DEPARTMENT OF EDUCATION

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Final Priorities, Requirements, Definitions, and Selection Criteria; Charter Schools Program Grants to State Educational Agencies

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A

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

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

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement announces priorities, requirements, definitions, and selection criteria under the Charter Schools Program (CSP) Grants to State Educational Agencies (SEAs). The Assistant Deputy Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2015 and later years.

DATES: These priorities, requirements, definitions and selection criteria are effective July 15, 2015.

FOR FURTHER INFORMATION CONTACT: Kathryn Meeley, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W257, Washington, DC 20202–5970. Telephone: (202) 453–6818 or by email: *Kathryn.Meeley@ed.gov.*

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SUPPLEMENTARY INFORMATION:

Executive Summary

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

Summary of the Major Provisions of This Regulatory Action: This regulatory action announces four priorities, four requirements, four definitions, and nine selection criteria that may be used for CSP Grants to SEAs competitions in FY 2015 and later years. This regulatory action's purpose is to achieve three main goals.

The first goal is to ensure that CSP funds are directed toward the creation of *high-quality charter schools.* For example, we are creating a selection criterion to ask applicants to explain how charter schools fit into the State's broader education reform strategy. In addition, the selection criteria request information from the SEA regarding how it will manage and report on project performance.

The second goal is to strengthen public accountability and oversight for authorized public chartering agencies (also referred to as authorizers). The priorities, requirements, definitions, and selection criteria collectively provide incentives for SEAs to implement CSP requirements, as well as State law and policies, in a manner that encourages authorized public chartering agencies to focus on school quality through rigorous and transparent charter approval processes. For example, *Priority 1—Periodic Review and Evaluation* and *Priority 2—Charter School Oversight* give priority to SEAs that take steps to improve public accountability and oversight for charter schools within the State, including by holding authorized public chartering agencies accountable for the quality of the charter schools in their portfolios.

The third goal is to support and improve academic outcomes for *educationally disadvantaged students.* Our commitment to equitable outcomes for all students, continued growth of *high-quality charter schools,* and addressing ongoing concerns about *educationally disadvantaged students'* access to and performance in charter schools, compel the Department to encourage a continued focus on students at the greatest risk of academic failure. A critical component of serving all students, including *educationally disadvantaged students,* is consideration of student body diversity, including racial, ethnic, and socioeconomic diversity. For example, the selection criteria encourage applicants to meaningfully incorporate student body diversity into charter school models and practices and ask applicants to describe specific actions they would take to support *educationally disadvantaged students* through charter schools.

In addition to the three goals outlined above, we believe this notice of final priorities, requirements, definitions, and selection criteria (NFP or notice) streamlines the CSP application process. For example, selection criterion (f) *Dissemination of Information and Best Practices* combines two statutory criteria that have been used separately in previous competitions, asking applicants to describe their plans to disseminate best or promising practices of charter schools to each local educational agency (LEA) in the State and to describe their dissemination subgrant awards processes, thereby decreasing the burden on applicants. Additional discussion regarding the final priorities, requirements, definitions, and selection criteria can be found in the *Public Comment* section of this document.

Costs and Benefits: The Department believes that the benefits of this regulatory action outweigh any associated costs, which we believe will be minimal. This action will not impose cost-bearing requirements on participating SEAs apart from those related to preparing an application for a CSP grant and would strengthen accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to SEAs that are most capable of expanding the number of *high-quality charter schools* available to our Nation's students. Please refer to the *Regulatory Impact Analysis* in this NFP for a more detailed discussion of costs and benefits.

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

(1) Providing financial assistance for the planning, program design, and initial implementation of charter schools;

(2) Evaluating the effects of charter schools, including the effects on students, student achievement, student growth, staff, and parents;

(3) Expanding the number of *high-quality charter schools* available to students across the Nation; and

(4) Encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.

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

Program Authority: The CSP is authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221–7221j); and the Consolidated and Further Continuing Appropriations Act, 2015 (FY 2015 Appropriations Act), Public Law 113–235.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on November 19, 2014 (NPP) (79 FR 68812). That NPP contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

The *Analysis of Comments and Changes* section in this NFP describes the differences between the priorities, requirements, and definitions we proposed in the NPP and these final priorities, requirements, definitions, and selection criteria.

Public Comment: In response to our invitation in the NPP, 26 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raise concerns not directly related to the priorities, requirements, definitions, or selection criteria.

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

Priorities

Priority 1—Periodic Review and Evaluation

Comment: We received several general comments regarding *Priority 1.* One commenter expressed support for the priority. Another commenter recommended that we revise the language of *Priority 1* to reflect language in the FY 2015 Appropriations Act that requires each SEA to provide an assurance that authorizers in the State use increases in student academic achievement as one of the most important factors, as opposed to the most important factor, when determining whether to renew or revoke a school's charter. Another commenter suggested that we designate this priority as a minimum requirement for applicants rather than a priority that the Department may or may not utilize in any particular competition year. Finally, several commenters suggested that there is overlap between *Priority 1* and the other three priorities.

Discussion: We agree that the priorities, requirements, definitions and selection criteria should be consistent with the FY 2015 Appropriations Act, which was enacted after publication of the NPP in the **Federal Register**. Accordingly, we have modified *Priority 2—Charter School Oversight* and selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to reflect the language in the FY 2015 Appropriations Act. We decline, however, to make any additional changes to *Priority 1.*

Regarding the comment that *Priority 1* should be a minimum requirement, we agree with the commenter that it is important for authorizers to conduct periodic reviews to evaluate how well their charter schools are performing. This priority is derived largely from a priority in the CSP authorizing statute (20 U.S.C. 7221a(e)(2)), and we believe that it is appropriate to retain it as a priority in this NFP.

Finally, we note that each priority can be used independently in any given competition. We believe that the overlapping elements across some of the priorities emphasize critical factors and provide the Department with flexibility to use or not use a particular priority in any given year.

Changes: None.

Comment: One commenter expressed concern that *Priority 1* diminishes the ability of an authorized public chartering agency (authorizer) to tailor charter contracts and performance standards in accordance with the needs of the charter school and its students. The commenter also suggested that charter schools would act responsibly without this priority. Similarly, one commenter stated that *Priority 1* removes local control of a charter school. Finally, one commenter asserted that the priority implies that an authorizer will conduct a review only once every five years at the time of charter renewal, and suggested that this will weaken authorizer oversight.

Discussion: This priority is based on section 5202(e)(2) of the ESEA (20 U.S.C. 7221a(e)(2)), which requires the Department to give priority to SEAs in States that provide for periodic review and evaluation of a charter school by its authorizer at least once every five years. In addition, we disagree that the priority will diminish an authorizer's ability to tailor charter contracts or performance standards to a specific charter school. Rather, with this priority, we can reward States that provide for periodic review and evaluation of each charter school by the authorizer, at a minimum, once every five years. Furthermore, while the review provides an opportunity for the authorizer to take appropriate action or impose meaningful consequences on the school for failing to meet certain performance standards, it does not prevent the authorizer from determining a more tailored approach under specific circumstances.

Finally, we note that the priority is designed to strengthen authorizer oversight. In specific instances, certain State laws allow charters to be awarded for a term of up to 15 years before being evaluated for renewal. In such circumstances, this priority is designed to promote more frequent reviews and evaluations. An SEA in a State that requires authorizers to conduct reviews and evaluations more frequently than every five years will not be penalized.

Changes: None.

Comment: Several commenters stated that the language of *Priority 1* is unclear and some recommended that we delete the priority. One commenter inquired whether *Priority 1* is designed to address a specific policy concern, stating that they were unaware of any scenario in which a State would have a charter school policy in place that is inconsistent with existing State law. Another commenter objected to the reference to the authorizer taking appropriate action, and also recommended that we remove the reference to the student academic achievement requirements and goals set forth in a State policy exceeding such requirements in State law. Finally, one commenter recommended that *Priority 1* be revised to ensure that the periodic reviews actually take place.

Discussion: Priority 1 is designed to clarify that performance standards for charter schools (including those related to student academic achievement) should be established in accordance with a State law, a State regulation, or a State policy to ensure the rigor of these performance standards across the State. Therefore, we decline to delete this priority.

In addition, we decline to remove from *Priority 1* the statement that periodic review and evaluation provides an opportunity for authorizers to take appropriate action or impose meaningful consequences on the charter school, if necessary. Often, the State charter school law, regulations, or policies that stipulate performance standards applicable to charter schools do not specify actions associated with meeting or failing to meet those performance standards. Given the underlying premise of charter schools—greater autonomy in exchange for accountability—we believe this language is critical to ensure that the

periodic review and evaluation result in deliberate, meaningful action if a charter school is failing to meet the standards of its charter or State charter law, regulation, or policy.

Changes: We agree that additional language in *Priority 1* is necessary to ensure that periodic reviews actually take place. For this reason, we have revised *Priority 1* to add that, in order to meet the priority, SEAs must take steps to ensure that periodic reviews take place. We believe this revision is consistent with the intent of the relevant priority in the authorizing statute.

Comment: None.

Discussion: The Department determined through internal review that the last sentence of *Priority 1* should be clarified to emphasize that the authorizer must have an opportunity to take appropriate action in order for an SEA to meet this priority.

Changes: We have revised the last sentence of *Priority 1* to clarify that periodic review and evaluation must include an opportunity for the authorized public chartering agency to take appropriate action or impose meaningful consequences on the charter school, if necessary.

Priority 2—Charter School Oversight

Comment: We received several general comments regarding *Priority 2—Charter School Oversight.* One commenter expressed support for the priority. One commenter recommended that we designate this priority an absolute priority. Another commenter recommended that we revise the priority to include language added to the FY 2015 Appropriations Act. Specifically, the commenter recommended that paragraph (b) be eliminated, and that paragraph (a)(1) refer only to legally binding performance contracts rather than to legally binding charters or performance contracts. Finally, one commenter expressed concern about requiring the use of increases in student academic achievement by subgroup as the most important factor in determining whether to renew or revoke a charter. The commenter recommended that the Department remove this requirement and substitute language that would allow greater authorizer discretion in making these renewal or revocation decisions.

Discussion: This NFP establishes the priorities that we may choose to use in the CSP Grants for SEAs competitions in FY 2015 and later years. We do not designate whether a priority will be absolute, competitive preference, or invitational in this NFP; we retain the flexibility to determine how best to designate the priorities to ensure that funded projects address the most pressing areas of need for competitions in FY 2015 and later years. When inviting applications for a competition using one or more of these priorities, we will designate the type of each priority through a notice published in the **Federal Register**.

We agree that *Priority 2* should reflect the language in the FY 2015 Appropriations Act, which was enacted after publication of the NPP in the **Federal Register**, and have made the appropriate change to *Priority* 2. Likewise, in accordance with the FY 2015 Appropriations Act, we believe paragraph (b) needs to remain part of *Priority 2* and have opted to retain the reference to a legally binding charter or performance contract in paragraph (a)(1) of *Priority 2*.

Changes: In conformance with the FY 2015 Appropriations Act, we have revised paragraph (b) of *Priority 2* to state that student achievement is one of the most important factors, as opposed to the most important factor, when determining whether to renew or revoke a school's charter.

Comment: One commenter recommended that *Priority 2* require annual financial audits and that the information from such audits describe public and private contributions. The commenter also suggested that this information be made public and that the Department strengthen the priority by requiring that charter schools include F–33 survey data (*i.e.,* LEA finance survey data on revenues and expenditures) collected by the Department's National Center for Education Statistics (NCES).

Discussion: We agree with the commenter that fiscal responsibility and public reporting are critical aspects of charter school oversight. Accordingly, the NFP includes a priority and a selection criterion regarding authorizer monitoring of operational performance expectations, including financial management, and annual public reporting of charter school performance (see *Priority 3—High-Quality Authorizing and Monitoring Processes* and selection criterion (g) *Oversight of Authorized Public Chartering Agencies*). We note, also, that in order for an SEA to meet *Priority 2,* all charter schools in the State must be required to file with their authorizers, on an annual basis, independent audits of their financial statements. We believe these elements address the commenter's concerns and, therefore, decline to revise *Priority 2.*

We decline to require that SEAs submit F–33 data for charter schools in order to meet this priority. The F–33 survey is a data collection and data census effort supported by NCES, whereas *Priority 2* is concerned primarily with charter school oversight by authorized public chartering agencies. We do not believe that requiring SEAs to complete a census report in order to meet this priority would strengthen or otherwise improve charter school oversight.

Changes: None.

Comment: One commenter suggested that the Department require SEAs to provide an assurance that charter schools will comply with the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 U.S.C. 11301, *et seq.*) and that charter schools ensure their compliance by designating a McKinney-Vento Homeless liaison within the LEA in order to meet *Priority 2.*

Discussion: In order to qualify for funds under the CSP, a charter school must provide all students in the community, including *educationally disadvantaged students,* such as those served under McKinney-Vento, with an equal opportunity to attend the charter school. Charter schools that are considered to be independent LEAs under the applicable State's charter school law must comply with McKinney-Vento on the same basis as other LEAs. For these reasons, we decline to revise *Priority 2* as suggested by the commenter.

Changes: None.

Comment: One commenter expressed concern that paragraph (a)(3) of *Priority 2* would require State law to mandate that every charter school demonstrate academic improvement and recommended that the Department make this an assurance rather than a priority. The commenter stated that it is unlikely that every charter school in a State would demonstrate such improvement and that some charter schools may have such a high level of achievement that further improvement is not possible.

Discussion: An SEA is not required to demonstrate improved student academic achievement in order to meet the priority. First, if designated a competitive preference or invitational priority, *Priority 2* would not impose requirements on applicants. While applicants would be required to meet an absolute priority, under *Priority 2,* an SEA would have to show only that State law, regulation, or policy requires each charter school in the State to demonstrate improved student academic achievement.

