education (L-HHS) Appropriations bill to the FY 2006 Defense Appropriations bill. The chamber passed the resolution, which included both the L-HHS and Defense conference reports, as well as a one-percent across-the-board cut, and then adjourned for the year. The House passed the same resolution on December 21, 2005 and it was presented to the President for signature on December 28, 2005.

As we reported throughout the appropriations process, Congress took an unprecedented step during conference committee consideration of the L-HHS bill and did not include any earmarks. Pending requests will therefore require re-submittal in early 2006. The approved conference report reflects an overall \$1.5 billion decrease from the FY 2005 spending levels, providing \$56.5 billion in funding for the U.S. Department of Education (ED), which is \$229 million above the FY 2006 Budget Request, but \$59 million below the FY 2005 funding level. Funding for *No Child Left Behind* (NCLB) programs is \$784 million below the FY 2005 spending levels.

In particular, it provides funding for the following key elementary and secondary education programs:

- **21st Century Community Learning Centers** - \$991 million, which is equal to the FY 2005 amount and the President's Budget Request;
- **English Language Acquisition (State Grants)** - \$675.7 million, which is equal to the FY 2005 amount and the President's Budget Request;
- **GEAR UP** - \$306.5 million, which is equal to the FY 2006 amount (the President's Budget Request eliminated this program);
- **Head Start** - \$6.9 billion, which is \$56 million over the FY 2005 level and equal to the President's Budget Request;
- **IDEA (Grants to States Part B)** - \$10.7 billion, which is \$150 million above the FY 2005 amount, but is \$358 million below the President's Budget Request;

- **Math and Science Partnerships** - \$184 million, which is \$5 million above the FY 2005 amount, but \$85 million below the President's Budget Request;
- **Reading Programs** - \$1.041 billion for *Reading First*, which is equal to the FY 2005 amount and the President's Budget Request; \$104.1 million for *Early Reading First*, which is equal to the FY 2005 amount and the President's Budget Request; \$30 million for *Striving Readers*, which is \$5.2 million above the FY 2005 amount, but \$170 million below the President's Budget Request; and \$100 million for *Even Start Program*, which is \$125 million below the FY 2005 amount, but an increase of \$100 million over the President's Budget Request;
- **Safe and Drug Free Schools and Communities (State grants)** - \$350 million, which is \$87 million below the FY 2005 level (the President's Budget Request eliminated this program);
- **Smaller Learning Communities** - \$94.476 million, which is equal to the FY 2005 amount (the President's Budget eliminated this program);
- **State Assessments** - \$411.6 million, which is which is equal to the FY 2005 amount and the President's Budget Request;
- **State Grants for Innovative Education (Title V)** - \$100 million, which is \$98.4 million below the FY 2005 amount and equal to the President's Budget Request;
- **Teacher Quality State Grants** - \$2.9 billion, which is equal to the FY 2005 amount and the President's Budget Request;
- **Title I** - \$12.8 billion, which is a \$100 million increase over the FY 2005 amount, but \$502.7 million less than the President's Budget Request; and
- **Vocational Education** - \$1.311 billion, which is \$14 million below the FY 2005 amount (the President's Budget Request eliminated this program).

Head Start

As included in our previous legislative report, on September 22, 2005, the House of Representatives passed H.R. 2123, the School Readiness Act of 2005, which would reauthorize the Head Start program through 2011. The Senate version of the legislation, S. 1107, was approved by the Senate Health, Education, Labor, and Pensions (HELP) Committee on May 26, 2005, however, the Senate adjourned for the year without considering S. 1107. Staff anticipates that the Senate will consider the legislation shortly after convening for the second session of the 109th Congress on January 31, 2006.

Carl Perkins Vocational and Technical Education Act

As reported previously, on March 10, 2005, the Senate unanimously passed S. 250, the Carl D. Perkins Career and Technical Education Improvement Act of 2005, which reauthorizes and revises programs under the Carl D. Perkins Vocational and Applied Technology Education Act of 1998.

