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THE CREDIT ENHANCEMENT FOR CHARTER SCHOOL FACILITIES PROGRAM

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GUIDANCE

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

What's New in the Credit Enhancement Program Guidance?

The following are new items in the program guidance:

- A. 6. Does a charter school have to directly receive a grant to benefit from this program?
- F.19 If I have more than one grant under the program, under which grant do I count the charter schools I serve and the financing I leverage?
- G. 5. Must grantees submit annual reports?
- G-6. Must grantees use cash-based accounting when they report on their use of grant funds?
- G-7. May grantees commingle their grant funds?

The following items in the program guidance have been altered to either clarify or expand on the guidance:

- A-5. For the purposes of eligibility:
 - Is a charter school a “public entity, such as a State or local government entity”?
 - Can a charter school be considered both a public school and a “private nonprofit”?
 - Is a charter school authorizer an eligible entity?
- B.2. Must grantees document that charter schools are eligible for services under this program?
- B.3. Does a charter school need to have a charter or be open to receive assistance from a grantee?
- B.7. If a grantee credit-enhances a facility owned by a third party for the benefit of a charter school and the charter school closes or moves, can the guarantee remain in place on the facility?
- C.1. What categories of applicants will receive awards under this program?
- C.6. Is there a preferred strategy for how the money would be used? (For example, is the Department more interested in establishing a new bond insurance provider, capitalizing a reserve for an ongoing loan revolving fund, or some other specific financial strategy?)
- C-9. Should my organization apply for funds?
- F.2. How should funds in the reserve account be invested?

- F.3. What is the objective of the reserve account?
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- G. 3. Based on .205 of OMB Circular A-133, do these grantees have to conduct A-133 audits when they have more than \$500,000 in their reserve accounts?

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The Credit Enhancement for Charter School Facilities Program (the program) provides grants to eligible entities to help charter schools gain access to capital from the private sector and other non-Federal sources in order to address their facilities renovation, construction, and acquisition needs. All program funds received by the grantee must be placed in a reserve account and used for one or more of the following four purposes:

- 1) Guaranteeing, insuring, and reinsuring debt used to assist charter schools to acquire, renovate, or construct school facilities.
- 2) Guaranteeing or insuring leases of personal or real property that are needed to begin or continue the operation of the charter schools.
- 3) Facilitating financing by potential lenders.
- 4) Facilitating the issuance of bonds by charter schools or other public entities for the benefit of charter schools.

The following Questions and Answers are designed to clarify different aspects of the program. For additional information on program requirements, and how to submit an application, please see the Notice Inviting Applications and the Application Package.

A. ELIGIBLE GRANTEES:

A.1. Who is eligible to apply for and receive a grant under this program?

A public entity, such as a State or local government; a private nonprofit entity; or a consortium of the first two types of entities may apply for and receive a grant under this program. A for-profit entity may not receive a grant under this program.

A.2. What is a consortium and what are the requirements for consortium applications?

For the purposes of this statute, a consortium is a group of eligible applicants that apply for a single grant. The consortium may include only eligible entities and can consist of a group of public or a group of private nonprofit entities or a combination of these two types of entities. We anticipate that consortia will often consist of a combination of public and private nonprofit entities.

Consortium applicants must either designate one member of the group to apply for the grant, or they may establish a separate, eligible legal entity to apply for the grant. The members of the consortium must also enter into an agreement that details the activities that each member of the group plans to perform and that binds each member to the application statements and assurances. The consortium agreement must be submitted with the

consortium's application. The Department's administrative regulations at 34 CFR §§ 75.127-129 provide more details about the requirements that govern group/consortium applications.

A.3. Is a consortium application required for applications in which multiple entities are involved in carrying out the grant project?

No. A permissible alternative to a consortium for multiple eligible entities that want to implement a grant project jointly would be for one entity to act as the applicant and enter into a contract with the second entity for some portion of anticipated services. In this case, the second entity would not be an applicant and, therefore, would not have to meet applicant eligibility requirements. For example, a private nonprofit grant applicant that plans to enter into a contract with another private nonprofit applicant to receive certain services related to the grant would be considered an individual applicant rather than a consortium applicant. However, if two eligible entities, such as two private nonprofit organizations, want to submit an application together and be equally bound by the terms of the grant award, they should form a consortium and enter a joint application, as detailed in the preceding answer. Under either example, the grantee entity has responsibility for administering or supervising the grant project and complying with the terms of the grant.

A.4. May a for-profit entity be part of a consortium application?

No. As noted above, a consortium applicant can be comprised only of eligible applicants and, under statute, for-profit entities are not eligible applicants. While a for-profit entity may not be a grantee, an eligible grantee may contract with for-profit entities to receive supplies, equipment, construction, and other services in accordance with 34 CFR Parts 74 and 80. However, the grantee may not delegate or contract out the responsibility for administering the grant project.