Changes: None.

Priority 3—High-Quality Authorizing and Monitoring Processes

Comment: We received several general comments regarding *Priority 3—High-Quality Authorizing and Monitoring Processes.* One commenter expressed support for the priority. Another commenter recommended that *Priority 3* be mandatory for all applicants. Another commenter recommended designating *Priority 3* as an invitational priority because the priority necessitates oversight and monitoring that could be contrary to the practices States have already established. In addition, a commenter stated that *Priority 3* could favor States with a single authorizer and not work to strengthen authorizer diversity.

Discussion: This priority is designed to provide an incentive to States to adopt high-quality authorizing and monitoring processes. As discussed above, this NFP is designed only to establish the priorities that we may choose to use in the CSP Grants for SEAs competitions in FY 2015 and later years. Accordingly, we decline to designate this priority as absolute, competitive preference, or invitational in this NFP. While *Priority 3* is intended to strengthen authorizer quality, it is not designed to address authorizer diversity. We believe that States with a single authorizer, as well as States with multiple authorizers, can meet this priority by focusing on overall authorizer quality.

Changes: None.

Comment: One commenter suggested we revise *Priority 3* to include performance benchmarks that would trigger prompt inquiry by an SEA of an authorizer that is persistently poor-performing. The commenter also suggested revisions that would provide for ongoing public dissemination of authorizers' performance information, thus increasing accountability for authorizers.

Another commenter expressed concerns about the disruptive nature of charter school closures and suggested that the Department place a greater emphasis on high standards for authorizer performance, including consequences for persistently poor-performing authorizers. The commenter stated that the Department should focus more on the charter application phase to ensure that the authorizer's review of charter applications is sufficiently rigorous in order to minimize the number of charter closures.

Discussion: We agree that the public should be informed about authorizer performance, and that mechanisms should exist to facilitate the termination of chartering authority for persistently poor-performing authorizers. This priority is designed to encourage States to ensure quality practices for charter school authorizing and to take appropriate action to strengthen charter school authorizing across the State, as necessary. It also is designed to accommodate a wide range of State contexts, including where the SEA itself is an authorizer, and where an SEA may or may not have the authority to revoke the authorizer role from an organization. We believe that *Priority 3* is sufficiently rigorous and fully addresses Congressional intent while still meeting the needs of SEAs in varying contexts.

Changes: None.

Comment: One commenter suggested that we revise paragraph (a)(2) of *Priority 3* to state that performance objectives may, rather than must, be school-specific. Additionally, the commenter recommended that the Department clarify whether the reference to standardized systems that measure and benchmark performance of the authorizer in paragraph (b) of *Priority 3* applies to authorizers or SEAs. Another commenter recommended changing standardized systems to standardized reporting in this paragraph.

Discussion: We believe that performance objectives that are developed for each charter school and tie to rigorous academic and operational performance expectations are critical to the evaluation of school performance. While some performance objectives may be used by the authorizer for more than one school, a school's performance objectives serve as the basis for measuring performance at that specific school, and we believe that some of these objectives must be school specific in order to evaluate school performance effectively. However, to clarify the purpose of this priority, we have revised paragraph (a)(2) of *Priority 3* to state that performance objectives for each charter school must be aligned to the rigorous academic and operational performance expectations established by the authorizer.

We note that paragraph (b) of *Priority 3* gives priority to SEAs that demonstrate that all authorizers use standardized systems to measure and benchmark their performance, and was not intended to imply that an entity other than the authorizer would develop or implement these systems. We also agree that the term ''standardized systems'' could be misunderstood and understand the recommendation that we change this reference to ''standardized reporting.'' However, because our intent is to require a State to develop clear and specific standards, we have revised this section to clarify that, in order for the SEA to meet the priority, each authorizer in the State should be measuring and benchmarking performance and disseminating the results annually, but the SEA does not need to develop a standardized system across all authorizers.

Changes: We have revised paragraph (a)(2) of *Priority 3—High-Quality Authorizing and Monitoring Processes* to refer to the performance objectives for each school instead of school-specific performance objectives to clarify that the objectives must be aligned to the rigorous academic and operational performance expectations established by the authorizer. We also have revised paragraph (b) of *Priority 3* to specify that authorizers must use clear and specific standards and formalized processes that measure and benchmark authorizer performance, instead of standardized systems, to clarify our intent.

Comment: One commenter recommended that we revise paragraph (a)(2) of *Priority 3* to allow charter schools to create school-specific performance objectives that meet some or all of the outlined expectations rather than all expectations.

Discussion: We believe that it is important for schools to establish performance objectives that are aligned with all academic and operational expectations and that *high-quality charter schools* should meet all performance objectives. While a charter school that fails to meet all of its performance objectives should not automatically have its charter revoked, we believe that authorizers should evaluate a charter school's performance based on performance objectives that are aligned with the academic and operational performance expectations that have been established for the charter school. Periodic review and evaluation allows an authorizer to assess a charter school's performance with respect to defined expectations and ensures that charter schools are held accountable for academic and organizational performance objectives. We also note that a charter school or authorizer can establish performance expectations and objectives that are more rigorous or cover more areas than specified under State law.

Changes: None.

Comment: One commenter suggested revising paragraph (d) of *Priority 3* to remove the reference to differentiated review based on whether the developer has been successful in establishing and operating one or more *high-quality charter schools.* The commenter also suggested removing the reference to

high-quality when referring to charter schools. Another commenter stated that, with respect to the concept of differentiated review, although applicants' past performance is occasionally a partial indicator of an organization's ability to expand successfully, the expansion process may raise new and unforeseen challenges that the authorizer should consider. Finally, one commenter recommended deleting paragraph (d) altogether.

Discussion: We believe that an applicant could meet *Priority 3* if authorizers in its State conduct a differentiated review for charter school developers who operate charter schools that do not currently meet the definition of *high-quality charter schools.* We agree that differentiated review is not exclusive to *high-quality charter schools* and have revised the priority accordingly.

For purposes of this program, we agree that authorizers should be able to exercise discretion in approving charters through a differentiated process based on the past performance of charter school developers.

By promoting differentiated review, we intend to encourage authorizers to acknowledge that there are additional factors to consider when reviewing a charter petition from an existing charter school developer versus a charter petition from a charter school developer who is not currently operating charter schools. For these reasons, we decline to delete the paragraph.

Changes: We have revised paragraph (d) of *Priority 3* to clarify that an SEA can meet the priority by demonstrating that authorizers in the State use authorizing processes that include differentiated review of charter petitions to assess whether and the extent to which, the charter school developer has been successful, as opposed to basing the differentiated review on those considerations.

Comment: One commenter stated that *Priority 3* is generally problematic and should be deleted because it promotes undefined authorizer practices that do not work well in actual school settings, relies on performance data that are neither clear nor objective, and expects authorizers to weigh and interpret data to make closure decisions. The commenter also stated that standardized systems of measurement governing complex decisions regarding renewal or closure serve to embolden weak authorizers and interfere with charter school autonomy.

Discussion: We recognize that the authorizing process may not be governed by absolutes in all instances. We also recognize that there may be certain qualitative data or additional circumstances that authorizers consider when determining whether to approve a charter petition or to revoke an existing school's charter, and agree that authorizers should use the full range of information available. We disagree, however, that the factors of *Priority 3* are unfounded or unlikely to promote the growth and development of a *high-quality charter school* sector.

Priority 3 encourages authorizers to define quantifiable and clear objectives and expectations, both for themselves and charter schools. Furthermore, we believe that this priority encourages SEAs and States to invest in and develop an infrastructure that fosters the development of *high-quality charter schools* and chartering practices. As a secondary benefit, this priority brings together many entities involved in the chartering process, which creates a network for effective development and dissemination of information. For example, this may provide an opportunity for authorizers to share best practices and learn from each other within a State.

Changes: None.

Comment: One commenter recommended adding language to *Priority 3* to state that the reporting referenced in paragraph (a)(5) must provide information necessary for the State to benchmark performance. The commenter also recommended revising paragraph (b) to require SEAs to disseminate information on authorizer performance. Additionally, the commenter recommended revising paragraph (c) to remove the factor for multi-tiered clearance or review and instead focus on an evaluation of an applicant's readiness to open and operate. Finally, the commenter recommended that the Department delete from paragraph (d) the reference to *high-quality charter schools,* regarding authorizing processes that include differentiated review.

Discussion: With regard to adding language to require the State to benchmark performance in paragraph (a)(5), the paragraph already requests the use of frameworks and processes to evaluate performance of charter schools on a regular basis and, therefore, already includes the commenter's suggestion. In response to the recommendation to revise paragraph (b) of *Priority 3,* the intent of the priority is not to ask authorizers to disseminate information on performance in general. Paragraph (b) already calls for annual dissemination of performance information related to standards and formalized processes that measure and benchmark the performance of the authorizer. We believe paragraph (b), with our previously described revisions, is clear in that respect and decline to revise it further.

We decline to revise paragraph (c) of this priority. Multi-tiered clearance or review will often involve making a determination about whether a charter school is prepared to open and operate successfully. However, there may be scenarios where the multi-tiered clearance or review is more involved or examines other elements, and we want to give authorizers latitude to consider those elements. For this reason, we believe it would be counter-productive to limit the focus of the paragraph to the evaluation of readiness to open and operate.

Finally, we decline to delete the reference to high-quality in paragraph (d) because a major purpose of the CSP Grants for SEAs program is to foster the development of *high-quality charter schools.*

Changes: We have revised paragraph (b), as described above, to refer to clear and specific standards and formalized processes, instead of standardized systems.

Comment: One commenter suggested several revisions to paragraphs (a) and (b) of *Priority 3.* First, the commenter suggested adding language regarding the use of student achievement as a factor in renewal and revocation decisions. Additionally, the commenter suggested that we revise paragraph (b) to provide additional authority for intervention for poor-performing authorizers and to emphasize that SEAs should be paying close attention to authorizer performance.

Discussion: We believe that the final priorities, requirements, definitions, and selection criteria will provide sufficient incentives for SEAs to monitor authorizers and to take appropriate action against poor-performing authorizers. As a general rule, authorized public chartering agencies are created pursuant to State charter school law and, as such, are governed by State law. Therefore, the Department defers to States with respect to the oversight of authorizers.

Changes: None.

Priority 4—SEAs That Have Never Received a CSP Grant

Comment: We received general comments regarding *Priority 4.* One commenter expressed support for the priority. Another commenter recommended that we make *Priority 4* invitational.

Discussion: This NFP establishes the priorities that we may choose to use in the CSP Grants for SEAs competitions in

FY 2015 and later years. We do not designate whether a priority will be absolute, competitive preference, or invitational in this NFP; but rather, retain the flexibility to designate each priority as invitational, competitive preference, or absolute in order to ensure that program funds are used to address the most pressing programmatic concerns for competitions in FY 2015 and later years. When inviting applications for a competition using one or more of these priorities, we will designate the type of each priority through the notice inviting applications for new awards (NIA).

Changes: None.

Comment: Several commenters suggested that *Priority 4* penalizes States that have established robust charter sectors. One commenter stated that the priority is overly broad and would provide an advantage to States with new charter school laws that have been unsuccessful in previous competitions. Similarly, several commenters stated that the Department should be more concerned with directing CSP funds to ensure charter school quality and oversight rather than to States that have been ineligible to apply for a grant or a State with weak charter school laws. One commenter suggested that the priority would favor less qualified applications above higher quality applications. Similarly, another commenter suggested that the priority would penalize States that support innovation or have otherwise demonstrated successful and high-quality authorizing practices. Finally, one commenter recommended that we remove the priority altogether.

Discussion: Priority 4 is designed to provide the Department with the option to provide incentives to SEAs that have never received a CSP grant and might be at a competitive disadvantage due to a limited charter school infrastructure or limited record of past performance. Additionally, the priority reflects our belief that CSP funds can have a greater impact when they help seed a charter sector as a part of a State's initial effort to create high-quality public schools.

We believe that in any year in which we run a competition, the combination of priorities, requirements, and selection criteria in the NIA will ensure that high-quality applications will have an opportunity to receive funding. We disagree that *Priority 4* will penalize States that support innovation or have demonstrated success in the charter school sector. Other priorities, requirements, definitions, and selection criteria will provide an opportunity for States to describe their proposed activities, regardless of whether they have received a CSP grant in the past.

Changes: None.

Comment: One commenter stated that *Priority 4* provides a disincentive to States that have invested in the growth of charter schools. The commenter recommended that the Department establish a bifurcated process to separate States that have not previously received a grant from States that have. Similarly, another commenter recommended that the Department limit the priority to States that have been ineligible rather than unsuccessful in previous grant competitions.

Discussion: We disagree that the priority should focus on SEAs that were ineligible rather than unsuccessful. As written, this priority will already apply to a very limited pool of applicants. Only a small number of States with charter school laws have not received a CSP grant at any point in the past. We do not believe that it is necessary to separate unsuccessful applicants from ineligible applicants; we believe that our application review process ensures that only the highest quality proposals will be recommended for funding. In addition, the priority promotes the purposes of the CSP with respect to innovation and geographic diversity.

Changes: None.

Comment: One commenter stated that *Priority 4* excludes States with critical needs to support *educationally disadvantaged students;* the commenter noted that some States have a greater need for funds than comparable States that have not previously received an SEA grant. The commenter stated that only four SEAs are eligible for points under this priority, and that those States would be unlikely to benefit from SEA funding. The commenter asserted that charter management organizations (CMOs) are reluctant to operate in States that have not received SEA grants because the States are isolated, funding is inadequate, or talent is limited. A few commenters suggested that SEA funds are better expended in States that welcome charter growth and produce conditions favorable to charter expansion and that *Priority 4* unfairly penalizes States that have invested in robust charter sectors and supported innovation in the field.

