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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2014-OII-0019; CFDA Number: 84.282A]

Proposed Priorities, Requirements, Definitions, and Selection Criteria--Charter Schools Program Grants to State Educational Agencies

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, definitions, and selection criteria under the Charter Schools Program (CSP) Grants to State educational agencies (SEAs). The Assistant Deputy Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2015 and later years. We take this action in order to support the development of high-quality charter schools throughout the Nation by strengthening several components of this program, including grantee accountability; accountability and

oversight for authorized public chartering agencies; and support to educationally disadvantaged students.

DATES: We must receive your comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments, address them to Stefan Huh, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W230, Washington, DC 20202-5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for

public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jonathan Bettis, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W242, Washington, DC 20202-5970. Telephone: (202) 453-6533 or by email: charter.schools@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, definitions, and selection criteria for CSP Grants to SEAs. The Assistant Deputy Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in FY 2015 and later years. We take this action in order to support the development of high-quality charter schools throughout the Nation by strengthening several components of the program, including grantee accountability, accountability and oversight for authorized

public chartering agencies, and support to educationally disadvantaged students.

Summary of the Major Provisions of This Regulatory Action: As noted above, the Assistant Deputy Secretary proposes this regulatory action to achieve three main goals.

The first goal is greater accountability for SEAs' use of CSP funds; the proposed priorities, requirements, definitions, and selection criteria would increase the likelihood that CSP funds are directed toward the creation of high-quality charter schools. Specifically, in order to address the proposed selection criteria, the SEA would be asked to explain how charter schools fit into the State's broader education reform strategy. In addition, these proposed selection criteria would clarify how the SEA should manage and report on project performance. Proposed selection criteria (a) ("State-Level Strategy") and (b) ("Policy Context for Charter Schools") would address the SEA's strategy for incorporating charter schools into the State's broader effort to improve student outcomes and how the policy context supports this goal. Proposed selection criterion (c) ("Past Performance") would assess the performance of charter schools in the applicant's State over the past five years. Proposed selection criterion (e)

("Vision for Growth and Accountability") would address the SEA's vision for measuring and reporting on charter school performance, cultivating the growth of new high-quality charter schools, and promoting rigorous accountability for charter school performance. Proposed selection criterion (f) ("Dissemination of Information and Best Practices") would help ensure that the SEA has a plan for disseminating information about charter schools and best practices in successful charter schools. Proposed selection criterion (h) ("Management Plan and Theory of Action") and the proposed logic model application requirement would require the SEA to provide a logic model that describes how its CSP funds would be linked to the achievement of specific measurable outcomes and performance measures that allow the SEA to track and evaluate its project's performance. Proposed selection criterion (i) ("Project Design") would solicit information on the mechanics of the charter school subgrant program the SEA plans to implement with CSP funds. In addition to the selection criteria discussed above, proposed priority 4 ("SEAs That Have Never Received A CSP Grant") would promote the first goal of greater accountability by supporting the growth of high-quality charter school sectors in States that have not received CSP funding in the past, thereby creating new systems of

supports and increasing the funding available for high-quality charter schools in new regions.

The second goal of this proposed regulatory action is to strengthen public accountability and oversight for authorized public chartering agencies. The proposed regulations would help ensure that SEAs implement program requirements, as well as State policies and supports, in a manner that enables authorized public chartering agencies to be keenly focused on school quality through rigorous and transparent charter school authorization processes. Furthermore, it would increase the likelihood that CSP funds are directed toward the creation of high-quality charter schools and help improve the quality of all charter schools throughout the State.

The following proposed priorities and selection criteria support this second goal. Proposed priorities 1 ("Periodic Review and Evaluation") and 2 ("Charter School Oversight") would clarify existing statutory priorities in these areas. Proposed priority 3 ("High-Quality Authorizing and Monitoring Processes") would encourage authorized public chartering agencies in States applying for this grant to adopt key authorizing and monitoring processes that are identified as best practices in the field. Proposed selection criterion (g) ("Oversight of

Authorized Public Chartering Agencies") would request that SEAs explain, in detail, their State's plan for holding authorized public chartering agencies accountable for the quality of the charter schools they approve.

The third goal of this proposed regulatory action is to encourage a stronger focus on supporting and improving academic outcomes for educationally disadvantaged students. While this goal has been a theme in previous competitions under this program, the proposed priorities, requirements, definitions, and selection criteria would raise its profile. The continued growth of charter schools, and ongoing questions about educationally disadvantaged students' access to and performance in charter schools, compels the Assistant Deputy Secretary to encourage a continued focus on students at the greatest risk of academic failure. A critical component of serving all students, including educationally disadvantaged students, is consideration of student body diversity, including racial, ethnic, and socioeconomic diversity. This proposed regulatory action encourages broad consideration of student body composition, consistent with applicable law, as charter schools are authorized and funded and as best practices are disseminated.

