

period should be extended. Therefore, the closing date for comments is changed to February 1, 2005, which will provide the NCUTCD, the AASHTO, and others interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

**DATES:** Submit comments on or before February 1, 2005.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document.

Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the on-line instructions for submitted comments). All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter J. Hatzl, Office of Safety Design (HSA-10), (202) 366-8036, or Raymond Cuprill, Office of the Chief Counsel (202) 366-0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access and Filing**

Interested parties may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>.

Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable

Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission, retrieval help and guidelines are available under the help section of the website.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

#### **Background**

The FHWA has conducted extensive research on the minimum levels of sign retroreflectivity. This research led to the development of proposed minimum maintained levels of traffic sign retroreflectivity, and a complement of maintenance methods for implementing the levels. On July 30, 2004, the FHWA published in the **Federal Register** a notice of proposed amendments (NPA) proposing changes to the MUTCD to include methods to maintain traffic sign retroreflectivity. The proposed maintenance methods would establish a basis for improving nighttime visibility of traffic signs to promote safety, enhance traffic operations, and facilitate comfort and convenience for all drivers.

The existing MUTCD requires that traffic signs be illuminated or retroreflective. However, until recently, little information was available about the levels of retroreflectivity necessary to meet the needs of drivers and thereby define the useful life of signs. The NPA for maintaining traffic sign retroreflectivity is proposing guidance for evaluating and maintaining traffic sign retroreflectivity to address the needs of drivers. The methods proposed would allow agencies options for evaluating and managing their signs.

The NPA proposes a seven-year compliance period for regulatory, warning, and post mounted guide signs and a 10-year compliance period for overhead guide signs and street name signs.

The original comment period for the NPA closes on October 28, 2004. The NCUTCD and the AASHTO have expressed concern that this closing date does not provide sufficient time to review and discuss the proposed changes; and then, develop and submit complete responses to the docket. To allow time for these organizations and others to submit comprehensive comments, the closing date is changed

from October 28, 2004, to February 1, 2005.

**Authority:** 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); sec. 406(a), Pub. L. 102-388, 106 Stat. 1520, 1564, 23 CFR 1.32 and 49 CFR 1.48(b).)

Issued on: October 18, 2004.

**Mary E. Peters,**

*Federal Highway Administrator.*

[FR Doc. 04-23674 Filed 10-21-04; 8:45 am]

**BILLING CODE 4910-22-P**

## **DEPARTMENT OF EDUCATION**

### **34 CFR Part 225**

**RIN 1855-AA02**

#### **Credit Enhancement for Charter School Facilities Program**

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

**ACTION:** Notice of proposed rulemaking.

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

**DATES:** We must receive your comments on or before November 22, 2004.

**ADDRESSES:** Address all comments about these proposed regulations to Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6140. If you prefer to send comments through the Internet, use the following address: [comments@ed.gov](mailto:comments@ed.gov). You must include the term "credit enhancement" in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Valarie Perkins or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-6140. Telephone: (202) 260-1924 or via Internet, at: [charter.facilities@ed.gov](mailto:charter.facilities@ed.gov). If

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **SUPPLEMENTARY INFORMATION:**

##### **Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 4W258, 400 Maryland Avenue, SW., Washington, DC, 20202-6140, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

##### **Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### **Background**

These proposed regulations would apply to both (a) the Credit Enhancement for Charter School Facilities program, which is authorized under title V, part B, subpart 2 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the No Child Left Behind Act of 2001 (Pub.

L. 107-110, enacted January 8, 2002) and (b) its predecessor, the Charter School Facilities Financing Demonstration Grant program, as authorized by title X, part C, subpart 2 of the Act as part of the Department of Education Appropriations Act, 2001 as enacted by the Consolidated Appropriations Act, 2001. The purpose of this program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to public and nonprofit entities, and consortia of these entities, to leverage other funds and help charter schools acquire school facilities through such means as purchase, lease, and donation. Grantees may also use grants to leverage other funds to help charter schools construct and renovate school facilities.

