DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0006]

Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants)

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

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

SUMMARY: The Department of Education (Department or ED) announces priorities, requirements, definitions, and selection criteria for CSP State Entity Grants, Developer Grants, and CMO Grants, Assistance Listing Numbers (ALNs) 84.282A, 84.282B, 84.282E, and 84.282M. We may use one or more of these priorities, requirements, definitions, and selection criteria for grant competitions under these programs in fiscal year (FY) 2022 and later years.

DATES: These priorities, requirements, definitions, and selection criteria are effective August 5, 2022.

FOR FURTHER INFORMATION CONTACT: Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E209, Washington, DC 20202–5970. Telephone: (202) 260–0968. Email: *charterschools@ed.gov.*

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SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: These priorities, requirements, definitions, and selection criteria are aimed at ensuring that all students have access to excellent schools that deliver the highest quality education. We take this action to ensure that Federal CSP funds support the creation, replication, and expansion of high-quality charter schools that promote positive student outcomes, educator and community empowerment, and promising practices; and to promote school diversity. We also seek to promote greater fiscal and operational transparency and accountability for CSP-funded charter schools. We believe the policies and strategies reflected in this regulatory action can serve as a model for all charter schools.

Summary of the Major Provisions of This Regulatory Action: Through this regulatory action, we establish two priorities, three application requirements, and two selection criteria for CMO Grants and Developer Grants; six application requirements and one selection criterion for State Entity Grants; and several assurances, definitions, and selection criteria applicable to CSP State Entity Grants, CMO Grants, and Developer Grants. These final priorities, requirements, definitions, and selection criteria supplement the provisions in Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA); and the priorities, requirements, definitions, and selection criteria in: Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO NFP), published in the **Federal Register** on November 30, 2018 (83 FR 61532), and Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer NFP), published in the **Federal Register** on July 3, 2019 (84 FR 31726).

Costs and Benefits: In accordance with Executive Order 12866, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe the benefits of this regulatory action outweigh any associated implementation costs for State Entity Grant applicants and subgrant applicants, CMO Grant applicants, and Developer Grant applicants. We also believe this regulatory action will strengthen accountability for the use of Federal funds in the CSP by helping to ensure that CSP grants and subgrants are awarded to those entities most capable of successfully implementing their proposed projects and meeting the needs of the students and families they serve.

Purposes of Programs: State Entity Grants, CMO Grants, and Developer Grants support various activities critical to the successful creation and implementation of charter schools. The major purposes of the CSP are to expand opportunities for all students, particularly underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

State Entity Grants (ALN 84.282A) comprise the largest portion of CSP funds. These competitive grants are awarded to State entities (SEs) that, in turn, award subgrants to eligible applicants on a competitive basis for the purpose of opening and preparing for the operation of new charter schools and replicated high-quality charter schools and expanding high-quality charter schools. Eligible applicants are charter school developers that have applied to an authorized public chartering agency to operate a charter school and have provided adequate and timely notice to that authority. A developer is an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators, and other school staff; parents; or other members of the local community in which a charter school project will be carried out.[1] For-profit organizations are ineligible to apply for grants or subgrants under the CSP.

In addition to awarding subgrants to eligible applicants to enable them to open new charter schools and to replicate or expand high-quality charter schools, State entity grantees may use grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in opening and preparing for the operation of new charter schools and replicated high-quality charter schools, and

[1] Section 4310(5) and (6) of the ESEA (20 U.S.C. 7221i(5) and (6)) (*www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf*).

expanding high-quality charter schools; and to work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. State entities may also use up to 3 percent of grant funds for administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(d).

If a State does not have an active CSP State Entity Grant, the Department may award Developer Grants (ALNs 84.282B and 84.282E) to eligible applicants in the State on a competitive basis to enable them to open and prepare for the operation of new charter schools and replicated high-quality charter schools, or to expand high-quality charter schools.

Through CMO Grants (ALN 84.282M), the Department provides funds to nonprofit charter management organizations (CMOs) on a competitive basis to enable them to replicate or expand one or more high-quality charter schools.

CSP State Entity Grants, Developer Grants, and CMO Grants are intended to support charter schools that serve elementary or secondary school students. Funds may also be used to serve students in early childhood education programs or postsecondary education programs.

Section 4310 of the ESEA defines ''replicate'' as opening a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school; and ''expand'' as significantly increasing enrollment or adding one or more grades to a high-quality charter school (20 U.S.C. 7221i(9) and (7)). Section 4310 defines ''high-quality charter school,'' in pertinent part, as a charter school that shows evidence of strong academic results, which may include strong student academic growth, as determined by a State; has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance; and has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school and for each of the subgroups of students defined in section 1111(c)(2) of the ESEA (20 U.S.C. 7221i(8)).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

We published a notice of proposed priorities, requirements, definitions, and selection criteria for CSP State Entity Grants, CMO Grants, and Developer Grants in the **Federal Register** on March 14, 2022 (NPP) (87 FR 14197). That document contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. We also published an extension notice in the **Federal Register** on April 12, 2022 (87 FR 21644), extending the deadline for interested parties to submit public comments on the NPP from April 13, 2022, to April 18, 2022.

There are important differences between the proposed priorities, requirements, definitions, and selection criteria and the final priorities, requirements, definitions, and selection criteria established in this NFP, as discussed in the *Analysis of Comments and Changes* section in this document.

Public Comment: In response to our invitation in the NPP, 26,586 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria. A large proportion of those comments appear to have been part of organized letter-writing campaigns and addressed the same issues and concerns. Approximately 5,770 of the total comments received were unique comments. These comments also raised similar issues either in support of, or expressing concerns about, the proposed priorities, requirements, definitions, and selection criteria.

We group major issues according to subject. We discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to any of the proposed priorities, requirements, definitions, or selection criteria in the NPP.

Analysis of Comments and Changes: An analysis of the comments and changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General Comments

Comments: A majority of commenters expressed general support for the proposed priorities, requirements, definitions, and selection criteria. Many of these commenters, however, but also recommended that the Department modify some of the proposed priorities, requirements, definitions, and selection criteria to strengthen their purpose and intent and to clarify the language.

One commenter who expressed general support for the proposed priorities, requirements, definitions, and selection criteria, for example, stated that the Department should address teacher licensure requirements in charter schools. The commenter noted that some teachers in charter schools do not have appropriate State teaching licenses or credentials, despite extensive research indicating that highly qualified educators improve student achievement. The commenter encouraged the Department to issue regulations under the ESEA to reduce the reliance on what the commenter described as unqualified teachers in charter schools, which the commenter argued adversely impacts student achievement, undermines the teaching profession, and hinders union organization efforts in charter schools.

Another commenter stated that the proposed actions are a positive development for America's children and, if fully implemented, will advance equity and help restore charter schools to their original purpose by integrating them into the broader education community. This commenter also suggested that we require applicants to certify that they will remain neutral in any union organizing effort for the term of the grant award, noting that charter-district collaborations can benefit when charter school and district teachers belong to the same union.

Discussion: We agree with the vast majority of commenters that these priorities, requirements, definitions, and selection criteria will improve the overall quality of CSP-funded charter schools. We agree with the commenter that research shows that highly qualified educators improve student achievement and that all students should be taught by teachers who are fully certified in the area they are assigned to teach. As a general matter, however, State law governs the licensure and credentialing requirements for teachers in public schools, including public charter schools. Therefore, the Department believes the issue of teacher licensure should be addressed at the State level. Additionally, while we acknowledge that teacher unions can play an important role in charter schools as well as traditional public schools, we believe the issue of union organizing is outside the scope of this regulatory action.

Changes: None.

Comments: With respect to the peer review of CSP grants and subgrants, one commenter recommended that review teams include at least one reviewer representative of the district public school community. This commenter also recommended that a minimum point threshold be established for an award, and that applications be checked

for factual accuracy and posted for public review and comment for a period of no less than 45 days before award decisions are made.

Discussion: The Department considers a number of factors when selecting peer reviewers, including their knowledge and experience relevant to the competition for which they are reviewing applications, and any possible conflicts of interest that might affect their ability to be objective when reviewing grant applications. While some peer review panels may include district employees, it would be impractical, and possibly impede timely grant award decisions, to require each peer review team to include one representative from any particular school district community. In an effort to expand our peer reviewer pool, increase peer reviewer diversity, and ensure that grant applications are evaluated by individuals with up-to-date and relevant knowledge in a variety of learning settings, we published a notice in the **Federal Register** on May 20, 2022, inviting interested persons to apply to serve as peer reviewers for upcoming grant competitions in the Department's Office of Elementary and Secondary Education, Office of Postsecondary Education, and Office of Special Education and Rehabilitative Services. A link to this notice in the **Federal Register** can be found here: *https://www.federalregister.gov/documents/2022/05/20/2022-10834/peer-review-opportunities-with-the-us-department-of-educations-office-of-elementary-and-secondary.*

Further, while the Department checks all applications for accuracy prior to making a grant award, we believe it would be impractical and lead to unnecessary delays to require applications to be posted for at least 45 days before award decisions are made. Currently, the Department posts on the CSP website copies of all CSP applications that are approved for funding as well as their overall scores and peer reviewers' comments. Even after an award is made, projects must continue to meet program requirements and can be subject to administrative actions, including possible termination, if they do not comply with applicable statutory and regulatory requirements and the terms of the approved application.

Although State entity grantees must award subgrants on a competitive basis, State entity grantees generally establish their own procedures for reviewing subgrant applications, consistent with the program statute and applicable regulations. With respect to grants awarded by the Department, we believe it would be impractical to establish a minimum funding threshold, as such decisions are driven by several factors (*e.g.,* total amount of funds available, number of applications received, overall quality of the applications received) that may vary from one competition to the next. We are confident that the statutory requirements concerning the peer review of CSP grants and subgrants, the notice we published in the **Federal Register** on May 20, 2022, and the actions taken in this NFP combined will lead to further improvements in the quality of our peer review processes.

Changes: None.