The following proposed priorities and selection

criteria support this third goal. Proposed selection criterion (d) ("Quality of Plan to Support Educationally Disadvantaged Students") would allow SEAs to highlight specific actions they would take to support educationally disadvantaged students through charter schools, while proposed selection criteria (f) ("Dissemination of Best Practices") and (g) ("Oversight of Authorized Public Chartering Agencies") would encourage the meaningful incorporation of diversity into charter school models and charter school practices.

In addition to the three goals outlined above, the Assistant Deputy Secretary proposes these priorities, requirements, definitions, and selection criteria in order to clarify certain statutory requirements and to streamline the CSP application process, thereby decreasing the burden on the applicant.

Costs and Benefits:

The Department believes that the benefits of this regulatory action outweigh any associated costs, which we believe would be minimal. This action would not impose cost-bearing requirements on participating SEAs apart from those related to preparing an application for a CSP grant and would strengthen accountability for the use of Federal funds by helping to ensure that the Department awards CSP

grants to SEAs that are most capable of expanding the number of high-quality charter schools available to our Nation's students. Please refer to the Regulatory Impact Analysis in this notice for a more detailed discussion of costs and benefits.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criteria that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in 400 Maryland Avenue, SW., room 4W259 Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday

through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model by:

- (1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;
- (2) Evaluating the effects of charter schools, including the effects on students, student achievement, student growth, staff, and parents;
- (3) Expanding the number of high-quality charter schools available to students across the Nation; and
- (4) Encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.

The purpose of the CSP Grants to SEAs is to enable SEAs to provide financial assistance, through subgrants to eligible applicants, for the planning, program design, and initial implementation of charter schools and for the dissemination of information about successful charter schools, including practices that existing charter schools have demonstrated are successful.

Program Authority: Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221-7221j); and the Consolidated Appropriations Act, 2014 (P.L. 113-76).

PROPOSED PRIORITIES:

This notice contains four proposed priorities.

Proposed Priority 1--Periodic Review and Evaluation.

Background: Under the CSP authorizing statute, the Department must give priority to applications from SEAs in States that provide for periodic review and evaluation by the authorized public chartering agency of each charter school.¹ These reviews must be conducted at least once every five years for each charter school (unless required more frequently by State law) to determine whether the charter school is meeting the terms of the school's charter

¹ Under section 5202(e) (1) of the ESEA, an SEA must meet this criterion and one or more of the three criteria described in section 5202(e) (3) in order to receive priority (20 U.S.C. 7221a(e)).

and meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or the school's charter (20 U.S.C. 7221a(e)(2)). While this periodic review and evaluation by an authorized public chartering agency would not necessarily have to occur only as part of the charter renewal process, in order to meet the priority, the periodic review and evaluation would have to provide an opportunity for the authorized public chartering agency to impose meaningful consequences on a charter school that is not meeting the terms of its charter or is not meeting or exceeding applicable student academic achievement requirements and goals.

The language in this proposed priority is identical to the language in the statute, except that this proposed priority would clarify that periodic review and evaluation should provide an opportunity for the authorized public chartering agency to take appropriate action or impose meaningful consequences on the charter school, if necessary. The proposed priority would also clarify that the student academic achievement requirements and goals may be established in a State regulation or State policy that meets or exceeds such requirements in the State law or regulation.

Proposed Priority: To meet this priority, the applicant must demonstrate that the State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth in the school's charter or under State law, a State regulation, or a State policy, provided that the student academic achievement requirements and goals for charter schools established by that policy meet or exceed those set forth under applicable State law or State regulation. Periodic review and evaluation provides an opportunity for the authorized public chartering agency to take appropriate action or impose meaningful consequences on the charter school, if necessary.

Proposed Priority 2--Charter School Oversight.

Background: Since FY 2010, each appropriations act applicable to the Department has required SEAs receiving CSP grants to provide two assurances.² First, each SEA

² The Consolidated Appropriations Act, 2010 (Pub. L. 111-117); the Department of Defense and Full-Year Continuing Appropriations Act, 2011

applicant must provide an assurance that State law, regulations, or other policies require that each authorized charter school in the State (a) operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that describes the rights and responsibilities of the school and the public chartering agency; (b) conduct annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency; and (c) demonstrate improved student academic achievement. Second, each SEA applicant must provide an assurance that authorized public chartering agencies in the State use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA³ as the most important factor when determining whether to renew or revoke a school's charter.⁴

(Pub. L. 112-10); the Continuing Appropriations Act, 2012 (Pub. L. 112-36); the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6); and the Consolidated Appropriations Act, 2014 (P.L. 113-76).

