

PART 906—COLORADO

■ 1. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Federal regulations at 30 CFR 906.15 are amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

§ 906.15 Approval of Colorado regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
3/27/03	3/24/05	1.04(71)(f)&(g), 2.04.13(1)(e), 2.06.6(2)(a),(g), 2.06.8(4)(a)(i), 2.06.8(5)(b)(i), 2.07.6(1)(a)(ii), 2.07.6(2)(n), 2.08.4(6)(c)(iii), 3.03.2(1)(e), 3.03.2(5)(a), 4.03.1(4)(e), 4.05.2, 4.06.1(2), 4.15.1(5), 4.15.4(5), 4.15.7(1), 4.15.7(2), 4.15.7(3)(b), 4.15.7(3)(f), 4.15.7(4), 4.15.7(5), 4.15.7(5)(a), 4.15.7(5)(b), 4.15.7(5)(c), 4.15.7(5)(d), 4.15.7(5)(e), 4.15.7(5)(f), 4.15.7(5)(g), 4.15.8(3)(a), 4.15.8(4), 4.15.8(7), 4.15.8(8), 4.15.9, 4.15.11, 4.15.11(1)(a), 4.15.11(1)(b), 4.15.11(1)(c), 4.15.11(2), 4.15.11(3), 4.25.2(4).

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DEPARTMENT OF EDUCATION

34 CFR Part 225

RIN 1855-AA02

Credit Enhancement for Charter School Facilities Program

AGENCY: Office of Innovation and Improvement, Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary issues these final regulations to administer the Credit Enhancement for Charter School Facilities program, and its predecessor, the Charter School Facilities Financing Demonstration Grant program. Under this program, the Department provides competitive grants to entities that are non-profit or public or are consortia of these entities to demonstrate innovative credit enhancement strategies to assist charter schools in acquiring, constructing, and renovating facilities through loans, bonds, other debt instruments, or leases.

DATES: These regulations are effective April 25, 2005.

FOR FURTHER INFORMATION CONTACT: Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, FB-6, Washington, DC 20202-6140. Telephone: (202) 205-9765 or via Internet, at: charter.facilities@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

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under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

These final regulations apply to both (a) the Credit Enhancement for Charter School Facilities program, which is authorized under title V, part B, subpart 2 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110, enacted January 8, 2002) and (b) its predecessor, the Charter School Facilities Financing Demonstration Grant program, as authorized by title X, part C, subpart 2 of the Act through the Department of Education Appropriations Act, 2001 as enacted by the Consolidated Appropriations Act, 2001. The purpose of this program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to public and nonprofit entities, and consortia of these entities, to leverage other funds and help charter schools acquire school facilities through such means as purchase, lease, and donation. Grantees may also use grants to leverage other funds to help charter schools construct and renovate school facilities.

To help leverage funds for charter school facilities, grant recipients may, among other things: Guarantee and insure debt, including bonds, to finance charter school facilities; guarantee and insure leases for personal and real property; facilitate a charter school's facilities financing by identifying potential lending sources, encouraging private lending, and carrying out other, similar activities; and establish temporary charter school facilities that new charter schools may use until they can acquire a facility on their own.

Sections in these regulations that govern the management of grants apply to grants under both the Credit

Enhancement for Charter School Facilities program and its predecessor, the Charter School Facilities Financing Demonstration Grant program. These two programs are virtually identical, and grants made under them will operate for several years. Sections related to grantee selection apply only to grant competitions conducted after fiscal year (FY) 2004.

Discussion of Regulations

The primary purpose of these regulations is to establish selection criteria for this complex program's discretionary grant competitions after FY 2004. Since we seek to award grants to high-quality applicants with high-quality plans for use of their grant funds, these criteria essentially include assessments on the quality of the applicant and the quality of the applicant's plan. The criteria also assess how applicants propose to leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs. The selection criteria are similar to those we have used in the two previous competitions for this program. As noted in the *Background Section*, this regulation also includes several provisions that govern the ongoing management of the grants already awarded in preceding fiscal years.

Analysis of Comments and Changes

On October 22, 2004, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (69 FR 62008). In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. We discuss substantive issues under the subparts of the regulations to which

they pertain. Generally, we do not address technical and other minor changes.

Subpart A—General

Comment: A commenter thought that § 225.1 would be clearer if it explicitly mentioned that the purposes of the program included helping charter schools construct or renovate school buildings.