Comments: Some commenters expressed concern that the proposed regulations empower Federal and State peer reviewers to question decisions that are central to the charter school authorizing process, such as whether there is sufficient demand for a school to be financially viable. These commenters contend that charter school authorizers are best positioned to determine whether requirements under State law have been met and evaluate the data and analyses that applicants are required to produce. These commenters recommended that we remove the community impact analysis requirement.

Discussion: We understand that the charter school authorizing process is governed by State law and agree with the commenters that charter school authorizers are better positioned than the Department to determine whether a particular proposed charter school meets State law requirements. On the other hand, the Department is responsible for administering the CSP and ensuring that CSP funds are used properly to support the highest quality applications that have the greatest likelihood of success. Given that peer reviews inform funding decisions involving the award of more than $400 million annually under the CSP, we believe it is necessary for peer reviewers to have access to as much information as possible in order to assess the viability of proposed charter schools. This peer review process is not merely an academic exercise; since 2001, seven years after the CSP was first authorized in 1994, approximately 930 CSP-funded charter schools and proposed charter schools (approximately 14.5 percent) either never opened or closed prior to the end of the grant period. These charter school closures and failures to open cost more than $174 million in Federal resources provided through CSP; are disruptive for communities, particularly for students and families directly affected by school closures; and potentially undermine the effectiveness of charter schools.[2] Moreover, assessing the need for Federal funding, including in the context of how well a particular proposal addresses local needs, is a standard consideration for peer reviewers in many Department discretionary grant programs, such as ''Promise Neighborhoods'' and ''Full-Service Community Schools.''

Changes: See the discussion of changes we have made to the requirements related to a community impact analysis, including changing this requirement to a ''needs analysis'' to align with other Department programs, under the *Requirements Applicable to CMO Grants and Developer Grants, Requirement 1* section of this Analysis of Comments and Changes.

Comments: Some commenters expressed concern about specific charter school practices that may exclude certain students from charter schools. A few commenters stated that charter schools should be required to disclose information about their student application, selection, turnover, backfilling, and disciplinary practices. One commenter stated that applicants should certify that application materials are available in all languages spoken in the community, that charter schools do not cap for admission the number of students with disabilities (or students with a particular type of disability), and that charter schools do not charge an application fee. The commenter further recommended that we require applicants that currently operate charter schools to disclose annual student turnover figures for the past 5 years and whether they use admissions tests, consider students' past academic or behavioral issues during admissions, and backfill student vacancies created as a result of withdrawals or expulsions during the school year. The commenter added that applicants should also be required to disclose how they have recruited students from diverse populations within their communities.

Discussion: We agree that transparency regarding student recruitment and enrollment practices of charter schools is important, including ensuring that charter schools implement enrollment practices that attract students from all different backgrounds. Accordingly, under the *Final Application Requirements, Requirements Applicable to CMO Grants and Developer Grants, Requirement 1* and *Requirements Applicable to State Entity Grants, Requirement 1,* grant and subgrant applicants must conduct a needs analysis that addresses the need for the

[2] WestED, Data Collection Form, 2012.

project and includes a robust family and community engagement plan that, among other things, describes how the charter school's recruitment, enrollment, and retention processes will engage and accommodate families from various backgrounds. As part of the needs analysis, applicants must include details about the school's common enrollment and retention practices that include, as part of the enrollment process, how it will disclose to families and community members policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program). Accordingly, we believe the needs analysis requirement is sufficient to obtain information from applicants necessary to address the commenters' concerns, without being overly burdensome.

Changes: None.

Comments: Some commenters expressed general concern about how CSP funding is allocated to charter schools and recommended ways to strengthen accountability and oversight of the grants. For example, one commenter noted that the CSP authorizing statute has a provision that prohibits a State from having more than one active State Entity Grant at a time and suggested that the Department impose a similar restriction under the CMO Grant program. The commenter further suggested that the Department should not award a grant to any charter management organization with an active CMO Grant that exceeds $25 million, citing the potential misuse of grant funds by grantees as an example of why such a provision is needed. Two other commenters recommended that the Department require a forensic audit for any charter school applying for CSP funding. These commenters also stated that charter schools that do not operate as classroom-based entities or that are operated by for-profit entities should be barred from receiving CSP funds. Another commenter requested that we require all federally funded charter schools and charter school authorizers to comply with State freedom of information and open meetings laws.

Discussion: We agree that transparency and accountability regarding the use of Federal funds are important and believe these priorities, requirements, definitions, and selection criteria will enhance transparency and accountability under the CSP. With respect to the State Entity Grant program, the commenter is correct that the CSP statute prohibits the Department from awarding a grant to a State entity in a State where there is already an active State Entity Grant. The commenter also is correct that the CSP statute does not impose a restriction on the number of CMO Grants that can be awarded in a specific State. Where there is interest from multiple State entities within a State to apply for a State Entity Grant and be responsible for awarding subgrants to eligible applicants, we believe the statutory limit of one active State Entity Grant per State can help encourage partnerships and, thereby, eliminate the need for State entities to compete against each other for a limited pool of prospective high-quality charter school subgrantees. This context does not exist for the CMO Grant program, as CMO grantees generally manage the charter schools that they fund and do not fund their charter schools through subgrants. Likewise, while we appreciate the commenter's concerns about the possible misuse of CSP funds, we believe that imposing a blanket prohibition against CMOs with active CMO grants that exceed $25 million from receiving new CMO Grants would be counter-productive. For instance, large CMOs that manage multiple high-quality charter schools and have demonstrated that they have the capacity and resources to administer their CMO grant effectively and efficiently could be prevented from receiving the funds they need to implement their projects successfully. Furthermore, prior to awarding a grant to any entity—particularly, an entity that has an existing grant—the Department takes appropriate steps to mitigate the risk of program funds being misspent, including conducting a risk analysis and ensuring that the applicant is in compliance with all program requirements and has the capacity and resources to administer the grant effectively and efficiently.

Regarding State freedom of information and open meetings laws, under the CSP statute, applicants for State Entity Grants are required to describe how charter schools are addressed in the open meetings and open records laws in their State. In addition, this NFP requires applicants for Developer Grants to hold or participate in a public hearing to obtain information and feedback on the impact of the proposed project and, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds must hold or participate in such a hearing. We do not address State freedom of information laws in these final priorities, requirements, definitions, and selection criteria because that issue is outside the scope of this regulatory action. Further, Assurance (c) of the *Final Assurances, Assurances Applicable to State Entity Grants, CMO Grants, and Developer Grants* requires applicants to provide an assurance that they will post on their websites information regarding any management contract between the charter school and a for-profit management organization, and the *Final Assurance Applicable to State Entity Grants and CMO Grants* requires applicants to post on their websites information regarding the charter schools slated to receive CSP funds.

Regarding comments that charter schools that do not operate as classroom-based entities should be barred from receiving CSP funds, we presume that the commenters were referring to virtual charter schools. Although the CSP statute does not specifically prohibit virtual charter schools from receiving CSP funds, the Department typically awards direct grants to ''brick and mortar'' charter schools and not to virtual charter schools. Because virtual charter schools in a few states may have received CSP funds indirectly through State educational agency (SEA) or State entity grantees, however, the Department has issued nonregulatory guidance to ensure that SEA and State entity grantees understand the inherent risks associated with the use of CSP funds by virtual charter schools and implement appropriate safeguards to mitigate the risks, particularly in the areas of student attendance and assessments. Finally, for-profit entities are ineligible to receive direct grants or subgrants under the CSP, although CSP grantees and subgrantees may enter into contracts with for-profit entities for the provision of goods and services. A grantee or subgrantee that enters into a contract for goods or services with any entity, including a for-profit management organization, must comply with the Federal procurement standards at 2 CFR 200.317–200.327, and applicable conflict of interest requirements. Further, Requirement 2 applicable to CMO Grants and Developer Grants and Requirement 2 applicable to State Entity Grants in the *Final Application Requirements* section of this notice require CSP grantees and subgrantees to provide detailed information about any management contracts they enter with for-profit management organizations, and Assurances (a) and (b) applicable to State Entity Grants, CMO Grants, and Developer Grants in the *Final*

Assurances section of this notice require applicants to provide assurances that they will not relinquish full or substantial administrative control of their CSP grants or subgrants to a for-profit management organization and that any management contract with a for-profit management organization will contain specific provisions to mitigate the risks associated with such contracts.

Changes: None.

Comments: Numerous commenters strongly recommended the continued use of the priorities, requirements, definitions, and selection criteria established in the CMO NFP published in the **Federal Register** on November 30, 2018 (83 FR 61532), and the Developer NFP published in the **Federal Register** on July 3, 2019 (84 FR 31726). These commenters stated that these regulations are critical to the success of charter schools and the inclusion of all students in charter schools.

Discussion: We agree that the priorities, requirements, definitions, and selection criteria established in the CMO NFP and Developer NFP should remain available for use in future competitions. Accordingly, as stated in the *Executive Summary* section of this notice and in the NPP, these regulations supplement, and do not supersede, the CMO NFP and the Developer NFP.

Changes: None.

Comments: Some commenters requested that the Department delay publishing the NFP or withdraw the actions proposed in the NPP to allow additional time for the Department to engage in meaningful discussions with the charter school community about the proposed changes to the programs.

Discussion: The Department received recommendations prior to the publication of the notice from numerous organizations and provided a public comment period to support further engagement with the field. As demonstrated by the significant number of comments, the Department has had the opportunity to hear directly from those who would be most impacted by this regulatory action. The Department carefully reviewed each of these comments. As stated in the *Purpose of Regulatory Action* section of this notice, we believe these final priorities, requirements, definitions, and selection criteria are critical to ensuring that CSP funds support the creation, replication, and expansion of high-quality charter schools that are fiscally and operationally transparent and accountable. Given the Biden-Harris Administration's commitment to ensuring that all students attending charter schools have access to a high-quality education, we decline to delay publishing the NFP or to withdraw the NPP.

Changes: None.