A.5. For the purposes of eligibility:

- **Is a charter school a “public entity, such as a State or local government entity”?**

If a charter school is a local educational agency (LEA) as defined in the Department's administrative regulations 34 CFR § 77.1 and meets the definition of a charter school as outlined in Question B.1., it is considered a public local government entity for this program. However, we expect that a charter school that is a school within an LEA will not typically qualify as a separate public entity. We anticipate that a charter school within an LEA that wants to submit an application for the program would collaborate with its LEA, State, or a combination of other eligible public or private nonprofit entities that would qualify as a consortium applicant. The eligible

entity would then submit an application that would include the charter school's proposals.

Successful applicants for these grants are likely to have the capacity and requisite financial expertise needed to help a number of charter schools leverage private-sector capital or other non-Federal funding sources to meet facilities needs.

- **Can a charter school apply as both a public entity and a “private nonprofit” in a single application?**

No. While a charter school may be both a public entity (or part of a public entity if it is not its own local educational agency) and a private, nonprofit entity, it must apply as one or the other in any single application.

- **Is a charter school authorizer an eligible entity?**

Yes, so long as the authorizer is either a public entity (such as a State or local government) or a private nonprofit entity.

A. 6. Does a charter school have to directly receive a grant to benefit from this program?

No, a charter school does not need to directly receive a grant to benefit from this program. We encourage individual charter schools who are contemplating applying for a grant to also consider directly contacting our existing grantees for assistance under the program. The grantees are listed at <http://www.ed.gov/programs/charterfacilities/granteelist.doc>. While none of these grantees are individual charter schools, all of them are assisting charter schools.

B. ELIGIBILITY OF CHARTER SCHOOLS FOR SERVICES:

B.1. What is a “charter school” for the purposes of this program?

The definition of a charter school under this program is the same as the definition used by the U.S. Department of Education’s Charter Schools Program (CSP). Under that definition:

(1) A charter school is a public school that--

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph [the paragraph that encompasses this definition];

(B) is created by a developer as a public school, or is adapted by a developer

from an existing public school, and is operated under public supervision and direction;

(C) has a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;

(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the CSP];

(J) meets all applicable Federal, State, and local health and safety requirements;

(K) operates in accordance with State law; and

(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Charter schools must meet the definition of a charter school used by the CSP in order to be eligible to receive services under the Credit Enhancement for Charter School Facilities Program. Consequently, a school that meets its State's definition of a charter school, but, for example, does not:

- provide an elementary or secondary education program (as defined under State law) or

- admit students based on a lottery if more students apply for admission than can be accommodated

cannot receive services from a grantee under the Credit Enhancement for Charter School Facilities program.

B.2. Must grantees document that charter schools are eligible for services under this program?

Yes, in compliance with 34 CFR 75.731, grantees must maintain documentation that the charter schools they serve are eligible for services under the program. The Department encourages grantees to obtain an assurance of eligibility from charter schools that they intend to serve. Ideally this assurance will list all of the components of the definition of a charter school and indicate that the charter school complies with each of those components and will continue to comply with it as long as it receives services from the grant.

In the event that a grantee does not document that a charter school complies with this definition, the burden of proof rests on the grantee that it is using grant funds under the program for allowable purposes. The lack of documentation could result in audit findings and make a grantee liable for repaying grant funds.

B.3. Does a charter school need to have a charter or be open to receive assistance from a grantee?

Sometimes a school will not yet have a charter because its authorizer requires schools to find a facility prior to granting a charter to the school. In the event a school does not yet have a charter or is not yet open, the receipt of the charter and the opening of the school must both be imminent in order to receive assistance.

Applicants will determine the requirements a charter school must meet to receive assistance through their proposed grant projects. Applicants must provide information on the criteria they will use to determine which schools to support, including how they will evaluate the likelihood of success of a charter school program. We believe that schools that are not chartered are less likely to receive assistance. Still, grant applicants may be able to define characteristics about schools that have not yet received their charter, such as strong support from a chartering authority, that indicate that they are likely to succeed and should be assisted under this program.

B.4. Is the use of the facility limited to operation of a charter school?

A charter school (or schools) must be the primary user of the facility. There may be cases where a charter school rents out either all of the facility for part

of the time or a portion of its facility all of the time. After factoring in these other uses, the primary purpose of the facility must be for the charter school(s).

B.5. May a grantee guarantee or insure a charter school's lease of a religious organization's facility?

A grantee may guarantee or insure a charter school's lease of a religious organization's facility. Charter schools may use the facilities of a religious organization to the same extent that other public schools may use these facilities. Generally, this means that a charter school may lease space from a religious organization so long as the charter school remains non-religious in all its programs and operations. Therefore, the religious landlord may not exercise any control over what is taught in the charter school.