Discussion: The Department agrees that helping charter schools construct or renovate school buildings is an objective of the program.

Change: The regulations now reference construction and renovation under § 225.1(b)(1).

Comment: One commenter sought a change to how the Department is implementing 34 CFR 74.24 as it relates to guarantee fees assessed by program participants. The commenter sought to have the flexibility to use these fees for purposes other than just the four purposes of the reserve account described under section 5225 of the program statute, which are to—

- Guarantee and insure debt;
- Guarantee and insure leases;
- Facilitate lending; and
- Facilitate bonding.

Discussion: Guarantee fees based on the Federal grant funds are program income. Program income is income that is directly earned from the grant. If the Federal grant funds are being directly pledged as a guarantee to earn fees, these fees are directly earned by the grant.

Under most Federal grant programs, the size of the grant is typically reduced by the amount of any program income earned. Under this program, however, the statute specifies that grantees may use their grants to earn funds as long as the earned funds are placed in the reserve account and used for the designated four reserve account purposes.

Since the program's statutory authority does not authorize the Secretary to allow grantees to use reserve account earnings for purposes other than the four reserve account purposes, it is not permissible to implement the proposed change.

Change: None.

Subpart B—How Does the Secretary Award a Grant?

Comment: One commenter indicated that it supported the proposed selection criteria under §§ 225.11 and 225.12.

Discussion: The Department has made minor changes to clarify the selection criteria as noted below based on other comments. These changes are not substantive in nature.

Change: Some technical changes are made as noted below.

Comment: One commenter recommended that the selection criteria emphasize a preference for proposals that would make credit both more available and affordable to charter schools in their respective States through partnerships with State or local government entities. The commenter sought to enhance the long-term impact of this program by providing an incentive to State governments to provide financing to charter schools to obtain facilities.

Discussion: The Department believes that grant projects from public entities, such as State and local governments, that make facility financing more readily available and less expensive for charter schools is desirable. The program statute requires the Department to fund at least one grant application from a public entity, one from a non-profit, and another from a consortium, provided that each is of sufficient merit. The Department does not want to provide a preference for one of these three types of applicants over the other two because it seeks to fund those applications that will be of the greatest benefit to charter schools. The Department was unable to fund any applications from public entities under the first grant competition for this program, but it provided considerable technical assistance to public entities during the second grant competition and funded two grant applications from public entities in that competition.

In addition, the proposed selection criteria address making credit more available and affordable. Selection criterion § 225.11(b)(4) takes into account serving charter schools with the greatest need, thereby emphasizing the importance of increasing the availability of credit to charter schools that would otherwise lack it. Selection criterion § 225.11(a)(1) emphasizes providing better rates and terms on loans, which encourages grant applicants to provide affordable financing.

The program statute and the selection criteria already provide considerable incentive for a public entity to submit the type of grant application it seeks to promote. The Department will continue to provide technical assistance to public entities to encourage them to submit proposals that make facility financing more accessible and affordable to charter schools.

Change: None.

Comment: One commenter thought that the selection criteria encourage taxable financing rather than providing tax-exempt bonds, which may be more

beneficial to borrowers. The commenter thought that the current selection criteria appear to favor applicants that have pre-existing relationships with financial institutions. The commenter indicated that tax-exempt bond financing by definition does not involve pre-identified investors because tax-exempt bond financing raises capital by selling bonds to investors enticed by the sellers' potential.

Discussion: The Department agrees that the program should promote tax-exempt bond financing for charter schools when practicable. The selection criterion § 225.11(a)(1) would help promote applications that provide tax-exempt bond financing, since charter schools would benefit from lower interest rates in the tax-exempt market.

The Department does not believe that the selection criteria harm applicants that cannot identify investors at the time they apply for their grant. For instance, one of the Department's current grantees successfully submitted a grant application indicating that it planned to credit-enhance tax-exempt bonds for charter schools. The grantee did so by demonstrating its ability to recruit financial institutions, including institutions with substantial experience in tax-exempt financing, that will work with charter schools. Consequently, the Department believes that an applicant proposing to provide tax-exempt bonds that demonstrate the ability to market bonds successfully to investors could also be successful.

Change: None.

Comment: A commenter was concerned that the reference to "better rates" under § 225.11(a)(1) might either—

- Inadvertently favor direct lending institutions that use their grants to credit-enhance their own charter school facility loans; or
- Cause charter school organizations with stronger credit histories that can qualify for "better rates and terms" to "bump" less credit worthy, including most new charter schools.