³ The groups of students described in section 1111(b)(2)(C)(v) of the ESEA include public elementary and secondary school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

⁴ This priority would not preclude an authorized public chartering agency from revoking or electing not to renew a school's charter based on other non-academic factors, such as financial mismanagement.

In the past, these two requirements were incorporated into an assurance document that SEA grantees signed to affirm compliance. These requirements are important characteristics of high-quality authorizing practices and are essential to holding charter schools accountable. Incorporating the language for these requirements into a priority would strengthen the Department's ability to hold SEAs accountable for meeting these requirements at the time the award is made and throughout the grant period.⁵

Proposed Priority: To meet this priority, an application must demonstrate that State law, regulations, or other policies in the State where the applicant is located require the following:

(a) That each charter school in the State --

(1) Operates under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that describes the rights and responsibilities of the school and the public chartering agency;

(2) Conducts annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency; and

⁵ In years in which the appropriations act requires the elements of this proposed priority, it will be a requirement.

(3) Demonstrates improved student academic achievement; and

(b) That all authorized public chartering agencies in the State use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA (20 U.S.C. 6311(b)(2)) as the most important factor when determining whether to renew or revoke a school's charter.

Proposed Priority 3--High-Quality Authorizing and Monitoring Processes.

Background: The quality of a charter school is influenced by the quality of the charter approval process and the quality of its authorized public chartering agency's oversight and monitoring processes. This proposed priority would promote the use of charter approval, monitoring, and oversight practices that have been identified by stakeholders as likely to contribute to the creation and operation of high-quality charter schools.⁶

High-quality authorizing processes can influence the quality of charter schools through the authorization process and beyond. Expedited charter approval for

⁶ See e.g., National Association of Charter School Authorizers' Index of Essential Practices 2012. Available at: www.pageturnpro.com/National-Association-of-Charter-School-Authorizers/50450-The-Index-of-Essential-Practices--2012/index.html#/1.

operators with exemplary track records helps increase the number of high-quality charter schools, while a multi-tiered approval process can keep potentially poor-performing charter schools from ever operating. Clear charter approval processes and frameworks for evaluating charter schools and authorized public chartering agencies would strengthen accountability and improve transparency.

Strong performance monitoring mechanisms can increase the speed of decision-making by authorized public chartering agencies, allowing high-quality charter schools to open, expand, and disseminate information about best practices. These systems can also accelerate the identification of charter schools that are performing poorly or demonstrate significant operational risks and, when necessary, expedite their closure.

Proposed Priority: To meet this priority, an applicant must demonstrate that all authorized public chartering agencies in the State operate using one or more of the following:

(a) Frameworks and processes to evaluate the performance of charter schools on a regular basis that include --

(1) Rigorous academic and operational performance expectations (including performance expectations related to

financial management and equitable treatment of all students and applicants);

(2) School-specific performance objectives aligned to those expectations;

(3) Clear criteria for renewing the charter of a school based on an objective body of evidence, including the performance objectives outlined in the charter contract, demonstration of organizational and fiscal viability, and demonstration of fidelity to the terms of the charter contract and applicable law;

(4) Clear criteria for revoking the charter of a school if there is violation of law or public trust regarding student safety or public funds, or evidence of poor student academic achievement; and

(5) Annual reporting by authorized public chartering agencies to each of their authorized charter schools that summarizes the individual school's performance and compliance, based on this framework, and identifies any areas needing improvement.

(b) Standardized systems that measure and benchmark the performance of the authorized public chartering agency, including the performance of its portfolio of charter schools, and provide for the annual dissemination of

information on such performance;

(c) Authorizing processes that establish clear criteria for evaluation of charter applications and include a multi-tiered clearance or review of a charter school, including a final review immediately before the school opens for its first operational year; or

(d) Authorizing processes that include differentiated review of charter petitions based on whether, and the extent to which, the charter school developer has been successful (as determined by the authorized public chartering agency) in establishing and operating one or more high-quality charter schools.

Proposed Priority 4--SEAs that Have Never Received a CSP Grant.

Background: This proposed priority would assist SEAs that have never received a CSP grant and it would address a major purpose of the CSP by expanding the number of high-quality charter schools across the Nation. A CSP grant can help an SEA support the growth of a high-quality charter school sector in its State beyond the startup of additional charter schools. The required elements for conducting a CSP subgrant program and the opportunity to share effective practices with other SEA grantees contribute to the development of a solid infrastructure to support charter

schools. These required elements include investing in quality authorizing practices, developing a subgrant competition process, and disseminating information about charter schools and best practices in charter schools. Therefore, this proposed priority would help create and strengthen a community of charter school practitioners and supports for the charter school sector in the State.