Space constraints are a major challenge facing charter schools. A charter school should select space based on its logistical and educational needs, not because the space is located in or near a religious school or institution or because officials of the charter school are connected to a particular religious organization. On the other hand, it is important that charter school operators have the flexibility to examine a range of options in their community. The Department strongly recommends that any space used by a charter school be free of religious symbols and under the full control of the charter school during school hours and during all charter school activities.

B.6. Can reserve account funds be used to credit-enhance or guarantee debt for private developers (non-profit or for-profit) or other entities to help them purchase or construct facilities for charter schools?

Yes, so long as the grantee ensures that the transaction is designed principally to benefit the charter school and not the developer. For instance, if the credit enhancement of the debt of a developer to build a facility enables a charter school to obtain a long-term lease at lower price than it would have received absent the credit enhancement, such a use of funds would be allowable. The statute permits this because, under Section 5224(1), it allows grantees to help third parties acquire facilities for the benefit of a charter school.

B.7. If a grantee credit-enhances a facility owned by a third party for the benefit of a charter school and the charter school closes or moves, can the guarantee remain in place on the facility?

The guarantee can remain in place on the facility as long as (1) the guarantee was not solely designated for the original charter school and (2) the school that moves into the space meets the Federal definition of a charter school. This type of a relationship reduces the risk associated with an individual charter school closing and another charter school being able to benefit from use of the facility.

If, however, an entity other than a charter school, such as a department store or day care center, moves into the space as a replacement tenant and stays for more than 12 months, the Federal grant funds may not continue to be used to guarantee the third party's debt on the facility.

C. GRANT COMPETITION:

C.1. What types of categories of applicants will receive awards under this program?

The legislation states that when possible the Secretary shall make at least one award in each of the "three categories" of eligible entities. The three categories are: A) a public entity, such as a State or local government entity; B) a private nonprofit entity; and C) a consortium of entities described in A and B. However, if high-quality applications are not submitted in each of the three categories, a different situation may occur. The Department might not fund grants in a given category and, instead, fund multiple awards in another category. Other factors in addition to applicant quality that can affect this decision are appropriation levels and the cost of proposed projects.

C.2. On what basis will applications be selected for funding?

Experts in charter schools and finance, including school facilities finance and credit enhancement, will review the applications. The criteria they will use in evaluating the proposals address three questions: (1) Has the applicant proposed a grant project that addresses school capacity issues related to implementation of the No Child Left Behind Act? (2) Has the applicant proposed a high-quality project that will address in a significant way the purpose of the Credit Enhancement for Charter School Facilities Program and thereby result in greater access for charter schools to facilities financing? (3) Does the applicant's organization have the ability to carry out the proposed project?

Factors involving the school capacity issues related to the No Child Left Behind Act (15 competitive priority points). These include the extent to which applicants would target services to charter schools that are in (1) 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 as amended by the No Child Left Behind Act; (2) geographic areas in which a large proportion of students perform below proficient on State academic assessments; and (3) communities with large proportions of students from low-income families.

Criteria related to the potential contribution of the proposed grant project to achieving the purpose of the Credit Enhancement for Charter School Facilities Program include:

- 1) *The quality of the design and potential significance of the proposed grant project* (35 points). This criterion addresses the rates and terms charter schools are likely to obtain through the project; the goals, objectives, and activities of the grant project; how the applicant will determine the viability of an individual school as an educational enterprise and therefore as a target for investment; the replicability of the grant project; the number and type of charter schools that it anticipates will obtain facilities as a result of the grant project; the amount and type of assistance they will receive; and the degree to which projects would serve charter schools in States with strong charter school laws.
- 2) *The quality of the services* (15 points). This criterion is concerned with the immediate benefits to be provided to charter schools as a result of the grant project. In this regard it addresses questions about the fit between the assistance to be provided and the needs of the recipients of the services. It also considers the cost-effectiveness of the services to be provided.

Criteria related to the applicant's capacity to carry out the proposed grant project include:

- 1) *The business and organizational capacity of the applicant to carry out the grant project* (35 points). This criterion focuses on the applicant's expertise in capital market financing and its organizational capacity to implement the proposed project as demonstrated by its financial track record and strength; its ability to protect against unwarranted financial risk; its expertise in assessing credit and evaluating the success of charter schools; and its ability to prevent conflicts of interest.
- 2) *The grant project team* (15 points). This factor focuses on the relevant training and experience of key grant project personnel, consultants, subcontractors, and, for nonprofits, members of the board of directors holding key positions.

C.3. Are eligible entities allowed to apply in more than one category or submit more than one proposal?

Eligible entities may apply in more than one category if they meet the requirements of the respective applicant categories. For example, it would be permissible for a State educational agency, which is a public entity, to submit a proposal on its own and also be a part of an application submitted by a consortium for a different type of proposal. Furthermore, applicants may choose to submit multiple proposals within a single category. However, applicants are advised that in selecting its final slate of grantees, the Department will not fund overlapping activities for the same grantee or charter school beneficiaries.