Several commenters expressed a general concern that the Department should not give priority to States that have been unsuccessful in receiving a CSP grant over States that have received CSP funding in the past. One commenter suggested that *Priority 4* would unfairly disadvantage States with significant rural school populations, while another commenter recommended that we expand the priority to include States that submitted applications but were denied funding under the FY 2011 CSP Grants for SEAs competition. Another commenter recommended revising the background statement to state that this priority would encourage rather than assist States that have not yet received a CSP grant.

Discussion: We disagree that this priority will exclude States with substantial populations of *educationally disadvantaged students* or that States with smaller populations (or more rural communities) will not benefit from SEA funding. We do not believe that a developer—including a CMO—will be discouraged from operating in a State merely because the State has not received a CSP grant previously.

We also disagree that *Priority 4* penalizes States that have invested in their charter sectors or that it provides a disincentive for SEAs to support innovation in the charter school sector. States in both situations will be eligible to respond to this priority if they have never received a CSP grant. We do not believe *Priority 4* will unfairly disadvantage SEAs in States with significant rural populations, as the priority does not distinguish between urban and rural applicants. Finally, we do not believe that it is appropriate to prioritize unsuccessful applicants from the FY 2011 CSP Grants for SEAs competition but not give priority to unsuccessful applicants from competitions held in other fiscal years. Further, all SEAs that applied for funding under the FY 2011 CSP Grants for SEAs competition have received CSP grants in the past; therefore, giving priority to those States would be contrary to the purpose of *Priority 4.*

Changes: None.

Requirements

Lottery and Enrollment Preferences

Comment: One commenter expressed the view that data on enrollment patterns will be essential for understanding the extent to which an existing charter school complies with the CSP Nonregulatory Guidance on weighted lottery procedures. The commenter asserted that States with clusters of specialized charter schools should be required to provide assurances that procedures exist to ensure that these charter schools do not limit students' access to more inclusive education settings. Finally, another commenter stated that the Department should prohibit charter schools from having an enrollment preference or exemption that would exclude any group of students.

Discussion: We agree that equal access for all students is important in the context of charter school development and the provision of public education generally. The CSP Nonregulatory Guidance (*www2.ed.gov/programs/charter/nonregulatory-guidance.html*) is intended to provide information and guidance to CSP grantees on the Department's interpretation of various CSP statutory and regulatory requirements. The Guidance specifies the circumstances under which a charter school receiving CSP funds may use a weighted lottery to give slightly greater chances of admission to *educationally disadvantaged students.* As public schools, charter schools must employ open admissions practices and comply with applicable Federal civil rights laws, including laws prohibiting discrimination on the basis of race, ethnicity, or disability, and requirements of Part B of IDEA. For these reasons, we do not believe that an additional assurance is necessary.

Changes: None.

Comment: One commenter stated that the collective body of Federal law related to student enrollment practices was never intended to create agency guidance on the matter of weighted lottery processes. Rather, the commenter asserted that the original drafters of the statutes only intended to distinguish charter schools from magnet or other specialized public schools. The commenter suggested a more modest role for the Department in the charter school lottery process, focusing on relevant statutory language, reducing prescriptive guidance, and permitting greater deference to State law, provided that it does not conflict with applicable Federal statutes.

Discussion: We agree that States should have great flexibility in administering their charter school subgrant programs, including their lottery processes. The purpose of the CSP Nonregulatory Guidance is to provide clarity to grantees regarding how Federal requirements apply to their projects and to ensure that grantees are aware of permissible enrollment practices for charter schools receiving CSP funds.

Changes: None.

Comment: Several commenters suggested that an entity other than an SEA may be responsible for monitoring charter school lotteries and admissions processes. These commenters recommended adding other responsible public entities to the current list of entities (SEAs and authorized public chartering entities) responsible for reviewing, monitoring, or approving lotteries with enrollment preferences to account for this difference.

Discussion: We acknowledge that the SEA may not be the only entity responsible for approving and monitoring a charter school's lottery and admissions process. Because the SEA is the grant recipient under this program and provides subgrants to charter schools and charter school developers, for purposes of the CSP, the SEA is primarily responsible for ensuring that subgrantees comply with CSP requirements, including the definition of a charter school and the lottery requirement in section 5210(1) of the ESEA (20 U.S.C. 7221i(1)).

Changes: None.

Logic Model

Comment: Several commenters stated that a logic model is either unnecessary, unduly burdensome to applicants, or not required for monitoring compliance. Other commenters recommended that the Department provide additional guidance on the form and composition of the logic model requirement (*e.g.,* on granularity, format, components, etc.). One commenter argued that the requirement to include a logic model would not lead to the creation of *high-quality charter schools.* Finally, another commenter recommended deleting the requirement on the ground that a State with a small charter sector or a new charter school law might be ill-positioned to articulate a statewide theory of action with regard to the use of CSP funds.

Discussion: We believe that the logic model is an important element that will enable us to review and evaluate the theory of action that supports each application. All applicants should be able to articulate clearly their plan for using Federal funds.

The logic model represents one of many sources of information to allow us to assess grantee progress. In addition, we believe that developing a logic model will help SEAs clearly articulate their proposed outcomes and methods for achieving them. The logic model will also assist peer reviewers in evaluating the merits and key elements of each applicant's project plan. Because of its importance to the process, we believe that a logic model is not unduly burdensome as part of a well-developed application.

Department regulations define a logic model in 34 CFR 77.1, and we will refer all applicants to that definition in any NIA in which we utilize this requirement. We may provide supplemental information in an NIA or through other means that we believe will benefit applicants during a grant competition.

Changes: None.

High-Quality Charter School

Comment: One commenter supported allowing a State to develop its own definition of *high-quality charter school.* The commenter suggested allowing a State to meet this requirement with an assurance rather than requiring the Department to approve the State's definition. The commenter explained that the requirement that a State-proposed definition be at least as rigorous as the Federal definition is unclear, as is the role the Department would play in determining if one State's definition is more rigorous than another.

Discussion: We do not intend to compare one applicant's State definition of *high-quality charter school* to another. Consistent with the application requirement, a State's alternative definition will be reviewed to determine if it is at least as rigorous as the standard in paragraph (a) of the definition based on the reasoning and evidence provided by the applicant. We also note that peer reviewers' evaluation of a State's alternative definition of *high-quality charter schools* will be reflected in their scoring of the relevant selection criteria referencing *high-quality charter schools.*

Changes: None.

Definitions

Academically Poor-Performing Charter School

Comment: One commenter expressed support for the definition. Another commenter recommended revising paragraph (b) of the definition to clarify that an alternative definition could be used if the SEA demonstrates that the alternative definition is at least as rigorous as the description in paragraph (a) of the definition of *academically poor-performing charter school.*

Discussion: We agree that the definition of *academically poor-performing charter school* should be clarified to specify the standard that an SEA's proposed definition of the term must meet. We believe this comment also is applicable to the definition of *high-quality charter school.*

Changes: We have revised paragraphs (b) of the requirements for *academically poor-performing charter school* and *high-quality charter school* to clarify that an SEA's definition of each term must be at least as rigorous as paragraph (a) of the definitions of *academically poor-performing charter school* and *high-quality charter school,* as set forth in this NFP.

Comment: One commenter suggested that the definition of *academically poor-*

performing charter school is too rigid, and stated that typical students enter charter schools no fewer than two years behind grade level in instruction. The commenter asserted that effective charter schools will provide opportunities for increased academic growth in order to ensure that students meet grade level upon exiting the school. The commenter expressed concern that this definition does not present the above-described growth trajectory as a significant component of assessing student performance when considering whether a charter school is academically poor-performing. Finally, one commenter questioned how a State-proposed definition would be reviewed, particularly in a scenario where an absolute standard, rather than a growth standard, is used.

Discussion: We disagree with the commenter that the definition of *academically poor-performing charter school* does not account for student academic growth. In order to meet this definition, a charter school would have to both be in the lowest performing five percent of all public schools in a State and have failed to demonstrate student academic growth of at least one grade level for each cohort of students. Therefore, a charter school that is successfully demonstrating growth, even if the students remain below grade level, would not be considered academically poor-performing.

We do not intend to compare one applicant's State definition of *academically poor-performing charter school* to another. Consistent with the application requirement, a State's alternative definition will be reviewed to determine if it is at least as rigorous as the Department's definition of the term as specified in paragraph (a) based on the reasoning and evidence provided by the applicant.

Changes: None.

Comment: One commenter suggested that the Department alternatively define an *academically poor-performing charter school* as one that fails to meet the student performance goals established in the school's charter or related performance agreements.

Discussion: We agree that it is important for a charter school to adhere to the performance objectives outlined in its charter or performance contract. Because these objectives can vary by school, however, we do not believe that such an alternative definition would facilitate meaningful comparison of academic performance across all charter schools in a State. In addition, this definition could potentially allow a charter school to underperform without penalty if its charter or performance contract includes performance objectives that are less rigorous than other State requirements.

Changes: None.

Educationally Disadvantaged Students

Comment: One commenter expressed concern that our definition for this term includes all subgroups specified in the ESEA except racial and ethnic groups and, thus, allows the Department to avoid considering achievement gaps among different races and ethnicities.

Discussion: We disagree that this definition impacts any reporting requirements related to achievement gaps, or removes race and ethnicity from consideration of achievement gaps. We note that the definition of *high-quality charter school,* which explicitly addresses achievement gaps, requires demonstrated success in closing historic achievement gaps for the subgroups of students referenced in Section 1111 of the ESEA, which includes the reporting of information disaggregated by race, ethnicity, and other factors (20 U.S.C. 6311). We believe this priority provides incentives for SEAs to support the development of charter schools that are expanding educational opportunities for the most *educationally disadvantaged students*.

Changes: None.

Comment: One commenter stated that the term homeless youth is defined by a number of Federal and State agencies and recommended that the Department revise the definition of *educationally disadvantaged students* to include homeless students as defined by subtitle B of title VII of McKinney-Vento (42 U.S.C. 11434a). Several commenters recommended adding additional categories of students, including foster children, to the definition of *educationally disadvantaged students*.

Discussion: The definition of *educationally disadvantaged students* in this NFP includes the categories of students eligible for services in targeted assistance schools under title I, part A of the ESEA (20 U.S.C. 6315(b)). We believe that this is an appropriate group of students to define as *educationally disadvantaged students* insofar as the services provided in a targeted assistance school are intended to be provided to the school's eligible children identified as having the greatest need for special assistance. For this reason, we do not believe it is necessary to include other groups of students in the definition.

For purposes of this definition, we consider students who meet the definition of homeless children and youths under section 725(2) of McKinney-Vento (42 U.S.C. 11434a(2)) to be homeless students and thus among the groups of students covered. We do not believe it is necessary to revise the definition to this end.

Changes: None.

High-Quality Charter School

Comment: One commenter stated that the Department should not designate a charter school that has been open for fewer than three years as a *high-quality charter school*.

Discussion: We disagree that a charter school that has been open for fewer than three years cannot qualify as a *high-quality charter school*. If, for example, a charter school is only open for one year, it must still show evidence of academic growth for all students for that period. We believe that a school can demonstrate successfully the elements of the definition with fewer than three years of data. If the elements of the definition are met, then the school can be considered a *high-quality charter school*.

Changes: None.

Comment: Several commenters recommended that the Department adopt the definition of *high-quality charter school* in legislation proposed (but not enacted) by the 114th Congress. Specifically, the commenters recommended we adopt the definition described in S. 2304 and H.R. 10. Expanding Opportunity through Quality Charter Schools Act. S.2304, 114th Cong. (2014).

Discussion: The definition of *high-quality charter school* from S. 2304 and H.R. 10 requires strong academic results, which may include academic growth as determined by a state, highlights strong financial and organizational management, and asks that the school demonstrate success in significantly increasing student academic achievement, including graduation rates where applicable. This definition does not specify a time period over which results must be demonstrated. The definition announced in this NFP is consistent with the definition of high-quality charter school used in other Department programs, and we believe it is the appropriate definition for this program.

Changes: None.

Comment: One commenter recommended that the Department permit applicants to satisfy three of the five elements of the definition, rather than all five. In the alternative, the commenter proposed that we revise paragraph (a)(1) to refer to high or increased student academic achievement rather than simply increased student academic achievement. The commenter stated that

an already high-achieving charter school could be penalized without the change.

Discussion: We believe that each of the five elements represents an outcome or characteristic that is important and necessary to identify *high-quality charter schools*. If, for example, a charter school demonstrates an increase in student achievement and success in closing historic achievement gaps but has *significant compliance issues,* we do not believe that school should be considered a *high-quality charter school*. Removing one or more of these factors from consideration would substantially erode the definition.

We also decline to revise paragraph (a)(1) of the definition to require high or increased student academic achievement. We do not believe that the definition, as written, will penalize an existing high-achieving charter school. A charter school with students who demonstrate high rates of proficiency on State assessments, for example, can still demonstrate increases in academic achievement in other ways, such as increasing school-wide proficiency rates or increasing the number of students at the advanced level. We believe that it is important to encourage increases in student academic achievement and attainment even in a school with comparatively high-performing students. We also note that this definition addresses student mastery of grade-level standards.

Changes: None.

Comment: One commenter stated that paragraph (a)(1) should not distinguish between *educationally disadvantaged students* and all other students. The commenter suggested a technical revision to the language or, as an alternative, removing the reference to *educationally disadvantaged students* as it adds complexity to an already complex definition.

Discussion: The CSP statute emphasizes the importance of assisting *educationally disadvantaged students,* as well as other students, in meeting State academic content standards and State student academic achievement standards. Therefore, we believe that it is important that a charter school specifically identify and increase academic achievement for educationally disadvantaged and other students in order to be considered a *high-quality charter school.* Consequently, we decline to remove this element of the definition.