Priorities Applicable to CMO Grants and Developer Grants

Priority 1—Promoting High-Quality Educator- and Community-Centered Charter Schools To Support Underserved Students

Comments: A number of commenters expressed support for Priority 1 and its focus on creating community-centered charter schools and consideration of community assets. One commenter stated that there is value in having parents, educators, and community members take an active role in the creation and governance of charter schools, but recommended making the priority a competitive preference priority rather than an absolute priority. The commenter also recommended broadening the parameters for educator involvement and removing the requirement for a timetable with milestones to reflect that a community-centered approach should be an ongoing effort.

Discussion: We agree that community involvement in the creation and governance of charter schools should be considered a best practice and increases the likelihood of a charter school's success. The priority is not intended to limit the ways educators can be involved in the development of high-quality charter school models, and we are revising the priority to clarify this. We also are removing the requirement for a ''timetable with milestones'' to clarify that we do not believe efforts to engage the community should have an end date. Rather, we seek a timeline for the applicant's plans to implement key activities under the priority. Further, when establishing a priority for use in a program, we generally do not identify the priority as absolute, competitive preference or invitational, to allow the Department flexibility to determine how the priority should be used in any future competition.

Changes: In paragraph (a)(1) of Priority 1, we clarified that applicants may propose educator involvement in activities other than the enumerated activities. Additionally, in paragraph (b), we revised the requirement to require applicants to provide a timeline to clarify that while there should be milestones, a grantee's community engagement efforts and community-centered approach should be ongoing. We also made corresponding changes to the language in Requirement 6 applicable to State Entity Grants to align with the changes to paragraph (a)(1) of Priority 1.

Priority 2—Charter School and Traditional Public School or District Collaborations That Benefit Students and Families

Comments: Many commenters expressed support for Priority 2 given its goal to foster greater collaboration between traditional public schools and public charter schools. One commenter stated that it is important for organizations and stakeholders, particularly those responsible for ensuring school quality, to listen and learn from one another to develop improved practices for implementing community-responsive schooling. While supportive of the priority, the commenter recommended making Priority 2 an invitational priority as opposed to a competitive preference priority, noting that the proposed priority might discourage applications from charter schools that are not able to engage in such collaborations, such as rural charter schools.

Another commenter expressed support for Priority 2 but requested that we require all applicants to certify that they will not use nondisclosure agreements or noncompete agreements at their schools and will void any such existing agreements during the grant period. The commenter asserted that nondisclosure agreements and noncompete agreements create barriers to fostering charter-district collaborations because such agreements prohibit teachers in charter schools from taking jobs in traditional public schools for a fixed period of time or within a specific geographic area that is close to the charter school following the termination of employment.

Several commenters recommended making the priority less prescriptive by allowing applicants to determine the nature of their collaborations with traditional school districts rather than including a menu of activities. These commenters also recommended allowing applicants to provide evidence of an existing collaboration or an intent to collaborate with a traditional school district if such collaboration is not already underway. Another commenter suggested that the Department add services to meet the needs of students with disabilities and English learners to the list of services on which the applicant may propose to collaborate with a traditional public school or school district.

One commenter recommended that we require grantees to provide evidence of the collaboration within 180 days of receiving a CSP grant award.

A relatively large number of commenters opposed this priority for varying reasons. Some commenters noted that while they are generally supportive of school collaborations and the sharing of best practices between charter schools and traditional public schools, they are skeptical that this priority will lead to true partnerships between charter schools and traditional public schools and school districts because of the tensions that exist between charter schools and traditional public schools in some communities.

Other commenters expressed concern that many eligible applicants may be blocked from receiving funding and opening new charter schools and, thus, may be discouraged from applying for a grant or subgrant if traditional public schools and school districts are unwilling to partner with charter schools; these commenters argued that traditional school districts often resist attempts to foster cooperation and collaboration with charter schools. One commenter stated that this priority has the potential to give traditional school districts additional leverage to reject the creation of new charter schools if the priority is implemented as an absolute priority or competitive preference priority.

Another commenter stated that requiring the district to sign a memorandum of understanding (MOU) could be labor-intensive, with significant legal fees, and noted that a newly elected school board could revoke the MOU in a subsequent year.

Other commenters stated that requiring State entities to give priority to eligible applicants that propose charter-district collaborations would diminish the role of states in the development and administration of their charter school programs by forcing states to re-orient grant-awarding priorities in their subgrant application process for peer review.

Discussion: We agree that charter schools and traditional public schools and school districts should listen and learn from one another to develop improved practices for implementing programs and services that are responsive to student, family, and community needs, which we believe can lead to improved academic outcomes for all students. We also agree that applicants should have flexibility regarding not only whether they respond to the priority, but also, how they respond to this priority, particularly if they have an existing collaboration with a traditional public school or school district. Likewise, we recognize that significant benefit could derive from collaborations between character schools and traditional public schools or school districts (also referred to as ''charter-traditional collaborations'' in this notice) focused on supporting students with disabilities and English learners. In response to these comments, we have revised the priority to clarify that applicants have flexibility to choose the collaborations they propose, modified elements of the description of the collaboration to reflect that collaborations may be proposed or existing, and added collaborations focused on serving students with disabilities and English learners to the list of examples of collaborations that applicants may choose to propose. We also acknowledge that it may take significant time for applicants to establish such collaborations, and that implementing the priority as an absolute priority could make it more difficult for some charter schools to qualify for CSP subgrants. To be clear, the purpose of this priority is to encourage, but not require, collaborations between charter schools and traditional public schools or school districts in ways that benefit students and families in charter schools and traditional public schools. Some of the most successful charter school networks have collaborated with traditional public schools and school districts, and there is evidence that these types of collaborations can improve the quality of educational opportunities and outcomes for students in charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, developing principal pipeline programs, and more.[3]

For example, an analysis of collaborations between charter schools and traditional public schools in the District of Columbia identified over 60 examples of how charter schools and traditional public schools were able to partner in mutually beneficial ways.[4] These collaborations included shared professional development, scaling innovative practices, and research development. A similar collaboration exists in Boston, Massachusetts, where a compact among traditional public schools, charter schools, and Catholic schools was created to coordinate and share best practices.

Perhaps more importantly, these types of partnerships can help improve services and supports for educationally disadvantaged students, including students with disabilities and English learners, enrolled in charter schools. For example, according to a report by the Center for American Progress (CAP),[5] developing the expertise to successfully serve students with disabilities can be particularly challenging for charter schools that may not enroll many students with low-incidence disabilities and who require highly specialized services and supports. Collaboration with the district can help charter schools access expertise that would help improve student services and outcomes. CAP also published a report with the Center for Learner Equity (CLE) that profiled examples of districts and charter schools pursuing similar efforts.[6] Such partnerships can provide charter schools with additional expertise and supports to help meet the needs of all students, particularly students with disabilities and English learners.

The CAP report also found that these partnerships can improve economies of scale for small charter school operators, as many charter schools are not able to access the same pricing for curricula, supplies, support services, and technology as larger districts and networks. This frees up resources for charter schools to invest elsewhere in their programs to ensure that they are meeting the needs of their students.

We also know that charter schools often foster innovation in public education, which is a major purpose of the CSP. These kinds of partnerships can provide opportunities for charter schools to share their best practices with traditional public schools that can learn from these efforts.

This priority reflects the research on how these mutually beneficial partnerships can improve educational opportunities for students enrolled in charter schools as well as traditional public schools. We have seen successful outcomes for students and communities

[3] See *e.g.,* Putting Students First: *Profiles of District-Charter Collaborations in the District of Columbia and Massachusetts,* Mid-Atlantic Comprehensive Center, WestEd, Putting Students First: Profiles of District-Charter Collaboration in the District of Columbia and Massachusetts (*wested.org*), 2019; Passing Notes: *Learning from Efforts to Share Instructional Practices Across District-Charter Lines,* CRPE, Passing Notes: Learning from Efforts to Share Instructional Practices Across District-Charter Lines—Center on Reinventing Public Education (*crpe.org*), February 2018.

[4] DC Public School and DC Public Charter School Collaboration, EdSight, EdSight Cross Sector Collaboration FINAL.pdf (*dc.gov*), October 2019.

[5] Improving Outcomes for Students with Disabilities: *Negotiating Common Ground for District and Charter School Collaboration,* Center for American Progress, Improving Outcomes for Students with Disabilities—Center for American Progress, January 2017.

[6] A Secondary Analysis of the Most Recent Civil Rights Data Collection to Inform Policy and Practice, Center for Learner Equity, A Secondary Analysis of the Most Recent Civil Rights Data Collection to Inform Policy and Practice—The Center for Learner Equity, November 2021.

when there is collaboration between charter schools and traditional public schools and hope to encourage more of it. Under no circumstances should this priority be implemented in a manner that creates barriers for eligible applicants seeking to obtain approval of a charter application or an application for CSP funding to support the creation, replication, or expansion of a high-quality charter school.

In response to the commenter's concerns about the use of noncompete and nondisclosure agreements in charter schools, we agree that the use of such agreements could impede charter-district collaborations to the extent that they restrict a teacher's ability to work at, or to share best practices with, another public school, and that non-compete agreements undermine the ability of all students to have access to qualified teachers. The issue of noncompete and nondisclosure agreements in charter schools, however, is outside the scope of this regulatory action. Nevertheless, the Department will explore options for collecting data in this area that might inform future activities.

Finally, while the Department has discretion to designate the priority as invitational, competitive preference, or absolute in any given competition, for the reasons noted above, we do not intend to use this priority as an absolute or competitive preference priority in FY 2022, and it is unlikely that we would use the priority as an absolute priority in future years. Therefore, in the FY 2022 CSP CMO Grant and Developer Grant competitions, applicants will not be required to collaborate with a traditional public school or school district to be eligible for funding. Further, as discussed below, we have revised Priority 2 to clarify the Department's intent and to help ensure that this priority is not implemented in a manner that would make it more difficult for eligible applicants to obtain charter approval or to qualify for CSP funding. Also, as discussed below, we have amended Requirement 6 applicable to State Entity Grants to require State entity applicants to describe how they will ''encourage, but not require,'' eligible applicants to propose projects that include charter-traditional collaborations.