C.4. How many schools should each grant project assist? Should a grant project serve more than one State?

Competitive applications will provide substantial assistance to a significant number of charter schools within the financial constraints of the proposed grant project. Applicants should structure their credit enhancement with sufficient size, scope, and quality to ensure an effective demonstration of a proposed strategy.

The legislation does not require grantees to serve multiple States. However, applicants should consider the potential replicability of their proposed activities in other settings, including other States.

C.5. May the application seek grant assistance for a blind pool, or must the potential charter school participants be pre-identified?

An application need not specify the schools that would receive services through the grant project. However, the applicant should substantiate demand among charter schools for its activities under the proposal. The applicant must also provide details as to how charter school participants will be chosen. Grantees will eventually be required to list the charter schools served and describe the facility financing offered during the grant's reporting period.

C.6. Is there a preferred strategy for how the money would be used? (For example, is the Department more interested in establishing a new bond insurance provider, capitalizing a reserve for an ongoing loan revolving fund, or some other specific financial strategy?)

The Department does not have a preferred strategy for how it would like to see applicants propose to use the funds. The Department has supported a variety of strategies in the program. Some of the grantees under the program serve as both

- the entity that credit enhances the loan using its grant funds and
- the lender.

Other grantees do not serve as a lender and credit enhance loans and bonds on behalf of others.

A 2008 study, *Implementation of the Credit Enhancement for Charter School Facilities Program*, found that grantees that credit enhance financing for others used their grant funds more quickly than those grantees that do not. However, the performance of both types of grantees vary and no one approach ensures that a grantee will successfully use its grant funds.

C.7. How much capital should be leveraged?

The Department expects projects to leverage a significant amount of funds, that is, enable a number of charter schools to obtain capital that is far greater than the amount of the grant. However, there is no set amount that the Department anticipates a project to leverage. In order to serve a number of charter schools with varying degrees of financial risk, an applicant might use multiple strategies that leverage very different levels of funds. Furthermore, applicants should seek to ensure that funds are not leveraged to such an extreme level that they could not reasonably be expected to supplement charter schools in obtaining and improving school facilities. The benefit to charter schools should be great enough that it induces them to obtain or improve a school facility.

C.8. What types of schools should be helped with these funds?

The purpose of this program is to support projects with varying degrees of credit-worthiness gain access to financing for facilities. Therefore, applicants should consider working with a variety of schools to exhibit the effectiveness of their approaches.

Many factors affect the extent to which charter schools have access to private-sector and other capital for financing. The length of time the school has been in operation, its size, and the populations it serves are some of the factors that play into the school's ability to obtain financing at a reasonable rate.

C.9. Should my organization apply for funds?

This program is primarily a finance program as opposed to an education program. Competitive proposals would likely come from applicants that demonstrate knowledge of charter schools and substantial experience with finance, including credit enhancement. In some cases, applicants might choose to form partnerships or consortia to obtain this mix of skills. In addition to having a strong capacity as an organization, a competitive application would need to include a high-quality proposal for how the organization would use a grant to benefit charter schools.

C.10. What could an applicant do to make a proposal highly competitive?

They could use other financial resources to enhance their applications. Many of the previous successful applicants pledged to contribute some kind of resource to subsidize charter schools. For instance, a State applicant's resources include Qualified Zone Academy Bonds (QZABs) and State school construction funds, a portion of which States could pledge to use on behalf of charter schools in their applications. As you know, QZABs are bonds the Federal Government subsidizes by allowing bondholders to receive tax

credits that are approximately equal to the interest that States and communities would pay holders of taxable bonds. As a result, issuers are generally responsible for repayment of just the principal. State education agencies receive these QZAB allocations and they have considerable flexibility determining how they are allocated.

Partners might also make applications more competitive than they previously were. Many of the previous successful applicants specified partners with whom they intended to work. A partner would not necessarily have to be a consortium member and partners that are not consortium members may be for-profit entities (See A.3.). These partnerships helped ensure that funded proposals would be run by a team of individuals that had expertise in both charter schools and credit enhancement. For instance, different State agencies, such as a State educational agency and a State agency that issues bonds on behalf of the State, might partner to ensure that they have sufficient expertise to administer a grant.

Other things that applicants can do to increase the likelihood of being funded include:

- submitting complete applications that include information, such as a budget, resumes of key personnel, and conflict of interest policies, that fully reflect the merit of the proposal;
- incorporating clear goals, objectives, and timelines;
- clearly describing who would manage the project;
- estimating the number of schools to be served and including a plan for marketing services to the schools;
- describing the qualifications of a project director, in the event an individual cannot be named in the application; and
- specifying the different responsibilities of all partners.

C. 11. What should an applicant do if its application’s proposed use of funds is based on obtaining funding from another source or cooperation from certain financiers and it is not clear the applicant will receive those funds or the cooperation from the financiers?