Changes: None.

Comment: One commenter asserted that paragraph (a)(2)(ii) of the definition of *high-quality charter school* is ambiguous as written. The commenter stated that the paragraph implies that we would require a school to compare performance independently between each racial and ethnic, income, disability, and English proficiency category, thus requiring approximately 28 comparisons. The commenter recommended that instead of requiring that a school demonstrate no significant achievement gap between any of the identified subgroups, we should require no gap between subgroups or, if applicable, appropriate comparison populations. Additionally, the commenter recommended referring to Section 1111(b)(2)(C)(v)(II) of the ESEA, rather than 1111(h)(1)(C)(i) because the former statutory reference is most commonly used for performance accountability purposes.

Discussion: We believe that, if an applicant chooses to respond to paragraph (2) of this definition, they have decided to demonstrate that there are no significant achievement gaps between any of the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)); therefore, they would have the data to support this claim with applicable subgroup information. An applicant that responds to paragraph (a)(2)(i) of this definition has decided to demonstrate that it is successfully closing the achievement gap and is able to provide the relevant supporting data. This definition has been used in previous CSP competitions with that understanding. However, we agree that section 1111(b)(2)(C)(v)(II) is the more appropriate reference, consistent with other CSP grants, and have revised the definition accordingly.

Changes: We have revised paragraphs (a)(2)(i) and (ii) of the *high-quality charter school* definition to reference section 1111(b)(2)(C)(v)(II) of the ESEA.

Comment: One commenter asserted that a school should not be required to take into account the performance of a particular subgroup listed under (a)(2)(i) or (a)(2)(ii) if the number of students in that subgroup is so small that the data are statistically unreliable. The commenter stated that this is the operating procedure for Title I grants.

Discussion: We agree that the data for the various subgroups should not be compared in cases where the data sample is so small it is statistically unreliable or would infringe upon the privacy of a student. When using the definition of *high-quality charter school,* or providing other data for CSP programs, we intend for applicants to use only data that are available and reportable and provide any necessary explanations to clarify the use of such data.

Changes: None.

Comment: One commenter suggested that the Department define a *high-quality charter school* as a school that meets or exceeds goals stated in the school's approved charter or performance contract, rather than focus on State tests, attendance rates, graduation rates, or postsecondary attendance at the expense of other assessment tools (*e.g.,* preparation for careers).

Discussion: We agree that other methods exist to evaluate the quality of a charter school. This is captured throughout the priorities, requirements, definitions, and criteria in this NFP, particularly in sections focused on authorizer quality. However, because the performance goals in a charter or performance contract will vary from school to school, we believe it would be difficult for an SEA to use the goals in a charter school's performance contract to assess the quality of charter schools across the State.

Changes: None.

Comment: Several commenters suggested that this definition is too narrow and could lead to ''creaming'' high-aspiration students from non-charter public schools. One commenter expressed confusion over many elements of the definition, such as the references to increased student achievement and the need to close historic achievement gaps. Additionally, the commenter stated that the definition ignores other assessment tools such as preparation for careers.

Discussion: We first note that the final priorities, requirements, definitions, and selection criteria are designed to provide incentives to SEAs to increase the number of *high-quality charter schools* in the State and, thus, provide more high-quality options for all students. In addition, the selection criteria are related to a State's broader plan to ensure equitable access for students throughout the State by ensuring that all students—including *educationally disadvantaged students*—have equal access and opportunities to attend *high-quality charter schools.* Charter schools receiving CSP funds are required to provide all students in the community with an equal opportunity to attend the charter school and admit students by lottery if the charter school is oversubscribed. We believe the final priorities, requirements, definitions, and selection criteria will support and reinforce these program requirements.

We next address the comment that many of the elements of the definition are confusing. This definition provides discrete and measurable indicators for defining a charter school as high-quality. The rate at which a charter

school reduces or closes a historic achievement gap is a quantifiable measure of student achievement and school success. Similarly, testing and attendance rates provide data that can be used to examine school performance. We believe that the percentage of charter school students who go on to enroll in postsecondary institutions is yet another indicator of the performance and efficacy of a State's charter schools. Finally, we note that the term ''postsecondary education'' may encompass both non-traditional postsecondary education options as well as other career and technical training. We agree that there are other tools that measure student achievement, including career readiness. We believe the definition of *high-quality charter school* in this NFP, however, promotes the purposes of the CSP and provides a consistent, clear, and measurable metric of student academic achievement. For these reasons, we decline to revise the definition.

Changes: None.

Comment: One commenter recommended that we revise the definition of *high-quality charter school* to examine growth differentially. The commenter stated that comparing graduation rates of a school serving students who are at a very low percentile of proficiency with a school serving students at a very high percentile of proficiency is neither comparable nor fair, and contended that what success looks like at those schools will manifest in different ways.

Discussion: The definition states that academic results for students served by a *high-quality charter school* must be above the average academic results for such students in the State. Because the definition allows for comparisons among similar populations of students, we believe that it addresses the commenter's concern.

Changes: None.

Comment: One commenter recommended several substantive revisions to elements of the definition that would remove references to the achievement gap, evidence of academic achievement over three years, and references to attainment and postsecondary enrollment, as well as add a requirement for compliance in the area of safety, financial management, or statutory or regulatory compliance.

Discussion: We decline to adopt these proposed changes. First, it is unclear from the commenter's suggested revisions whether a CSP applicant's *high-quality charter schools* would have to show increased achievement in one or more (or all) subgroups. We decline to remove the three-year achievement requirement because we believe that a three-year period provides a reasonable time within which a charter school's performance can be evaluated to determine whether the school is high-quality. This does not mean the charter school could not be deemed high-quality with fewer than three years of data available, as noted within the definition. However, if three years of data exist, the charter should be evaluated based on all three years. Further, we believe the references to attendance, attainment, and retention are critical to the spirit of this definition given their correlation to performance. Finally, we believe the recommended revisions would remove or substantially diminish the focus of charter schools on serving *educationally disadvantaged students* and treating all students equitably, which are crucial elements that promote the purposes of the CSP.

Changes: None.

Comment: One commenter asked why, under paragraph (a)(2)(i) of the definition for *high-quality charter school,* demonstrated success in closing historic achievement gaps would be acceptable, while in paragraph (a)(2)(ii), an applicant must show actual significant gains rather than the closing of gaps. The commenter stated that a school could satisfy the requirements of paragraph (a)(2)(i) if its higher-achieving students decreased in performance and its lower achieving students did not make gains. Additionally, the commenter asked when, under paragraph (3) of the definition for *high-quality charter school,* results on statewide tests might not be considered applicable to meeting the definition of high-quality charter school, if those results are available.

Discussion: First, we note that in order for a school to be considered high-quality, all subgroups would have to demonstrate significant progress and the school would have to close achievement gaps simultaneously. These are two distinct but equally important components of this definition that work in tandem to ensure that SEA subgrants are used to support *high-quality charter schools.* In order to be considered high-quality, a charter school must meet elements (a)(1)–(5), unless the State opts to use an alternate definition. With regard to the commenter's second question, we note that an example of available but not necessarily applicable results could be an elementary charter school that tracks college completion rates of its alumni. Although these data theoretically could be collected, unless there was a general requirement for the collection of this information by all charter schools, it might not be a relevant measure. Without uniform data collection for all charter schools, there would be no comparison data to illustrate meaningful impact, and the data likely would not take into consideration other influences, such as the other secondary schools the students attended before going to college.

Changes: None.

Comment: One commenter suggested two revisions to the definition. First, the commenter recommended moving element (a)(5), which prohibits a *high-quality charter* school from having any *significant compliance issues,* (to paragraph (b); and replacing the term particularly with including, to make the provision more logical.

Discussion: We decline to revise paragraph (a)(5) or paragraph (b). Paragraph (a) provides the Department's definition of *high-quality charter school,* and paragraph (b) provides an SEA the option to propose its own definition. Paragraph (a)(5) is intended to highlight three areas where *significant compliance issues* can occur, but is not meant to be exhaustive.

Changes: None.

Comment: One commenter recommended that the Department define ''significant achievement gap.''

Discussion: We decline to define ''significant achievement gap'' in this NFP because we believe that not defining the term affords States greater flexibility. An applicant should be able to provide the necessary evidence and information in its application, demonstrating that schools identified as *high-quality charter schools* are either closing the achievement gap or have no significant achievement gap.

Changes: None.

Selection Criteria

(a) State-Level Strategy

Comment: Two commenters recommended expanding paragraph (1) of selection criterion (a) *State-Level Strategy* to include activities of authorizers and other entities that impact charter schools in the State.

Discussion: We agree that it is important for authorizers and other entities that impact charter schools to be part of the State's overall strategy for improving student academic achievement and attainment, and we encourage States to address the extent to which the activities of authorizers and other entities are integrated into the State-level strategy. For purposes of this program, however, we believe that the focus should be on the individual State's plan for integrating its CSP grant activities with its broader public education strategy. While a State whose

charter school authorizing practices are integrated into its CSP activities should include this information, we only expect States to discuss such practices in relation to proposed CSP grant activities. Likewise, if the CSP activities are integrated into the practices of authorizers and other entities, we would expect the State to discuss that as well.

Changes: None.

Comment: One commenter opined that a State's charter sector is purposefully designed to serve as an alternative to, rather than an integrated component of, a State's overall strategy for school improvement.

Discussion: Although charter schools are an alternative to traditional public schools, charter schools also are public schools, and we believe that it is important for States to include charter schools as part of their overall strategy for providing public education.

Changes: None.

Comment: One commenter recommended that we expand the criterion to require SEAs to explain how the State will ensure that charter schools serve the same or similar student populations as their non-charter public school counterparts.

Discussion: Charter schools are public schools and, as such, must employ open admissions policies and ensure that all students in the community have an equal opportunity to attend the charter school. A charter school's admissions practices must comply with applicable Federal and State laws, including Federal civil rights laws, such as title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990. Further, paragraph (2) of selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students* addresses the quality of the SEA's plan to ensure that charter schools attract, recruit, admit, enroll, serve, and retain *educationally disadvantaged students.* Additionally, the CSP Nonregulatory Guidance clarifies that section 5203(b)(3)(E) of the ESEA (20 U.S.C. 7221b(b)(3)(E)) requires SEAs to provide an assurance that applications for CSP subgrants will include a description of how parents and other members of the community will be involved in the planning, program design, and initial implementation of the charter school.

Changes: None.

Comment: One commenter expressed concern about referring to a State's Race to the Top application or ESEA Flexibility request as examples of statewide education reform efforts in paragraph (1) of selection criterion (a) *State-Level Strategy.* The commenter questioned whether a charter sector could be strong in a State that did not receive a Race to the Top grant or an ESEA Flexibility waiver. Additionally, the commenter recommended revising the language to consider the extent to which the authorizer, in addition to the State, encourages strategies for improving student academic achievement.

Discussion: While States' Race to the Top applications and ESEA Flexibility requests are examples of initiatives that could be discussed in relation to State-level strategy, the list we provided was not intended to be exhaustive or exclusive. A State that has not received a Race to the Top grant or an ESEA Flexibility waiver may discuss its State-level strategy within the context of other efforts and receive full points on this criterion. We decline to expand the list of examples in this element of the criterion to include authorizer actions and authorizer strategy but agree that limiting the examples to Race to the Top and ESEA Flexibility applications may be confusing. Therefore, we have removed the examples from the final selection criterion. While an SEA may discuss its authorizer practices within the context of its State-level strategy, a discussion of authorizer quality and practice alone is unlikely to be deemed an adequate response to the criterion.

Changes: We have removed the reference to State Race to the Top applications and ESEA Flexibility waivers from paragraph (1) of this selection criterion.

Comment: One commenter recommended adding the State Systemic Improvement Plan (SSIP) as an example of an improvement effort in paragraph (1). The commenter stated that adding the SSIP will ensure that charter schools and the students they serve are actively considered in any and all State planning efforts.

Discussion: SSIPs are multi-year plans that each State produces to describe how it will improve educational outcomes for children with disabilities served under IDEA. The Department's Office of Special Education Programs administers the IDEA and works with States as they implement these plans. Like a State's Race to the Top application and ESEA Flexibility waiver request, a SSIP describes activities that could be responsive to this selection criterion. We agree that providing only a few examples for this criterion may be confusing, however, and are removing the examples from the final selection criterion and decline to include this revision.

Changes: None.

Comment: One commenter expressed concern about how the Department will consider States' various funding needs in relation to the composition of the student body, in cases where charter schools do not enroll student populations that are demographically similar to traditional non-charter public schools. The commenter mentioned students with disabilities and English learners as populations that may require additional funding in order to ensure that they are adequately served, and asked whether this will be a consideration in review of funding equity for paragraph (2) of selection criterion (a) *State-Level Strategy.*

Discussion: We recognize that the demographic composition and funding needs of schools may vary at the State and local levels. For this reason, this criterion is designed to allow applicants to describe the State's overall systems for funding public schools generally, and charter schools specifically, including any variances between the two, to demonstrate the extent to which funding equity for similar students is incorporated into the State's overall strategy.

Changes: None.

(b) Policy Context for Charter Schools

Comment: Several commenters stated that charter school policy is a local issue rather than an SEA-focused issue. One commenter stated that selection criterion (b) *Policy Context for Charter Schools* generally speaks to the SEA as the primary force behind information dissemination, growth, oversight, and other factors related to charter schools. The commenter stated that, in some States, an emphasis on the SEA would be misguided because the SEA may be hostile towards charter schools or may lack the legal ability to play a large role in the charter sector.

