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DEPARTMENT OF EDUCATION

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Final Priorities, Requirements, Definitions, and Selection Criteria--Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools

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

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

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria for Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer grants) under the Expanding Opportunity Through Quality Charter Schools Program (CSP). We may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2019 and later years. We take this action

to support the opening of new charter schools, Catalog of Federal Domestic Assistance (CFDA) number 84.282B, and the replication and expansion of high-quality charter schools, CFDA number 84.282E, throughout the Nation.

DATES: These priorities, requirements, definitions, and selection criteria are effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Katherine Cox, U.S. Department of Education, 400 Maryland Avenue, SW, room 3E207, Washington, DC 20202. Telephone: (202) 453-6886.

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

SUPPLEMENTARY INFORMATION:

Summary of the Major Provisions of This Regulatory Action: We announce these final priorities, requirements, definitions, and selection criteria to achieve two main goals.

First, we seek to continue to use funds under this program to support high-quality applications from highly qualified applicants. To that end, we announce priorities, requirements, definitions, and selection criteria that encourage or require applicants to describe, for example: past successes working with academically poor-performing

public schools<sup>1</sup> or schools previously designated as persistently lowest-achieving schools or priority schools; experience serving concentrations of students who are individuals from low-income families; plans to expand their reach into new communities; logical connections between their proposed projects and intended outcomes for the students they propose to serve; and plans to evaluate the extent to which their proposed projects, if funded, yield intended outcomes.

Second, these final priorities, requirements, definitions, and selection criteria are designed to increase the likelihood that Developer grants support expanded high-quality educational opportunities for educationally disadvantaged students, as well as students who traditionally have been underserved by charter schools, such as Native American students and students in rural communities. Specifically, among other things, the final priorities, requirements, definitions, and selection criteria enable the Department of Education (Department) to give priority to applications that propose to open new charter schools or replicate or expand high-quality charter schools that serve a meaningful proportion of students who

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<sup>1</sup> Italicized terms are defined in the Final Definitions section of this document.

are individuals from low-income families, high school students, students in rural communities, and Native American students. Further, in order to meet the final requirements announced in this document, Developer grant applicants must describe how the schools they intend to newly open, replicate, or expand would recruit and enroll educationally disadvantaged students and support such students in mastering State academic standards.

**Costs and Benefits:** The Department believes that the benefits of this regulatory action outweigh any associated costs, which we believe will be minimal. While this action imposes cost-bearing requirements on participating Developers, we expect that applicants will include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory action strengthens accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to Developers 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 document for a more detailed discussion of costs and benefits.

**Purpose of Program:** The major purposes of the CSP are to: expand opportunities for all students, particularly

students facing educational disadvantages and students who traditionally have been underserved by charter schools, to attend high-quality charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of public charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

Developer grants are intended to support charter schools that serve early childhood, elementary school, or secondary school students by providing grant funds to eligible applicants for the opening of new charter schools (CFDA number 84.282B) and for the replication and expansion of high-quality charter schools (CFDA number 84.282E).

Program Authority: Title IV, part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the *Federal Register* on April 4, 2019 (84 FR

13204) (NPP). The NPP contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are several significant differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP). We have revised Priority 1--Spurring Investment in Opportunity Zones to clarify that each subpart can be used separately as its own priority. Second, we have added Priority 8--Promoting Diversity to enable the Department to target for funding applications from Developers that are taking active steps to promote socioeconomically diverse student bodies. We have also revised the Requirements to clarify statutory parameters regarding the use of weighted lotteries. Finally, we have revised the Definitions to clarify and expand the rural community definition. We discuss these changes in detail in the Analysis of Comments and Changes section of this document.

Public Comment: In response to our invitation in the NPP, 19 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

raised concerns not directly related to the proposed priorities, requirements, definitions, or selection criteria.

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

#### General

Comments: Two commenters suggested that we include a priority focused on improving outcomes for students with disabilities. One commenter encouraged the Department to create a competitive preference or invitational priority for developers that propose to open, replicate, or expand schools that are intentionally designed to address achievement gaps that exist for students with disabilities. Another commenter noted that the charter sector presents an opportunity to leverage parental choice and school autonomy to develop innovative approaches to educating students with disabilities.

Discussion: We agree that students with disabilities face unique educational challenges, and the charter sector presents an opportunity to improve outcomes for students

with disabilities.<sup>2</sup>

To help facilitate this goal, a number of priorities, requirements, definitions, and selection criteria under this program focus on educationally disadvantaged students, which include students who are children with disabilities, as defined in section 8101(4) of the ESEA. For example, Priority 3--High School Students requires an applicant to propose one or more performance measures that will provide information on the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions.

Additionally, on March 2, 2018, the Department published in the *Federal Register* (83 FR 9096) the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, which are available for use in all of the Department's discretionary grant programs, including the Developer grant competition. Included are two priorities that focus on the needs of students with disabilities and could be used in future Developer grant competitions. These priorities are:

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<sup>2</sup> Public charter schools are required to comply with applicable laws, including Part B of the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (ADA). All eligible students with disabilities attending public charter schools and their parents retain all rights under Part B of the IDEA, including the right to receive a free appropriate public education (FAPE).

Priority 1--Empowering Families and Individuals to Choose a High-quality Education that Meets their Unique Needs (which includes a specific option for focusing on students with disabilities) and Priority 5--Meeting the Unique Needs of Students and Children with Disabilities and/or Those with Unique Gifts and Talents. For these reasons, we did not include a specific priority for students with disabilities.

Changes: None.

Comments: Several commenters suggested that we designate specific priorities as absolute priorities or competitive preference priorities for competitions in FY 2019 and later years.

Discussion: Federal regulations at 34 CFR 75.105 authorize the Department to establish annual priorities and to designate the priorities as invitational, competitive preference, or absolute. We believe it is important to 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 2019 and later years. Therefore, in accordance with 34 CFR 75.105(c), we will designate specific priorities as invitational, competitive preference, or absolute priorities for the FY 2019 competition, and competitions in

later years, through a notice inviting applications (NIA) published in the *Federal Register*.

Changes: None.