Proposed Priority: To meet this priority, an applicant must be an eligible SEA applicant that has never received a CSP grant.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that

meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS:

Background: We propose four application requirements to use in conjunction with the statutory application requirements. The purpose of the first application requirement is to collect important information on charter school admissions lotteries, including any proposed student enrollment preferences or exemptions from the lottery.⁷ The purposes of the remaining three application requirements are to strengthen the Department's ability to monitor CSP grants and ensure that grantees adhere to the terms of their approved applications, specifically through the

⁷ The Department is requesting this information in response to specific recommendations made by the Government Accountability Office (GAO) in its February 2013 report entitled, "Charter Schools: Guidance Needed for Military Base Schools on Startup and Operational Issues" (GAO-13-67). In its response to the report, the Department agreed, among other things, to require SEAs (and other eligible applicants under the CSP), as appropriate, (a) to describe any enrollment preferences that charter schools are required or permitted to employ under State law; and (b) to require applicants for CSP subgrants to include descriptions of their recruitment and admissions policies and practices, including any enrollment preferences they plan to employ, in their subgrant applications.

development of comprehensive logic models and their definitions of a high-quality charter school and an academically poor-performing charter school, during their projects.

Proposed Requirements: The Assistant Deputy Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Lottery and Enrollment Preferences: Describe (1) how lotteries for admission to charter schools will be conducted in your State, including any student enrollment preferences or exemptions from the lottery that charter schools are required or expressly permitted by the State to employ, and (2) any mechanisms that exist for the SEA or authorized public chartering agency to review, monitor, or approve such lotteries or student enrollment preferences or exemptions from the lottery. In addition, the SEA must provide an assurance that it will require each applicant for a CSP subgrant to include in its application descriptions of its recruitment and admissions policies and practices, including a description of the proposed lottery and any enrollment preferences or exemptions from the lottery the charter school employs or plans to employ, and how those enrollment preferences or exemptions are

consistent with State law, the CSP authorizing statute, and CSP guidance (for information related to admissions and lotteries under the CSP, please see Section E of the CSP guidance at <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>).

Logic model: Provide a complete logic model for the project, as defined in 34 CFR 77.1.⁸ The logic model must address the role of the grant in promoting the State-level strategy, articulated in selection criterion (a), for expanding the number of high-quality charter schools through startup subgrants, optional dissemination subgrants, optional revolving loan funds, and other strategies.

High-quality charter school: Provide --

(a) Written certification that, for the purposes of the CSP grant, the SEA uses the term high-quality charter schools as defined in this notice; or

(b) If the State proposes to use an alternative definition of high-quality charter school in accordance

⁸ Under 34 CFR 77.1, *logic model* (also referred to as theory of action) means a well-specified conceptual framework that identifies key components of the proposed process, product, strategy, or practice (i.e., the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the relationships among the key components and outcomes, theoretically and operationally.

with paragraph (b) of the definition of the term in this notice, (1) the specific definition the State proposes to use; and (2) a written explanation of why the proposed definition is at least as rigorous as the definition of high-quality charter school set forth in the Definitions section of this notice.

Academically poor-performing charter school: Provide --

(a) Written verification that, for purposes of the CSP grant, the SEA uses the term academically poor-performing charter schools as defined in this notice; or

(b) If the State proposes to use an alternative definition of academically poor-performing charter school in accordance with paragraph (b) of the definition of the term in this notice, (1) the specific definition the State proposes to use; and (2) a written explanation of why the proposed definition is at least as rigorous as the definition of academically poor-performing charter school set forth in the Definitions section of this notice.

PROPOSED DEFINITIONS:

Background: We propose to define four important terms associated with this program that are not defined in section 5210 of the ESEA (20 U.S.C. 7221i) or 34 CFR 77.1.

Proposed Definitions: The Assistant Deputy Secretary

proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

The proposed definitions of high-quality charter school, and significant compliance issue are substantively similar to the definitions of the terms in the notice of final priorities, requirements, and definitions for the CSP Replication and Expansion grant program, published in the Federal Register on July 12, 2011 (76 FR 40898). While the definition of "educationally disadvantaged students" is similar to the definition of the term in the July 12, 2011, notice of final priorities, requirements, and definitions for the CSP Replication and Expansion grant program, the definition of educationally disadvantaged students in this notice is based primarily on section 1115(b)(2) of the ESEA.

Although we propose minor revisions to these definitions to capture the meaning of these terms from a State perspective, the substance of the definitions remains unchanged.