Discussion: The Department administers several grant programs under the CSP, including direct grants to non-SEA eligible applicants (*i.e.,* charter school developers and charter schools). The purpose of these priorities, requirements, definitions, and section criteria, however, is to implement the provisions of the CSP statute that authorize the Secretary to award grants to SEAs to enable them to conduct charter school subgrant programs in their States, in accordance with the requirements of the ESEA. In some cases, State charter school laws assign the primary role for charter school oversight to entities other than the SEA, and these entities play critical roles in information dissemination and growth of charter schools. This selection criterion asks SEA applicants to respond

to each factor within the context of their State activities. We understand, however, that the SEA may not be the sole entity responsible for executing these activities.

Changes: None.

Comment: One commenter expressed support for the selection criterion (b) *Policy Context for Charter Schools.* Another commenter expressed concern about the promotion of policies that weaken the collective bargaining rights of certain State or school employees based on the language contained in paragraph (1)(i) regarding the extent to which charter schools in the State are exempt from State or local rules that inhibit the flexible operation and management of public schools.

Discussion: By definition, charter schools are exempt from many significant State and local rules that inhibit the flexible operation and management of public schools. In exchange for this increased flexibility, charter schools are held accountable for results, including improved student academic achievement. Charter schools still must comply with Federal and State laws generally and meet all health and safety requirements. The criterion is designed to enable reviewers to assess the flexibility afforded charter schools, including flexibility with respect to school operations and management. The criterion bears no relation to employment policies or employee rights. Therefore, we decline to make any changes in response to the concern raised by the commenter.

Changes: None.

Comment: One commenter acknowledged the appropriateness of including flexibility under paragraph (1) of selection criterion (b) *Policy Context for Charter Schools* and recommended expanding the flexibility relative to establishing goals and quality measures related to State-mandated standards or assessments. The commenter referred to section 5210(1)(C) of the ESEA (20 U.S.C. 7221i(1)(C)), which defines a charter school as a public school that, among other things, operates in pursuit of a specific set of educational objectives determined by the school's developer.

Discussion: We believe the autonomy of charter schools to develop their own educational objectives and performance goals is critical, and this criterion acknowledges that importance by specifically emphasizing autonomy within paragraph (1)(ii). This criterion addresses the policy context for charter schools in a State, rather than the development of specific performance objectives, which would happen during the charter approval process. We believe *Priority 3—High-Quality Authorizing and Monitoring Processes* provides a strong incentive for the development of rigorous objectives that an authorizer would apply to the charter schools in its portfolio, and that this criterion would capture the unique qualities of individual charter schools. However, charter schools are still required to report on certain objectives applicable to all public schools. Together, the elements of this selection criterion ensure that an individual charter school's autonomy over the development of educational objectives is reflected in the CSP Grants for SEAs application.

Changes: None.

Comment: One commenter supported paragraph 3 of selection criterion (b) *Policy Context for Charter Schools,* which requests that SEAs describe their plans for ensuring that LEAs, including charter school LEAs, comply with IDEA. The commenter referenced several recently negotiated settlement agreements between schools and the Department's Office for Civil Rights related to IDEA compliance and recommended that we develop clear means to monitor charter school compliance with IDEA and other applicable statutes governing civil rights.

Discussion: Paragraph (3) of selection criterion (b) *Policy Context for Charter Schools* will enable peer reviewers to evaluate the quality of an SEA's plan to ensure charter schools' compliance with applicable Federal civil rights laws and part B of IDEA. We believe that this element of IDEA oversight is one that States are already required to have in place under section 612(a)(11) of the IDEA (20 U.S.C. 1412(a)(11)). This provision requires each SEA to exercise general supervision over all educational programs for children with disabilities administered in the State and to ensure that all such programs meet the requirements of part B of the IDEA. In addition, the Federal definition of a charter school ensures compliance with Federal civil rights laws and part B of IDEA. See section 5210(1)(G) of the ESEA (20 U.S.C. 7221i).

Changes: None.

(c) Past Performance

Comment: Several commenters supported the inclusion of selection criterion (c) *Past Performance.* Several commenters questioned how a State with a new charter school law (and, therefore, no previous charter experience) would receive points or otherwise not be unfairly disadvantaged during the application process. Additionally, one commenter asked how the Department would ensure that States with few or no *academically poor-performing charter schools* are not unfairly disadvantaged under this criterion.

Discussion: This selection criterion applies only to SEAs in States with charter school laws that have been in effect for five years or more. Therefore, an SEA in a state that enacted its first charter school law less than five years before the closing date of the relevant competition will not be scored on this criterion, and its total score will be calculated against a maximum point value that does not include the points assigned to this criterion.

In addition, SEAs that are required to respond to this criterion will not be at a disadvantage for having few or no *academically poor-performing charter schools.* In such a case, the SEA should include sufficient information for the reviewers to understand and evaluate the quality of its charter schools, including an explanation of how the State has minimized its number of *academically poor-performing charter schools.*

Changes: None.

Comment: Multiple commenters stated that the reduction in the number and percentage of *academically poor-performing charter schools* should not be evaluated based on a reduction of ''each'' of the past five years.

Discussion: We believe that it is important to examine the reduction in the number and percentage of *academically poor-performing charter schools* each year in order to determine the rate and consistency at which *academically poor-performing charter schools* have been closed or improved in a State. In addition, providing past performance data for each year gives the peer reviewers a more complete picture on which to score the applications. We encourage applicants to provide context about the performance of charter schools in the State.

Changes: None.

Comment: Several commenters recommended that we add past performance information as an application requirement. Specifically, one commenter suggested that we focus CSP funds on States that enhance, rather than diminish, the overall quality of public education.

Discussion: Selection criterion (c) *Past Performance* allows us to evaluate the extent to which an SEA's past performance has led to an increase in *high-quality charter schools* and a decrease in *academically poor-performing charter schools* within their State. An application requirement would only collect this information,

rather than allow for evaluation. For this reason, past performance will remain a selection criterion. We agree with the commenter that CSP funds should be awarded to States that enhance the overall quality of public schools, including charter schools. We believe that the final priorities, requirements, definitions, and selection criteria will achieve that purpose. The NIA for each competition will provide the specific criteria against which applications will be evaluated in that year.

Changes: None.

Comment: One commenter suggested that the evaluation of an SEA's past performance also be based on (1) the extent to which the demographic composition of the State's charter schools (in terms of *educationally disadvantaged students*) is similar to the demographic composition of non-charter public schools; (2) the extent to which approved charter applications in the State reflect innovations in charter schools; (3) the track record of the State's lead authorizer in minimizing compliance issues in its charter schools; and (4) the track record of the SEA in ensuring high-quality authorizer performance through early identification of authorizer performance issues with appropriate remedies.

Discussion: The focus of this criterion is on the SEA's performance in increasing the number of *high-quality charter schools,* decreasing the number of *academically poor-performing charter schools,* and improving student academic achievement. While we agree that the additional factors proposed by the commenter could inform an evaluation of an SEA's past performance, in many cases, an SEA providing a detailed response to the criteria will address the additional factors proposed by the commenter. Moreover, proposed addition (1) is covered by paragraph (2) of selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students,* assessing the quality of the SEA's plan to serve an equitable number of educationally disadvantaged students. Proposed addition (2) is covered broadly under selection criterion (f) *Dissemination of Information and Best Practices,* which assesses the quality of the SEA's plan to disseminate best and promising practices of successful charter schools in the State. Proposed addition (3) is covered under the definition of a *high-quality charter school* in paragraph (5) which notes that a *high-quality charter school* should have no *significant compliance issues.* Finally, proposed addition (4) is covered under *Priority 1—Periodic Review and Evaluation,* which asks for SEAs to demonstrate that periodic review and evaluation occurs at least once every five years and provides an opportunity for authorizers to take appropriate action and impose meaningful consequences. Proposed addition (4) may also be addressed in an SEA's response to selection criterion (g), which asks SEAs how they will monitor and hold accountable authorizing public chartering agencies.

Changes: None.

Comment: One commenter stated that selection criterion (c) *Past Performance* does not consider the quality of States' existing charter schools and opined that it should be a specific focus for the SEA grant competition. Another commenter suggested that the Department consider revising this criterion to examine an SEA's performance only by its reduction of the number of *academically poor-performing charter schools.*

Discussion: We agree that the quality of a State's existing charter schools is an important consideration when evaluating the overall quality of an SEA's application for CSP funds and believe we have addressed that factor in these priorities, requirements, definitions, and selection criteria. While reducing the number of *academically poor-performing charter schools* is an important measure of an SEA's past performance with respect to administration of its charter schools, we believe that is only one aspect of the overall quality of a State's charter schools program. A major purpose of the CSP Grants to SEAs program is to increase the number of *high-quality charter schools* across the Nation and to improve student academic achievement. For these reasons, we decline to make the recommended change.

Changes: None.

(d) Quality of Plan To Support Educationally Disadvantaged Students

Comment: One commenter stated that the Department should include a reference to diversity in all of the selection criteria, beyond what is included in selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students.* Additionally, the commenter suggested that the Department expand selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students* to include the following 10 additional factors, to ensure that charter schools are fully inclusive and do not either directly or indirectly discourage enrollment of all students: (a) Compliance with Federal and State laws, particularly laws related to educational equity, nondiscrimination, and access to public schools for *educationally disadvantaged students;* (b) broad-reaching, inclusive marketing efforts; (c) streamlined applications with no enrollment or other barriers; (d) receptive processes that do not steer away *educationally disadvantaged students;* (e) availability of services for students with disabilities and English learners; (f) positive practices to address behavioral issues, avoiding practices that encourage students to leave the charter school; (g) sparing use of grade retention practices; (h) provision of services for disadvantaged students that are comparable to those offered in nearby public schools, including free- and reduced-price meals; (i) addressing location and transportation in ways that are designed to serve a diverse community that includes *educationally disadvantaged students;* and (j) comprehensive planning to ensure that charter school enrollment patterns do not contribute to increased racial and economic isolation in proximate schools within the same school district.

Discussion: Many of the factors proposed by the commenter are covered under selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students* and the other criteria. More broadly, these selection criteria provide a basis for SEAs to address each of the factors proposed by the commenter at a level of detail that we believe will enable peer reviewers to evaluate the quality of the applications effectively.

Changes: None.

Comment: One commenter recommended that the Department revise this selection criterion to include a description of how SEAs plan to avoid disproportionate enrollment of homeless students in charter schools. The commenter stated that some non-charter public schools have shifted homeless students from their schools to charter schools.

Discussion: As public schools, charter schools must employ open admissions policies and ensure that all students in the community have an equal opportunity to attend the charter school. Further, charter schools receiving CSP funds must admit students by lottery if there are more applicants than spaces available at the charter school. While charter schools may weight their lotteries in favor of *educationally disadvantaged students,* which may include homeless students, they are not required to do so. Accordingly, the criterion includes a review of the SEA's plan to ensure that charter schools attract, recruit, admit, enroll, serve, and retain educationally disadvantaged and other students equitably. Although this criterion emphasizes the importance of

charter schools serving *educationally disadvantaged students,* which may include homeless students, the criterion does not diminish the requirement that charter schools receiving CSP funds provide all students in the community with an equal opportunity to attend the charter school.

Changes: None.

Comment: Several commenters recommended that the Department amend paragraphs (2), (3), and (4) of the selection criterion to address the quality of authorizers' and other State entities' plans to support *educationally disadvantaged students,* in addition to the SEA's plans to support such students.

Discussion: We agree that it is important for authorizers and other State entities to contribute to an SEA's efforts to support *educationally disadvantaged students.* Because this program authorizes the Secretary to award CSP grants to SEAs, however, the focus of these final priorities, requirements, definitions, and selection criteria is on SEAs' plans to support *educationally disadvantaged students.* To the extent that it is relevant, however, an SEA should include in its response to this criterion information regarding how its plan includes collaboration, coordination, and communication with other State entities for the purpose of providing effective support for *educationally disadvantaged students* and other students.

Changes: None.

Comment: One commenter stated that the criterion speaks to innovation in paragraph (3), and recommended that we make innovation a priority driven by individual schools rather than the SEA. The commenter recommended that the Department define innovation to include innovative curriculum, instructional methods, governance, administration, professional roles of teachers, instructional goals and standards, student assessments, use of technology, and stated that innovation should be a priority for all students, rather than just *educationally disadvantaged students* and other students.

Discussion: The CSP authorizing statute does not define innovation, and we prefer to permit applicants to exercise more flexibility by not defining the term in this NFP. We agree that innovation often happens at the school level but, for the purposes of this program, we are interested in how SEAs are encouraging innovation in charter schools within their State.

Changes: None.

(e) Vision for Growth and Accountability

Comment: Two commenters recommended revising selection criterion (e) *Vision for Growth and Accountability* to focus on the overall State plan by asking the SEA to describe the statewide vision for cultivating high-performing charter schools, as opposed to merely the SEA's vision. One commenter noted that a statewide vision may include the views of the SEA, authorizer(s), or other bodies. The other commenter suggested that the criterion should request information on charter schools with the capacity to become high-quality, rather than focus on the creation of *high-quality charter schools.*

Discussion: We agree that the statewide vision for growth and accountability is important and that the SEA should play a role in defining and assisting the State in realizing that vision. Thus, the SEA should describe a broad vision for cultivating *high-quality charter schools.* We agree that a charter school's capacity to become high-quality is relevant to an evaluation of the statewide vision for charter school growth and accountability. Therefore, we have revised paragraph (2) to request that SEAs provide a reasonable estimate of the overall number of *high-quality charter schools* in the State at both the beginning and end of the grant period.

Changes: We have revised selection criterion (e) *Vision for Growth and Accountability* to clarify that the SEA should describe its statewide vision for charter school growth and accountability, including the role of the SEA instead of just the vision of the SEA. We also revised the priority to list the factors the Secretary will consider in determining the quality of that statewide vision.

