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**Charter Schools Program
New Flexibilities under the Every Student Succeeds Act
Frequently Asked Questions
December 2017**

Introduction:

On November 15, 2017, the United States Department of Education's (Department's or ED's) Office of Innovation and Improvement (OII) released a [Dear Colleague Letter](#) (DCL) inviting existing Charter Schools Program (CSP) grantees that received their grants in fiscal year (FY) 2016 or earlier (*i.e.*, under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB)) to request approval to amend their approved CSP grant applications in order to implement certain provisions under the ESEA, as amended by the Every Student Succeeds Act (ESSA).¹ The ESSA, which was enacted in December 2015, reauthorized the CSP and applies to CSP grants awarded in FY 2017 and later years. The ESSA flexibilities discussed in the DCL apply to the following grant programs: CSP Grants to State Educational Agencies (Grants to SEAs); CSP Grants for the Replication and Expansion of High-Quality Charter Schools (Replication and Expansion Grants); and CSP Grants to Non-SEA Eligible Applicants (Grants to Non-SEAs) programs. The purpose of these Frequently Asked Questions (FAQs) is to provide responses to grantee questions received by the Department following release of the DCL and during the CSP webinar that was held on November 17, 2017.² For additional information or technical assistance regarding the new ESSA flexibilities, grantees should contact their assigned program officer or submit their questions by e-mail to charterschools@ed.gov.

The ESSA amended the CSP program statute in several ways, including by expanding the allowable activities under the CSP. In addition to the CSP authorizing statute, the Department's regulations, and the responses to frequently asked questions included in this document, the

¹ Unless stated otherwise, all references to the ESEA in these Frequently Asked Questions (FAQs) are to the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).

² Webinar Link:

<https://educateevents.webex.com/educateevents/lsr.php?RCID=ccd61349766d0005ea9c2f5a36a8b015>.

Department encourages CSP grantees to refer to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200, Subpart E in determining whether a specific item or activity is allowable. As a general matter, an expenditure that is not specifically authorized by statute must be necessary, reasonable, and allocable to the grant in order to be allowable under the CSP (2 CFR 200.403(a)). In particular, grantees should refer to the following provisions:

- Reasonable cost: A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration must be given to, among other things, whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award, and market prices for comparable goods or services for the geographic area. (2 CFR 200.404)
- Allocable cost: A cost is allocable if the goods and services involved are chargeable or assignable to the grant in accordance with the relative benefits received. (2 CFR 200.405(a))

In addition, under 2 CFR Part 200, Subpart D, all CSP grantees' financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes and regulations, and the terms and conditions of the Federal award. (2 CFR 200.302(a))

Questions and Answers:

1. Will the Department consider through the expedited review process an amendment request submitted by a CSP grantee that received its award in FY 2017?

No, the Department will not consider through the expedited review process amendment requests from CSP grantees that received their awards in FY 2017. Because CSP grants awarded in FY 2017 are governed by the provisions of the ESSA, the flexibilities described in the DCL were available to such grantees at the time they developed and submitted their applications.

2. May a grantee request additional time to submit an amendment request through the expedited review process?

As a general rule, a grantee may submit an application amendment request at any time during the grant performance period. All requests to amend an approved application through the expedited review process described in the DCL, however, must be submitted to ED by **December 22**,

2017,³ with no exceptions. Grantees that submit their requests by this deadline will receive a response from the Department on or before January 31, 2018. If a grantee submits an amendment request after the deadline, the Department will review and provide a response to the request after we have completed our review of the amendment requests submitted by the due date.

3. What constitutes a “written notification” of a grantee’s intent to request approval to amend an approved grant application in order to implement one or more of the flexibilities discussed in the DCL?