Academically poor-performing charter school means--

(a) A charter school that has been in operation for at least three years and that --

(1) Has been identified as being in the lowest-

performing five percent of all schools in the State and has failed to improve school performance (based on the SEA's accountability system under the ESEA) over the past three years; and

(2) Has failed to demonstrate student academic growth (at least an average of one grade level of growth for each cohort of students) in each of the past three years, as demonstrated by statewide or other assessments approved by the authorized public chartering agency; or

(b) An SEA may use an alternative definition for academically poor-performing charter school, provided that the SEA complies with the requirements for proposing to use an alternative definition for the term as set forth in paragraph (b) of "Academically poor-performing charter school" in the Proposed Requirements section of this notice.

Educationally disadvantaged students means economically disadvantaged students, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, or homeless students.

High-quality charter school means--

(a) A charter school that shows evidence of strong academic results for the past three years (or over the life

of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increased student academic achievement and attainment (including, if applicable, high school graduation rates and college and other postsecondary education enrollment rates) for all students, including, as applicable, educationally disadvantaged students served by the charter school;

(2) Either --

(i) Demonstrated success in closing historic achievement gaps for subgroups of students described in section 1111 of the ESEA (20 U.S.C. 6311) at the charter school; or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111 of the ESEA (20 U.S.C. 6311) at the charter school and significant gains in student academic achievement for all populations of students served by the charter school;

(3) Results (including, if applicable and available, performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college and other postsecondary education attendance rates, and college and other postsecondary education persistence rates) for low-income and other educationally disadvantaged

students served by the charter school that are above the average academic achievement results for such students in the State;

(4) Results on a performance framework established by the State or authorized public chartering agency for purposes of evaluating charter school quality; and

(5) No significant compliance issues, particularly in the areas of student safety, financial management, and equitable treatment of students; or

(b) An SEA may use an alternative definition for high-quality charter school, provided that the SEA complies with the requirements for proposing to use an alternative definition for the term as set forth in paragraph (b) of "High-quality charter school" in the Proposed Requirements section of this notice.

Significant compliance issue means a violation that did, will, or could (if not addressed or if it represents a pattern of repeated misconduct or material non-compliance) lead to the revocation of a school's charter.

PROPOSED SELECTION CRITERIA:

Background: The proposed selection criteria would strengthen several components of this program, which include grantee accountability; accountability and oversight for authorized public chartering agencies; and

equitable access to charter schools and support for educationally disadvantaged students. The proposed selection criteria also would improve efficacy in data collection and reporting by clarifying application requirements and streamlining the selection criteria. Specifically, factors (1), (2), and (3) under proposed selection criterion (b) ("Policy Context for Charter Schools") are based upon elements of the CSP authorizing statute.

Proposed selection criteria (a) ("State-Level Strategy"), (b) ("Policy Context for Charter Schools"), and (c) ("Past Performance") would request that the SEA describe its vision and the policy context for charter schools in the State and provide evidence of the past performance of charter schools in the State. These criteria are intended to encourage an SEA to consider charter schools as a key part of its overall efforts to improve public education and allow reviewers to evaluate the context in which a grant might be awarded.

Proposed selection criteria (d) ("Quality of Plan to Support Educationally Disadvantaged Students"), (e) ("Vision for Growth and Accountability"), (f) ("Dissemination of Information and Best Practices"), and (g) ("Oversight of Authorized Public Chartering Agencies")

would allow an SEA to focus on specific areas of importance for charter schools in its State. As noted in the Executive Summary, a major focus of the competition would be on the quality of the plan to support educationally disadvantaged students. Specifically, proposed selection criterion (d) ("Quality of Plan to Support Educationally Disadvantaged Students") would ask an SEA to describe how it plans to support educationally disadvantaged students equitably and meaningfully.

Proposed selection criterion (e) ("Vision for Growth and Accountability") would ask an SEA to describe its vision for cultivating high-performing charter schools generally, while proposed selection criteria (f) ("Dissemination of Information and Best Practices") and (g) ("Oversight of Authorized Public Chartering Agencies") would ask an SEA to describe how it plans to disseminate best or promising practices of charter schools to each local educational agency (LEA) in the State. In addition, these criteria would ask an SEA to describe its efforts to strengthen authorized public chartering agencies' oversight and approval processes for charter schools (including any efforts by the SEA to encourage authorized public chartering agencies to create a robust portfolio of charter schools, including charter schools with a focus on

increasing student body diversity). By disseminating information on successful school models that incorporate student body diversity, and by encouraging authorized public chartering agencies to work with charter school developers to address student body diversity during the charter approval, monitoring, and renewal processes, these selection criteria would encourage the meaningful inclusion of student body diversity in charter school models, in accordance with applicable law, as they are being developed and implemented.