Comment: One commenter expressed concern about administrative burden within the context of selection criteria (e), (f), and (g). The commenter suggested that the Department add language that would incentivize States to reduce reporting and administrative requirements for charter schools, particularly when a school has a proven track record of high student achievement.

Discussion: We are mindful of the general reporting burden charter schools face as they comply with Federal, State, local, and authorizer reporting and other administrative requirements. However, the purpose of this regulatory action is to support the development of *high-quality charter schools* throughout the Nation by strengthening several components of the CSP Grants to SEAs program. These final priorities, requirements, definitions, and selection criteria do not address State or local reporting requirements. We believe that the factors outlined in the three selection criteria noted above do not increase reporting burden on charter schools, but rather, request that SEAs communicate how their plans address accountability within areas of reporting that already exist; how they plan to disseminate information about charter schools across the State, which is a requirement of the grant; and how, within the construct of their laws, they plan to provide oversight to authorizers.

Changes: None.

Comment: One commenter stated that selection criterion (e) *Vision for Growth and Accountability* is inherently subjective and recommended that the Department clarify what it would consider to be a highly rated plan.

Discussion: We rely on a team of independent peer reviewers to use their professional knowledge and expertise to evaluate responses to the selection criteria and rate the quality of the applications based on those responses. For these reasons, the Department declines to further delineate what constitutes a highly rated plan. Applicants are asked to address the criterion in their proposed plans in a way that they believe successfully responds to the selection criterion.

Changes: None.

(f) Dissemination of Information and Best Practices

Comment: Two commenters suggested that the Department revise selection criterion (f) *Dissemination of Information and Best Practices* to request a description of the extent to which authorizers or other State entities, as well as the SEA, will serve as leaders in identifying and disseminating information, including information regarding the quality of their plans to disseminate information and research on best or promising practices that effectively incorporate student body diversity and are related to school discipline and school climate.

Discussion: We understand that SEAs often collaborate with authorizers or other State entities to disseminate information about charter schools and best practices in charter schools. Information dissemination is a requirement for all SEAs that receive CSP funding. This criterion is intended to collect specific information about how the SEA plans to meet this requirement. Although we support collaboration, because SEAs are the grantees under the program, we decline to make the proposed revision.

Changes: None.

(g) Oversight of Authorized Public Chartering Agencies

Comment: One commenter expressed support for selection criterion (g) *Oversight of Authorized Public Chartering Agencies.* Another commenter recommended deleting this selection criterion, stating that it assumes that authorizers are providing inadequate or ineffective oversight and that requiring SEAs to oversee and manage authorizers' activities would impose undue costs and require more funding than the CSP Grants for SEAs program currently provides. The commenter also stated that the criterion should be deleted because it assumes that SEAs have statutory authority to monitor, evaluate, or otherwise hold accountable authorizers.

Discussion: This criterion is not intended to imply that authorizers are not providing adequate or effective oversight. Rather, the criterion is intended to challenge SEAs to take steps to ensure higher-quality charter school authorizing. We understand that SEAs do not always have the statutory authority to take action against authorizers that perform poorly or approve low-quality charter schools. However, all SEAs can review and evaluate data on authorizer and charter school performance, and this criterion is designed to encourage that role within the administrative plans SEAs put in place for the CSP grant. The CSP Grants for SEAs program allows up to five percent of funds to be set aside for administrative costs, which can be used for a wide range of activities to support charter schools funded under the grant, including monitoring and oversight and providing technical assistance.

Changes: None.

Comment: One commenter suggested revising paragraph (1) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to require authorizers only to seek charter school petitions from developers that have the capacity to create *high-quality charter schools,* rather than requiring authorizers to seek and approve charter school petitions from such developers. Second, two commenters recommended revising paragraph (1) to focus on the capacity of developers to create charter schools that can become *high-quality charter schools.*

Discussion: We decline to delete the word ''approving'' from paragraph (1), which asks for the SEA's plan on how it will ensure that authorizers both seek and approve applications from developers with the capacity to create *high-quality charter schools.* We believe that, in addition to seeking applications from developers that have the capacity to create *high-quality charter schools,* authorizers should strive to assess the likelihood that applications will result in *high-quality charter schools.* However, we agree that it would be useful to clarify that these developers need only demonstrate that they have the capacity to create charter schools that can become *high-quality charter schools.* These suggested changes are consistent with other changes that we are making to these priorities, requirements, definitions, and selection criteria.

Changes: We have revised paragraph (1) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to refer to developers that have the capacity to create charter schools that can become *high-quality charter schools.*

Comment: Several commenters recommended either substantial edits to paragraph (2) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* or the deletion of paragraph (2) altogether. These commenters stated that the focus on evidence-based whole-school models and practices related to racial and ethnic diversity would significantly limit charter school and authorizer autonomy and restrict innovation in the charter school sector. Finally, some commenters opined that this factor would create an obstacle for charter school developers seeking to open schools in communities that are not racially and ethnically diverse.

Discussion: We agree that innovation is a critical and fundamental attribute of charter schools. We disagree, however, that asking SEAs to describe how they will ensure that authorizers are approving charter schools with design elements that incorporate evidence-based school models and practices would limit innovation or preclude the creation of charter schools in certain communities. Despite the commenter's concern, this criterion does not ask applicants to ensure that all approved charter schools solely use evidence-based approaches—authorizers may approve charter school petitions that include new or untested ideas as long as there are elements within their new approach that are supported by evidence.

As discussed above, selection criteria do not impose requirements on applicants, but merely request information to enable peer reviewers to evaluate how well an applicant will comply with certain programmatic requirements based on their responses to the selection criteria. Thus, while we encourage SEAs and charter schools to take steps to improve student body diversity in charter schools, paragraph (2) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* does not require every approved school to be racially and ethnically diverse.

Changes: None.

Comment: Multiple commenters recommended that the Department revise paragraph (5) of selection criterion (g) *Oversight of Authorized Public Chartering* to reflect language added in the FY 2015 Appropriations Act which requires applicants to provide assurances that authorizers use increases in student academic achievement for all groups of students as one of the most important factors in deciding whether to renew a school's charter.

Discussion: We agree that this factor should be consistent with the language in the FY 2015 Appropriations Act, which was enacted after publication of the NPP in the **Federal Register**, and have made appropriate revisions.

Changes: We have revised paragraph (5) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to reflect the requirement in the FY 2015 Appropriations Act that SEAs provide assurances that State law, regulations, or other policies require authorizers to use increases in student academic achievement as one of the most important factors in charter renewal decisions, instead of the most important factor.

Comment: One commenter recommended that the Department clarify selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to ensure that States hold authorizers accountable for the enrollment, recruitment, retention and outcomes of all students, including students with disabilities. The commenter noted that all State charter school laws have provisions regarding special education and related services but that the substance of these statutes varies considerably from State to State. The commenter recommended providing clarity within selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to specify that in accordance with IDEA, SEAs must exercise their authority to ensure authorizers provide students with disabilities equal access to the State's charter schools, and provide students with disabilities a free appropriate public education in the least restrictive environment.

Discussion: In general, selection criteria do not impose requirements on applicants. Rather, they are intended to solicit information to enable peer reviewers to evaluate an SEA's plan to

hold authorizers accountable within the constraints of the State's charter school law. One factor in selection criterion (g) provides for consideration of the quality of the SEA's plan to monitor, evaluate, assist, and hold authorized public chartering agencies accountable in monitoring their charter schools on at least an annual basis, including ensuring that the charter schools are complying with applicable State and Federal laws. Charter law provisions regarding IDEA requirements would be part of the SEA's plan.

In addition, although SEAs' statutory authority over authorizers varies from State to State, all charter schools receiving CSP subgrants through the SEA must comply with applicable Federal and State laws, including Federal civil rights laws and part B of the IDEA, to meet the Federal definition of a charter school (section 5210(1)(G) of the ESEA, 20 U.S.C. 7221i).

We also refer the commenter to selection criterion (a) *State-Level Strategy,* which requires SEAs to demonstrate how they will improve educational outcomes for students throughout the State. Finally, we refer the commenter to selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students,* which explicitly requires SEAs to provide a plan and vision for supporting *educationally disadvantaged students,* which includes students with disabilities.

Changes: None.

Comment: One commenter recommended revising selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to allow the Secretary to consider the quality of an authorizer either in addition to, or in place of, the quality of an SEA's plan to monitor the authorizer. The commenter expressed concern that the elements of this criterion will give an SEA undue influence over authorizers.

Discussion: The CSP Grants for SEAs program provides funds to SEAs to enable them to conduct charter school subgrant programs in their State. State charter school laws vary with respect to an SEA's oversight authority over authorizers. Therefore, this criterion is intended to challenge SEAs to take steps to ensure that charter school authorizers establish policies and employ practices to create and retain *high-quality charter schools* that meet the terms of their charter contracts and comply with applicable State and Federal laws, within the constraints of the State's charter school law. For this reason, we leave the language as originally drafted.

Changes: None.

Comment: Several commenters suggested textual revisions to selection criterion (g) *Oversight of Authorized Public Chartering Agencies.* First, one commenter recommended extensive changes to paragraph (2) in order to emphasize the need for an authorizer to conduct a petition approval process that considers an individual developer's capacity to create *high-quality charter schools,* among other factors. Additionally, one commenter suggested adding financial measures to academic and operational performance measures as an element of paragraph (3). One commenter recommended that we revise paragraph (7) to emphasize providing rather than supporting charter school autonomy. Finally, one commenter stated that the words ''public'' and ''government'' are not synonymous with regard to authorizing entities, but did not provide additional context for the comment.

Discussion: We decline to change paragraph (2) as suggested. We believe that it is critically important for an authorizer to evaluate entities for the capacity to develop a *high-quality charter school.* We also do not believe that it is appropriate to add a reference to financial factors to paragraph (3), as financial performance expectations are included as part of the general operational performance expectations discussed in the paragraph.

We also disagree with the proposed revisions to paragraph (7). We recognize that autonomy manifests in many ways and that the degree of autonomy afforded to charter schools is based on State law. With this criterion, we ask SEAs to describe their plans to ensure that authorizers are supporting charter school autonomy; this could be through the authorizer's provision of that autonomy, but also could occur in other indirect ways. For this reason, we decline to revise the language as suggested by the commenter. Finally, we agree that the terms ''public'' and ''government'' are not synonymous with respect to authorizers.

Changes: None.

Comment: One commenter suggested that we revise selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to request that an SEA describe all efforts in the State to strengthen authorized public chartering agencies, rather than describe only the SEA's efforts. The commenter expressed expectations that an SEA will have robust oversight over authorizers.

Discussion: Because SEAs are the grantees under this program, we believe the emphasis should remain on the SEA rather than other entities within the State. We note that selection criterion (e) *Vision for Growth and Accountability* addresses the statewide vision for strengthening authorizers, which may involve direct State action or other entities playing an oversight or performance management role in partnership with the State.

Changes: None.

Comment: One commenter recommended that we revise selection criterion (g) *Oversight of Authorized Public Chartering Agencies* to ask SEAs to include an analysis of whether the State's budget is adequate for the SEA's plan to support high-quality authorizing within the context of each State's charter school law.

Discussion: We agree with the commenter that the adequacy of a State's budget for an SEA's plan is relevant in determining the quality of the SEA's plan to support high-quality authorizing. While we encourage each SEA to provide a detailed description of its plan, including any available resources to implement the plan, we decline to specify what constitutes a quality plan.

Changes: None.

(h) Management Plan and Theory of Action

Comment: One commenter suggested that we limit consideration of monitoring reviews under paragraph (3)(ii) of selection criterion (h) *Management Plan and Theory of Action* to those that have occurred within the past three years.

Discussion: Restricting the time period for monitoring reviews to three years may not provide a full picture of an applicant's capacity for effective program administration. Further, permitting an SEA to address compliance issues or findings identified in reviews beyond the three-year period will enable it to describe any corrective actions that have been implemented successfully.

Changes: None.

(i) Project Design

Comment: One commenter recommended that we revise paragraph (1)(i) of selection criterion (i) *Project Design* to request information about how the SEA will ensure that subgrants will be awarded to applicants demonstrating the capacity to create charter schools that can become *high-quality charter schools,* as opposed to the capacity to create *high-quality charter schools.*

Discussion: With this criterion, we ask SEAs to describe the likelihood of awarding subgrants to applicants that demonstrate the capacity to create *high-quality charter schools.* Asking

applicants to demonstrate their capacity to create *high-quality charter schools* implies that the SEA will employ rigorous subgrant review processes to assure subgrants are awarded to eligible applicants with the capacity to create *high-quality charter schools.* This criterion does not impose a time limit by which new charter schools must be able to demonstrate that they are *high-quality charter schools,* but still conveys the ultimate goal of SEAs awarding CSP subgrants to charter school developers that will create *high-quality charter schools.* We believe that this language already achieves the commenter's goal and decline to revise the criterion.

Changes: None.

Comment: One commenter stated that it is not useful to ask SEAs to estimate the number of *high-quality charter schools* they will create during the life of the grant or the proportion of charter schools that have yet to open that will become high-quality. The commenter suggested that we strike paragraph (1)(i) of selection criterion (i) *Project Design,* which requests the SEA to discuss the subgrant application and peer review processes, and how the SEA intends to ensure that subgrants will be awarded to applicants demonstrating the capacity to create *high-quality charter schools* and retain the language in paragraph (1)(ii), which requests that the SEA provide a reasonable year-by-year estimate of the number of subgrants the SEA expects to award during the project period.