Comments: Four commenters encouraged the Department to include a priority that focuses on promoting diversity. Three commenters suggested adding a diversity priority comparable to the CSP Charter Management Organization (CMO) grant competition to help support the creation of new diverse-by-design charter schools focusing on racial and socioeconomic diversity, with one commenter encouraging the scope to include students with disabilities and other educationally disadvantaged students. One commenter noted that it is important to support the growth of charter schools that aim to increase diversity, encouraging the use of a priority and technical assistance focused on student diversity.

Discussion: We agree that students can benefit from attending high-quality charter schools with a student body reflecting a broad socioeconomic spectrum. To avoid potential Constitutional questions, we are adding a priority focused just on promoting recruitment of students from diverse socioeconomic backgrounds. In addition, the Department will consider how we can support efforts to reach children from broad and diverse socioeconomic

backgrounds in a legally compliant way through technical assistance and the dissemination of information beyond rulemaking.

Changes: We have added Priority 8--Promoting Diversity, under which applicants must propose to open a new charter school, or replicate or expand a high-quality charter school, that has an intentional focus on recruiting students from diverse socioeconomic backgrounds and maintaining socioeconomically diverse student bodies in that charter school.

Comments: One commenter asserted that the Department did not comply with the requirement in Executive Order 13563 that, in choosing among regulatory alternatives, an agency "select those approaches that maximize net benefits including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity" because the Department did not provide a comprehensive definition of "equity."

Discussion: Executive Order 13563 requires that the Department consider regulatory approaches that maximize benefits, including with respect to equity. The Executive Order does not define equity, nor does it require an agency to adopt a specific definition for the term. As noted in the Regulatory Impact Analysis in the NPP, the Department

assessed the potential benefits of this regulatory action and concluded that the proposal "would strengthen accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to Developers that are most capable of expanding the number of high-quality charter school available to our Nation's students." Therefore, we disagree with the commenter's assertion that the Department failed to comply with the Executive order.

Changes: None.

Priority 1--Spurring Investment in Opportunity Zones

Comments: One commenter expressed concern about the impact that this priority may have on racial and socioeconomic segregation in and around an opportunity zone. The commenter recommended that the Department instead encourage the use of grant funds for transportation of children in families of low economic status to schools of choice.

Discussion: As noted in the NPP, this priority is focused specifically on harnessing the power of opportunity zones to increase educational choices for students in distressed communities. The Economic Innovation Group found that "[n]early a quarter of Americans living in distressed communities have not completed high school, and more than one-third have no education beyond a high school diploma or

equivalent.”<sup>3</sup> This priority is focused on the connection between students living in distressed communities and their academic achievement and long-term outcomes. Therefore, it is not specifically intended to address racial and socioeconomic segregation. In addition, as noted above, we have added a priority focused on recruiting and maintaining a socioeconomic diverse student body.

With respect to the transportation of students, we believe the statute already includes requirements that adequately address this issue. Specifically, under section 4303(f)(1)(E) of the ESEA, an applicant must describe how it will ensure that each charter school receiving CSP funds has considered and planned for the transportation needs of the school’s students. In addition, under section 4303(h)(4) of the ESEA, grantees are authorized to use CSP funds to provide one-time start-up costs associated with providing transportation to students to and from school.

Changes: None.

Comments: One commenter inquired about what criteria the Department would use to determine if a school to be opened in an opportunity zone is high quality.

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<sup>3</sup> Economic Innovation Group Distressed Communities Index, 2017. Available at <https://eig.org/wp-content/uploads/2017/09/2017-Distressed-Communities-Index.pdf>.

Discussion: Developer grants support the opening of new charter schools and the replication and expansion of "high-quality charter schools," which is defined in section 4310(8) of the ESEA. Accordingly, the Department will apply that definition when considering applications for replication and expansion.

Changes: None.

Comments: Two commenters expressed support for the priority as a way to attract charter schools to areas lacking a sufficient number of high-quality seats. One commenter supported the possibility of the Department giving applicants additional time to provide evidence of partnership with a qualified opportunity fund after the application deadline. The other commenter also supported the priority but did not believe that meeting both subparts of the priority should be required for an applicant to fully meet the priority. The commenter suggested removing subpart (b) of the priority.

Discussion: We agree that using the opportunity zone priority can attract charter schools to areas lacking a sufficient number of high-quality seats. We also believe that having the flexibility to grant additional time to enable an applicant to formalize a relationship with an opportunity fund could be merited. The Department

anticipates that we would provide additional time for this purpose especially if the priority area focused on opportunity funds is used in an absolute priority.

With respect to the commenter's concerns about meeting both parts of the priority, we believe that as opportunity zones and opportunity funds mature, the ability to promote either or both subparts maximizes the Department's flexibility. To this end, we believe a slight modification is necessary to ensure that the Department has flexibility to use either or both subparts, which may include using the subparts as different types of priorities in a competition (e.g., using subpart (a) as an absolute priority and subpart (b) as a competitive preference priority).

Changes: We have revised the priority to clarify that the Department may use each subpart as its own priority by removing the semicolon as well as the "and" connector between the two subparts.

Priority 2--Reopening Academically Poor-Performing Public Schools as Charter Schools

Comments: Several commenters recommended that we use Priority 2 cautiously because available research on charter school performance is mixed. One commenter urged the Department to ensure that any restart efforts intentionally include evidence-based, effective, and innovative

strategies.

Discussion: We agree that, where possible, Federal funding should be used primarily to support strategies that are based on research or otherwise have promise of or have been shown to be effective. For this reason, to meet this priority, applicants must demonstrate past success working with one or more academically poor-performing public schools or schools previously designated as persistently lowest-achieving schools or priority schools. In addition, under the final requirements, all applicants, regardless of whether they address this priority, must provide a complete logic model that includes the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition. Applicants for grants under CFDA number 84.282E, regardless of whether they address this priority, may be required to disclose compliance issues and describe student assessment results, attendance rates, and student retention rates for charter schools they currently operate or manage. This program specifically supports the opening of new charter schools and the replication and expansion of high-quality charter schools, and the final priorities, requirements, definitions, and selection criteria are designed to differentiate between high-quality applications

that are likely to be successful and low-quality applications that have little chance of succeeding.