Proposed selection criteria (h) ("Management Plan and Theory of Action") and (i) ("Project Design") would require an SEA to describe, in detail, the key elements of its proposed project in the form of a logic model that includes relevant program and project-specific performance measures and the mechanics of the SEA's planned subgrant competitions, including how such competitions would create a portfolio of subgrantees that focus on areas of need within the State.

Proposed Selection Criteria: The Assistant Deputy Secretary proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications

or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) State-Level Strategy. The Secretary considers the quality of the State-level strategy for using charter schools to improve educational outcomes for students throughout the State. In determining the quality of the State-level strategy, the Secretary considers one or more of the following factors:

(1) The extent to which the SEA's CSP activities, including the subgrant program, are integrated into the State's overall strategy for improving student academic achievement and attainment (including high school graduation rates and college and other postsecondary education enrollment rates), and closing achievement and attainment gaps, and complement or leverage other statewide education reform efforts (e.g., as described in the State's Race to the Top application or ESEA Flexibility request);

(2) The extent to which funding equity for charter schools (including equitable funding for charter school facilities) is incorporated into the SEA's State-level strategy; and

(3) The extent to which the State encourages local strategies for improving student academic achievement and attainment that involve charter schools, including but not

limited to the following:

(i) Collaboration, including the sharing of data and promising instructional and other practices, between charter schools and other public schools or providers of early learning and development programs or alternative education programs; and

(ii) The creation of charter schools that would serve as viable options for students who currently attend, or would otherwise attend, the State's lowest-performing schools.

(b) Policy Context for Charter Schools. The Secretary considers the policy context for charter schools under the proposed project. In determining the policy context for charter schools under the proposed project, the Secretary considers one or more of the following factors:

(1) The degree of flexibility afforded to charter schools under the State's charter school law, including:

(i) The extent to which charter schools in the State are exempt from State or local rules that inhibit the flexible operation and management of public schools; and

(ii) The extent to which charter schools in the State have a high degree of autonomy, including autonomy over the charter school's budget, expenditures, staffing, procurement, and curriculum;

(2) The quality of the SEA's process for:

(i) Annually informing each charter school in the State about Federal funds the charter school is eligible to receive and about Federal programs in which the charter school may participate; and

(ii) Annually ensuring that each charter school in the State receives, in a timely fashion, the school's commensurate share of Federal funds that are allocated by formula each year, particularly during the first year of operation of the school and during a year in which the school's enrollment expands significantly; and

(3) The quality of the SEA's plan to ensure that charter schools that are considered to be LEAs under State law and that LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Past Performance. The Secretary considers the past performance of charter schools in a State that enacted a charter school law for the first time five or more years

before submission of its application. In determining the past performance of charter schools in a State that enacted a charter school law for the first time five or more years before submission of the SEA's application, the Secretary considers one or more of the following factors:

(1) The extent to which there has been a demonstrated increase, for each of the past five years, in the number and percentage of high-quality charter schools (as defined in this notice) in the State;

(2) The extent to which there has been a demonstrated reduction, for each of the past five years, in the number and percentage of academically poor-performing charter schools (as defined in this notice) in the State; and

(3) Whether, and the extent to which, the academic achievement and academic attainment (including high school graduation rates and college and other postsecondary education enrollment rates) of charter school students equal or exceed the academic achievement and academic attainment of similar students in other public schools in the State over the past five years.

(d) Quality of Plan to Support Educationally Disadvantaged Students. The Secretary considers the quality of the SEA's plan to support educationally disadvantaged students. In determining the quality of the

plan to support educationally disadvantaged students, the Secretary considers one or more of the following factors:

(1) The extent to which the SEA's charter school subgrant program would--

(i) Assist students, particularly educationally disadvantaged students, in meeting and exceeding State academic content standards and State student achievement standards; and

(ii) Reduce or eliminate achievement gaps for educationally disadvantaged students;

(2) The quality of the SEA's plan to ensure that charter schools attract, recruit, admit, enroll, serve, and retain educationally disadvantaged students equitably, meaningfully, and, with regard to educationally disadvantaged students who are students with disabilities or English learners, in a manner consistent with, as appropriate, the IDEA (regarding students with disabilities) and civil rights laws, in particular, section 504 of the Rehabilitation Act of 1973, as amended, and title VI of the Civil Rights Act of 1964;

(3) The extent to which the SEA will encourage innovations in charter schools, such as models, policies, supports, or structures, that are designed to improve the academic achievement of educationally disadvantaged

students; and

(4) The quality of the SEA's plan for monitoring all charter schools to ensure compliance with Federal and State laws, particularly laws related to educational equity, nondiscrimination, and access to public schools for educationally disadvantaged students.