We also acknowledge the commenter's concern that requiring the district to sign an MOU could be labor-intensive and result in significant legal fees, only to be revoked at a later date. Putting in place an MOU is not required in order for applicants to address this priority but is one example of the various types of information that may be provided. Nevertheless, to avoid confusion, we have removed the reference to an MOU in the priority. In addition, as discussed below, we have extended the time period within which an applicant must provide evidence of the existence of a collaboration. Having an MOU in place, or having a traditional public school or district ''sign off'' on the application, is not a requirement of this priority.

Changes: We changed the name of this priority to Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools. In paragraph (a) of Priority 2, we clarified that applicants can meet the priority not only by proposing a new collaboration, but also by proposing to continue an existing collaboration. We also revised the priority to provide more examples of the types of collaborations applicants may propose. We also clarified, in paragraph (a), that the collaboration must be designed to benefit students or families served by at least one member of the collaboration and lead to increased educational opportunities and improved academic outcomes for students served by at least one member of the collaboration. The proposed priority referred to improved *student* outcomes and required the activity to benefit ''students and families served by each member of the collaboration.'' Additionally, in paragraph (a)(1), we revised the priority to allow applicants to implement, among other examples, co-developed or shared curricular and instructional resources or academic course offerings. We moved the example describing ''policies and practices to create safe, supportive, and inclusive learning environments'' to paragraph (a)(4) and replaced ''including'' with ''such as'' in reference to systems of positive behavioral intervention and support. We also added paragraph (a)(7) to include as an example of a charter-traditional collaboration any shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools and traditional public schools in improving academic and developmental outcomes and services for students with disabilities. Similarly, we added paragraph (a)(8), which allows applicants to describe implementation of this priority by including details of a shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving student outcomes for English learners. We moved the reference to ''other collaborations designed to address a significant barrier or challenge faced by charter schools and traditional public schools'' to paragraph (a)(9), clarified that the collaboration must address a significant barrier or challenge faced by participating schools, and added as an example the sharing of innovative and best practices. In paragraph (b), we modified the priority to require applicants to describe the collaboration, and in paragraph (b)(1), we deleted the requirement to provide evidence of the collaboration at the time the application is submitted, and added that applicants must describe each member of the collaboration and indicate whether the collaboration would be a new or existing commitment. In paragraph (b)(3), we removed the requirement to identify key staff responsible for completing specific tasks and required applicants to describe the ''anticipated'' roles and responsibilities of each member of the collaboration. Lastly, we revised the priority to require applicants to provide evidence of the collaboration within 120 days of receiving a CSP grant or subgrant award, or within 120 days of the date the collaboration is scheduled to begin, whichever is later; and made it clear that an MOU is not required. We also made corresponding changes in Requirement 6 applicable to State Entity Grants to align with the changes in Priority 2, and revised Requirement 6 to require State entities to describe how they will encourage, but not require, eligible applicants to propose projects that include a new or existing collaboration with a traditional public school or school district.

Requirements Applicable to CMO Grants and Developer Grants

Requirement 1 for CMO Grants and Developer Grants

Comments: A number of commenters expressed support for the community impact analysis requirement, noting various reasons why it is needed in the CSP. Some commenters suggested that low student enrollment in specific charter schools is one of the leading factors associated with a significant number of charter school closures. For this reason, these commenters expressed strong support for this requirement and the idea of bringing greater transparency, careful planning, and better judgment to the process of awarding CSP grants.

One commenter expressed support for this requirement given its intent to ensure due diligence in the selection of qualified, well-meaning grantees, but recommended requiring applicants to

include demographic information on students with disabilities and English learners in the community of the proposed project, along with an assurance that the applicant will provide the full range of services that meet the needs of such students. This commenter also recommended that applicants be required to provide a fiscal impact report and a signed affidavit provided by a district or State education department official attesting to the accuracy of the information provided in the grant application.

Another commenter noted that this requirement is a move in the right direction, stating CSP programs have long ignored the economic reality of charter school growth and how such growth impacts the resources available to traditional public schools. This same commenter recommended that the Department require applicants to state, as part of the community impact analysis, whether a credit rating agency has identified charter school growth as a credit negative for the districts from which the proposed charter school intends to draw its students.

Other commenters expressed strong support for the requirement given its emphasis on desegregation and diversity. One commenter stated that one of the most concerning features of urban charter schools is their potential to accelerate the concentration of the poorest and highest need students in the traditional public schools from which charter schools draw students, and that the community impact analysis would address this issue.

Another commenter stated that the community impact analysis is necessary because charter schools have been ''magnets for white flight'' from integrated traditional public schools, and some charter schools attract high-achieving students while discouraging students with special needs from attending. This commenter noted further that the information requested by the Department under this requirement is reasonable and will help peer reviewers make sound decisions.

Many commenters expressed significant concerns about this requirement and requested that the Department remove it, as they do not believe it is necessary. One commenter stated that the requirement will subject charter schools to a standard to which traditional public schools are not held accountable. This commenter, along with several others, cited concerns that paragraph 1(e) of the requirement implies that charter schools should only open in districts where the public schools are overcrowded, and that such a requirement does not take into consideration other factors, such as the number of seats in high-quality schools accessible to all students, possible shifts of students from private schools into charter schools, or the availability of enrollment data. One commenter recommended that the Department encourage the opening of charter schools in communities where children attend low-performing schools and do not have high-quality public school options, regardless of the traditional school district's capacity.

Another commenter opposed to this requirement contended that enrollment figures remain below pre-pandemic numbers in some of the Nation's largest school districts and that the limited availability of enrollment data may hinder an applicant from providing a complete or accurate analysis. This same commenter also stated that requiring a community impact analysis would hold charter schools responsible for maintaining diverse student populations, without clearly defining the meaning of the term ''diverse,'' even in communities that are not ethnically diverse, such as those affected by historical neighborhood ''red lining.''

Relatedly, one commenter suggested that the requirement is intended to prioritize integrated school models exclusively. According to this commenter, the requirement may have a chilling effect on a community or families of color who may seek to open or enroll in a different mission-oriented school, such as a school offering a pedagogical model that is in high demand by families of color in the community but that may not attract a sufficient number of White students to satisfy paragraph 1(b). According to this commenter, an applicant seeking to serve these families and communities of color may be deterred from applying for CSP funds, even though these monies often provide supports essential to opening a successful charter school. The commenter stated further that, if such an applicant chose to apply for CSP funds, instead of having an equal chance at funding to support planning and opening the charter school, the applicant would be at a competitive disadvantage when its application is evaluated by peer reviewers. The commenter stated that the charter school would face heightened barriers to opening, and that the families and ''community of color'' that the school intends to serve could be disproportionately negatively impacted.

Two commenters recommended revising the name of the requirement to ''Community Benefit Analysis'' to emphasize the available data and evidence regarding how a proposed project may benefit the community where it intends to locate. Additionally, one commenter stated that, if the Department keeps the requirement, grant and subgrant applicants should be allowed to decide what information to include in the analysis so that they can provide data and evidence that is applicable to their proposed project.

Lastly, some commenters raised concerns that the proposed requirement would increase burden hours and administrative costs for applicants, claiming that hiring a firm to conduct a community impact analysis could cost a charter school operator $15,000 or more—funds a small charter school operator would not have access to without receiving a CSP grant or subgrant.

Discussion: The goal of this requirement is to ensure that CSP applicants clearly address in their applications the need for their proposed projects and the anticipated benefits to the community in which the charter school is or would be located. As stewards of taxpayers' dollars, we hold a fundamental belief that all applicants for Federal financial assistance should be able to articulate the need for their proposed project and its potential impact on the community that it would serve. The idea of requiring grant and subgrant applicants to address the need for the proposed project is not unique to the CSP. Many notices inviting applications for new awards under the Department's discretionary grant programs require applicants to address project need and the potential impact of the project on the community, including several school choice and place-based discretionary grant programs, such as the Magnet Schools Assistance and Full-Service Community Schools programs.

Furthermore, through this requirement, we ultimately seek to support the creation, expansion, and replication of high-quality charter schools that effectively meet the needs of their communities and that remain open. As noted above, data from the Department's Charter School Programs Office show that 930 prospective charter schools and charter schools funded as subgrantees under the Department's CSP State Educational Agency [7] (CSP SEA) and State Entity Grant programs from 2001 to 2020, never opened or closed prior to the end of the grant period primarily due to low student

[7] In December 2015, Congress enacted the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB). The CSP SEA program was originally authorized under NCLB but was replaced with the CSP State Entity program under ESSA.

enrollment. We believe the proposed requirement can help reduce the number of CSP-funded charter schools that never open or close prematurely by directing Federal resources to high-quality, well-planned charter schools.

Contrary to concerns expressed by some commenters, the community impact analysis is not intended to require applicants to show evidence of over-enrollment in other public schools; nor is the requirement intended to restrict CSP-funded charter schools to opening only in districts whose traditional public schools are overcrowded. Therefore, the Department has revised the requirement to clarify that its intent is to require applicants to demonstrate need for the proposed project. District over-enrollment is one of several possible factors that an applicant may cite to evince the need for the proposed charter school. To be clear, applicants may use their discretion in identifying relevant information or data to demonstrate need for the project and that projected enrollment targets will be met. Applicants also may provide other information or data to demonstrate need and support estimates of projected enrollment, including, but not limited to, information on waiting lists for the proposed charter school or existing charter schools in the community; data on access to seats in high-quality schools in the community; and proposed specialized programs and student and family interest in those specialized programs.

In response to commenters who expressed concern that conducting a community impact analysis will create additional burden hours and administrative costs for applicants, we acknowledge that it may take considerable time for an applicant to conduct a thoughtful and thorough needs analysis depending on the size and scale of the proposed project. However, we also believe the benefits of such analysis far outweigh any additional burden. Many high-quality charter school authorizers already require charter applicants to present data on academic achievement, demographics, and enrollment and retention rates of students in the surrounding public schools of a proposed project. We also note that consideration of need for the project is a common factor the Department considers when determining whether to fund a proposed project and to appropriately direct resources to communities that would derive the most benefit from program funds in alignment with the purposes of the program. Thus, requiring a needs analysis is a best practice that helps ensure that CSP grant and subgrant applicants are aware of, and prepared to address, issues related to need for a proposed charter school project, including providing evidence of thoughtful planning to support a student population that is racially and socio-economically diverse.