Most notably, the Senate-passed bill maintains the Tech Prep Program as a separate funding stream. S. 250 maintains the current postsecondary funding eligibility criteria, which was initially expanded in the introduced version to include four-year and other institutions. Under the current Perkins program, states may reserve up to 10 percent of their grants for professional development activities and five percent for administrative programs. The Senate bill would give more flexibility to spend funds between training and administrative accounts, and remove spending on non-traditional programs, such as prisoner retraining.

On May 4, 2005, the House passed their version of reauthorization legislation, H.R. 366, the Vocational and Technical Education for the Future Act. H.R. 366 seeks to help states better utilize federal funds for secondary and postsecondary vocational education programs, increase accountability, and emphasize student achievement, and strengthen opportunities for coordination between secondary and postsecondary vocational and technical education.

The House- and Senate-passed bills include many of the same provisions, however the Senate bill incorporates "career education" into the law in the place of "vocational education" and does not consolidate the Tech-Prep program with the basic grant program. The House bill also requires states to use up to two percent of their grants for administrative purposes, as opposed to the Senate bill.

The House and Senate adjourned for the year without reaching a consensus on the House- and Senate-passed versions of the legislation. According to Education Committee staff, the conference committee process was hindered by disagreements concerning the differing provisions referenced above. Conference committee negotiations will resume when Congress returns for the second session of the 109th Congress.

Workforce Investment Act

During the 109th Congress, the House of Representatives passed H.R. 27, the Job Training Improvement Act of 2005, on March 3, 2005. H.R. 27 reauthorizes the Workforce Investment Act (WIA), the Adult Education and Family Literacy Act, and the Rehabilitation Act, and is nearly identical to similar legislation passed by

the House last Congress, with few exceptions including new language, which provides authorization for the Community-Based Job Training Grants (CBJTG). Similar to the previously-passed legislation, H.R. 27 consolidates the adult, dislocated worker, and employment service funding streams and includes a provision allowing faith-based organizations that receive WIA funding to hire employees based on an individual applicant's religion. It also significantly changes the structure and content of youth services, requiring that youth training programs spend greater funds on out-of-school youth and gives a priority to services for school dropouts.

On May 18, 2005, the Senate HELP Committee approved S. 1021, the Workforce Investment Act Amendments of 2005, which reauthorizes the WIA, the Adult Education and Family Literacy Act, and the Rehabilitation Act. S. 1021 is similar to H.R. 27, however the Senate bill retains the current dislocated worker, adult, and Wagner-Peyser funding streams and does not alter the youth activities structure as significantly. S. 1021 also includes authorization for the CBJTG program.

The Senate adjourned for the year without considering S. 1021 on the floor. Speculation that Senators planned on offering a number of amendments during floor consideration of the bill likely contributed to the chamber's failure to address the bill. It is unclear when the Senate will consider the bill during the second session of the 109th Congress.

E-Rate

As previously reported, on April 11, 2005, the Senate Commerce, Science, and Transportation Committee held a hearing on S. 241, the USF Exemption from the Anti-Deficiency Act, which would permanently exempt the USF from the ADA. Subsequently, on November 17, 2005, Senators Olympia Snowe (R-ME) and John D. Rockefeller, IV (D-WV) announced that the Senate had approved an additional year (until December 31, 2006) of exemption for Universal Service Fund (USF) programs from the Anti-Deficiency Act (ADA). Under that exemption, E-rate will be able to issue new commitment letters based on future revenue, and not according to the cash-on-hand rules imposed by the FCC.

During an October 18, 2005 hearing, the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations presented the findings of its investigation into the E-rate program. Based upon the results of the E-rate program investigation, the subcommittee identified several overarching principles that should guide program reform.