Discussion: This criterion is not designed to favor grant applicants using one type of model over applicants using other types. For instance, an applicant that does not make loans itself but instead works with a different lender on a loan-by-loan basis could help charter schools shop for the best rates and terms on facility financing among several investors.

The criterion is designed to reward applicants that can provide charter schools—whose students are the ultimate beneficiaries under the program—with good rates and terms on

facility financing. The term “better rates and terms” applies to both those charter schools that already have access to credit and those that do not. An applicant would not be providing better rates and terms to a low-risk charter school if it provided it with an interest rate and under the same terms that the school could obtain without assistance through the program. Furthermore, selection criterion § 225.11(b)(4) already addresses the risk level of charter schools to be served so that applicants will not try to achieve low interest rates and good loan terms by serving charter schools that already have access to attractive financing for facilities.

Change: None.

Comment: One commenter, a group consisting largely of institutions that directly lend funds to charter schools, objected to including the language regarding “better rates and terms” under § 225.11(a)(1), because it thought that—

- The primary purpose of the program should be to provide access to capital; and
- The criterion contradicts the goal to leverage funds under § 225.11(a)(6).

In addition, the commenter thought that “better” needed to be defined since some charter schools have no access to capital at all.

Discussion: The Department believes that the program should serve dual purposes—

- To provide access to capital; and
- To provide better rates and terms on charter school facility financing.

The Department believes that if an applicant proposed to (1) serve charter schools that already have access to capital; and (2) provide these schools with the same rates and terms charter schools can receive, absent assistance from a grantee, the applicant should justify why such an approach is in the best interest of charter schools. If an applicant proposed to provide financing to a charter school that would otherwise have no access to financing at all, the applicant would be providing better rates and terms to the charter school than it could otherwise obtain absent the program. However, the Department does not see the need to codify a definition of “better” and prefers to allow applicants to address how their proposals are beneficial to charter schools so that its external grant readers can determine if they are better than what charter schools can obtain absent assistance from the program.

The Department agrees that particularly low interest rates may require relatively high levels of credit enhancement that would result in low leveraging ratios. Applicants must

determine how to best balance this trade-off in the interest of charter schools. Since the Department believes that providing charter schools access to capital addresses § 225.11(a)(1), it does not view this provision as encouraging applicants to lower their leveraging ratios.

Change: None.

Comment: One commenter thought that inserting the words “more than they would” in § 225.11(a)(6) would help clarify the meaning of the criterion.

Discussion: The Department concurs.

Change: Similar language is added.

Comment: One commenter thought that the program should support passage of strong charter school laws in the States. The commenter thought that the Department could accomplish this by focusing those grants on entities that will help enhance credit for charter schools that operate in States with strong charter school laws.

Discussion: The Department agrees that the program should help encourage States to pass strong charter school laws. The proposed regulations included a provision (§ 225.11(a)(7)) that would for the first time take into account the strength of these laws. The Department believes that the proposed regulation addressed the commenter’s concern.

Change: None.

Comment: One commenter thought that the program should not include § 225.11(a)(7), which encourages applicants to serve States with strong charter school laws. The commenter thought that this would work against the Department’s goal of serving charter schools in communities with the greatest need for school choice.

Discussion: The Department agrees that the program should help serve communities with the greatest need for school choice. The Department provides up to 15 points to grant applicants on this basis under § 225.12. Furthermore the Department encourages applicants to serve charter schools with the greatest need under the provision in § 225.11(b)(4). The Department, however, also wants to encourage States to pass strong charter school laws.

Change: None.

Comment: One commenter recommended that the selection criteria place a greater emphasis on and preference for proposals that offer new approaches that have not yet been demonstrated.

Discussion: The Department believes innovative projects that have not yet been demonstrated can be beneficial, as can projects that employ approaches that have already demonstrated that

they successfully meet the needs of charter schools. Since the Department seeks to fund applications that will be of the greatest benefit to charter schools, it prefers not to favor one type of project over another.

Change: None.

Comment: One commenter recommended that the selection criteria more explicitly emphasize a preference for proposals that would help create permanent credit enhancement programs for charter schools that will extend beyond the life of the grant program and be replicable through State policies.