Changes: None.

Comments: Several commenters expressed support for Priority 2. One commenter requested that we clarify whether an applicant could address the priority by proposing to partner with a school district to open a new charter school and prioritize enrollment of students attending the academically poor-performing public school or a recently closed school, rather than to reopen an academically poor-performing public school as a charter school. Another commenter requested clarity on what constitutes the reopening of an academically poor-performing public school as a charter school. One commenter encouraged the Department to ensure that applications addressing this priority be evaluated with the context that the authorization process may be different for a school that is reopening versus a replication or expansion school. This commenter also suggested that the Department update its nonregulatory guidance to clarify that Developers who intend to reopen academically poor-performing public schools as charter schools could exempt from admissions lotteries students who are enrolled in the academically poor-performing public school at the time it

is reopened. The commenter also recommended that the Department use the priority as a competitive, but not absolute, priority.

Discussion: We agree with the commenter that the purpose of this priority--to "reopen" academically poor-performing public schools--should be clear. Therefore, an applicant proposing only to open a new charter school, and not "reopen" an academically poor-performing public school as a charter school, would not meet this specific priority (but could meet other priorities established in this NFP).

In addition, we agree that starting a new school is an important endeavor and note that opening new high-quality charter schools is a key element of the CSP. We also believe that charter schools can play an important role in helping to improve academic outcomes for students in low-performing public schools. Therefore, this priority is specifically focused on Developers that propose to reopen academically poor-performing public schools as charter schools.

With respect to the parameters around reopening an academically poor-performing public school as a charter school, we note that applicants are required to demonstrate past success working with one or more academically poor-performing public school or schools that previously were

designated as persistently lowest-achieving schools, or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), including but not limited to direct experience reopening academically poor-performing public schools as charter schools. As outlined in our final priority, the applicant must target a demographically similar student population in the replicated charter school as was served by the academically poor-performing public school, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Additionally, when evaluating applications, the Department will use selection criteria that focus on the quality of the eligible applicants, the significance of the contributions in assisting educationally disadvantaged students, and the quality of the continuation plans. We rely on the expertise of independent peer reviewers to evaluate the quality of applications submitted under a grant competition in order to ensure the fairness and integrity of the competition.

While the differences in authorization processes for a school that is reopening is a factor that the applicant can

describe in the application, the Department will not evaluate that factor as part of the determination whether to fund an applicant. To ensure an equal playing field, we believe it is critical that all applicants be required to submit the same general information for review. Therefore, beyond having the flexibility to apply this priority, we decline to evaluate applications differently based on whether the proposed school will be a reopened school.

Regarding admissions lotteries, under section 4303(c)(3) of the ESEA, charter schools receiving funds under a Developer grant may use "a weighted lottery to give slightly better chances for admission to all, or a subset of, educationally disadvantaged students," so long as weighted lotteries in favor of such students are not prohibited under State law and are not used to create schools that would serve a particular group of students exclusively.<sup>4</sup>

Further, the Department issued its most recent update to the CSP nonregulatory guidance in January 2014.<sup>5</sup> Although that guidance was issued prior to enactment of the Every Student Succeeds Act (ESSA), much of it is applicable

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<sup>4</sup> As stated above, under section 4305(c) of the ESEA, Developer grantees generally are subject to the same terms and conditions as State entity grantees funded under section 4303.

<sup>5</sup> See <http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>.

to the CSP lottery requirement in section 4310(2)(H) of the ESEA. Specifically, the January 2014 CSP Nonregulatory Guidance identifies several categories of students who may be exempted from a charter school's lottery, including students who are enrolled in a public school at the time it is reopened as a charter school. The Department may update this guidance to address changes to the CSP made by the ESSA. In the meantime, Developer grantees may continue to follow the guidelines in the January 2014 CSP Nonregulatory Guidance regarding the categories of students who may be exempted from the lottery requirement.

Finally, we appreciate the recommendation on use of the priority. As previously stated, this NFP establishes the priorities that we may choose to use in the Developer grant competition in FY 2019 and later years. We do not designate whether a priority will be invitational, competitive preference, or absolute 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 2019 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 NIA.

Changes: None.

Comments: One commenter expressed that there is a disproportionately high percentage of students with disabilities in turnaround schools and suggested that we require Developers proposing to reopen academically poor-performing public schools as charter schools to address the issue.

Discussion: A major goal of these priorities, requirements, definitions, and selection criteria is to expand high-quality educational opportunities for educationally disadvantaged students, including students with disabilities. Developer grantees, and the charter schools they operate, must comply with applicable laws, including Part B of the IDEA, Section 504, and Title II of the ADA. Further, to meet the priority, an applicant must propose a strategy that targets a student population that is demographically similar to that of the academically poor-performing public school. Therefore, we decline to revise this priority in the manner suggested by the commenter.

Changes: None.

Comments: One commenter expressed concern that reopening an academically poor-performing public school as a charter school would lead to higher-achieving students abandoning

their traditional public school in order to attend the charter, leading to an increase in traditional public schools being academically poor-performing.

Discussion: The Department appreciates the opportunity to provide clarity in response to the comment. The intent of this priority is to promote high-quality educational options in areas where traditional public schools have not been producing high-quality outcomes and encourage the creation of high-quality options in those areas that have traditionally been underserved. The priority included in this competition is almost identical to the final priority under the CMO grant competition. We believe that the restart model (i.e., reopening a low-performing traditional public school under the management of a charter school developer, or reopening a low-performing public charter school under the management of a different charter school developer) holds promise as a school improvement strategy, but data suggest that it has been underutilized.<sup>6</sup> Accordingly, Priority 2 is intended to help increase the frequency of implementation of the restart model. In future Developer grant competitions that include

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<sup>6</sup> Hurlburt, S., Therriault, S.B., and Le Floch, K.C. (2012). School Improvement Grants: Analyses of State Applications and Eligible and Awarded Schools (NCEE 2012-4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

this priority, we would encourage applicants to review CSP technical assistance materials pertaining to how an applicant may design an admissions lottery for an academically poor-performing public school that the applicant is proposing to reopen. Under the most recent version of the CSP nonregulatory guidance, for example, a charter school receiving CSP funds could, if permissible under applicable State law, exempt from its lottery students who are enrolled in the academically poor-performing public school at the time it is reopened. Additionally, in order to meet this priority, applicants must target a demographically similar student population in the replicated charter school as was served by the academically poor-performing public school, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Changes: None.