(e) Vision for Growth and Accountability. The Secretary determines the quality of the SEA's vision for charter school growth and accountability. In determining the quality of the SEA's vision, the Secretary considers one or more of the following factors:

(1) The quality of the SEA's systems for collecting, analyzing, and publicly reporting data on charter school performance, including data on student academic achievement, attainment (including high school graduation rates and college and other postsecondary education enrollment rates), retention, and discipline for all students and disaggregated by student subgroup;

(2) The ambition, vision, and feasibility of the SEA's plan (including key actions) to support the creation of high-quality charter schools during the project period, including a reasonable estimate of the number of high-quality charter schools to be created in the State during the project period; and

(3) The ambition, vision, and feasibility of the SEA's plan (including key actions) to support the closure of academically poor-performing charter schools in the State (i.e., through revocation, non-renewal, or voluntary termination of a charter) during the project period.

(f) Dissemination of Information and Best Practices. The Secretary considers the quality of the SEA's plan to disseminate information about charter schools and best or promising practices of successful charter schools to each LEA in the State as well as to charter schools, other public schools, and charter school developers (20 U.S.C. 7221(b)(2); 20 U.S.C. 7221(c)(f)(6)). If an SEA proposes to use a portion of its grant funds for dissemination subgrants under section 5204(f)(6)(B) of the ESEA (20 U.S.C. 7221c), the SEA should incorporate these subgrants into the overall plan for dissemination. In determining the quality of the SEA's plan to disseminate information about charter schools and best or promising practices of successful charter schools, the Secretary considers one or more of the following factors:

(1) The extent to which the SEA will serve as a leader in the State for identifying and disseminating information (which may include, but is not limited to, providing technical assistance) about best or promising

practices in successful charter schools, including how the SEA will use measures of efficacy and data in identifying such practices and assessing the impact of its dissemination activities;

(2) The quality of the SEA's plan for disseminating information and research on best or promising practices used and benefits of charter schools that effectively incorporate student body diversity, including racial and ethnic diversity and diversity with respect to educationally disadvantaged students, consistent with applicable law;

(3) The quality of the SEA's plan for disseminating information and research on best or promising practices in charter schools related to student discipline and school climate; and

(4) For an SEA that proposes to use a portion of its grant funds to award dissemination subgrants under section 5204(f)(6)(B) of the ESEA (20 U.S.C. 7221a), the quality of the subgrant award process and the likelihood that such dissemination activities will increase the number of high-quality charter schools in the State and contribute to improved student academic achievement.

(g) Oversight of Authorized Public Chartering Agencies. The Secretary considers the quality of the SEA's

plan (including any use of grant administrative or other funds) to monitor, evaluate, assist, and hold accountable authorized public chartering agencies. In determining the quality of the SEA's plan to provide oversight to authorized public chartering agencies, the Secretary considers how well the SEA's plan will ensure that authorized public chartering agencies are --

(1) Seeking and approving charter school petitions from developers with the capacity to create high-quality charter schools;

(2) Approving charter school petitions with design elements that incorporate evidence-based school models and practices, including, but not limited to, school models and practices that focus on racial and ethnic diversity in student bodies and diversity in student bodies with respect to educationally disadvantaged students, consistent with applicable law;

(3) Establishing measureable academic and operational performance expectations for all charter schools (including alternative charter schools, virtual charter schools, and charter schools that include pre-kindergarten, if such schools exist in the State) that include, but are not limited to, the elements of high-quality charter schools as defined in this notice;

(4) Monitoring their charter schools on at least an annual basis, including conducting an in-depth review of each charter school at least once every five years, to ensure that charter schools are meeting the terms of their charters and complying with applicable State and Federal laws;

(5) Using increases in student academic achievement as the most important factor in renewal decisions; basing renewal decisions on a comprehensive set of criteria, which are set forth in the charter contract; and revoking, not renewing, or encouraging the voluntary termination of charters held by academically poor-performing charter schools;

(6) Providing, on an annual basis, public reports on the performance of their portfolios of charter schools, including the performance of each individual charter school with respect to meeting the terms of, and expectations set forth in, the school's charter contract.

(7) Supporting charter school autonomy while holding charter schools accountable for results and meeting the terms of their charters and performance agreements; and

(8) Ensuring the continued accountability of charter schools during any transition to new State assessments or accountability systems, including those based on college-

and career-ready standards.