We disagree with the comment that the community impact analysis requirement requires charter schools to maintain diverse student populations even in communities that are not ethnically diverse and, thus, fails to acknowledge that some communities are not ethnically diverse due to historical neighborhood redlining. To clarify the purpose of the requirement, we revised Requirement 1(b) now subpart (c) applicable to CMO Grants and Developer Grants (and Requirement 1(b) now subpart (c) applicable to State Entity Grants) to require the needs analysis to include an analyses of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the charter school would be located and, how the applicant plans to establish and maintain a racially and socio-economically diverse student body, including proposed strategies (consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. As revised, this requirement clarifies that an applicant that is unlikely to establish and maintain a racially or socio-economically diverse student body due to its specific educational mission or because the proposed charter school would be located in a racially or socioeconomically segregated or isolated community would not be at a competitive disadvantage. The revised language requires such an applicant to describe (i) why it is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school; (ii) how the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and (iii) the anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school. For example, a proposed charter school that enrolls 90 percent Native American students—either because the student population of the public schools or school districts from which the charter school draws students is generally Native American, or because the charter school's educational mission focuses on Native American languages and heritage would not be at a competitive disadvantage due to this requirement.

To clarify, peer reviewers do not assign points to an application based on the quality of an applicant's response to all application requirements. The overall quality of an application, and whether it is recommended for funding, is evaluated by peer reviewers based on an applicant's responses to the specific selection criteria and any competitive preference priorities established for the competition.

Likewise, an applicant that proposes to operate or manage a charter school in a racially or socio-economically segregated or isolated community would not be at a competitive disadvantage simply due to community demographics. This is true even if the proposed charter school itself would not have a racially or socio-economically diverse student body. For example, a proposed charter school in a community in which 95 percent of the students are Latino, and that draws students from school districts with roughly 95 percent Latino students both before and after the creation of the proposed charter school, would not be at a competitive disadvantage due to this requirement because the proposed charter school would not increase the racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. The Administration is committed to supporting State and local efforts to increase student diversity and reduce racial and socio-economic isolation, including preventing Federal funds from being used to support efforts counter to these purposes. Racially and socio-economically diverse schools have positive benefits for all students, including higher graduation rates, improved academic outcomes, and increased levels of college enrollment for students of all races.

Lastly, we agree that the data provided by applicants should emphasize the main benefits that a proposed new, replicated, or expanded charter school may bring to the community it intends to serve. The community impact analysis requirement allows applicants flexibility to present relevant and applicable data most suitable for the types of projects they are proposing. For these reasons, we decline to require applicants to submit

information regarding the demographics of students with disabilities and English learners, a fiscal impact report and a signed affidavit provided by the district or SEA attesting to the accuracy of the information submitted in the grant application, or evidence that a credit rating agency has identified charter school growth as a credit negative for the districts from which the charter school would likely draw students.

Changes: We changed the requirement from a ''community impact analysis'' to a ''needs analysis'' to emphasize the main purpose of the requirement is to ensure that CSP applicants address the need for their proposed projects, including the anticipated benefits to the community. Referring to the analysis as a needs analysis also aligns with approaches used in other Department grant programs like the Full-Service Community Schools and Magnet Schools Assistance programs. We also added, in the lead-in sentence, that applicants must provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in communities the charter school intends to serve. We also clarified that the needs analysis may consist of information and documents previously submitted to an authorized public chartering agency to address need.

Additionally, we streamlined and simplified the requirement. We revised paragraph (a) to require that applicants include descriptions of the community support for the charter school, benefits to the community, and other evidence of demand for the charter school that demonstrates a strong likelihood that the charter school will achieve and maintain its enrollment projections. We clarified that such information may include information on waiting lists for the proposed charter school or traditional public schools, data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students; or evidence of family interest in specialized instructional approaches proposed to be implement at the charter school. These changes make it clear that over-enrollment of schools in the districts or communities an applicant proposes to serve is not a requirement of the program. Applicants that propose to serve students in a district or community with declining enrollment are eligible to apply to participate in the program.

We streamlined paragraph (b) to require applicants to provide information on the proposed charter school's projected enrollment and evidence to support such projected enrollment based on the needs analysis and other relevant data and factors. We also moved the request for applicants to describe how they plan to establish and maintain racially and socio-economically diverse student bodies to paragraph (c) and eliminated the request for applicants to address diverse staff populations.

In paragraph (c), we also ask applicants for an analyses of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located. We also added to this paragraph that an applicant that is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school because the charter school would be located in a racially or socio-economically segregated or isolated community, or because of the charter school's specific educational mission (*e.g.,* serving underserved students), must describe why it is unlikely to maintain a racially and socio-economically diverse student body, how the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP to provide high-quality educational opportunities to underserved students, and the anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

We also revise paragraph (c) so that it no longer requires applicants to include analyses of publicly available information and enrollment trends of students attending schools in the community in which the proposed charter school would be located and the school districts from which students are, or will be, drawn to attend the charter school.

Finally, we have modified paragraph (f)(4) to require applicants to describe how the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate families from diverse backgrounds. We also made corresponding changes to Requirement 1 applicable to State Entity Grants to align with the changes in Requirement 1 applicable to CMO Grants and Developer Grants.

Requirement 2 for CMO Grants and Developer Grants

Comments: The overwhelming majority of comments received regarding this requirement were supportive of the Department's efforts to increase transparency for CSP applicants that enter into contracts with for-profit management organizations. One commenter expressed strong support for prohibiting charter schools operated by for-profit management organizations from receiving CSP grant or subgrant funds. Another commenter recommended that we add the phrase ''and its related entities'' wherever references to for-profit organizations appear in the language to capture the caveat that many for-profit organizations operate by steering business to their nonprofit related entities. Another commenter expressed support for the requirement's focus on increasing transparency but stated that the extent to which the proposed rules build on existing CSP guidance or set an entirely new standard is unclear. This commenter recommended that we remove ''substantial'' from the requirement where it suggests that arrangements under which a for-profit entity, including a nonprofit CMO operated by or on behalf of a for-profit entity, exercises full or ''substantial'' administrative control over the charter school because the commenter believes such a restriction is not permissible under CSP-funded projects.

Discussion: We agree with the commenters that it is important for CSP grantees and subgrantees to exercise fiscal and operational transparency by disclosing their contractual relationships with for-profit management organizations. For this reason, the proposed requirements and assurances included the phrase, ''including a nonprofit management organization operated by or on behalf of a for-profit entity,'' after references to for-profit management organization, where appropriate. In addition, we are adding the phrase, ''or its related entities,'' where appropriate, to ensure that this provision applies to those applicants with related for-profit arms that access CSP funds through their non-profit related entities. Furthermore, as stated in the NPP, this requirement is based, in part, on Federal regulations at 34 CFR 75.701 and 76.701, which require grantees and subgrantees, respectively, to directly administer or supervise the administration of their projects. It builds on existing non-regulatory guidance and is not intended to establish a new standard but rather to further clarify an existing standard. The

term ''substantial'' refers to the management organization's control over the charter school. We believe it is important to distinguish between control over the charter school and control over the CSP project, as a management organization could control certain aspects of the charter school without controlling the CSP grant or subgrant. The use of the term ''substantial'' in this context is intended to put grantees and subgrantees on notice that, in most cases, a management organization that exercises ''substantial'' control over a charter school would be considered to be exercising an impermissible amount of control over the CSP project.

Changes: We changed the first paragraph of Requirement 2 applicable to CMO and Developer Grants to cover ''related entities'' of for-profit management organizations as well as the management organizations themselves. Additionally, to ease the burden on applicants, we clarified that applicants can meet the requirement by providing equivalent information that they have submitted to the authorized public chartering agency.

We modified paragraph (a) to require applicants either to submit a copy of the existing contract with a for-profit management organization or to describe the terms of such contract. We also streamlined the requirement by combining paragraphs (a) and (b), and paragraphs (d) and (e). Additionally, we revised the provision to require, in addition to the name and contact information for each member of the governing board of the charter school, a list of the management organization's officers, chief administrator, other administrators, and any staff involved in approving or executing the management contract. Finally, we added paragraph (d) requiring applicants to describe how they will ensure that members of the governing board of the charter school are not selected, removed, controlled or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization. We also made corresponding changes to Requirement 2 applicable to State Entity Grants to align with the changes in Requirement 2 applicable to CMO Grants and Developer Grants.

Requirement 3 for CMO Grants and Developer Grants

Comments: We received minimal comments in response to this requirement, but the majority of commenters offered general support for requiring applicants to provide more information regarding the approval status of their charter application from an authorized public chartering agency. One commenter recommended changing the language to request the dates the charter application was submitted and approved by the authorized public chartering agency rather than requiring a signed copy of the school's charter application. The commenter also recommended requiring applicants to identify the authorized public chartering agency to which they submitted the charter application and to provide proof that the application was submitted. Finally, the commenter recommended adding the leading phrase, ''In its budget,'' to paragraph (d), which requires applicants to submit documentation on planning costs.

Discussion: Under section 4310(6) of the ESEA, an applicant that has applied (and provided adequate and timely notice of its CSP application) to an authorized public chartering agency is eligible to apply for and receive CSP planning funds, even if the charter application has not yet been approved. Given the Department's interest in collecting more information regarding the status of grantees' charter applications, particularly as it relates to applicants that receive funding before obtaining charter approval, we believe that requiring applicants to submit this information is warranted and have revised the requirement based on all the recommended changes previously noted. We hope to gain greater insight into the charter authorizing process from this data.

Changes: We changed paragraph (a) to cover all applicants. We changed paragraph (a)(1) to request the name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied. We removed the proposed requirement for an applicant to provide a timeline from the authorized public chartering agency for providing a final decision on the charter application, and changed paragraph (a)(2) to request the date on which an applicant that has not yet received an approved charter submitted its charter application to the authorized public chartering agency and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application. Additionally, we changed paragraph (a)(3) to require applicants to provide documentation that they have provided notice to the authorized public chartering agency that they have applied for a CSP grant. Lastly, we changed paragraph (a)(4) to require applicants to include in their proposed budgets a description of any post-award planning costs, including planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application.