### Priority 3--High School Students

Comments: One commenter encouraged the Department to consider supporting charter schools at the elementary and middle school level, concerned that programs that begin at the high school level may be too late to close education gaps and ensure a quality education.

Discussion: Developer grants are intended to support

charter schools that serve early childhood, elementary school, and secondary school students. This priority is not intended to preclude the development of charter schools at the elementary and middle school level, but rather promote high-quality charter school options for the entire elementary and secondary sector, including high school. Data from the Department's National Center for Education Statistics (NCES) in the 2015-2016 school year demonstrated that over half of all charter schools were elementary schools (56%). Approximately 23 percent of charter schools in the 2015-2016 school year were secondary schools, with the remaining 21 percent representing a combination elementary/secondary or not classified by grade span. While research comparing the outcomes of students who participated in a charter school only for high school versus students who attended a charter school at the elementary and middle school levels is limited, evidence does demonstrate that the long-term impact of attending a charter school is positive. One study found that "students attending charter high schools had a substantially higher chance of graduation and college enrollment (relative to students that attended charter middle schools but regular

public high schools).”<sup>7</sup> In an effort to increase the number of high-quality educational options for high school students, the Department added the priority for high school students.

With respect to concerns about closing education gaps in high school and ensuring a quality education, section 4303(f)(1)(A)(x) of the ESEA requires that all applicants, regardless of whether they address this priority, describe how they will ensure that charter schools receiving funds under this program meet the educational needs of their students. Under the final requirements, the applicant must also describe the educational program that will be implemented in the charter school, including how the program will enable all students to meet the challenging State academic standards.

Changes: None.

Comments: Two commenters supported the priority focused on high school students, with one commenter noting that the priority should be used as invitational or competitive preference, rather than absolute. The other commenter requested that the Department ensure that any application

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<sup>7</sup> Booker, Kevin, et al. “The Effects of Charter High Schools on Educational Attainment.” *Journal of Labor Economics*, vol. 29, no. 2, 2011, pp. 377-415. JSTOR, [www.jstor.org/stable/10.1086/658089](http://www.jstor.org/stable/10.1086/658089).

focused on high school students include strategies to support transition planning for students with disabilities.

Discussion: As stated above, the NFP establishes the priorities that we may choose to use in the Developer grant competition in FY 2019 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 NIA.

We agree with the commenter that ensuring that students with disabilities (as well as other educationally disadvantaged students) graduate from high school with adequate preparation for postsecondary education options is paramount. Therefore, the priority language includes specific references to educationally disadvantaged students, including students with disabilities, where appropriate. Also, eligible students with disabilities attending public charter schools and their parents retain their right to receive FAPE, and the IDEA requirements for transition services apply beginning with the first individualized education plan (IEP) to be in effect when the student turns 16, or younger if determined appropriate by the IEP team.<sup>8</sup> In order to be considered a high-quality

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<sup>8</sup> See 20 U.S.C. 1414(d)(1)(A)(i)(VIII) and 34 CFR 300.320(b); see also

charter school (a key aspect of this program), a charter school that serves high school students must have demonstrated success in increasing student academic achievement and graduation rates, and must provide that information disaggregated by subgroups of students defined in section 1111(c)(2) of the ESEA, which includes children with disabilities, as defined in the IDEA. Further, the previously described application requirements are designed to ensure that an applicant is meeting the needs of all its students, including those students with disabilities that require transitional support. As children with disabilities are included in the definition of "educationally disadvantaged students," we do not specifically need to identify this subgroup in a separate application requirement. Therefore, we decline to revise the priority to include a specific focus on high schools that provide transitional programming (i.e., preparation for specific postsecondary education options) for students with disabilities.

Changes: None.

Priority 4--Rural Community

Comments: Two commenters requested clarity around the use

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20 U.S.C. 1401(34) and 34 CFR 300.43.

of this priority. One commenter expressed support for the priority if used as a competitive preference or invitational priority, rather than an absolute priority based on the concern that use as an absolute priority may unduly prevent developers in largely urban or suburban areas from competing for grant funds. Another commenter requested that the Department clarify how this priority would operate if the entire priority is used in a competition.

Discussion: According to NCES, 28 percent of public elementary and secondary schools are in rural areas, serving 19 percent of the Nation's students enrolled in public elementary and secondary schools.<sup>9</sup> Additionally, according to the Department's *Section 5005 Report on Rural Education: Final Report*, "Rural schools and LEAs often face unique challenges, including fewer career options and apprenticeship options for students, the inability to attract, train, and retain teachers and principals, and the inability to offer advanced courses that better prepare students for college and careers." Additionally, the report revealed that "rural schools and LEAs often see

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<sup>9</sup> Public elementary and secondary school enrollment, number of schools, and other selected characteristics, by locale: Fall 2012 through fall 2015, [https://nces.ed.gov/programs/digest/d17/tables/dt17\\_214.40.asp](https://nces.ed.gov/programs/digest/d17/tables/dt17_214.40.asp).

themselves at a distinct disadvantage compared to their urban and suburban counterparts during grant competitions. While many large districts may have dedicated grant-writing staff, many rural districts (due to small staffs and frequent turnover) lack personnel with the knowledge and experience to complete complex grant applications. In addition, more often than their counterparts in other locales, rural districts lack access to reliable broadband internet access, causing additional difficulties in applying for grants, providing classroom instruction, and administering programs.”<sup>10</sup> For these reasons, we are interested in prioritizing applications that seek to increase high-quality educational options in rural areas. We do not believe that use of this priority as an absolute priority would prevent urban and suburban districts from competing for funds; rather, it would allow rural applicants a comparable opportunity to compete with those with similar resources. As written, this priority gives the Department flexibility to establish an absolute or competitive preference priority for applications that propose to open a new charter school, or to replicate or

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<sup>10</sup> U.S. Department of Education, Office of Communications and Outreach, Section 5005 Report on Rural Education: Final Report, Washington, D.C., 2018, <https://www2.ed.gov/about/inits/ed/rural/rural-education-report.pdf>

expand a high-quality charter school, in a rural community or non-rural community, depending on the Department's policy objectives in a given year. Additionally, in a competition in which this priority is established as an absolute priority, we would expect to use both the rural and the non-rural parts of this priority in order to create two funding slates. We believe the priority is clear and, therefore, decline to revise it.