Discussion: Paragraph (1)(i) of selection criterion (i) *Project Design* does not ask SEAs to provide an estimate of new charter schools that will become high-quality, but rather, focuses on the quality of the SEA's subgrant award process and how the SEA will ensure that subgrants are awarded to applicants demonstrating the capacity to create *high-quality charter schools.* On the other hand, we agree that the determination of the amount of CSP funds to award to an SEA requires a reasonable estimate of the number and size of subgrants the SEA expects to award during the grant period. For these reasons, we decline to make the change suggested by the commenter.

Changes: None.

Comment: One commenter suggested that the Department revise paragraph (3) of selection criterion (i) *Project Design* to include maintaining as well as increasing student body diversity as examples of areas of need in the State on which the SEA's subgrant program might focus.

Discussion: We agree that it would be useful to add maintaining a high level of student body diversity as an example of a potential area of need in a State. For this reason, we have made the recommended revision.

Changes: We have revised paragraph (3) of selection criterion (i) *Project Design* to refer to increasing student body diversity or maintaining a high level of student body diversity, as opposed to just increasing diversity.

General Comments

Comment: Several commenters expressed the opinion that charter school law is a State and local concern and should be subject to less Federal regulation. Several other commenters expressed concern that the proposed priorities, requirements, definitions, and selection criteria fail to acknowledge that States may have charter school laws that minimize the importance of SEAs in the charter school sector.

Discussion: We recognize that charter schools are authorized under State law and that State charter school laws vary. The CSP Grants for SEAs program, however, provides funds to SEAs to enable them to conduct charter school subgrant programs in the State. In order for SEAs to qualify for CSP funds, they must comply with the statutory and regulatory requirements governing the program. These priorities, requirements, definitions, and selection criteria are intended to clarify CSP requirements and to ensure that CSP funds are spent in accordance with those requirements.

Changes: None.

Comment: One commenter suggested that the Department require SEAs to ensure that education management organizations (EMOs) make their financial records available to governing boards on request.

Discussion: As for-profit entities, EMOs are not eligible to apply for CSP subgrants under the CSP Grants to SEAs program. While CSP subgrant recipients may enter into contracts with EMOs for the provision of goods and services within the scope of authorized activities under the program and approved subgrant project, the subgrantee is responsible for administering the project and supervising the administration of the project. When negotiating the terms of the contract with the EMO, the subgrantee should ensure that the contract includes whatever provisions are necessary for the proper and efficient administration of the subgrant (*e.g.* a provision that would give the grant and subgrant recipients, the Department, the Comptroller of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the contractor that are directly pertinent to the program for the purpose of conducting audits or examinations).

Changes: None.

Comment: One commenter expressed concern that the priorities, requirements, definitions, and selection criteria collectively disadvantage students with disabilities.

Discussion: We disagree that these final priorities, requirements, definitions, and selection criteria disadvantage students with disabilities. A major focus of the CSP grants for SEAs program is to provide financial assistance to SEAs to enable them to conduct charter school subgrant programs to assist educationally disadvantaged and other students in meeting State academic content standards and State student academic achievement standards. Likewise, these final priorities, requirements, definitions, and selection criteria reflect the Department's interest in ensuring that charter schools receiving CSP funds serve *educationally disadvantaged students,* including students with disabilities.

Changes: None.

Comment: One commenter stated that the priorities, requirements, definitions, and selection criteria imply that *economically disadvantaged students* as well as ethnic and racial minority students are not well-represented in charter schools and that this is not true in all States. In addition, the commenter provided an example of a State in which charter schools primarily serve students at greatest academic risk, and suggested that the Department emphasize academic growth as opposed to student achievement in order to capture the success of charter schools serving those students.

Discussion: These final priorities, requirements, definitions, and selection criteria are not intended to imply that economically disadvantaged, racial, or ethnic minority students are underrepresented in charter schools nationwide. We recognize that student demographic distributions vary by State and that many charter schools are successfully serving diverse student populations, including *educationally disadvantaged students* (*i.e.,* students at risk of academic failure) and students who are members of racial or ethnic minorities. In addition, the final priorities, requirements, definitions, and selection criteria provide opportunities for SEAs to demonstrate academic growth as well as improved student academic achievement in charter schools for all students, including *educationally disadvantaged students.* For example, paragraph (1) of the definition of a *high-quality charter*

school requires a charter school to demonstrate increased academic achievement and attainment for all students.

Changes: None.

Comment: One commenter recommended that the Department consider diversity-enhancing policies in the charter, magnet, and non-charter school sectors. Specifically, the commenter recommended that the Department support strategies that reflect collaborative cross-sector efforts and community input, consider actual and potential cross-sector student enrollment dynamics and impacts, and broadly increase school diversity across all taxpayer-supported school sectors.

Discussion: We agree that cross-sector collaboration can be useful in increasing student body diversity in public schools, including charter schools. Although SEAs are the only eligible applicants under this program, SEAs have great flexibility to devise charter school subgrant programs that promote cross-sector collaboration within the parameters of the CSP authorizing statute and applicable regulations.

Changes: None.

Comment: One commenter suggested that paragraph (3) of selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students,* which considers the extent to which an SEA encourages innovations in charter schools in order to improve the academic achievement of *educationally disadvantaged students,* and paragraph (2) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies,* which considers whether an SEA's plan ensures that authorizers are approving charter school petitions with design elements that incorporate evidence-based school models and practices, are contradictory.

Discussion: We disagree that the two factors contradict each other. For example, an SEA may support charter schools that incorporate evidence-based practices into an innovative school model focused on improving the academic achievement of *educationally disadvantaged students.* While the entirety of the proposed model may not have been evaluated because of the demographics of *educationally disadvantaged students* served, some or all of the individual components of the model or practices used may be evidence-based. In the context of selection criterion (g) *Oversight of Authorized Public Chartering Agencies,* the intent of encouraging SEAs to propose a plan whereby authorizers approve charter schools petitions with design elements that incorporate evidence-based school models is to promote rigorous review as it relates to authorizing but not to discourage authorizers from approving an untested innovative school design model focused on serving a subset of *educationally disadvantaged students,* as long as the model, or elements or practices with the model, are sufficiently based in research.

Changes: None.

Comment: One commenter stated that the Department should require SEAs to work with all partners in the field to ensure that the pool of charter school developers is diverse and focused on the needs of *educationally disadvantaged students.*

Discussion: We believe that it is important for SEAs to work with other entities that are relevant to charter schools to improve the overall quality of the charter school sector and to improve academic outcomes for *educationally disadvantaged students.* To that end, we have included selection criteria that ask applicants to discuss their State-level strategies and plans to serve *educationally disadvantaged students.*

Changes: None.

Comment: One commenter recommended that the Department consider additional options for a State to submit a competitive application. The commenter indicated that, in some States, the chief education officer (*e.g.,* superintendent of instruction or similar position) may lack the will or ability to advance a strong grant proposal under the CSP Grants for SEAs program.

Discussion: Given that this program awards funds to SEAs, we cannot compel a State to advance charter schools when the relevant leadership believes that it is not appropriate to do so. In States in which the SEA does not have an approved application under the CSP, non-SEA eligible applicants (*i.e.,* charter school developers and charter schools) may apply directly to the Department for CSP startup and dissemination grants. Additional information about the Department's CSP Grants to Non-SEA Eligible Applicants program can be found at *www2.ed.gov/programs/charternonsea/applicant.html.*

Changes: None.

Comment: One commenter expressed general concern about the structure of the priorities, requirements, definitions, and selection criteria, stating that the priorities are long and vague and may be difficult for the Department to apply. The commenter opined that the priorities, requirements, definitions, and selection criteria favor a narrow interpretation of sound chartering practices that lacks research-based support.

Discussion: These final priorities, requirements, definitions, and selection criteria will form the basis of our CSP Grants for SEAs competition for FY 2015 and future years. While we do not identify which priorities we will utilize for any particular competition, we believe that the substance of the priorities in this NFP is appropriate given the amount of Federal funds that will flow to the States and their subgrantees. We also disagree that these final priorities, requirements, definitions, and selection criteria lack appropriate alignment with leading practices. Rather, we believe that these final priorities, requirements, definitions, and selection criteria are well-founded in current educational research and widely-accepted practice.

For applicants that require additional information about these final priorities, requirements, definitions, and selection criteria, the Department will include information in each NIA on any planned pre-application meetings as well as instructions on how to request additional information.

Changes: None.

Comment: One commenter recommended that the Department add a selection criterion to measure the strength of a State's charter school law with respect to provisions related to the closure of *academically poor-performing charter schools.*

Discussion: We agree that an SEA's ability to close *academically poor-performing charter schools* is an important factor in assessing the quality of an SEA's grant application. These priorities, requirements, definitions, and selection criteria address school closure in several areas, including *Priority 3—High-Quality Authorizing and Monitoring Processes,* selection criterion (c) *Past Performance,* and selection criterion (e) *Vision for Growth and Accountability.* These provisions address State charter authorizing practices, including charter school closure policies, and their impact on the development of *high-quality charter schools* and closure of *academically poor-performing charter schools.*

Changes: None.

Comment: One commenter recommended that we add a new priority related to facilities access, based on the following additional factors: (1) Funding for facilities; (2) assistance with facilities acquisition; (3) access to public facilities; (4) the ability to share in bonds or mill levies; (5) the right of first refusal to purchase public school buildings; or (6) low- or no-cost leasing privileges.

Discussion: We support State efforts to assist charter schools in acquiring

facilities. Accordingly, selection criterion (a) *State-Level Strategy* considers the extent to which funding equity for charter school facilities is incorporated into the *State-level strategy.*

Changes: None.

Comment: One commenter stated that the proposed priorities generally imply that authorizers must follow a uniform path for decision-making, that such a path will lead to homogony across authorizers, and that this monoculture is not preferable. The commenter suggested that the Department address authorizer diversity and an authorizer's ability to exercise its own judgment and discretion with regard to chartering decisions.

Discussion: We agree that authorizers should exercise judgment over their portfolio of charter schools and should be evaluated based on the success of those portfolios. We also note that it is important for SEAs to develop and adopt principles and standards around charter school authorizing to ensure some level of quality control and public accountability within the charter sector if charter schools are to fulfill their intended purposes. These final priorities, requirements, definitions, and selection criteria enable the Department and peer reviewers to evaluate SEA applications regarding quality control and public accountability around charter school authorizing within their State.

Changes: None.

Comment: Two commenters expressed concern about charter schools' compliance with open records and meeting laws. One of the commenters recommended that the Department require States to ensure that charter schools comply with these laws, while the other commenter suggested that the Department require SEAs to provide guidance to charter schools, LEAs, and authorizers clarifying that neither the Family Educational Rights and Privacy Act (FERPA) nor IDEA prevent the sharing of student data in an efficient and timely manner.

Discussion: We support transparency across all aspects of the chartering process. Open meetings laws are not addressed in ESEA or other areas of Federal law. Therefore, the decision to include charter schools in open meetings requirements is a State issue. It is worth noting, however, that factors (4) and (6) of selection criterion (g) *Oversight of Authorized Public Chartering Agencies* ask charter schools how they comply with all related State laws. Regarding the request to add an additional assurance regarding records transfer, we note that section 5208 of the ESEA (20 U.S.C. 7221g) requires an SEA and LEA to transfer a student's records when that student transfers schools.

*Change*s: None.

Comment: One commenter expressed general concern over parent contracts in certain charter school settings. The commenter stated that these contracts have the potential to deny eligibility to a student if a child's parent or guardian is unable to comply with the contract, and that such contracts can have a discriminatory impact on certain students. The commenter recommended that the Department determine CSP Grants to SEAs program eligibility on the condition that subgrantees prohibit parent contracts. The commenter also recommended that the Department require school districts, authorizers, and individual schools to provide a city-wide, multi-year plan to note demographic changes, criteria for new school openings or closings, and equitable geographic distribution of schools. Additionally, the commenter asked that the Department require authorizers to submit an impact statement before approving any new charter school application. Finally, the commenter recommended that the Department require an SEA to conduct an annual assessment of the cumulative impact of charter schools on traditional school districts. This assessment would analyze funding, enrollment trends, and educational outcomes.

Discussion: While the CSP authorizing statute does not expressly prohibit parent contracts, SEAs are required to ensure that charter schools are providing equal educational opportunities for all students. In addition, charter schools receiving CSP subgrants may not charge tuition and, as public schools, ls must employ open admissions policies and provide all students with an equal opportunity to attend the charter school. While SEAs have great flexibility to conduct their charter schools subgrant programs in a manner that promotes State goals and objectives, they must do so consistent with CSP requirements. Thus, SEAs may not require or allow charter schools to employ admissions or other policies that are discriminatory or otherwise exclude certain students from applying for admission to the charter school.

With regard to the commenter's request that we require impact statements, we do not believe that requiring an SEA to conduct an annual impact assessment of charter schools represents the best expenditure of CSP funds. Further, elements related to impact could be addressed in selection criterion (a) *State-Level Strategy,* and also under selection criterion (g) *Oversight of Authorized Public Chartering Agencies,* through the development of a *State-level strategy* and authorizers' review and monitoring of their school portfolios. For these reasons, we decline to impose any of the recommended requirements.

Changes: None.

Comment: One commenter recommended that the Department require SEAs to post information regarding individual charter schools online, such as the school's charter, performance contract, and school rules. The commenter also stated that members of the charter sector should be subject to financial conflict of interest guidelines similar to those that magnet schools follow.

Discussion: We believe that charter schools should be transparent in their operations and make information as widely available to the public as possible. In addition, charter schools are public schools and, as such, are subject to all applicable laws governing information access. However, we defer to States regarding the specific information they choose to post on a particular Web site.

Changes: None.