A grant application may propose a contingent plan in the event that it is unable to implement its preferred plan. For instance, an applicant might plan to apply for a New Market Tax Credits award and not know if it will obtain the award. The contingent plan should clearly indicate how the applicant would use the grant funds in the event that applicant was unable to execute its preferred plan for using the funds. In addition, we recommend that

applicants indicate in their timeline when they would make their decisions to switch to their contingent plans.

D. COMPETITIVE PRIORITY:

D.1. What are school facility capacity issues under the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind (NCLB) Act?

Under NCLB, school districts are required to provide public school choice to students in schools that have either (1) failed to make adequate yearly progress for two years, or (2) are considered to be persistently dangerous. In the event that there is insufficient space to accommodate students desiring to exercise choice as a result of schools failing to make adequate yearly progress, school districts are required to create additional space for those students.

School districts that lack sufficient space to accommodate students who desired to exercise choice because of the requirements under NCLB would have a school facility capacity issue. In addition, sometimes a school facility capacity issue might exist in part of a large school district. A school district might be able to accommodate students who desired to exercise choice, but if the schools that could accommodate these students are far from the home of the student, this choice might not be meaningful.

The competitive priority under this program awards applicants up to 15 points based on how well they address the school facility capacity issues related to the No Child Left Behind Act. The factors involving these school capacity issues include the extent to which applicants would target services to charter schools that are in:

- 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 as amended by the No Child Left Behind Act;
- geographic areas in which a large proportion of students perform below proficient on State academic assessments; and
- communities with large proportions of students from low-income families.

D.2. What schools can accept students who exercise school choice under NCLB?

Any public school that has not been identified as needing improvement, including newly formed schools, may serve as a school of choice under NCLB.

D.3. How might an established charter school increase its capacity to provide school choice?

An existing charter school could increase its capacity to serve a larger number of students, by establishing a new campus, moving to a larger facility, building an addition, or purchasing “portable” classrooms.

E. CONFLICTS OF INTEREST:

E.1. What are the rules governing “conflicts of interest” in the administration of grants?

Grantees must avoid apparent and actual conflicts of interest when administering grants from the U.S. Department of Education. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family member; and (b) the person is a public official or has a family or business relationship with the grantee. Section 75.525(b) provides further that a person may not participate in a project to use his or her position for a purpose that is - or gives the appearance of being - motivated by a desire for a private or financial gain for that person or for others.

E.2. What procedures must a grantee follow in order to avoid a “conflict of interest” when making a procurement?

When using Federal funds to enter into a contract, a non-profit grantee must comply with the procurement standards set forth in the Department’s regulations at 34 CFR 74.40-74.48 and a State or local entity receiving a grant must comply with 34 CFR 80.36. These standards require Federal grant recipients to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the grantee may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists.

F. USE OF FUNDS:

F.1. How may a grantee use these funds?

A grant recipient must deposit all but its administrative cost funds (no more than $\frac{1}{4}$ of one percent of the grant award) in a reserve account. By statute, the funds in the reserve account must be used for one or more of the following four purposes:

- 1) Guaranteeing, insuring, and reinsuring bonds, notes, loans, or other types of debt that will be used to assist charter schools to acquire, renovate, or construct school facilities that are needed to begin or continue the operation of these schools.

- 2) Guaranteeing or insuring leases of personal or real property that are needed to begin or continue the operation of the charter schools.
- 3) Facilitating financing by potential lenders, encouraging private lending, and other similar activities that directly promote lending to or for the benefit of charter schools.
- 4) Facilitating the issuance of bonds by charter schools or other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance designed to obtain or attract investors (such as retaining bond counsel and underwriters and consolidating multiple charter school projects into a single bond issue).

F.2. How should funds in the reserve account be invested?

Funds deposited in the reserve account must be invested in obligations guaranteed by the United States or a State, or in other similarly low-risk securities. Reserve account investments must be designed to preserve principal. More specifically, permitted investments are limited to:

- obligations issued or guaranteed by the United States Government;
- obligations of instrumentalities or agencies of the United States, such as Ginnie Mae or government-sponsored enterprises such as Fannie Mae or Freddie Mac;
- obligations issued by or guaranteed by any State, provided such obligations are rated in the two highest rating categories of Moody's Investor Service, Standard and Poor's Corporation, or Fitch IBCA (collectively, a "Rating Agency");
- commercial paper, repurchase agreements, guaranteed investment contracts, or other similar instruments issued by corporations that are organized and operating within the United States having assets in excess of \$500 million and having a short-term rating in the highest rating category of a Rating Agency and a long-term rating in one of the two highest rating categories;
- Money market funds that invest solely in United States Government securities or in United States agency securities from the above listed issuers;
- Certificates of deposit (with no more than \$250,000 purchased from a single financial institution prior to January 1, 2010 and no more than \$100,000 beginning January 1, 2010) that are fully insured by the Federal Deposit Insurance Corporation, including certificates of deposit acquired

through the Certificate of Deposit Account Registry Service that meet these criteria; and

- Such other investment securities as the Secretary of Education may determine comply with the statutory provisions and terms of the program.