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

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

##### **Proposed Regulations**

The primary purpose of this regulation is to establish selection criteria for this complex program's discretionary grant competitions after FY 2004. Since we seek to award grants to high-quality applicants with high-quality plans to use their grant funds, these criteria essentially include assessments on the quality of the applicant and the quality of the applicant's plan. The criteria also assess how applicants propose to leverage private or public sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs. The proposed selection criteria are similar to those we have used in the two previous competitions

for this program. As noted above, this proposed regulation also includes a few provisions that govern the ongoing management of the grants already awarded in preceding fiscal years.

##### **Executive Order 12866**

###### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

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

###### *Summary of Potential Costs and Benefits*

The Secretary believes that these regulations are necessary to clarify complex statutory provisions. As noted elsewhere, these proposed regulations add clarity where the statute is ambiguous or reorganize statutory material to facilitate a better understanding of the statute's requirements. Nearly all of the benefits and costs of these proposed regulations stem from the underlying legislation and not the regulations. The costs associated with these proposed regulations are not only minimal but are also justified in terms of the benefits that successful applicants for these discretionary grants will receive. For example, the statute requires an application and the types of information that would be collected through the proposed selection criteria should be readily available to applicants under this program.

###### *2. Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations

easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 225.1 *What is the Credit Enhancement for Charter School Facilities Program?*)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be tangentially affected by these proposed regulations are small grantees and, tangentially, small charter schools that ultimately benefit from services provided by grantees. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small grantees and small charter schools affected because the proposed regulations would not impose excessive regulatory burdens on those entities or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, since the statute requires Credit Enhancement for Charter School Facilities applicants to apply to the Department if they wish to receive discretionary funds, it would be difficult for the Department to award funds without the application information specified in the proposed regulations. The proposed regulations will ensure that applicants do not provide significant amounts of

information that is already otherwise available to the Department.

The proposed regulations would impose minimal paperwork burden requirements for all applicants and minimal requirements with which grant recipients must comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Credit Enhancement for Charter School Facilities program.

#### Paperwork Reduction Act of 1995

Sections 225.11 and 225.12 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

#### Collection of Information: Credit Enhancement for Charter School Facilities Grant Program

The Department will use the information collected through the selection criteria and competitive priority to determine whether to fund applicants. Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We estimate the annual reporting and recordkeeping burden for this collection of information to average 80 hours for each respondent for 30 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 2400 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including

whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Credit Enhancement for Charter School Facilities program.

Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be placed in the public comment file and considered in the preparation of the final regulations.

#### Intergovernmental Review

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

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

## Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in PDF at the following site: <http://www.ed.gov/programs/charterfacilities/index.html>.

**Note:** 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 on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

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

## List of Subjects in 34 CFR Part 225

Charter Schools, Credit Enhancement, Education, Educational facilities, Elementary and secondary education, Grant programs—education, Report and recordkeeping requirements, Schools.

Dated: October 19, 2004.

**Nina Shokraii Rees,**

*Assistant Deputy Secretary for Innovation and Improvement.*

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

## PART 225—CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

### Subpart A—General

Sec.

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

225.2 Who is eligible to receive a grant?

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

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

### Subpart B—How Does the Secretary Award a Grant?

225.10 How does the Secretary evaluate an application?

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

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

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

225.20 When may a grantee draw down funds?

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

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

### Subpart A—General

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

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

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

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

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

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

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

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

#### § 225.2 Who is eligible to receive a grant?

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

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

(b) A private nonprofit entity; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The regulations in this part 225.

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

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

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

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1: Acquisition, Applicant, Application, Award, Department, EDGAR, Facilities, Grant, Grantee, Nonprofit, Private, Project, Public, and Secretary.

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

### Subpart B—How Does the Secretary Award a Grant?

#### § 225.10 How does the Secretary evaluate an application?

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

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

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

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

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

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

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

(1) The extent to which the grant proposal would provide financing to

charter schools at better rates and terms than they can receive absent assistance through the program;

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

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

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

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

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

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

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

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

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

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

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

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

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

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

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

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

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

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

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

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

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

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

(2) The staffing plan for the grant project.

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

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

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

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

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

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

(b) The Secretary may elect to—

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

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11.

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

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

##### **§ 225.20 When may a grantee draw down funds?**

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

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

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

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

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

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

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

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

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

[FR Doc. 04-23746 Filed 10-21-04; 8:45 am]

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