(h) Management Plan and Theory of Action. The Secretary considers the quality of the management plan and the project's theory of action. In determining the quality of the management plan and the project's theory of action, the Secretary considers one or more of the following factors:

(1) The quality, cohesion, and reasoning of the logic model (as defined in 34 CFR 77.1 (c)), including the extent to which it addresses the role of the grant in promoting the State-level strategy for using charter schools to improve educational outcomes for students through CSP subgrants for planning, program design, and initial implementation; optional dissemination subgrants; optional revolving loan funds; and other strategies;

(2) The extent to which the SEA's project-specific performance measures, including any measures required by the Department, support the logic model; and

(3) The adequacy of the management plan to --

(i) Achieve the objectives of the proposed project on time and within budget, including the existence of clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(ii) Address any compliance issues or findings

related to the CSP that are identified in an audit or other monitoring review.

(i) Project Design. The Secretary considers the quality of the design of the SEA's charter school subgrant program, including the extent to which the project design furthers the SEA's overall strategy for increasing the number of high-quality charter schools in the State and improving student academic achievement. In determining the quality of the project design, the Secretary considers one or more of the following factors:

(1) The quality of the SEA's charter school subgrant awards process, and the dissemination subgrant awards process, if applicable, including:

(i) The subgrant application and peer review process, timelines for these processes, and how the SEA intends to ensure that subgrants will be awarded to applicants demonstrating the capacity to create high-quality charter schools; and

(ii) A reasonable year-by-year estimate, with supporting evidence, of the number of subgrants the SEA expects to award during the project period and the average size of those subgrants, including an explanation of any assumptions upon which the estimates are based, and if the SEA has previously received a CSP grant, the percentage of

eligible applicants that were awarded subgrants and how this percentage related to the overall quality of the applicant pool;

(2) The process for monitoring CSP subgrantees;

(3) How the SEA will create a portfolio of subgrantees that focuses on areas of need within the State, such as increasing student body diversity, and how this prioritization aligns with the State-level strategy;

(4) The steps the SEA will take to inform teachers, parents, and communities of the SEA's charter school subgrant program; and

(5) A description of any requested waivers of statutory or regulatory provisions over which the Secretary exercises administrative authority and the extent to which those waivers will, if granted, further the objectives of the project.

Final Priorities, Requirements, Definitions, and Selection

Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the Federal Register. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude

us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise

interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than \$100 million because we anticipate awarding more than \$100 million in grants to SEAs in FY 2015. Therefore, this proposed action is "economically significant" and subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as

possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this proposed regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the potential costs and benefits of this action as well as regulatory alternatives we considered.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action would not impose significant costs on eligible SEAs, whose participation in this program is voluntary. This action

would not impose requirements on participating SEAs apart from those related to preparing an application for a CSP grant. The costs associated with meeting these requirements are, in the Department's estimation, minimal.

This regulatory action would strengthen accountability for the use of Federal funds by helping to ensure that the Department selects for CSP grants the SEAs that are most capable of expanding the number of high-quality charter schools available to our Nation's students, consistent with the purpose of the program as described in section 5201 of the ESEA (20 U.S.C. 7221). Similarly, this action would benefit participating SEAs by supporting their efforts to encourage the development and operation of high-quality charter schools. The Department believes that these benefits to the Federal government and to SEAs outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priorities, requirements, definitions, and selection criteria proposed in this notice are needed to administer the program effectively. As an alternative to promulgating the proposed selection criteria, the Department could choose from among the selection factors authorized for CSP grants to SEAs in section 5204(a) of the ESEA (20 U.S.C. 7221c)

and the general selection criteria in 34 CFR 75.210. We do not believe that these factors and criteria provide a sufficient basis on which to evaluate the quality of applications. In particular, the factors and criteria would not sufficiently enable the Department to assess an applicant's past performance with respect to the operation of high-quality charter schools or the closure of academically poor-performing charter schools (as would be examined under proposed selection criterion (c) "Past Performance") or its plan to hold authorized public chartering agencies accountable for the performance of charter schools that they approve (as under criterion (g) "Oversight of Authorized Public Chartering Agencies"), considerations which are critically important in determining applicant quality.

We note that several of the priorities, requirements, and selection criteria proposed in this notice are based on priorities, requirements, selection criteria, and other provisions in the authorizing statute for this program.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in the following table we have prepared an accounting statement showing the classification of the

expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from the Federal Government to SEAs.

Accounting Statement Classification of Estimated Expenditures [in millions]

Category	Transfers
Annualized Monetized Transfers	\$100
From Whom To Whom?	From The Federal Government to SEAs

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on

request to the program contact person listed under FOR
FURTHER INFORMATION CONTACT.

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through the advanced search feature at this site, you can
limit your search to documents published by the Department.

Dated: November 13, 2014.

Nadya Chinoy Dabby,
Assistant Deputy Secretary
for Innovation and Improvement.

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