Changes: None.

Proposed Priority 5--Opening a New Charter School or Replicating or Expanding a High-quality Charter School to Serve Native American Students

Comments: Two commenters expressed support for the priority. One commenter requested clarification on the relative importance of this priority in relation to other priorities.

Discussion: We believe it is important to retain the flexibility to designate each priority and its importance in any given year in order to ensure that program funds are used to address the most pressing programmatic concerns for competitions in FY 2019 and later years. Therefore, in accordance with 34 CFR 75.105(c), we will designate specific priorities as invitational, competitive preference, or absolute priorities for the FY 2019

competition, and competitions in later years, through an NIA published in the *Federal Register*.

Changes: None.

Proposed Priority 6--Low-Income Demographic

Comments: Several commenters expressed support for the priority but suggested various refinements. Two commenters suggested that we revise the priority to require Developers to demonstrate that the schools serve a proportion of low-income students that is within a defined range of the demographics of the community that they are serving, rather than a determined percentage of individuals from low-income families. Another commenter suggested that if the Department uses more than one percentage, a tiered approach to competitive preference priority points be used in scoring (e.g., one point for an applicant that can demonstrate its schools have at least 40 percent students who are individuals from low-income families, two points for an applicant that can demonstrate its schools have at least 50 percent students who are individuals from low-income families, and three points for an applicant that can demonstrate its schools have at least 60 percent students who are individuals from low-income families).

Discussion: The priority is written in a manner that gives the Department flexibility to apply one, two, or all three

poverty standards in a single competition. We believe it is important to retain the flexibility to designate each priority as invitational, competitive preference, or absolute and specify the point values when applicable in order to ensure that program funds are used to address the most pressing programmatic concerns for competitions in FY 2019 and later years. Therefore, in accordance with 34 CFR 75.105(c), we will designate specific priorities as invitational, competitive preference, or absolute priorities for the FY 2019 competition, and competitions in later years, through an NIA published in the *Federal Register*.

We require an applicant receiving points for this priority to maintain the same, or a substantially similar, poverty threshold throughout the life of the grant. We recognize that the percentage of students who are individuals from low-income families may fluctuate on an annual basis and, for this reason, believe the priority should focus on all schools operated by a Developer, when applicable, and not just the charter school being opened, replicated, or expanded as part of the grant project.

Likewise, we understand that use of community demographics may provide useful data in areas in which the district school enrollment differs considerably from the

demographics of the school-age population; however, the Department must balance its interest in obtaining sufficient information to assist peer reviewers in evaluating the quality of applications with its interest in minimizing the burden on applicants. In order to meet the priority, an applicant must meet the requisite percentage of students who are individuals from low-income families across all the charter schools the applicant operates or manages, and ensure that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period. In addition, applicants must establish one or more project-specific performance measures that will provide reliable information about the grantee's progress in meeting the objectives of the project. We believe these requirements will generate the necessary information to enable peer reviewers to evaluate the quality of applications without placing an undue burden on applicants. For these reasons, we decline to revise the priority in the manner suggested by the commenters.

Changes: None.

Proposed Priority 7--Single School Operators

Comments: Several commenters requested clarity on the use of the single school operator priority. One commenter felt

that charter school operators with multiple schools may be able to meet student needs more immediately, while two other commenters preferred that the preference be given to single school operators to allow smaller start-up schools an opportunity to demonstrate their capabilities that otherwise would not exist.

Discussion: The Department appreciates the opportunity to provide clarity on this priority. The single school operator priority is intended only for replication and expansion grants (CFDA 84.282E). The intent of this priority is to focus funding for replication and expansion grants under CFDA 84.282E on developers who currently operate a single school, considering the availability of funds for replication and expansion for entities that operate more than one school under the CMO grant competition. This priority, by itself, is not intended to assess quality with respect to the size of the applicant. In any year in which we announce a competition, we will select a combination of priorities, requirements, and selection criteria that meet the requirements of the Developer grant program and are aligned with the Secretary's policy objectives. Generally, the single-school priority as it relates to CFDA 84.282E and the novice priority in 34 CFR 75.225 as it relates to CFDA

84.282B are intended to encourage applications from novice applicants within the parameters of each grant program.

Changes: None.

Requirements

Comments: One commenter urged the Department to ensure that any grantee using a weighted lottery meet all relevant statutory requirements and suggested that we ensure that any weighted lotteries are designed to enroll students with disabilities in proportion to the enrollment of such students in neighboring schools.

Discussion: As stated above, under section 4303(c)(3) of the ESEA, charter schools receiving funds under a Developer grant may use "a weighted lottery to give slightly better chances for admission to all, or a subset of, educationally disadvantaged students," so long as weighted lotteries in favor of such students are not prohibited under State law and are not used to create schools that would serve a particular group of students exclusively. In addition, as described in the January 2014 CSP Nonregulatory Guidance, the Department strongly encourages charter schools to use weighted lotteries as part of a broader strategy of outreach, recruitment, and retention for all students, including educationally disadvantaged students.

To help ensure compliance with the weighted lottery

requirement, an applicant must describe its lottery and enrollment procedures, including how any weighted lottery complies with section 4303(c)(3)(A) of the ESEA. As such, the Department believes it has taken steps to ensure compliance with this requirement and declines to expand on the statutory requirements for weighted lotteries as they apply to Developer grants. The Department does believe, however, that modifying the application requirements related to lottery and enrollment procedures, including weighted lotteries, to be a separate and distinct element would add clarity regarding the statutory requirement on weighted lotteries.