Requirements Applicable to State Entity Grants

Requirements 1 and 2 for State Entity Grants

For comments, discussion, and changes applicable to these requirements, see the above discussion for *Requirement 1 for CMO Grants and Developer Grants* and *Requirement 2 for CMO Grants and Developer Grants,* which include parallel requirements within the context of those programs.

Requirement 3 for State Entity Grants

Comments: While some commenters expressed general support for the requirement for State Entity applicants to provide a detailed description of how they will review applications from eligible applicants, slightly more commenters opposed the requirement. Some of the commenters who opposed the requirement questioned the Secretary's authority to create the requirement given that the program statute provides flexibility for State Entity applicants to describe how they will review subgrant applications. One commenter said the requirement may inhibit the ability of developers to propose new high-quality charter schools by discouraging CSP grant applications for State Entity review. Another commenter stated that paperwork to process a subgrant for review would increase as a result of the proposed requirement, discouraging schools from applying, especially single site and community schools. Another commenter noted that some State statutes conflict with the proposed requirement. This commenter asserted that, given the likely timing of the release of the NFP, the Department would have very little time to provide guidance on reconciling subgrant application requirements with State law requirements, further narrowing the ability for charter school developers to apply for CSP grants and subgrants and to open schools.

Discussion: We agree with some commenters that the program statute offers some flexibilities to State entity applicants regarding the development and implementation of their CSP subgrant programs, including the review of subgrant applications. Under the CSP,

State Entity grantees are given flexibility to design and implement their subgrant programs in a manner that enables them to achieve their policy goals and objectives, consistent with CSP requirements. Requirement 3 Applicable to State Entity Grants merely requires SE applicants to explain how they will review applications; it does not limit a State Entity's flexibility in developing the review process or adhering to State statutes. Thus, while grantees and subgrantees must comply with the CSP authorizing statute, applicable regulations, and their approved applications, the Department believes State entities are in the best position to establish the standards and guardrails that are necessary for their subgrantees to create, replicate, and expand high-quality charter schools that meet the educational needs of their students and comply with CSP requirements. Requirement 3 applicable to State Entity Grants holds State entities accountable for designing and implementing high-quality subgrant programs and, we believe, enhances the overall quality of charter school subgrantees in the areas of transparency, oversight, and accountability. We also do not believe this requirement will inhibit or discourage charter school subgrantees from applying to the State entity for funding as the requirement does not add any burden to charter school subgrant applicants. Therefore, we decline to eliminate or change the requirement.

Changes: None.

Requirement 4 for State Entity Grants

Comments: Commenters generally expressed support for this requirement for State Entity Grant applicants to provide a detailed description of how the SE will monitor and report on subgrant performance. One commenter recommended that the Department modify the language slightly to encourage collaboration between the State entity and authorized public chartering agency of a given school to eliminate unnecessary duplication of oversight activities. That commenter noted that high-quality charter school authorizers should already be conducting some level of operational and fiscal oversight of such entities. Two commenters suggested that the Department require subgrantee monitoring review teams to include at least one reviewer representative from the traditional school district in the community.

Discussion: The purpose of this requirement is to ensure that CSP State entity grantees implement high-quality compliance monitoring reviews that address and mitigate subgrantee risk. We also recognize that, in many instances, charter school authorizers are required to monitor and oversee the charter schools they authorize for operational and fiscal management and agree that such monitoring and oversight should be conducted widely across all authorized public chartering agencies in tandem with State entity subgrantee monitoring. It should be noted, however, that charter school authorizers generally monitor their charter schools for compliance with the terms of the charter, which may include compliance with State and Federal laws, while State entity grantees are responsible for monitoring their subgrantees to ensure compliance with CSP requirements. Nevertheless, the Department agrees with this recommendation and deems such collaboration between charter school authorizers and State entity grantees to be a best practice for ensuring the quality and effectiveness of CSP grants and subgrants. We do not, however, agree with the recommendation to require State entity grantees to include at least one representative from a traditional school district on the monitoring review team for the charter school as the district representative would not necessarily have the expertise to ensure compliance with CSP requirements; therefore, we decline to make this change.

Changes: We added a reference to ''subgrant activities'' to the introductory paragraph and, to avoid duplication, removed the prior paragraph (d) regarding monitoring for progress and compliance. We added paragraph (h) that requires applicants for State Entity Grants to describe how they will work with authorized public chartering agencies to share information regarding the monitoring of subgrantees, including in areas related to fiscal protocols and organizational governance, for the purpose of reducing the reporting burden on charter schools.

Requirement 5 for State Entity Grants

Comments: None.

Changes: None.

Requirement 6 for State Entity Grants

For comments, discussion, and changes applicable to this requirement, see the above discussions for *Priority 1—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students* and *Priority 2—Charter School and Traditional Public School or District Collaborations that Benefit Students and Families,* which establish priorities for CMO Grants and Developer Grants that are parallel to what a State entity prioritizes and encourages under this requirement when awarding subgrants.

Assurances Applicable to State Entity Grants, CMO Grants, and Developer Grants

Assurance (a) for State Entity Grants, CMO Grants, and Developer Grants

Comments: None.

Changes: We added a parenthetical to Assurance (a) to clarify that State entity and CMO grantees must ensure that charter schools that they fund meet the requirement.

Assurance (b) for State Entity Grants, CMO Grants, and Developer Grants

Comments: None.

Changes: We added a parenthetical to Assurance (b) to clarify that State entity and CMO grantees must ensure that charter schools that they fund meet the requirement.

Assurance (c) for State Entity Grants, CMO Grants, and Developer Grants

For comments, discussion, and changes applicable to this assurance, see the above discussion for *Requirement 2 for CMO Grants and Developer Grants,* which include parallel requirements within the context of those programs.

Assurance (d) for State Entity Grants, CMO Grants, and Developer Grants

Comments: None.

Changes: We added a parenthetical to Assurance (d) to clarify that State entity and CMO grantees must ensure that charter schools that they fund meet the requirement.

Assurance (e) for State Entity Grants, CMO Grants, and Developer Grants

Comments: One commenter expressed support for Assurance (e), which requires CMO Grant and Developer Grant applicants, and subgrant applicants under the State Entity Grant program, to provide an assurance that they (or, in the case of an applicant for a CMO Grant, each charter school it proposes to fund) will hold or participate in a public hearing in the community where the charter school will be located to obtain information and feedback regarding the potential impact of the charter school, including the steps the applicant has taken or will take to ensure that the proposed charter school would not negatively affect any desegregation efforts in the public school districts from which students would be drawn to attend the charter school and to ensure that the proposed charter school would not otherwise increase racial or socioeconomic segregation or isolation in such schools.

However, the commenter recommended that the Department modify the language to expand the focus of such public hearing to include multiple topics relevant to the affected community. The commenter expressed concern that the assurance language, as written, is too restrictive regarding the nature of the public hearings and the topics that must be covered.

Discussion: The main purposes of Assurance (e) are to ensure transparency regarding the creation, replication, and expansion of proposed charter schools and to ensure that the applicant engages the community in the planning and implementation of CSP-funded charter schools. The assurance requires the applicant to obtain ''information and feedback'' from the community regarding the potential impact of the charter school. The applicant must also obtain information and feedback regarding the steps it has taken or will take to ensure that the proposed charter school does not negatively affect any desegregation efforts or otherwise increase racial or socioeconomic segregation or isolation in the public school districts from which students are, or would be, drawn to attend the charter school. We agree with the commenter that the hearing, which may take place as part of or concurrent with a public hearing in which the applicant participates or conducts for other purposes (*e.g.,* as part of a pre-opening requirement of a charter school authorizer or under State-law), also should cover other topics related to the charter school project that are of interest to the community.

Changes: We added a parenthetical to Assurance (e) to clarify that State entity and CMO grantees must ensure that charter schools that they fund meet the requirement. We also modified Assurance (e) to specify that the public hearing must include a discussion of how the proposed charter school will increase the availability of high-quality public school options for traditionally underserved students in the local community in which the charter school would be located; promote racial and socio-economic diversity in such community, be located in a racially or socio-economically segregated of isolated community, have a specific educational mission, for example, serving targeted underserved students; and not increase racial or socio-economic segregation or isolation in the school districts from which students would be drawn to attend the charter school.

Assurance (f) for State Entity Grants, CMO Grants, and Developer Grants

Comments: Some commenters expressed support for Assurance (f), which requires State Entity, CMO Grant, and Developer Grant applicants, and subgrant applicants under the State Entity Grant program, to provide an assurance that they will not use or provide CSP ''implementation'' funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has obtained a facility in which to operate. One commenter recommended that we keep the assurance but clarify its purpose. Another commenter noted the significance of the assurance to prevent waste, fraud, and abuse under the CSP and provided statistics regarding the percentage of previous recipients of CSP ''planning'' funds between 2006 and 2015 that never opened the proposed charter school and the number of charter schools that opened and received CSP funds but have since closed. Another commenter recommended imposing a spending cap on the use of implementation funds before a prospective new charter school is authorized or secures a facility, rather than prohibiting the use of CSP funds if these milestones are not met right away. Similarly, several other commenters recommended imposing a $10,000 cap on the amount of CSP funds an applicant may use for planning purposes and releasing the remaining planning funds when the charter is approved. Another commenter supported continuing to allow funds for planning and program design to be provided to applicants even if they have not yet secured a facility given the challenges many charter schools face when trying to obtain a new site in various communities.

A number of commenters strongly opposed Assurance (f), citing concerns that the assurance will create a standard that is very difficult for CMO Grant applicants to meet. The commenters stated that research indicates that it sometimes takes up to 5 years for a new charter school to gain approval and, thus, a CMO Grant applicant might have to wait several years before they are eligible to apply for CSP funding.