- The Federal Communications Commission (FCC) and Universal Service Administrative Company (USAC) must conduct more rigorous oversight.
- The E-rate program must have concrete and achievable goals and measures of effectiveness so that Congress can assess the specific impact and value of program spending. Among a number of key issues, Congress should consider: (a) whether the FCC is the proper agency to manage and oversee the E-rate program; (b) whether the largely arbitrary \$2.25 billion annual allocation is appropriately set; (c) whether control and management of this large sum is effectively delegated to a non-governmental entity; and (d) the extent to which E-rate program discounts should cover technological infrastructure and related services, i.e., whether the program covers too much, or should expand to subsidize key technology components that are not currently eligible, such as computers, software, and teacher training.
- In the interest of ensuring the maximum return on E-rate program funds, the E-rate program must have a mechanism to ensure that “gold-plating” is minimized. That is, schools should request and receive only what they genuinely will put to effective use, and technology plans should not be an empty exercise. The FCC and USAC should develop a mechanism to verify those applicants’ requests match legitimate education-technology needs which, will require revising the technology planning process and requirements. Among other things, complete and approved E-rate program technology planning documents should be the required first step before posting a Form 470.
- Reform should incorporate the Government Accountability Office’s (GAO) recent recommendations for the FCC, including that the FCC: (a) comprehensively determine which federal accountability requirements apply to E-rate; (b) establish meaningful E-rate program performance goals and measures; and (c) take steps to reduce its backlog of appeals.
- The E-rate program should require an organizational structure that encourages greater accountability of all program participants – including vendors, consultants, schools, USAC, and the FCC Wireline Competition Bureau.
- The FCC must acquire, and promptly provide to Congress, some tangible measure of the extent and scope of program waste, fraud, and abuse, i.e., statistically significant auditing must be undertaken immediately and accomplished before the end of this Congress.
- School districts should hold a greater “stake” in their applications for E-rate program discounts.
- The E-rate program requires stronger “built-in” disincentives to waste, fraud, and abuse (as opposed to the external disincentives of FCC Inspector General

(IG) auditing or Justice Department criminal prosecution), including such options as mandatory audits, civil penalties for rule violations, and more flexible provisions for program debarment.

- The program needs a much more robust competitive bidding structure than it currently possesses, in order to ensure that E-rate program funds support the highest per-dollar value possible.
- The FCC and USAC should act immediately to specify that, for all "Priority II" (internal connections) applications exceeding a reasonable threshold, a portion of a school district's approved funding must be set aside for an independent audit of the total funds committed.
- The GAO should examine the potential for (and scope of any) waste, fraud, and abuse in the E-rate program's funding of "Priority I" services (telecommunications and Internet access fees).

High School Initiative

The President's Budget called for the creation of a \$1.5 billion High School Initiative, which would replace the existing vocational education system through assessment-based performance measures similar to NCLB. While the President and Education Secretary Margaret Spellings have promoted this initiative, it has received a lukewarm reaction, at best, from Members of Congress.

In response to House Education and Workforce Chairman John Boehner's (R-OH) agreement to hold a series of informational hearings on high school reform, the House Education and the Workforce Committee held a series of three hearings to examine efforts underway to strengthen secondary education in states and local communities. On May 17, 2005, the Education and Workforce Committee invited two prominent governors (Mitt Romney (R) of Massachusetts and Tom Vilsack (D) of Iowa) to testify on high school reform efforts being spearheaded at the state level, as well as to discuss national partnerships being formed among governors and private, non-profit groups dedicated to education reform.

On June 9, 2005, the committee held the second hearing, which further explored the role non-profit organizations play in driving secondary school reform to strengthen opportunities for students in America's high schools. According to testimony offered at the hearing, through the assistance of non-profit organizations and other private entities, states and local communities are showing a strong commitment to addressing the challenges and working proactively to improve opportunities for students.

On June 28, 2005, the third hearing examined how the private sector is partnering with states and local communities to spur high school reform. This hearing focused primarily on how the business community is investing time and resources to help states and local communities reform high schools and better prepare students with the skills and knowledge needed to compete in a changing economy.

NCLB Implementation

Growth Models: Flexibility and Accountability

In April, Secretary Spellings announced a New Path for No Child Left Behind - a set of common-sense principles to guide states in meeting the law's goals. This New Path "equation" includes the primary elements of the law, such as annual testing and reporting of subgroup data, increasing student achievement and narrowing the achievement gap, along with overall sound state education policies that ensure that progress is being made. States that show results and follow the requirements of NCLB are eligible for new tools to help them meet the law's goals of getting every child to grade level by 2014.