The DCL asks grantees that plan to request approval to amend their grant applications in order to implement one or more of the ESSA flexibilities through the expedited review process described in the DCL to submit a “written notification” of such intent to the Department. Any written communication from a grantee informing the Department of the grantee’s intent to submit a request to amend its approved grant application in order to implement one or more of the flexibilities discussed in the DCL constitutes a “written notification.” Grantees may send an e-mail to their assigned CSP grant program officer notifying him or her of the grantee’s intent to request an application amendment to implement one or more of the flexibilities outlined in the DCL. Please copy charterschools@ed.gov and Catherine.Shade@ed.gov on all e-mail correspondence.

4. Is a grantee that is conducting CSP grant activities under a no-cost extension eligible to request approval to amend its approved application in order to implement one or more flexibilities described in the DCL?

No. Grantees operating under no-cost extensions are not eligible to amend their approved applications. *See* 34 CFR 75.261(c) and 2 CFR 200.308(d)(2).

5. In order to take advantage of the higher per-seat funding available for replication charter schools than for expansion charter schools under the Replication and Expansion grant program, may a charter management organization (CMO) request approval to amend its application to change expansion charter schools to replication charter schools in a case where the application proposed to expand one or more existing charter schools because the lottery requirement under the prior law (*i.e.*, the ESEA, as amended by NCLB) prohibited charter schools receiving CSP funds from admitting students through the use of “feeder patterns?”

Yes, a CMO grantee under the Replication and Expansion program that proposed to expand one or more existing high-quality charter schools, rather than replicate them, in order to comply with the lottery requirement under NCLB may request approval to amend its application to enroll students in the immediate prior grade level of an affiliated charter school automatically (*i.e.*,

³ The DCL established December 11, 2017, as the deadline for grantees to submit requests to amend their approved applications to implement the ESSA flexibilities under an expedited review process. The Department has extended the deadline to **December 22, 2017**.

employ a “feeder pattern”), to replace one or more proposed expansion charter schools with replication charter schools, and to re-allocate the approved project budget accordingly. A grantee proposing to amend its application and budget for this purpose must explain in its amendment request, among other things, how the proposed change falls within the scope and objectives of the approved project.

6. What constitutes construction?

The CSP authorizing statute does not define the term “construction.” For purposes of the DCL and these FAQs, however, the Department encourages grantees and subgrantees to refer to the definition of “construction” in section 7013(3) of the ESEA for guidance: “(A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt service for such activities” (20 U.S.C. 7713(3)).

7. May a grantee use CSP funds for construction?

ESEA grant funds generally may not be used to purchase real property or for construction, unless specifically authorized by statute or the implementing regulations of the program (34 CFR 75.533). However, under Section 4303(h)(3) of the ESEA, grantees may use CSP funds to carry out “necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).”

Under section 200.13 of the Uniform Guidance, renovations or improvements that materially increase the value or useful life of a “capital asset” (*e.g.*, land, building or facility, equipment, and intellectual property (including software)) are “capital expenditures.” In order to charge a capital expenditure to the CSP grant or subgrant, the grantee or subgrantee must obtain the prior written approval of the Department or SEA (*i.e.*, “pass-through entity”) (2 CFR 200.439(b)(3)). For information regarding title, use, and disposition of real property improved with Federal grant funds and reporting requirements for such property, grantees should refer to 2 CFR 200.311 and 200.329, respectively.

8. Section 4303(h)(3) of the ESEA authorizes the use of CSP funds for necessary renovations in a “new school building.” Are the new ESSA flexibilities described in the DCL applicable only to newly constructed buildings, or do they also apply to existing buildings that are considered new for the charter school?

For purposes of implementing the new ESSA flexibilities as described in the DCL, the Department is interpreting “new school building” to include an existing building that is a new (or first-time) site for a charter school that is opening or expanding.

9. Are the ESSA flexibilities in allowable uses of funds (*e.g.*, “necessary renovations” and minor facilities repairs, transportation, etc.) available for existing charter schools as well as charter schools opening within the grant period?

Yes. Like the other flexibilities discussed in the DCL, the ESSA flexibilities related to allowable costs are available to any existing grantee that received its award under NCLB (*i.e.*, prior to FY 2017) and is not operating under a no-cost extension. If the grant is still open and active, the grantee may request approval to amend its approved application and budget to conduct the new allowable activities specified under the ESSA (and discussed in the DCL) in existing charter schools as well as charter schools that are approved to open within the grant period.