Discussion: The Department agrees that a grant proposal that exceeded the life of the grant program and that States could replicate could be of great benefit to charter schools. The Department also believes that a proposal that would create a permanent credit enhancement program would likely score high under the proposed selection criteria. These grants do not end until all of the grant funds are spent or the debt guaranteed by grant is no longer outstanding. The life span of the funded grants varies from about five years to over twenty years.

The program statute requires the Department to fund at least one grant application from a public entity, provided that it is of sufficient merit. Furthermore, selection criterion § 225.11(c)(7) emphasizes the extent to which States have or will meet charter schools’ facility funding needs. In addition, selection criterion § 225.11(a)(4) addresses the extent to which proposed grant projects are replicable. The Department itself plans to evaluate its grantees and disseminate successful models that are replicable.

Change: None.

Comment: One commenter thought that the program has not always taken advantage of economies of scale and that the Department should give larger grants to fewer recipients in order to reduce interest rates for charter schools.

Discussion: The Department also wants to take advantage of economies of scale, when possible. The Education Department General Administrative Regulations (EDGAR) address how grants are funded under 34 CFR 75.217 and the Department does not believe that it would be appropriate to revise these criteria for this particular program.

Change: None.

Comment: One commenter wanted the selection criteria to reward applicants that have demonstrated—

- The ability to assist charter schools over a wide geographic area; and
- The willingness to credit-enhance charter school facility financing

transactions with the most risk, *i.e.*, guarantees for “start-up” and new charter schools, including leasehold improvement loans.

Discussion: One of the goals the Department set when establishing these selection criteria was to not restrict applicants from proposing innovative applications. One type of innovative application might be to establish a secondary market for charter school loans. A secondary market would likely be limited to several States so that investors could reasonably become familiar with the risk associated with serving charter schools in those particular States. If a selection criterion was added that encouraged applicants to serve a wide geographic area, it might discourage applicants from working with a given set of States to help develop a secondary loan market for charter schools.

The Department does not want to provide a preference for one type of application over other types because it seeks to fund those applications that will be of the greatest benefit to charter schools. In addition, defining what a wide geographic area means could prove difficult, since it potentially involves the distance between charter schools that would receive services from an applicant.

An applicant that had the ability to serve a geographically diverse area could propose to target States that are relatively underserved. This could enable the applicant to better target charter schools with the “greatest demonstrated need” under § 225.11(b)(4).

The selection criteria already take the risk level of charter schools into account under § 225.11(b)(4) by encouraging applicants to assist “charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.” This criterion is designed to encourage applicants to serve charter schools with the need for assistance, including new charter schools and schools seeking leasehold improvement loans. The criterion also includes the likelihood of success of a charter school since the Department would not want to encourage applicants to take unwarranted risk.

Change: None.

Subpart C—What Conditions Must Be Met by a Grantee?

Comment: One commenter thought that the Department should evaluate the Credit Enhancement for Charter School Facilities grants program, if possible by using national activity funds under the Charter Schools Program.

Discussion: The Department concurs and plans to evaluate the program using these funds. However, the Department does not generally promulgate regulations about what programs it evaluates and how it funds its evaluations.

Change: None.

Comment: A commenter thought that the term “reserve account” should be defined. The commenter noted that the list of definitions under § 225.4 does not reference a definition of the term in either EDGAR or in the statute.

Discussion: Neither EDGAR nor the program statute define this term. Section 5225 of the program statute, however, clearly indicates how the reserve account operates. The Department does not attempt to repeat the entire statute in these regulations and believes the statute provides sufficient clarification as to what is meant by a reserve account.

Change: None.

Comment: A commenter thought that § 225.21(b) could be interpreted as preventing grantees from paying contractors directly in the event of a default.

Discussion: The language does not prevent grantees from directly paying contractors in the event of a default. The section is not intended to provide an extensive list of impermissible uses of the funds or exceptions to the impermissible uses.

Change: The regulation now clearly indicates that contractors may be paid directly in the case of a default.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits justify the costs.

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

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in

the preamble to the NPRM (69 FR 62009). We include additional discussion of potential costs and benefits in the section of this preamble titled *Analysis of Comments and Changes*.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The collection of information in these final regulations has been approved by OMB under control number 1855–0007. This control number also is listed in the final regulations at the end of the affected sections in the final regulations.

Intergovernmental Review

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

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

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.354A Credit Enhancement for Charter School Facilities Program)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these amendments to 34 CFR chapter II.