Comment: One commenter supported the inclusion of the statutory priority for States that have a non-LEA authorizer as described in section 5202(e)(3)(B) of the ESEA (20 U.S.C. 7221a(e)(3)(B)). The commenter expressed the belief that the priority was not included in the NPP because the Department does not propose to supplement the statutory language, and that the priority should be used in the FY 2015 CSP Grants for SEAs competition.

Discussion: The commenter is correct that the final priorities in this NFP do not alter the statutory priority described in section 5202(e)(3)(B) of the ESEA (20 U.S.C. 7221a(e)(3)(B)), which delineates priority criteria to incentivize States who have an authorizer that is not a LEA or, if only LEAs can authorize charter schools within a given State, an appeals process for the denial of a charter school application.

Changes: None.

Comment: One commenter asked the Department to require applicants to submit information about the SEA's process for awarding grants to charter schools with a significant expansion of enrollment under the CSP program and noted that current CSP regulations give States latitude in defining significant expansion of enrollment.

Discussion: Under this program, the Department awards grants to SEAs to assist them in conducting a charter school subgrant program in their States. As a general matter, funds may be used

only for post-award planning and initial implementation of charter schools and the dissemination of information about charter schools. The CSP Replication and Expansion Grant program (CFDA Number 84.282M) awards grants to non-profit charter management organizations (CMOs) and other not for-profit entities to support the replication and expansion of *high-quality charter schools.* In limited circumstances, the Department has granted waiver requests submitted by SEAs under this program to enable the SEA to award a CSP grant to a charter school that has substantially expanded its enrollment. Because CSP Grants to SEAs generally do not support charter school expansions, however, the Department declines to include the proposed requirement.

Changes: None.

Comment: One commenter suggested including a note in the NIA stating that, while guiding growth within the priorities of a State or district is an admirable goal, the application and review process should not remove a strong community charter school proposal from consideration just because it does not focus on a priority for a State or authorizer.

Discussion: We acknowledge that a community charter school applicant may propose models to a specific authorizer that may not be aligned with a State's specific priorities for charter growth. While SEAs may exercise flexibility in designing and establishing priorities for their CSP subgrant programs, they are required to utilize a peer review process to evaluate subgrant applications to ensure fairness in the competitive subgrant award process and that the highest quality applications are approved for funding. We encourage the State to have a deliberate plan for innovative charter school growth, but individual authorizers approve or reject charter school petitions based on the requirements of the applicable State charter school law.

Changes: None.

Comment: We received several general comments about the goals stated in the Executive Summary section. One commenter stated that including annual measurable objectives as the most important factor in charter renewal decisions will exclude other equally important factors such as health, safety, finances, and governance. Additionally, one commenter stated that requiring all subgroups to attain high levels of achievement is inappropriate at the present time. Finally, two commenters asserted that an SEA should have the authority to establish academic outcomes related to its authorizers' portfolios so that the SEA can drive systemic and systematic changes in charter practices while also increasing the performance standards of a State's charter school system.

Discussion: With regard to the first point, we do not intend to imply that annual measurable objectives are the most important factor. All enumerated factors are equally important and include the elements enumerated by the commenter. Further, we recognize that various subgroups will achieve differing gains over time. In addition, while SEA oversight authority over authorizers varies based on State charter school law, we believe that having a *State-Level Strategy* provides the SEA with an opportunity to create systemic and systematic change while also increasing student academic achievement in charter schools.

With regard to the final point, we disagree with the commenter and note that an SEA's authority is an issue of State law. We do, however, believe that these priorities, requirements, definitions, and selection criteria may motivate a State to exercise a more active role over authorizer accountability.

Changes: None.

Comment: One commenter commended the Department's focus on *educationally disadvantaged students* and recommended that we reward States that present data demonstrating that there is equitable access to charter schools for all subgroups.

Discussion: We believe that equitable access to charter schools for all subgroups is addressed in paragraph (2) of selection criterion (d) *Quality of Plan to Support Educationally Disadvantaged Students.* A critical aspect of these priorities, requirements, definitions, and selection criteria is to ensure equitable access to charter schools for students across all subgroups, including *educationally disadvantaged students.* For this reason, we decline to make the suggested revision.

Changes: None.

FINAL PRIORITIES:

Priority 1—Periodic Review and Evaluation.

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

Priority 2—Charter School Oversight.

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

(a) That each charter school in the State—

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

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

(3) Demonstrates improved student academic achievement; and

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

Priority 3—High-Quality Authorizing and Monitoring Processes.

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

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

(1) Rigorous academic and operational performance expectations (including performance expectations related to financial management and equitable treatment of all students and applicants);

(2) Performance objectives for each school aligned to those expectations;

(3) Clear criteria for renewing the charter of a school based on an objective body of evidence, including evidence that the charter school has (a) met the performance objectives outlined in the charter or performance contract; (b)

demonstrated organizational and fiscal viability; and (c) demonstrated fidelity to the terms of the charter or performance contract and applicable law;

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

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

(b) Clear and specific standards and formalized processes that measure and benchmark the performance of the authorized public chartering agency or agencies, including the performance of its portfolio of charter schools, and provide for the annual dissemination of information on such performance;

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

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

Priority 4—SEAs that Have Never Received a CSP Grant.

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

Types of Priorities:

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

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

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

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

FINAL REQUIREMENTS:

Academically poor-performing charter school: Provide one of the following:

(a) Written certification that, for purposes of the CSP grant, the SEA uses the definition of *academically poor-performing charter school* provided in this notice; or

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

High-quality charter school: Provide one of the following:

(a) Written certification that, for purposes of the CSP grant, the SEA uses the definition of *high-quality charter school* provided in this notice; or

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

Logic model: Provide a complete logic model (as defined in 34 CFR. 77.1) for the project. The logic model must address the role of the grant in promoting the State-level strategy for expanding the number of *high-quality charter schools* through startup subgrants, optional dissemination subgrants, optional revolving loan funds, and other strategies.

Lottery and Enrollment Preferences: Describe (1) how lotteries for admission to charter schools will be conducted in the State, including any student enrollment preferences or exemptions from the lottery that charter schools are required or expressly permitted by the State to employ; and (2) any mechanisms that exist for the SEA or authorized public chartering agency to review, monitor, or approve such lotteries or student enrollment preferences or exemptions from the lottery. In addition, the SEA must provide an assurance that it will require each applicant for a CSP subgrant to include in its application descriptions of its recruitment and admissions policies and practices, including a description of the proposed lottery and any enrollment preferences or exemptions from the lottery the charter school employs or plans to employ, and how those enrollment preferences or exemptions are consistent with State law and the CSP authorizing statute (for information related to admissions and lotteries under the CSP, please see Section E of the CSP Nonregulatory Guidance (January 2014) at *www2.ed.gov/programs/charter/nonregulatory-guidance.html*).

FINAL DEFINITIONS:

Academically poor-performing charter school means—

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

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

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

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

Educationally disadvantaged students means economically disadvantaged students, students with disabilities, migrant students, limited English proficient students (also referred to as English learners or English language learners), neglected or delinquent students, or homeless students.

High-quality charter school means—

(a) A charter school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increased student academic achievement and attainment (including, if applicable and available, high school graduation rates and college and other postsecondary education enrollment rates) for all students, including, as

applicable, *educationally disadvantaged students* served by the charter school;

(2) Either—

(i) Demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) at the charter school; or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111 (b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311) at the charter school and significant gains in student academic achievement for all populations of students served by the charter school;

(3) Results (including, if applicable and available, performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college and other postsecondary education attendance rates, and college and other postsecondary education persistence rates) for low-income and other *educationally disadvantaged students* served by the charter school that are above the average academic achievement results for such students in the State;

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

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

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

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

FINAL SELECTION CRITERIA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Past Performance.* The Secretary considers the past performance of charter schools in a State that enacted a charter school law for the first time five or more years before submission of its application. In determining the past performance of charter schools in such a State, the Secretary considers one or more of the following factors:

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

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

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

(d) *Quality of Plan to Support Educationally Disadvantaged Students.* The Secretary considers the quality of the SEA's plan to support *educationally disadvantaged students.* In determining the quality of the plan to support *educationally disadvantaged students,* the Secretary considers one or more of the following factors:

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

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

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

(2) The quality of the SEA's plan to ensure that charter schools attract, recruit, admit, enroll, serve, and retain *educationally disadvantaged students* equitably, meaningfully, and, with regard to *educationally disadvantaged*

students who are students with disabilities or English learners, in a manner consistent with, as appropriate, the IDEA (regarding students with disabilities) and civil rights laws, in particular, section 504 of the Rehabilitation Act of 1973, as amended, and title VI of the Civil Rights Act of 1964;

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

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

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

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

(2) The ambitiousness, quality of vision, and feasibility of the SEA's plan (including key actions) to support the creation of *high-quality charter schools* during the project period, including a reasonable estimate of the number of *high-quality charter schools* in the State at both the beginning and the end of the project period; and

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

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

(1) The extent to which the SEA will serve as a leader in the State for identifying and disseminating information and research (which may include, but is not limited to, providing technical assistance) about best or promising practices in successful charter schools, including how the SEA will use measures of efficacy and data in identifying such practices and assessing the impact of its dissemination activities;

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

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

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

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

(1) Seeking and approving charter school petitions from developers that have the capacity to create charter schools that can become *high-quality charter schools*;

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

(3) Establishing measureable academic and operational performance expectations for all charter schools (including alternative charter schools, virtual charter schools, and charter schools that include pre-kindergarten, if such schools exist in the State) that are consistent with the definition of *high-quality charter school* in this notice;

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

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

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

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

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

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

(1) The quality, including the cohesiveness and strength of reasoning, of the logic model (as defined in 34 CFR 77.1(c)), and the extent to which it

addresses the role of the grant in promoting the State-level strategy for using charter schools to improve educational outcomes for students through CSP subgrants for planning, program design, and initial implementation; optional dissemination subgrants; optional revolving loan funds; and other strategies;

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

(3) The adequacy of the management plan to—

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

(ii) Address any compliance issues or findings related to the CSP that are identified in an audit or other monitoring review.

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

(1) The quality of the SEA's process for awarding subgrants for planning, program design, and initial implementation, and, if applicable, for dissemination, including:

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

(ii) A reasonable year-by-year estimate, with supporting evidence, of (a) the number of subgrants the SEA expects to award during the project period and the average size of those subgrants, including an explanation of any assumptions upon which the estimates are based; and (b) if the SEA has previously received a CSP grant, the percentage of eligible applicants that were awarded subgrants and how this percentage related to the overall quality of the applicant pool;

(2) The process for monitoring CSP subgrantees;

(3) How the SEA will create a portfolio of subgrantees that focuses on areas of need within the State, such as increasing student body diversity or maintaining a high level of student body diversity, and how this focus aligns with the *State-Level Strategy*;

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

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

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, and definitions we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

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

This regulatory action would have an annual effect on the economy of more than $100 million because we anticipate awarding more than $100 million in grants to SEAs in FY 2015. Therefore, this action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits would justify the costs.

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 this regulatory impact analysis we discuss the potential costs and benefits of this action, comments we received regarding those costs and benefits, and regulatory alternatives we considered.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action would not impose significant costs on eligible SEAs, whose participation in this program is voluntary. This action would not impose requirements on participating SEAs apart from those related to preparing an application for a CSP grant. The costs associated with meeting these requirements are, in the Department's estimation, minimal.

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

Discussion of Comments

We received several comments expressing concern that this regulatory action imposes undue administrative burden on applicants and grantees. Although the Department recognizes that there are costs to SEAs associated with applying for and receiving CSP grants, we do not believe that the requirements imposed on SEAs through this regulatory action—which relate only to preparing an application for a CSP grant—carry significant costs. Moreover, for the reasons noted in the preceding section, we believe the benefits of this action to the Federal government and to SEAs outweigh those costs.

We note, in addition, that SEAs receiving CSP grants may use up to 5 percent of grant funds for administrative costs associated with carrying out their grant projects.

Regulatory Alternatives Considered

The Department believes that the final priorities, requirements, definitions, and selection criteria in this notice are needed to administer the program effectively. As an alternative to promulgating the selection criteria, the Department could choose from among the selection factors authorized for CSP grants to SEAs in section 5204(a) of the ESEA (20 U.S.C. 7221c(a)) and the general selection criteria in 34 CFR 75.210. We do not believe that these factors and criteria provide a sufficient basis on which to evaluate the quality of applications. In particular, the factors and criteria would not sufficiently enable the Department to assess an applicant's past performance with respect to the operation of *high-quality charter schools* or the closure of *academically poor-performing charter schools* (as examined under selection criterion (c) *Past Performance*) or its plan to hold authorized public chartering agencies accountable for the performance of charter schools that they approve (as under selection criterion (g) *Oversight of Authorized Public Chartering Agencies*), considerations which are critically important in determining applicant quality.

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

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the changes in annual monetized transfers as a result of this regulatory action. Expenditures are classified as transfers from the Federal Government to SEAs.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$115.
From Whom To Whom?	From The Federal Government to SEAs.

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

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

Waiver of Congressional Review Act

These regulations have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final priorities, requirements, definitions, and selection criteria are needed to conduct the 2015 CSP Grants for SEAs competition. The Department must award funds authorized for this program under the FY 2015 Appropriations Act for this competition to qualified applicants by September 30, 2015, or the funds will lapse. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final priorities, requirements, definitions, and selection criteria and make grant awards to qualified applicants by the September 30, 2015 deadline. When the 60-day delayed effective date is added to the time the Department will need to receive applications (approximately 35 days), review the applications (approximately 45 days), and finally approve applications (approximately 30 days), the Department will not be able to allocate funds authorized under the FY 2015 Appropriations Act to all qualified applicants by September 30, 2015.

Not being able to allocate the approximately $116 million would have a significant negative effect on the quality of charter schools and public accountability and oversight. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-day delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

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

request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 8, 2015.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

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