10. What should a grantee consider in determining whether renovations are necessary to ensure that a new school building complies with applicable statutes and regulations, and whether the cost of the renovations is reasonable?

As stated above, grantees may use CSP funds to carry out “necessary renovations to ensure that a new school building complies with applicable statutes and regulations.” In determining whether a proposed renovation is necessary to ensure that a new school building complies with applicable statutes and regulations, the Department encourages grantees to consider, and to explain in their amendment requests, whether the renovation is actually required by a statute or regulation (*i.e.*, not simply suggested or proposed), including the source and citation for the specific compliance requirement and the consequences for non-compliance. In determining whether the cost of a proposed renovation is “necessary and reasonable,” the Department encourages grantees to consider, and to explain in their amendment requests, the following:

- Whether the renovation is necessary for the performance of the grant;
- Whether the cost of the renovation (*e.g.*, materials and labor) is commensurate with the market rate for such goods and services;
- The relative cost of the renovation calculated as a percentage of the overall dollar size of the CSP grant allocated to the charter school;
- The relative cost of the renovation calculated as a percentage of the overall cost basis of the underlying property; and
- Whether the costs are non-sustained (*i.e.*, “one-time” costs associated with the startup or expansion of the charter school).

Example 1 - Allowable: A charter school is required under a Federal or State statute (*e.g.*, the Americans with Disabilities Act (ADA)) to provide accessibility in the form of an elevator; without it, the school will not be permitted to operate. To comply, the charter school requests approval to amend its approved application to use \$50,000 of its \$900,000 CSP grant for expenditures it will incur (such as engineering drawings, labor, equipment, and materials) to install an elevator in its building that has a cost basis of \$1 million. Assuming the cost of installing the elevator is reasonable and the proposed amendment to the approved application does not result in a substantial change in the scope or objectives of the grant, then the \$50,000 renovation cost appears to be *allowable*, as 1) installation of the elevator is necessary to comply with a statute or regulation (*i.e.*, the ADA); 2) the expenditure is necessary for the performance of the grant (*i.e.*, opening and operating a new charter school); and 3) the renovation cost is reasonable insofar as it represents only 5.6 percent of the overall size of the grant and only 5

percent of the current cost basis of the real property (prior to the renovation) and, therefore, does not represent a significant grant expenditure under the grant project budget or in the context of the overall dollar cost of the real property.

Example 2 - Unallowable:

A charter school requests approval to amend its approved application to use \$250,000 of CSP grant funds to acquire commercial real property (a land parcel with a former warehouse) and renovate it for use as a permanent school facility for the charter school. In this scenario, the charter school may not use any CSP funds to acquire the property, as the acquisition of the property represents an unallowable capital expenditure for real property (34 CFR 75.533). Nor may the charter school use CSP funds to renovate the facility, unless the charter school can show that the renovations are “necessary” to ensure that the building complies with a specific statute or regulation (*e.g.*, a State safety regulation requiring installation of a sprinkler system). In such a case, the charter school also must demonstrate that the cost for the renovation is necessary, reasonable, and allocable to the grant (2 CFR 200.403(a)). Further, if the renovation would result in a material increase in the value or useful life of the property, then the cost for the renovation would qualify as a “capital expenditure,” and the charter school would be required to obtain prior written approval from the Department or, in the case of a charter school subgrantee, the SEA (*see* response to Question #7 above and Uniform Guidance at 2 CFR 200.12, 200.13, 200.329, and 200.439).

11. May a grantee use CSP funds for the acquisition of portable classrooms?

Yes, a grantee may use CSP funds to acquire portable classrooms, provided that the classrooms are temporary and directly related to opening or preparing for the operation of a new charter school or replicated high-quality charter school, or expanding a high-quality charter school (*see* section 4303(b)(1) of the ESEA). In accordance with the cost principles in the Uniform Guidance, acquisition of the portable classrooms also must be necessary, reasonable, and allocable to the grant (2 CFR 200.403-200.405). A grantee may not use CSP funds to construct permanent or non-portable classrooms on school property due to the regulatory prohibition against the use of Federal funds for construction (34 CFR 75.533).