Changes: To provide clarity regarding the statutory requirement on the use of weighted lotteries, we modified the application requirements to include a separate application requirement focused on lottery and enrollment procedures. Specifically, we separated proposed requirement (c) into two distinct requirements--(c) and (d). While Final Requirement (c) requires an applicant to address how it will ensure the charter school that receives funding will recruit, enroll, and retain educationally disadvantaged students, Final Requirement (d) requires an applicant to address the lottery itself, including how the weighted lottery (if used) complies with section

4303(c) (3) (A) of the ESEA.

Comments: One commenter urged the Department to clarify through these final priorities, requirements, definitions, and selection criteria that applicants proposing to open or expand virtual/online charter schools must ensure that all students, particularly students with disabilities, can access virtual and online content. The commenter requested that we require all virtual public schools, including virtual charter schools, to demonstrate compliance with the Web Content Accessibility Guidelines (WCAG).

Discussion: Section 4310(2) (G) of the ESEA requires charter schools receiving CSP funds to comply with various laws, including Section 504, the ADA, and Part B of IDEA. Thus, consistent with the requirements in Section 504 and Title II of the ADA, virtual charter schools must ensure that all content is accessible to students with disabilities enrolled in the school as well as prospective students with disabilities and parents or guardians. Similarly, like other local educational agencies (LEAs), public charter schools that operate as LEAs under State law, including virtual charter school LEAs and LEAs that include virtual charter schools among their public schools, must ensure that eligible students with disabilities enrolled in these schools receive FAPE in accordance with

the requirements of Part B of the IDEA.<sup>11</sup> To meet this obligation, these schools must provide instructional materials to students with disabilities in accessible formats, in accordance with the requirements of Part B of the IDEA, consistent with the requirements in Section 504 and Title II of the ADA. If web-based instruction or online instructional platforms are used, these schools must ensure that the information provided through those sources is accessible to students with disabilities, consistent with the requirements in Part B of the IDEA, Section 504, and Title II of the ADA. Because these requirements are already established by Federal law, we decline to revise these final priorities, requirements, definitions, or selection criteria.

Further, while we understand that WCAG is designed to make web content accessible to a wide range of individuals with disabilities and that demonstrating compliance with WCAG is a widely accepted method for public schools, including virtual public charter schools, to meet the obligations discussed above, the Department does not

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<sup>11</sup> Students with disabilities attending public charter schools and their parents retain all rights under Part B of the IDEA. Further, charter schools that operate as LEAs under State law, as well as LEAs that include charter schools among their public schools, are responsible for ensuring that the requirements of Part B of the IDEA are met, unless State law assigns that responsibility to some other entity. See 34 CFR 300.209.

require grantees to adopt a particular standard to ensure accessibility of web content or online platforms to meet their obligations under Section 504 or Title II of the ADA.

Changes: None.

#### Definitions

Comments: One commenter asked the Department to reconsider the proposed definition of "rural community," raising concerns that our use of the Small Rural School Achievement (SRSA) program and the Rural and Low-Income School (RLIS) determinations could potentially restrict otherwise eligible applicants. The commenter additionally encouraged the Department to use consistent definitions across all Department grant programs to the extent possible.

Discussion: We consulted with other programs across the Department, including the Rural Education Achievement Program (REAP) and the Education Innovation Research (EIR) program, and obtained additional data on updated methods to determine geographic boundary assignments. After discussions, we agree that there is an opportunity to improve the definition of "rural community" as well as align it with other agency programs. The EIR program uses locale classifications pulled from the NCES Education Demographic and Geographic Estimates (EDGE) program, which has categorized the United States into four types of areas:

City, Suburban, Town, and Rural. These areas are further categorized as Fringe, Distant, or Remote based on distance from a major urban cluster. We believe that use of NCES EDGE data will be a more accurate method of determining a locale classification and will remove restrictions for applicants opening schools in areas that would otherwise have been eligible to meet the definition of "rural community." Accordingly, the Department will revise our definition to align more closely with the one used in the EIR program. The revised definition is more flexible than the previous definition, may allow for additional applicants to meet any proposed priorities associated with the definition, and takes advantage of an opportunity to improve a definition through the public feedback process.

Changes: We have revised the definition of "rural community" to be a community served by one or more LEAs (a) with a locale code of 32, 33, 41, 42, or 43; or (b) that include a majority of schools with a locale code of 32, 33, 41, 42, or 43. The revised definition notes that applicants are encouraged to retrieve locale codes from the NCES School District search tool

(<https://nces.ed.gov/ccd/districtsearch/>), to look up an LEA individually to retrieve locale codes, and Public School search tool (<https://nces.ed.gov/ccd/schoolsearch/>),

to look up individual schools and retrieve locale codes.

### Selection Criteria

Comments: One commenter expressed strong support for the selection criteria, specifically Selection Criterion (b)--Significance of contribution in assisting educationally disadvantaged students and Selection Criterion (c)--Quality of the continuation plan. Another commenter shared support for use of Selection Criterion (a)--Quality of the eligible applicant and the distinction that it is only for applicants under CFDA 84.282E. A third commenter expressed support for all three selection criteria but requested that the Department weigh the selection criteria in such a way that an applicant would be unable to receive a grant award if they receive inadequate scores on these criteria.

Discussion: We appreciate the commenters' support for the various selection criteria and the opportunity to provide clarification. First, it should be noted that Selection Criterion (a)--Quality of the eligible applicant, is intended only for replication and expansion grants (CFDA 84.282E). In addition, two major purposes of the CSP are to expand educational opportunities for educationally disadvantaged students and to assist such students in meeting State academic content and performance standards. The final selection criteria (a) and (b) enable the

Department to evaluate the quality of an application with respect to achieving these two objectives.

Furthermore, the maximum possible score for addressing each selection criterion will be indicated in the NIA. The rank order list for applicants will be generated based on the average raw score each application receives on the selection criteria and the average number of competitive preference priority points the application receives. The maximum possible score an application will be able to receive will be based on the selection criteria and the competitive preference points assigned to the application. Each application's total score for the selection criteria will be calculated, and the competitive preference priority points assigned to the application will be added to each application's score, as appropriate. A rank order list will be prepared, based on the resulting scores.