List of Subjects in 34 CFR Part 225

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

Dated: March 18, 2005.

Michael J. Petrilli,

Acting Assistant Deputy Secretary for Innovation and Improvement.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by adding a new part 225 to read as follows:

PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

Subpart A—General

Sec.

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

225.2 Who is eligible to receive a grant?

225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

225.4 What definitions apply to the Credit Enhancement for Charter School Facilities Program?

Subpart B—How Does the Secretary Award a Grant?

225.10 How does the Secretary evaluate an application?

225.11 What selection criteria does the Secretary use in evaluating an application for a Credit Enhancement for Charter Schools Facilities grant?

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

Subpart C—What Conditions Must Be Met by a Grantee?

225.20 When may a grantee draw down funds?

225.21 What are some examples of impermissible uses of reserve account funds?

Authority: 20 U.S.C. 7223, unless otherwise noted.

Subpart A—General

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

(a) The Credit Enhancement for Charter School Facilities Program provides grants to eligible entities to assist charter schools in obtaining facilities.

(b) Grantees use these grants to do the following:

(1) Assist charter schools in obtaining loans, bonds, and other debt instruments for the purpose of obtaining, constructing, and renovating facilities.

(2) Assist charter schools in obtaining leases of facilities.

(c) Grantees may demonstrate innovative credit enhancement initiatives while meeting the program purposes under paragraph (b) of this section.

(d) For the purposes of these regulations, the Credit Enhancement for Charter School Facilities Program includes grants made under the Charter School Facilities Financing Demonstration Grant Program.

(Authority: 20 U.S.C. 7223)

§ 225.2 Who is eligible to receive a grant?

The following are eligible to receive a grant under this part:

(a) A public entity, such as a State or local governmental entity;

(b) A private nonprofit entity; or

(c) A consortium of entities described in paragraphs (a) and (b) of this section.

(Authority: 20 U.S.C. 7223a; 7223i(2))

§ 225.3 What regulations apply to the Credit Enhancement for Charter School Facilities Program?

The following regulations apply to the Credit Enhancement for Charter School Facilities Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Educational Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 225.

(Authority: 20 U.S.C. 1221e-3; 1232)

§ 225.4 What definitions apply to the Credit Enhancement for Charter School Facilities Program?

(a) *Definitions in the Act.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001:

Charter school

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Department
EDGAR
Facilities
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary

(Authority: 20 U.S.C. 7221(i)(1); 7223d)

Subpart B—How Does the Secretary Award a Grant?

§ 225.10 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 225.11.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 7223; 1232)

§ 225.11 What selection criteria does the Secretary use in evaluating an application for a Credit Enhancement for Charter School Facilities grant?

The Secretary uses the following criteria to evaluate an application for a Credit Enhancement for Charter School Facilities grant:

(a) *Quality of project design and significance.* (35 points) In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established,

are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs more than would be accomplished absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the Elementary and Secondary Education Act of 1965; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services.* (15 points) In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity.* (35 points) In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its

loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

(d) *Quality of project personnel.* (15 points) In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project. (Approved by the Office of Management and Budget under control number 1855-0007)

(Authority: 20 U.S.C. 7223; 1232)

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

(a) The Secretary may award up to 15 additional points under a competitive priority related to the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities

with large proportions of students from low-income families.

(b) The Secretary may elect to—

(1) Use this competitive priority only in certain years; and

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11. (Approved by the Office of Management and Budget under control number 1855-0007)

(Authority: 20 U.S.C. 7223; 1232)

Subpart C—What Conditions Must Be Met by a Grantee?

§ 225.20 When may a grantee draw down funds?

(a) A grantee may draw down funds after it has signed a performance agreement acceptable to the Department of Education and the grantee.

(b) A grantee may draw down and spend a limited amount of funds prior to reaching an acceptable performance agreement provided that the grantee requests to draw down and spend a specific amount of funds and the Department of Education approves the request in writing.

(Authority: 20 U.S.C. 7223d)

§ 225.21 What are some examples of impermissible uses of reserve account funds?

(a) Grantees must not use reserve account funds to—

(1) Directly pay for a charter school's construction, renovation, repair, or acquisition; or

(2) Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

(b) In the event of a default of payment to lenders or contractors by a charter school whose loan or lease is guaranteed by reserve account funds, a grantee may use these funds to cover defaulted payments that are referenced under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7223d)

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