Grantees must invest reserve account funds in ways designed to protect principal, while allowing the funds to be liquidated and applied toward the four statutory purposes. Consequently some obligations might not be permissible reserve account investments even if they fall into one of the categories described above. For instance, an investment in a 30-year bond with a fixed interest rate would likely have substantial interest rate risk and could lose principal if the bond had to be sold prior to maturing.

F.3. What is the objective of the reserve account?

The goal or objective of both the reserve account and its purposes (specified in Question F.1.) is to assist charter schools in accessing private-sector and other non-Federal capital. The proceeds derived from investors must be used to assist charter schools with the acquisition of school facilities that are needed to begin or continue a charter school's operation. Schools may acquire facilities through the:

- a) the purchase, lease, donation, or other acquisition of improved or unimproved real property; or
- b) construction of new facilities, or renovation, repair, or alteration of existing facilities.

F.4. May grantees use grant funds during the project period for planning their grant project?

Grantees may choose to use some time at the beginning of the project period to solidify their plans; however, competitive applications will most likely present comprehensive plans for prompt implementation. As discussed in more detail under Question F.1., a grantee's use of funds during the entire grant period (including planning) must fall within the four statutory allowable purposes of funds and/or costs of administering the grant project.

F.5. What costs must be included as administrative costs? Please provide examples of administrative costs and program costs for this program.

Administrative costs are costs that are incurred by the applicant in managing a grant project. Examples would include salaries of staff for the performance of administrative tasks such as maintaining grant account ledgers, record keeping, rental of office space for administrative personnel, and reporting on project activities.

Program costs are those incurred in conducting the activities that are required to meet the program objectives. In the Credit Enhancement for Charter School Facilities Program, 99.75% of the funds are to be placed in a reserve account. The reserve account funds are to be used to cover program-eligible costs. Specifically, the funds are to cover the cost of activities required to meet the four program purposes described in Question F.1.

Examples of program costs required to meet these purposes would include compensation to experts providing technical assistance and the cost of attracting potential investors.

F.6. May a grantee consider earnings on the reserve account funds when determining the amount to be spent on administrative costs?

No, the administrative cost amount is limited to $\frac{1}{4}$ of 1% of the original grant award amount. Earnings cannot be used for administrative costs. All earnings must be deposited in the reserve account and may only be used for the reserve account's four statutory purposes.

F.7. May reserve account funds be used by charter schools to pay directly for construction, renovation, repair, and acquisition costs, such as building ramps, purchasing modular classrooms, leasing a building, and adding restroom facilities?

Reserve account funds are not intended to pay for charter schools' facility costs directly. Furthermore, they are not intended to be the primary source for the repayment of loans. The program is designed to enhance the credit of charter schools and leverage private-sector and other non-Federal funds to pay for such costs. Only in rare instances should it be necessary to use reserve account funds to pay creditors and lenders. For example, if an issuer of a construction bond that is directly guaranteed by the reserve account defaults, it may be necessary to use reserve account funds to repay the loan.

F.8. Can reserve account funds be used to help schools lease facilities?

Funds from the reserve account may be used to guarantee and insure leases, but are not intended to be the designated source of funding to make scheduled lease payments. However, if the reserve account is used to provide a guarantee of some other repayment source (e.g., charter school net operating revenues and State aid), then funds could be spent out of the reserve account to pay rent for a charter school that is unable to pay its rent. The reserve account is supposed to leverage funds to assist charter schools in obtaining school facilities; it is not supposed to pay for facilities outright.

F.9. Can reserve account funds be used to facilitate renovations on a building that is being leased?

Yes, funds in the reserve account may be used to leverage funding for renovations to a leased facility. However, these renovations must be designed principally to benefit the charter school rather than the owner of the building. Generally the useful life of the renovations should be reasonably related to the length of a lease. The landlord should finance the cost of renovations for which he would be the primary beneficiary without assistance through this program.

F.10. May grantees use reserve account funds to make down payments on facilities in order to secure loans for charter schools?

No. The reserve account funds may not be used to directly provide a down payment on a school facility. However, a grantee can use reserve account funds to guarantee a loan for the portion that would otherwise have to be funded with a down payment. For instance, a charter school might want to purchase a building but only be able to obtain a loan on its own credit covering 80 percent of the cost. The grantee might then use the reserve account to guarantee a loan to cover all or some portion of the remaining 20 percent of the cost.

F.11. May a grantee lend out the grant funds?

No, grantees may not lend out grant funds. They, however, may use these funds to make a guarantee and subsequently use the grant funds to make loan payments in the event of a default or a delinquency.

F.12. May a grantee use grant funds to guarantee a predevelopment loan for a charter school?