On November 18, 2005, Secretary Spellings announced a new pilot program in response to states' request for the use of growth-based accountability models. These models show promise as fair, reliable and innovative methods to measure school and student improvement.

As part of this new pilot program, states may propose a growth-based accountability model for use in adequate yearly progress (AYP) purposes as long as they meet certain principles. ED will approve no more than 10 high-quality growth models in this pilot program for 2005-2006. The models must:

- Ensure that all students are proficient by 2014 and set annual goals to ensure that the achievement gap is closing for all groups of students;
- Set expectations for annual achievement based upon meeting grade-level proficiency, not based on student background or school characteristics;
- Hold schools accountable for student achievement in reading/language arts and mathematics;
- Ensure that all students in tested grades are included in the assessment and accountability system, hold schools and districts accountable for the performance of each student subgroup, and include all schools and school districts;
- Include assessments in each of grades three through eight and high school in both reading/language arts and mathematics, must have been operational for

more than one year, and must receive approval through the NCLB peer review process for the 2005-06 school year. The assessment system must also produce comparable results from grade to grade and year to year;

- Track student progress as part of the state data system; and
- Include student participation rates and student achievement on a separate academic indicator in the state accountability system.

The Department will rigorously monitor and evaluate states that receive approval under the pilot this year. In addition, outside peer reviewers with technical expertise will evaluate proposals; states that receive approval must provide data to the Department on how the growth model works compared to the current AYP model - this information will be useful to the Department and policymakers and will help inform future actions. States that wish to apply and meet the core requirements should submit their proposals to the Department by February 17, 2006 to allow sufficient time for review.

Some states do not have the assessment systems or data capabilities to use a growth model according to the principles above. But under NCLB, states currently have the flexibility to use an index model. For states that cannot track individual student progress, an index model provides an alternative that gives schools credit for moving students from "below basic" to "basic" even if they are not yet proficient. However, the end target of having students proficient in reading and math by 2014 still remains. Currently, nine states (Massachusetts, Minnesota, Mississippi, New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, and Vermont) use index models to determine AYP.

Teacher-to-Teacher Initiative

ED launched a new Internet feature of its Teacher-to-Teacher Initiative on August 24, 2005. This new feature is "Teachers Ask the Secretary." The site was created as a way for teachers to stay in touch with the Department regarding NCLB. This page will provide teachers with answers on a wide range of subjects including teacher quality, professional development, and state academic standards. In addition, best practices and success stories under NCLB will be shared. "Teachers Ask the Secretary" can be accessed through the Department's website at: <http://www.ed.gov/teachersask>.

In addition, on September 8, 2005, Secretary Spellings announced additional efforts aimed at supporting the teachers of more than one million students over the next year, including a teacher training corps and a technology partnership for teachers in urban areas who focus on math and science. The additional efforts are part of the Department's Teacher-to-Teacher initiative, a comprehensive program

that offers professional development, research-based classroom strategies, and other support to teachers. The new Teacher-to-Teacher Training Corps will include teachers and practitioners who will provide on-site technical assistance to individual school districts. Members of the Teacher-to-Teacher Training Corps will participate in the Department's summer workshops. All 50 states and the District of Columbia accept the Department's Teacher-to-Teacher summer workshops and online professional development courses for credit. Expanded to 32 courses, the free digital workshops are available to teachers around the world. Secretary Spellings also announced a partnership between the Department and TechNet, a group of technology companies, to create workshops for teachers in urban areas that focus on math, science, and technology. Additional information about the Teacher-to-Teacher Initiative can be found on the Department's website: <http://www.ed.gov/teachers/how/tools/initiative/index.html>.

NCLB Informational Guide for Hispanic Parents

On August 31, 2005, Secretary Spellings distributed the first copies of the U.S. Department of Education's Tool Kit for Hispanic Families - Resources to Help Children Succeed in School. The kit is a collection of materials designed for families with children in preK-12 grades. Different publications within the kit explain the services and information now available to families under the NCLB and offer tips about school-related subjects from homework to preparing for college. Tool kits can be downloaded immediately at <http://www.ed.gov/parents/academic/involve/toolkit/> or can be ordered from the Department's publications center at 1-877-4ED-PUBS (1-877-433-7827).