Discussion: Under section 4310(6) of the ESEA, a charter school developer that has applied to an authorized public chartering agency for approval to operate a charter school is eligible to apply for a CSP grant or subgrant, even if the developer has not yet received an approved charter or secured a facility. Under the CSP, planning funds may be used to cover post-award costs associated with planning and designing the educational program of the charter school before it opens, and implementation funds are used to cover costs associated with the initial implementation of the charter school after it opens. Planning funds can be used, for example, for hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; or other critical activities that need to occur prior to opening. The CSP statute limits grantees and subgrantees to no more than 18 months for planning activities. Assurance (f) requires State Entity Grant, CMO Grant, and Developer Grant applicants, and subgrant applicants under the State Entity Grant program, to provide an assurance that they will not use CSP ''implementation'' funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has obtained a facility in which to operate. Assurance (f) is consistent with how previous administrations have addressed this issue by distinguishing between planning funds and implementation funds and restricting the use of implementation funds to costs related to operating the charter school. As stated above, a CSP applicant may receive ''planning'' funds before charter approval is obtained or a facility is secured. Assurance (f) does not restrict the use of planning funds beyond what is prescribed in the statute, but rather, is intended to clarify expectations for charter school developers to obtain charter approval and secure a facility during the 18-month planning period of the grant or subgrant. We also believe this assurance will help to mitigate the risk of CSP implementation funds being used to support charter schools that never open because the charter was not approved or the applicant was unable to secure a facility in a timely manner. The Department recognizes that the charter approval process may exceed the 18-month planning period for CSP grants and subgrants, as prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, applicants may request approval from the Department or the State entity to amend their application to request an extension of the 18-month planning period. Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of ''charter school'' in section

4310(2), provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. It is also worth noting that a grantee may request approval from the Department, and a State entity subgrantee may request approval from the State entity, to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process or for other reasons.

Changes: We amended Assurance (f) to remove the requirement that applicants provide an assurance that they will not ''use or provide'' implementation funds for a charter school until after the eligible applicant has received an approved charter and secured a facility, so that applicants are required only to provide an assurance that they will not ''use'' implementation funds prior to receiving an approved charter and securing a facility. We also added a parenthetical to clarify that State entity and CMO grantees must ensure that charter schools that they fund meet the requirement. Additionally, we added language specifying some of the allowable uses of planning funds, stating that consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources.

Assurance Applicable to State Entity Grants and CMO Grants

Comments: One commenter expressed support for the assurance that requires State entity and CMO grantees, and subgrantees under the State Entity Grant program, to post specific information regarding the proposed charter schools on their respective websites within 30 days of receiving the grant or subgrant award notification. The commenter recommended changing the time limit to 120 days to align with the timing of grant administration activities by the Department and the multi-year way that CMO grantees make decisions about where to allocate funds to individual charter schools. The same commenter recommended revising the assurance to require State Entity Grant and CMO Grant applicants to assure that they will update annually the list of charter schools slated to receive CSP funds, including charter schools that have been approved to receive CSP planning funds but do not yet have a campus or facility identified.

Discussion: We agree that a 120-day time limit would allow more efficient timing for award recipients to post the required information on their websites after making decisions about how to allocate their grant funds. We also agree that CMO grantees should update their lists of charter schools approved to receive CSP funding at least once per year. In addition, we believe CMO grantees should be transparent regarding the anticipated number of charter schools likely to receive CSP planning funds prior to having a facility or campus identified. Since the assurance requires State entity grantees to post information regarding the subgrants they award after each local subgrant competition, depending on the number of subgrant competitions a State entity holds during the year, the State entity could be required to post such information more frequently than once a year.

Changes: We deleted the reference to ''subgrantee'' so that only State entity and CMO grantees are required to post the required information regarding the charter schools funded under their grants, since subgrantees are unlikely to have access to the required information for all subgrants awarded by the State entity. We increased from 30 days to 120 days after award notification the time period within which State Entity Grant and CMO Grant recipients must post the required information on their websites. We also added a paragraph (b) to this assurance that requires CMO applicants to assure that they will update their lists of charter schools that have been approved for funding at least annually and include on the list the charter schools that will receive CSP planning funds prior to securing a facility. Finally, in paragraph (a)(6), we added the phrase, ''For State entity grantees,'' and deleted ''grant or'' from the phrase, ''grant or subgrant,'' to clarify that only State entity grantees are required to post peer review materials on their website since CMO grantees do not hold local subgrant competitions. The Department posts such information regarding CMO Grants on the CSP website.

Selection Criteria Applicable to CMO Grants and Developer Grants

Comments: We received relatively few comments that addressed the selection criteria or that provided specific recommendations for changes; however, of the comments received, most offered general support for the proposed selection criteria. One commenter who expressed support for the selection criteria specifically noted the focus on requiring applicants for State Entity Grants to address how they will estimate the number of subgrants they intend to provide.

Discussion: We agree with the one commenter that it is important to hold applicants accountable for providing realistic estimates of the number of subgrants they plan to award. The selection criteria are designed to provide peer reviewers with clear and measurable parameters to identify the best quality applications that are most likely to succeed in supporting the development and implementation of high-quality charter schools, and that are driven by the needs of families and their communities. We revise the Quality of Needs Analysis criterion to align with the revisions made to the needs analysis requirement and its emphasis on ensuring that an applicant's needs analysis demonstrates a clear need for the proposed charter school.

Changes: We changed the title of the Quality of the Community Impact Analysis criterion to Quality of Needs Analysis to align with corresponding changes to the Needs Analysis application requirements and assurance. We also revised the third subpart of Quality of Needs Analysis a(1), replacing ''and will not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school'' to ''demonstrates sufficient demand for the charter school.''

Definitions Applicable to State Entity Grants, CMO Grants, and Developer Grants

Comments: A few commenters recommended that the Department establish definitions for ''diverse,'' ''racial isolation,'' and ''substantial.'' Similarly, a commenter stated that because the term ''racial isolation'' is not defined in the notice, applicants may have difficulty determining whether a school is segregated under Requirement 1 applicable to CMO Grants and Developer Grants and Requirement 1 applicable to State Entity Grants. Some commenters also expressed support for providing a definition for ''community asset,'' noting that many stakeholders believe a community-centered approach is

necessary to ensure quality charter school authorizing.

Discussion: We understand that the meanings of the terms ''diverse,'' ''racial isolation,'' and ''substantial'' are somewhat broad. Because of the universal nature of these terms, however, we do not believe it is necessary to define them. For these reasons, we decline to define ''diverse,'' ''racial isolation,'' and ''substantial.'' The definition for the term ''community assets'' that was proposed in the NPP is included in the final Definitions applicable to State Entity Grants, CMO Grants, and Developer Grants.

Changes: To simplify the definition of ''community assets'' we removed the reference to ''political assets''. FINAL PRIORITIES, REQUIREMENTS, DEFINITIONS, AND SELECTION CRITERIA: The Department establishes the following priorities, requirements, definitions, and selection criteria for use in any future CSP grant competitions.

Final Priorities

Priorities Applicable to CMO Grants and Developer Grants

Priority 1—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students.

(a) Under this priority, an applicant must propose to open a new charter school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other educators; and

(2) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school.

Priority 2—Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) Under this priority, an applicant must propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following—

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based (as defined in section 8101 of the ESEA) practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA);

(8) A shared English learner (as defined in section 8101 of the ESEA) collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners;

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration) ;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, provide evidence of participation in the collaboration (which may include, but is not required to include, an MOU).

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)). Depending on the grant competition, applicants may have the option to choose one or more of several absolute priorities.

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)).

Final Application Requirements

Requirements Applicable to CMO Grants and Developer Grants

Requirement 1:

Each applicant must provide a needs analysis and describe the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following:

(a) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools; data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students; or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(b) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(c) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socio-economically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school because the charter school would be located in a racially or socio-economically segregated or isolated community, or due to the charter school's specific educational mission, must describe—

(i) why it is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school;

(ii) how the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) the anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(d) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(1) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(4) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including holding enrollment and recruitment events on weekends or during non-standard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually-impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(5) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(e) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(f) A description of the steps the applicant has taken or will take to ensure that the proposed charter school (1) would not hamper, delay, or negatively affect any desegregation efforts in the local community in which the charter school would be located or in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools,; and (2) to ensure that the proposed charter school would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Requirement 2:

For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, the applicant must provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(a) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP

funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(b) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(c) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(d) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization;

(e) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(f) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA.

Requirement 3:

(a) Each applicant must provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application.

Requirements Applicable to State Entity Grants

Requirement 1:

Each applicant must certify that it will require each subgrant applicant to provide a needs analysis and describe in its subgrant application the need for the proposed project, including how the proposed project would serve the interests and meet the needs of students and families in the communities the charter school intends to serve. The needs analysis, which may consist of information and documents previously submitted to an authorized public chartering agency to address need, must include, but is not necessarily limited to, the following:

(a) Descriptions of the local community support, including information that demonstrates interest in, and need for, the charter school; benefits to the community; and other evidence of demand for the charter school that demonstrates a strong likelihood the charter school will achieve and maintain its enrollment projections. Such information may include information on waiting lists for the proposed charter school or existing charter schools or traditional public schools; data on access to seats in high-quality public schools in the districts from which the charter school expects to draw students; or evidence of family interest in specialized instructional approaches proposed to be implemented at the charter school.

(b) Information on the proposed charter school's projected student enrollment, and evidence to support the projected enrollment based on the needs analysis and other relevant data and factors, such as the methodology and calculations used.

(c) An analysis of the proposed charter school's projected student demographics and a description of the demographics of students attending public schools in the local community in which the proposed charter school would be located and the school districts from which students are, or would be, drawn to attend the charter school; a description of how the applicant plans to establish and maintain a racially and socio-economically diverse student body, including proposed strategies (that are consistent with applicable legal requirements) to recruit, admit, enroll, and retain a diverse student body. An applicant that is unlikely to be able to establish and maintain a racially and socio-economically diverse student body at the proposed charter school because the charter school would be located in a racially or socio-economically segregated or isolated community, or due to the charter school's specific educational mission must describe—

(i) why it is unlikely to establish and maintain a racially and socio-economically diverse student body at the proposed charter school;

(ii) How the anticipated racial and socio-economic makeup of the student body would promote the purposes of the CSP, including to provide high-quality educational opportunities to underserved students, which may include a specialized educational program or mission; and

(iii) The anticipated impact of the proposed charter school on the racial and socio-economic diversity of the public schools and school districts from which students would be drawn to attend the charter school.