Yes, provided that the predevelopment work leads to (1) obtaining real property or (2) constructing or renovating a facility. A grantee may not use grant funds to guarantee a predevelopment loan for a charter school if that loan has not resulted in

- purchasing, leasing, or otherwise obtaining real property;
- constructing a facility; or
- renovating a facility.

Grantees may use grant funds to guarantee debt for charter schools, but this debt must be tied to one of the facility uses above when doing so.

F.13. May a grantee use grant funds to refinance debt for a charter school?

Yes, a grantee may refinance or reinsure debt if doing so assists the charter school in accomplishing the objectives in section 5224 of the Act and

- helps the charter school acquire real property or construct (build, renovate, repair, or alter) a charter school facility or
- the refinancing either (1) helps provide the charter school with better rates or terms on its financing or (2) enables it to obtain debt to make a balloon or bullet payment and continue to finance a facility.

F.14. May reserve account funds be used to establish an organization that will provide services under the grant?

No part of the reserve account funds may be used to establish an organization. We expect that successful competitors for grants or subcontracts under the program will be entities that can demonstrate the capabilities of their organization to administer the grant project and/or to provide the services required by the project.

F.15. Can reserve account funds be used to enhance the credit of charter schools so they can lease personal property, such as computers?

In certain cases reserve account funds can be used to guarantee and insure leases of personal property. However, grant funds may only be used for this purpose as part of a larger effort to help a charter school acquire or build a school facility as described under Section 5224.

F.16. When are grant funds obligated and liquidated?

The Department considers the reserve account funds to be obligated and liquidated when they are placed in a reserve account as required under Section 5225. The Department anticipates that funds will be immediately deposited into the reserve account after the grantee signs a performance agreement and draws down the funds.

F.17. Are there any circumstances under which the grantee would be required to return the grant funds to the Department of Education?

The statute provides the Department with the authority to recover funds from the reserve account at any point after two years if substantial progress is not made. The statute also provides the Department with the authority to recover grant funds at any point if the Secretary determines the grant recipient has permanently ceased to use all or a portion of the grant funds.

In addition, the Department's general grant regulations provide it with the authority to recover grant funds if a grantee fails to comply with requirements.

The Department has the authority to recover grant funds for noncompliance from state, local, and tribal government grantees under 34 CFR 80.43 and it has the authority to recover grant funds for noncompliance from nonprofit grantees under 34 CFR 74.61 and 74.62.

F.18. Please define “substantial progress” for the purpose of clarifying when the Secretary may recover funds.

“Substantial progress” will be determined by evaluating a grantee’s progress in accordance with the goals and timelines established by the grantee in its approved proposal and the terms of the performance agreement that the grantee will enter into with the Department. If the grantee is not making substantial progress toward its performance goals, or if the grantee ceases to use the funds for the four allowable purposes (see Question F.1.), the Department must recover reserve account funds that are not being properly used for the purposes of the program.

Grantees have two years from the date they draw down grant funds to make substantial progress. If they do not make substantial progress after that time, the Department must recover reserve account funds that are not being properly used for the purposes of the program.

F. 19. If I have more than one grant under the program, under which grant do I count the charter schools I serve and the financing I leverage?

If you have more than one grant under the program, we expect that you will typically count the charter schools you serve and the financing you leverage towards your grants in chronological order. Of course, this is provided that the transactions fall within the scope of the initial grant application and this issue is not otherwise addressed in your grant conditions, performance agreement(s), or other written communications from ED. In other words to the extent feasible, we expect that a grantee should work toward fully using funds from its initial grants first. If you serve charter schools that fall out of the scope of your earlier grant(s), then you should count them towards the earliest grant under which the transactions fit.

For instance, if your first grant enables you to credit enhance loans only in Idaho and you receive a subsequent that enables you to credit enhance loans anywhere in the U.S., then you would count any loan you credit enhance under your first grant until your organization fully used those grant funds. The type of assistance provided under a grant can determine the scope as well as the geographic area covered under the grant. If you’re an initial grant only covered credit enhancing loans and a subsequent grant application focuses on credit enhancing bonds, you would not count bond financings towards your first grant, even if the first grant was not fully used.

F.20. What is the length of the grant period?

The grant period will run from the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later. For instance, the reporting period for a grant project that immediately spends all of its funds to pay a third party to guarantee 10-year bonds to help charter schools obtain facilities would be 10 years.

F. 21. Please explain "No Full Faith and Credit for Grantee Obligations."

The program legislation stipulates that the U.S. Government is not a party to any debts or obligations that the grantee may incur in carrying out the purposes of the program. That is, if a grant recipient or a charter school defaults on a loan, the Federal Government is not liable to pay the outstanding debt.

F. 22. What happens to the reserve account funds when a charter school that received assistance is closed? Who would have rights to which of the school's assets? What is the responsibility of the grantee to the Federal Government in the case of a school closing?

