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DEPARTMENT OF EDUCATION

34 CFR Part 225

RIN 1810-AB56

Outdated Regulations--Expanding Opportunity Through Quality
Charter Schools Program (CSP)--Grants for Credit

Enhancement for Charter School Facilities

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary amends the CSP--Grants for Credit
Enhancement for Charter School Facilities program
regulations to reflect changes made to title IV of the
Elementary and Secondary Education Act of 1965 (ESEA), as
amended by the Every Student Succeeds Act (ESSA), to
incorporate relevant statutory changes for the program and
its implementing regulations.

DATES: This final rule is effective [INSERT DATE OF
PUBLICATION IN THE FEDERAL REGISTER].

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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: On December 10, 2015, the ESSA, which reauthorized the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), was signed into law.

Therefore, we are revising, in title 34 of the Code of Federal Regulations (CFR), §§ 225.1(b), 225.4(a), 225.11(a)(7), and 225.12(a)(1) to reflect specific statutory changes. The following paragraphs describe the changes we are making to the regulations and the statutory changes that necessitate them.

Part 225--CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM (§225.1)

Statute: Section 4304 of the ESEA.

Current Regulations: Current §225.1 provides the purpose of the Credit Enhancement for Charter School Facilities program. The regulation was derived from the authorizing statute for the program under the ESEA, as amended by NCLB, that allowed grantees to use the grant funds deposited in the reserve account to assist charter schools to access private sector capital to accomplish either of the following objectives: (1) the acquisition of an interest in improved or unimproved real property that is necessary

to commence or continue the operation of a charter school;
or (2) the construction of new facilities, or the
renovation, repair, or alteration of existing facilities,
necessary to commence or continue the operation of a
charter school.

Final Regulations: Revised §225.1 updates the stated
purpose of the Credit Enhancement for Charter School
Facilities program. The regulation is derived from the
authorizing statute for the program under the ESEA, as
amended by ESSA, that allows for grantees to use the funds
deposited in the reserve account to assist charter schools
to access private sector capital to accomplish one or more
of the following objectives: (1) the acquisition of an
interest in improved or unimproved real property that is
necessary to commence or continue the operation of a
charter school; (2) the construction of new facilities, or
the renovation, repair, or alteration of existing
facilities, necessary to commence or continue the operation
of a charter school; or (3) the predevelopment costs
required to assess sites for purposes of the program and
that are necessary to commence or continue the operation of
a charter school.

Reasons: Section 4304(e) of the ESEA, as amended by ESSA,
added an additional program objective for which an eligible

entity receiving a grant under this program may use the funds. Therefore, we are adding the new program objective to the regulation.

Part 225--CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM (§225.4)

Statute: Section 4310(2) of the ESEA, as amended by ESSA, defines "charter school."

Current Regulations: Section 225.4(a) currently defines "charter school" under this program as it was defined in section 5210 of the ESEA, as amended by NCLB.

Final Regulations and Reasons: The final regulation updates the definition of "charter school" under this program, to reference the current definition in section 4310(2) of the ESEA, as amended by the ESSA.

Part 225--CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM (§225.11)

Statute: Section 4303(g)(2) of the ESEA.

Current Regulations: The current regulation provides criteria that the Secretary will use to evaluate an application for a Credit Enhancement for Charter School Facilities grant. Section 225.11(a)(7) references States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the ESEA, as amended by NCLB.

Final Regulations and Reasons: The final regulation updates §225.11(a)(7) to reference States with strong charter laws, consistent with the criteria for such laws in section 4303(g)(2) of the ESEA, as amended by ESSA.

Part 225--CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM (§225.12)

Statute: Section 4304 of the ESEA.

Current Regulations: The current regulation provides that the Secretary may award up to 15 additional points under a competitive preference priority related to the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on three factors. The three factors are: (1) the extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the ESEA, as amended by NCLB; (2) the extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and (3) the extent to which the applicant would target services to communities with large proportions of students from low-income families.

Final Regulations: The final regulation updates the first factor in the list above to refer to the extent to which the applicant would target services in geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA, as amended by the ESSA.

Reasons: With the passage of the ESEA, as amended by ESSA, the categories of schools that States must identify under section 1111 have changed, and thus, the categories of schools in §225.12 that are based on these provisions must be updated. Under the ESEA, as amended by NCLB, the Department could award additional points to applicants that target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring. However, under the ESEA, as amended by ESSA, States must now identify schools for comprehensive support and improvement and targeted support and improvement.

Executive Orders 12866, 13563, and 13771

Waiver of Rulemaking and Delayed Effective Date:

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations.

However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

There is good cause here for waiving rulemaking under the APA because this regulatory action revises regulations to conform with statutory changes. This regulatory action does not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that obtaining public comment on this regulatory action is unnecessary.

Rulemaking is "unnecessary" when "the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." Utility Solid Waste Activities Group v. EPA, 236 F.3d 749, 755 (D.C. Cir. 2001), quoting U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 31 (1947) and South Carolina v. Block, 558 F. Supp. 1004, 1016 (D.S.C. 1983).

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously

stated, because the final regulations merely reflect existing statutory changes, there is good cause to waive the delayed effective dates in the APA and make the final regulations effective upon publication.

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined 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 final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f)(1) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this final rule is not a significant regulatory action, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations 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 on 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 final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. The Department believes that these final regulations are consistent with the principles in Executive Order 13563.

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

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The final regulations are not expected to have a significant impact.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and

comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

Intergovernmental Review

The CSP--Grants for Credit Enhancement for Charter School Facilities are subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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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(Catalog of Federal Domestic Assistance Number: 84.354A CSP--Grants for Credit Enhancement for Charter School Facilities.)

List of Subjects in 34 CFR Part 225

Education, Educational facilities, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Schools.

Dated: May 30, 2019.

Betsy DeVos,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 225 of title 34 of the Code of Federal Regulations as follows:

PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

1. The authority citation for part 225 is revised to read as follows:

AUTHORITY: 20 U.S.C. 1221e-3, 1232, and 7221c.

§§ 225.1 through 225.21 [Amended]

2. Sections 225.1 through 225.21 are amended by removing the authority citations at the end of each section.

3. Section 225.1 is further amended by adding paragraph (b)(3) to read as follows:

§ 225.1 What is the Credit Enhancement for Charter School Facilities Program?

* * * * *

(b) * * *

(3) Assist charter schools with the predevelopment costs required to assess sites for the purpose of acquiring (by purchase, lease, donation, or otherwise) an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property or constructing new facilities, or renovating,

repairing, or altering existing facilities, and that are necessary to commence or continue the operation of a charter school.

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§ 225.4 [Amended]

4. Section 225.4 is further amended by removing the words "5210 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001" from paragraph (a) introductory text and adding in their place the words "4310(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act".

§ 225.11 [Amended]

5. Section 225.11 is further amended by removing the words "5202(e) (3) of the Elementary and Secondary Education Act of 1965" from paragraph (a) (7) and adding in their place the words "4303(g) (2) of the Elementary and Secondary Education Act of 1965".

6. Section 225.12 is further amended by revising paragraph (a) (1) to read as follows:

§ 225.12 What funding priority may the Secretary use in making a grant award?

(a) * * *

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA, as amended by the Every Student Succeeds Act;

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