Changes: None.

FINAL PRIORITIES:

Priority 1--Spurring Investment in Opportunity Zones.

Under this priority, an applicant must address one or both of the following priority areas:

- (a) Propose to open a new charter school or to replicate or expand a high-quality charter school in a qualified opportunity zone as designated by the Secretary

of the Treasury under section 1400Z-1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115-97).

(b) Provide evidence in its application that it has received or will receive an investment from a qualified opportunity fund under section 1400Z-2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for one or more of the following, as needed to open or to replicate or expand the school:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of the school) in improved or unimproved real property;

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities;

(3) The predevelopment costs required to assess sites for purposes of subparagraph (1) or (2); and

(4) The acquisition of other tangible property.

In addressing paragraph (a) of this priority, an applicant must provide the census tract number of the qualified opportunity zone in which it proposes to open a new charter school or replicate or expand a high-quality charter school. A list of qualified opportunity zones, with census tract numbers, is available at

[www.cdfifund.gov/Pages/Opportunity-Zones.aspx](http://www.cdfifund.gov/Pages/Opportunity-Zones.aspx).

In addressing paragraph (b) of this priority, an applicant must identify the qualified opportunity fund from which it has received or will receive financial assistance. The Department may, at its discretion, give applicants additional time to provide evidence of such assistance after the deadline for transmittal of applications. If the Department elects to give applicants additional time, we will announce in the NIA the deadline by which such evidence must be provided.

Priority 2--Reopening Academically Poor-Performing Public Schools as Charter Schools.

Under this priority, applicants must:

(a) Demonstrate past success working with one or more academically poor-performing public schools or schools that previously were designated as persistently lowest-achieving schools or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), including but not limited to direct experience reopening academically poor-performing public schools as charter schools; and

(b) Propose to use grant funds under this program to reopen an academically poor-performing public school as a charter school during the project period by:

(1) Replicating a high-quality charter school based on a successful charter school model for which the applicant has provided evidence of success; and

(2) Targeting a demographically similar student population in the replicated charter school as was served by the academically poor-performing public school, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Priority 3--High School Students.

(a) Under this priority, applicants must propose to:

(1) Open a new charter school or replicate or expand a high-quality charter school to serve high school students, including educationally disadvantaged students;

(2) Prepare students, including educationally disadvantaged students, in that school for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education

programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests; and

(3) Provide support for students, including educationally disadvantaged students, who graduate from that school and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution.

(b) Applicants must propose one or more project-specific performance measures, including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a Developer grant must provide data that are

responsive to the measure(s), including performance targets, in its annual performance reports to the Department.

(c) For purposes of this priority, postsecondary education institutions include institutions of higher education, as defined in section 8101(29) of the ESEA, and one-year training programs that meet the requirements of section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA).

Priority 4--Rural Community.

Under this priority, applicants must propose to open a new charter school or to replicate or expand a high-quality charter school in one of the following:

- (a) A rural community.
- (b) A community that is not a rural community.

Priority 5--Opening a New Charter School or Replicating or Expanding a High-quality Charter School to Serve Native American Students.

Under this priority, applicants must:

- (a) Propose to open a new charter school, or replicate or expand a high-quality charter school, that--
  - (1) Utilizes targeted outreach and recruitment in order to serve a high proportion of Native American students, consistent with nondiscrimination requirements

contained in the U.S. Constitution and Federal civil rights laws;

(2) Has a mission and focus that will address the unique educational needs of Native American students, such as through the use of instructional programs and teaching methods that reflect and preserve Native American language, culture, and history; and

(3) Has or will have a governing board with a substantial percentage of members who are members of Indian Tribes or Native American organizations located within the area to be served by the new, replicated, or expanded charter school;

(b) Submit a letter of support from at least one Indian Tribe or Native American organization located within the area to be served by the new, replicated, or expanded charter school; and

(c) Meaningfully collaborate with the Indian Tribe(s) or Native American organization(s) from which the applicant has received a letter of support in a timely, active, and ongoing manner with respect to the development and implementation of the educational program at the charter school.

Priority 6--Low-Income Demographic.

Under this priority, applicants must demonstrate one

of the following:

(a) That at least 40 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

(b) That at least 50 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

(c) That at least 60 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

Priority 7-- Single School Operators.

Under this priority, applicants must provide evidence of one or more of the following:

(a) The applicant currently operates one, and only one, charter school.

(b) The applicant currently operates more than one charter school.

Priority 8-- Promoting Diversity.

Under this priority, applicants must propose to open a new charter school, or replicate or expand a high-quality charter school, that has an intentional focus on recruiting students from socioeconomically diverse backgrounds and maintaining socioeconomically diverse student bodies in those charter schools.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as invitational, competitive preference, or absolute 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:

Application Requirements: Applicants for funds under this program must address one or more of the following application requirements:

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out.

(b) Describe the educational program that the applicant will implement in the charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used.

(c) Describe how the applicant will ensure that the charter school that will receive funds will recruit, enroll, and retain students, including educationally

disadvantaged students, which include children with disabilities and English learners.

(d) Describe the lottery and enrollment procedures that the applicant will use for the charter school if more students apply for admission than can be accommodated and, if the applicant proposes to use a weighted lottery, how the weighted lottery complies with section 4303(c)(3)(A) of the ESEA.

(e) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition.

(f) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities.

(g) If the applicant proposes to open a new charter school (CFDA number 84.282B) or proposes to replicate or expand a high-quality charter school (CFDA number 84.282E) that provides a single-sex educational program, demonstrate that the proposed single-sex educational programs are in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) ("Title IX") and its

implementing regulations, including 34 CFR 106.34.

(h) Provide the applicant's most recent available independently audited financial statements prepared in accordance with generally accepted accounting principles.