(d) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(1) How families and the community were, are, or will be engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, is, or is expected to be incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families

and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in ensuring their ongoing input in school decision-making.

(4) How the charter school's recruitment, admissions, enrollment, and retention policies and practices will engage and accommodate students and families from diverse backgrounds, including English learners, students with disabilities, and students of color, including by holding enrollment and recruitment events on weekends or during nonstandard work hours, making interpreters available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages; as appropriate, large print or braille for visually-impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).

(5) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted student population and their families, including students with disabilities and English learners.

(e) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including consideration of district or community assets and how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(f) A description of the steps the applicant has taken or will take to ensure that the proposed charter school would not hamper, delay, or negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn or in which the charter school is or would be located, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Requirement 2:

For any existing or proposed contract between a charter school and a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, each applicant must certify that it will require subgrant applications to include the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(a) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's overall funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(b) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(c) The name and contact information for each member of the governing board of the charter school and a list of the management organization's officers, chief administrator, other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(d) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization;

(e) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(f) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA.

Requirement 3:

Each applicant must provide a detailed description of how it will review applications from eligible applicants, including—

(a) How eligibility will be determined;

(b) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

(c) How subgrant applications will be reviewed and evaluated;

(d) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable, and allocable to the subgrant;

(e) How applicants will be assessed for risk (*i.e.,* fiscal, programmatic, and compliance); and

(f) How funding decisions will be made.

Requirement 4:

Each applicant must provide a detailed description, including a timeline, of how the State entity will monitor subgrant activities and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including—

(a) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (*e.g.,* charter schools that have management contracts with for-profit management organizations, virtual charter schools, and charter schools with a history of poor performance);

(b) How identified subgrantee risk will be addressed;

(c) How subgrantee expenditures will be monitored;

(d) How monitors will be trained;

(e) How monitoring findings will be shared with subgrantees;

(f) How corrective action plans will be used to resolve monitoring findings;

(g) How the State entity will ensure transparency so that monitoring findings and corrective action plans are available to families and the public; and

(h) How the State entity will work with authorized public chartering agencies to share information regarding the monitoring of subgrantees, including in areas related to fiscal protocols and organizational governance, for the purpose of reducing the reporting burden on charter schools.

Requirement 5:

Each applicant must provide evidence to support the requested funds and projected enrollment, such as explanations for the methodology and calculations.

Requirement 6:

Each applicant must describe how, in awarding subgrants to eligible applicants, the State entity will—

(a)(1) Give priority to eligible applicants that propose projects that include the creation, replication, or expansion of a high-quality charter school that is developed and implemented—

(i) With meaningful and ongoing engagement with current or former teachers and other educators; and

(ii) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(2) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a)(1) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school.

(b)(1) Encourage, but not require, eligible applicants to propose projects that include a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased and improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following—

(i) Co-developed or shared curricular and instructional resources or academic course offerings.

(ii) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(iii) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(iv) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(v) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(vi) A shared transportation plan and system that reduces transportation costs for members of the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(vii) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools and traditional public schools in improving academic or developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA);

(viii) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic outcomes for English learners (as defined in section 8101 of the ESEA); or

(ix) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools and designed to improve academic outcomes for all students served by members of the collaboration.

(2) The State entity must certify that it will ask each eligible applicant that proposes a project that includes such a collaboration to—

(A) Provide in its subgrant application a description of the collaboration that—

(i) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(ii) States the purpose and duration of the collaboration;

(iii) Describes the anticipated roles and responsibilities of each member of the collaboration;

(iv) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased or improved educational opportunities for students, and meet specific and measurable, if applicable, goals;

(v) Describes the resources members of the collaboration will contribute; and

(vi) Contains any other relevant information; and

(B) Within 120 days of receiving a subgrant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, provide evidence of participation in the collaboration (which may include, but is not required to include, an MOU).

Final Assurances

Assurances Applicable to State Entity Grants, CMO Grants, and Developer Grants:

(a) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that it (or, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds) has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization, or its related entities, exercises full or substantial administrative control over the charter school and, thereby, the CSP project.

(b) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that any management contract between the charter school (or, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds) and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant or subgrant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization.

(c) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that it (or, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds) will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department (or, in the case of a charter school that receives CSP funding through a State Entity Grant, to the State Entity), including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization, the cost (*i.e.,* fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding, the duration, roles and responsibilities of the management organization, the steps the charter will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 75.701 and 76.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school, and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close.

(d) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that it (or, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds) will disclose, as part of the enrollment process, any policies and requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (*e.g.,* transportation services or participation in the National School Lunch Program).

(e) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that it (or, in the case of an applicant for a State Entity Grant or CMO Grant, each charter school that it funds) will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socio-economic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above.

(f) Each applicant for a State Entity Grant, CMO Grant, or Developer Grant must provide an assurance that it (or, in the case of an applicant for a State Entity Grant or CMO Grant, any charter school that it funds) will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B), and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources.

Assurance Applicable to State Entity Grants and CMO Grants:

Each applicant must provide an assurance that, within 120 days of the date of the grant award notification (GAN), or the date of any subgrant award notifications for State Entity Grants, the grantee will post on its website:

(a) A list of the charter schools slated to receive CSP funds, including the following for each school:

(1) The name, address, and grades served.

(2) A description of the educational model.

(3) If the charter school has contracted with a for-profit management organization, the name of the management organization, the amount

of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(4) The award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(5) The grant or subgrant application (redacted as necessary).

(6) For State entity grantees, the peer review materials, including reviewer comments and scores (redacted as necessary) from the subgrant competition.

(b) As applicable for CMO grants, such a list must be updated at least annually and provide the anticipated number of charter schools that will receive CSP planning funds before securing a facility.

Final Definitions

Definitions Applicable to State Entity Grants, CMO Grants, and Developer Grants:

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities.

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner (as defined in section 8101 of the ESEA).

(5) A child or student with a disability (as defined in section 8101 of the ESEA).

(6) A disconnected youth.

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level.

Definitions Applicable to State Entity Grants:

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

Final Selection Criteria

Selection Criteria Applicable to CMO Grants and Developer Grants:

(a) *Quality of the Needs Analysis.* The Secretary considers the quality of the needs analysis for the proposed project. In determining the quality of the needs analysis, the Secretary considers one or more of the following factors:

(1) The extent to which the needs analysis demonstrates that the proposed charter school will address the needs of all students served by the charter school, including underserved students; will ensure equitable access to high-quality learning opportunities; and demonstrates sufficient demand for the charter school.

(2) The extent to which the needs analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of underserved students and their families.

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis, including in the academic, financial, organizational, and operational performance of the charter school.

(b) *Quality of the Charter School's Management Plan.* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers one or more of the following factors:

(1) The adequacy of the applicant's plan to maintain control over all CSP grant funds.

(2) The adequacy of the applicant's plan to make all programmatic decisions.

(3) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant.

Selection Criterion Applicable to State Entity Grants:

(a) *Quality of the Project Design.* The Secretary considers the quality of the project design for the proposed project. In determining the quality of the project design for the proposed project, the Secretary considers the quality of the State Entity's process for awarding subgrants, including—

(1) The extent to which the projected number of subgrant awards for each grant project year is supported by evidence of demand and need; and

(2) The extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants.

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 Office of Management and Budget (OMB) must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of Executive Order 12866 and subject to review by 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.

OMB has determined that this final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final 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 final priorities, requirements, definitions, and selection criteria 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. 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 regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. We estimate funding for new awards in FY 2022 will be approximately $81,000,000 for State Entity Grants, $4,000,000 for Developer Grants, and $94,000,000 for CMO Grants. The total cost to the Department for this collection is estimated to be $179,000,000.

While this action would impose cost-bearing application requirements on participating State Entity Grant, Developer Grant, and CMO Grant applicants and on State Entity subgrant applicants, we expect that applicants would include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory action will strengthen accountability for the use of Federal funds, and benefit students, by helping to ensure that CSP grants and subgrants are awarded to the entities that are most capable of expanding the number of high-quality charter schools available to our Nation's students.

Regulatory Flexibility Act Certification: The Secretary certifies that this regulatory action does not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this regulatory action would affect are charter school developers. We believe that the costs imposed on an applicant by the priorities, requirements, definitions and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of these priorities, requirements, definitions and selection criteria would outweigh any costs incurred by the applicant. For these reasons these priorities, requirements, definitions and selection criteria would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995: The CSP, including these final priorities, requirements, definitions and selection criteria, contain information collection requirements. These are new requirements for applicants to conduct a needs analysis and to submit detailed information on their management contracts with for-profit entities, including non-profit charter management organizations operated by or on behalf of for-profit entities. Consistent with prior information collection requirements for the CSP, the new package also requires applicants to describe the project for which funding is requested, identify the objectives, activities, and timelines for the funding period requested; describe the qualifications of key personnel; and provide a detailed budget and description of resources.

The Department has developed the following burden estimates for the information collection requirements associated with this NFP. For the years that the Department holds State Entity Grant, CMO Grant, and Developer Grant competitions and that State entities hold subgrant competitions, we estimate that 365 applicants will apply and submit applications. We estimate that it will take each applicant 60 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 21,900 hours.

The Department requested and obtained a six month emergency approval from OMB for a new information collection request, which includes the requirements associated with this NFP. A separate notice requesting public comment for this information collection is being published in this issue of the **Federal Register** for emergency processing. The Information Collection Request (ICR) notice also provides a 30-day public comment period to solicit feedback on the estimated paperwork burden and to obtain a standard three year approval for the ICR. An assigned control number notifies the public that OMB has

approved these information collection requirements under the Paperwork Reduction Act of 1995.

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 notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

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