IDEA Proposed Regulations

On December 14, 2005, Secretary Spellings announced proposed regulations to enhance the ability of schools and states to more effectively measure the achievement of America's students with disabilities. The proposed rules, published in the Federal Register on December 15, 2005, are designed to meet the needs of students with disabilities who may not reach grade level within the same time frame as their peers, but who can make significant strides, given the right instruction.

A brief summary of the proposed regulations follows:

- States may develop modified achievement standards and give assessments to qualified students based on those standards;
- States may include "proficient" scores from the modified assessments toward determining AYP (capped at two percent of the total tested population at the district and state levels);

- States may continue to include the "proficient" scores of students with the most significant cognitive disabilities (capped at one percent of the total tested population at the district and state levels);
- For AYP purposes, states may include within the "students with disabilities" subgroup, the test scores of students previously identified as having disabilities for up to two years after they no longer receive special education services; and
- The proposed regulation gives states credit for doing laudable work to raise the achievement levels of students with disabilities.

The proposed regulations also contain key criteria to protect students with disabilities from being inappropriately assessed against modified achievement standards. They include the following:

- States must establish guidelines for Individualized Education Program (IEP) teams to determine which students are most appropriately assessed against modified achievement standards;
- Standards must continue to hold students to high expectations; modified standards must be aligned with grade-level curriculum;
- Students assessed under modified achievement standards must receive grade-level instruction in the relevant subjects; and
- Modified achievement standards may not preclude a student from earning a regular high school diploma.

The Department of Education invites state officials, local educators, and the general public to offer their opinions on the proposed regulations. The deadline for submitting comments is 75 days after the regulations are published in the Federal Register (December 15, 2005). An informal version of the proposed regulations is currently available on the Department's website: <http://www.ed.gov/legislation/FedRegister/proprule/2005-4/121505a.html>.

Teacher Excellence for All Children Act of 2005

This legislation, S. 1218, introduced by Senator Edward Kennedy (D-MA) on June 9, 2005, and its House companion bill H.R. 2835, introduced by Representative George Miller (D-CA) also on June 9, 2005, revises and establishes programs relating to recruitment, preparation, distribution, and retention of public elementary and secondary school teachers and principals. S. 1218 has been referred to the Senate Committee on Finance and H.R. 2835 has been referred to the House Committee on Education and the Workforce, Subcommittee on Education Reform. Both bills are aimed at implementing the requirements

regarding highly qualified teachers set forth by NCLB. No further action has occurred on either bill.

School Construction/ Qualified Zone Academy Bond

On April 20, 2005, Rep. Charles Rangel (D-NY) introduced H.R. 1742, the America's Better Classroom Act of 2005. Similar to legislation introduced during the 108th Congress, H.R. 1742 provides a \$25.2 billion tax credit for investment in eligible modernization bonds for public schools. Eligible bonds include those for repair, rehabilitation and construction of public schools, as well as for the acquisition of land for a proposed public school site. The bill has been referred to the House Education and the Workforce Committee and the House Ways and Means Committee for further consideration. Senator John Rockefeller (D-WV) has redrafted companion legislation, which we expect to be introduced prior to the Independence Day recess. We are prepared to work with the School District to obtain bipartisan support in the House and Senate as we have in prior sessions of Congress to increase the likelihood of passage of school construction legislation.

Notably, House Education and the Workforce Ranking Member George Miller (D-CA) is planning to introduce separate school construction legislation, which staff is continuing to draft. We will provide you with the status of this legislation once it has been introduced.

As previously reported, the Qualified Zone Academy Bond (QZAB) program was extended through December 31, 2005 as part of a broad corporate tax package, which became Public Law 108-311 on October 4, 2004. Although strongly advocated by national education associations and school districts nationwide, the legislation did not amend the Internal Revenue Code to include "construction" as an eligible activity for the bonds. Working cooperatively with school construction advocacy organization, Rebuild America's Schools, and your Congressional Delegation, we will engage the leadership to consider legislation that would provide a broader tax credit for holders of QZABs, expand the list of eligible bond purchasers, and include "new construction" to the list of qualified activities to which QZABs could be applied.