(i) For each charter school currently operated or managed by applicants under CFDA 84.282E for replication and expansion, provide—

(1) Information that demonstrates that the school is treated as a separate school by its authorized public chartering agency and the State, including for purposes of accountability and reporting under title I, part A of the ESEA;

(2) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(3) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(4) Information on any significant compliance and management issues encountered within the last three school years by the existing charter school being operated or managed by the eligible entity, including in the areas of

student safety and finance.

(j) Provide--

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the eligible entity believes are necessary for the successful operation of the charter school to be opened or to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to the school that will receive funds.

(k) Describe how each school that will receive funds meets the definition of charter school under section 4310(2) of the ESEA.

Eligibility: Eligibility for a grant under this competition is limited to charter school developers in States that do not currently have a CSP State Entity grant (CFDA number 84.282A) under the ESEA. Eligibility in a State with a CSP State Educational Agency (SEA) grant (CFDA 84.282A) under the ESEA, as amended by NCLB, is limited to grants for replication and expansion<sup>12</sup> (CFDA 84.282E) and

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<sup>12</sup> The list of eligible States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

only if the Department has not approved an amendment to the SEA's approved grant application authorizing the SEA to make subgrants for replication and expansion.<sup>13</sup>

Funding Restriction: An applicant may propose to support only one charter school per grant application.

FINAL DEFINITIONS:

Academically poor-performing public school means:

(a) A school identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; or

(b) A public school otherwise identified by the State or, in the case of a charter school, its authorized public chartering agency, as similarly academically poor-performing.

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

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<sup>13</sup> The list of these States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

High proportion, when used to refer to Native American students, means a fact-specific, case-by-case determination based upon the unique circumstances of a particular charter school or proposed charter school. The Secretary considers "high proportion" to include a majority of Native American students. In addition, the Secretary may determine that less than a majority of Native American students constitutes a "high proportion" based on the unique circumstances of a particular charter school or proposed charter school, as described in the application for funds.

Indian Tribe means a federally-recognized or a State-recognized Tribe.

Individual from a low-income family means an individual who is determined by a State educational agency or local educational agency to be a child from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or (e) an alternate method that combines or

extrapolates from the data in items (a) through (d) of this definition.

Institution of higher education means an educational institution in any State that--

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(b) Is legally authorized within such State to provide a program of education beyond secondary education;

(c) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(d) Is a public or other nonprofit institution; and

(e) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined

that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Native American means an Indian (including an Alaska Native), as defined in section 6132(b)(2) of the ESEA, Native Hawaiian, or Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Native American organization means an organization that—

(a) Is legally established—

(1) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(2) With appropriate constitution, by-laws, or articles of incorporation;

(b) Includes in its purposes the promotion of the education of Native Americans;

(c) Is controlled by a governing board, the majority of which is Native American;

(d) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(e) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(f) Is not an agency of State or local government.

Rural community is a community served by one or more local educational agencies (LEAs) (a) with a locale code of 32, 33, 41, 42, or 43; or (b) that include a majority of schools with a locale code of 32, 33, 41, 42, or 43.

Applicants are encouraged to retrieve locale codes from the National Center for Education Statistics School District search tool (<https://nces.ed.gov/ccd/districtsearch/>), where LEAs can be looked up individually to retrieve locale codes, and Public School search tool (<https://nces.ed.gov/ccd/schoolsearch/>), where individual schools can be looked up to retrieve locale codes.

FINAL SELECTION CRITERIA:

(a) Quality of the eligible applicant.

In determining the quality of the eligible applicant, the Secretary considers one or more of the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments and annual student attendance and retention rates and, where applicable and available, student academic

growth, high school graduation rates, postsecondary enrollment and persistence rates, including in college or career training programs, employment rates, earnings, and other academic outcomes) for educationally disadvantaged students served by the charter school(s) operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State.

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation.

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter.

(4) The extent to which the schools operated or managed by the applicant demonstrate strong results on measurable outcomes in non-academic areas such as, but not

limited to, parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction.

(b) Significance of contribution in assisting educationally disadvantaged students.

In determining the significance of the contribution the proposed project will make in expanding educational opportunity for educationally disadvantaged students and enabling those students to meet challenging State academic standards, the Secretary considers the quality of the plan to ensure that the charter school the applicant proposes to open, replicate, or expand will recruit, enroll, and effectively serve educationally disadvantaged students, which include children with disabilities and English learners.

(c) Quality of the continuation plan.

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available.

This document does not preclude us from proposing additional priorities, requirements, definitions, or

selection criteria, subject to meeting applicable rulemaking requirements.

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

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

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

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

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

agency;

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

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

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

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

We have also reviewed this final regulatory action

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

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

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

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

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

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired

behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

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

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

In accordance with these Executive orders, the Department has assessed the potential costs and benefits,

both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

#### Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating Developers that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

This regulatory action strengthens accountability for the use of Federal funds by helping to ensure that the Department selects for CSP grants the Developers that are most capable of expanding the number of high-quality charter schools available to our Nation's students, consistent with a major purpose of the CSP as described in section 4301(3) of the ESEA. The Department believes that these benefits to the Federal government outweigh the costs

associated with this action.

#### Regulatory Alternatives Considered

The Department believes that the priorities, requirements, definitions, and selection criteria are needed to administer the program effectively. As an alternative to the selection criteria announced in this document, the Department could choose from among the general selection criteria in 34 CFR 75.210. We do not believe that these criteria provide a sufficient basis on which to evaluate the quality of applications. In particular, the criteria do not sufficiently enable the Department to assess an applicant's past performance with respect to the operation of high-quality charter schools or with respect to compliance issues that the applicant has encountered.

#### Paperwork Reduction Act of 1995

The final priorities, requirements, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the final priorities, requirements, and selection criteria do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number

of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Participation in this program is voluntary and limited to charter school developers seeking funds to help open a new charter school or replicate or expand a high-quality charter. The Department anticipates that approximately 50 developers will apply for Developer grants in a given year and estimates that approximately half of these developers will be small entities. For this limited number of small entities, any cost-bearing requirements imposed by this regulatory action can be defrayed with grant funds, as discussed in the Regulatory Impact Analysis.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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

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Dated: June 28, 2019.

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Frank T. Brogan,  
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