12. What are some examples of minor facilities repairs?

Under section 4303(h)(3) of the ESEA, CSP funds may be used for minor facilities repairs (excluding construction). Examples of minor facilities repairs include repairing a leak in the roof, replacing a broken window, and repairing a furnace or air conditioning unit. In essence, minor facilities repairs neither add to the permanent value of the property nor appreciably prolong its intended life, but rather, keep it in efficient operating condition (2 CFR 200.452).

13. May a grantee use CSP grant funds for the cost of providing transportation services, directly or through a contract, to students?

Under section 4303(h)(4) of the ESEA, grantees may use CSP funds to provide “one-time, startup costs associated with providing transportation to students to and from the charter school.” One-time startup costs may not be sustained in nature and must be related to the startup or expansion of the charter school. Therefore, provided that the costs are necessary, reasonable, and allocable to the grant or subgrant, a newly opened or expanded charter school could use a portion of its CSP funds to purchase a school bus or to procure a bus service to transport students to and from the charter school during the startup or expansion phase of the school. Grantees should be aware that, depending on the facts, a school bus may be considered a “capital asset,” in which case the grantee would be required to treat the cost of purchasing the school bus as a “capital expenditure” (*see* response to Question #7 above and Uniform Guidance at 2 CFR 200.12, 200.13, 200.329, 200.439).

14. To be eligible for a CSP grant for the expansion of an existing high-quality charter school, must a charter school demonstrate that the expansion grades supported by CSP grant funds are beyond the grades or enrollment levels of the charter school’s approved charter, or may the charter school have been already approved to serve the expansion grades or enrollment levels in its original charter?

A charter school recipient of an expansion grant is not necessarily required to apply to its authorizer for a new charter or approval to amend its existing charter in order to add grades or otherwise expand enrollment; in other words, the charter school may already have been approved at the time of its charter petition approval to serve the expansion grades or higher enrollment level. However, a charter school may not receive a CSP grant to carry out the same or substantially similar activities as a previous CSP grant (*e.g.*, a high-quality charter school may not receive a second grant for expansion, if the purpose of a previous grant was to prepare for the opening and operation of a charter school serving the same grade levels and of similar size). A high-quality charter school may receive an expansion grant only for a significant increase in enrollment or to add one or more grade levels served (*e.g.*, beyond the levels supported by a previous CSP grant). Further, grantees should note that, under section 4303(e)(2) of the ESEA, an eligible applicant (*i.e.*, charter school) may not receive more than one startup or expansion subgrant for a five-year period, unless the eligible applicant demonstrates that the charter school has at least three years of improved educational results for students enrolled in the charter school with respect to elements (A) and (D) of the definition of “high-quality charter school” in section 4310(8) of the ESEA.

15. May an applicant apply for and receive multiple concurrent grants (or subgrants) for the replication or expansion of a high-quality charter school to support multiple separate campuses of the charter school?

Under section 4310(7) of the ESEA, “[t]he term ‘expand,’ when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school.” Section 4310(9) defines “replicate,” however, when used with respect to a high-quality charter school, as “open[ing] a new charter school, *or a new campus of a high-quality charter school*, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law” (emphasis added). Therefore, a charter school could receive a second, concurrent grant (or subgrant) to support the replication of a high-quality charter school on a separate campus of the existing high-quality charter school. However, while a high-quality charter school is eligible to apply for an expansion grant, the charter school may not receive concurrent grants (or subgrants) to support the expansion of a single high-quality charter school on multiple separate campuses. Further, as stated in the response to Question #14 above, an eligible applicant (*i.e.*, high-quality charter school or campus of the charter school) may not receive more than one subgrant for a five-year period, unless the charter school has at least three years of improved educational results for students enrolled in the charter school (*see* section 4303(e)(2) of the ESEA).