In those rare instances in which the grantee has insured a loan or has otherwise encumbered reserve account funds for a charter school that closes before its debt has been repaid in full, the grantee will have to meet its obligations under the agreement it entered into with creditors on behalf of the charter school.

The assets of the school that closed before paying off its debt would be disbursed in accordance with the agreement(s) made with the lender(s) and applicable State law. If a school closing results in the loss of funds that were derived from the Federal grant, the grantee would report the loss in its financial report to the Department.

F. 23. Will there be any conditions attached to the award of grant assistance?

As part of the grant award, each grantee will be required to enter into a performance agreement that sets forth the goals the grant project is designed to achieve and other conditions for the conduct of the project as appropriate. Performance goals may relate to the type or number of schools to be assisted, the leveraging ratio to be attained, the cost of financing to charter schools, and other measures of performance. The grantee will be expected to demonstrate substantial progress in achieving the objectives set forth in the application during the grant's reporting period.

Under 34 CFR 74.14 and 80.12, grantees that are deemed to be “high risk” may receive grants with special conditions and more scrutiny than other grantees. Furthermore, high-risk grantees may be subject to more monitoring and reporting requirements than other grantees.

F. 24. When can grantees draw down funds?

Grantees cannot draw down any funds until they have signed a performance agreement that is acceptable to the Department. If a grantee needs to spend some portion of funds prior to reaching a mutually acceptable performance agreement, it may provide a written request to the Department to allow it to draw down and spend a specific amount of funds. If the Department approves this request in writing, the grantee may draw down and spend that specific amount of funds in advance of reaching a mutually acceptable performance agreement.

Grantees can draw down all funds except those funds it intends to use for administrative costs once they have signed a performance agreement that is acceptable to the Department. These non-administrative grant funds (at least 99.75% of the grant) must be deposited in the reserve account when they are drawn down.

G. FEDERAL REQUIREMENTS:

G.1. Do Davis-Bacon prevailing wage requirements apply to these funds?

No. Typically, when Department grant funds are spent for construction, the project is subject to prevailing wage requirements. However, as discussed in more detail in Question F.1., these grant funds will be placed in a reserve account and cannot directly be used for renovation or construction. Private-sector capital, not Federal funds, will pay for any related construction for charter schools; consequently Davis-Bacon will not apply.

G. 2. Do these grantees have to conduct A-133 audits when they drawdown more than \$500,000 in funds?

Yes. When a grantee draws down funds under this program which, coupled with the amount of any other expenditures of Federal awards (as defined by OMB Circular A-133), equal or exceed \$500,000 in its fiscal year, the grantee must obtain an A-133 audit. However, if drawdowns were not made in a given fiscal year, but funds that were drawn down in prior years are held in the reserve account, an A-133 audit may still be required in that year (See G.3.).

G. 3. Based on .205 of OMB Circular A-133, do these grantees have to conduct A-133 audits when they have more than \$500,000 in their reserve accounts?

Yes. Grantees are required to obtain an A-133 audit when they have \$500,000 or more outstanding in the reserve account. Section 205 of OMB Circular A-133 sets forth provisions and concepts for determining Federal awards expended, including whether funds are restricted to statutory uses and agreements. Grantees may draw down Credit Enhancement for Charter School Facilities Grants program funds in advance of using them for restricted purposes in compliance with the statute and their performance agreements. Based on the principles set forth in Section 205, the "value of Federal awards expended" under this program is the total of the following amounts:

- (1) The amount in the reserve fund at the beginning of the grantee fiscal year; plus
- (2) Any funds drawn down in the grantee's fiscal year to add to the reserve fund; plus
- (3) Any earnings on the reserve account.

This total amount should be used for determining whether an A-133 audit is required, and for the determination of Major Federal Programs under OMB Circular A-133.

If this amount is \$500,000 or more, then an A-133 audit is required. If this amount is less than \$500,000, an A-133 audit is required if this amount, added to the value of Federal Awards expended for all other Federal Programs administered by the grantee, totals \$500,000 or more in the grantee's fiscal year.

G. 4. Must grantees track the size of their grant funds over time?

Yes, in order to comply with 34 CFR 75.730, grantees must keep records that fully show the amount of their grant funds. Grantees may earn funds directly related to the grant that, in turn, increase the size of the grant, and they may expend grant funds consistent with the program statute and regulations. Consequently, grantees must account for increases in their grant as well as any decreases resulting from expenditures.

G. 5. Must grantees submit annual reports?

Yes, grantees must submit annual reports for the length of the grant period. Specifically the program statute under Section 5227(b) and the Department's general grant regulations under 34 CFR 75.720 require grantees to submit annual reports.

G-6. Must grantees use cash-based accounting when they report on their use of grant funds?

Yes, grantees must use cash-based accounting when they report on their use of grant funds under the program. The Federal government frequently requires recipients of funds for credit programs, such as student loan guarantee agencies under the Federal Family Education Loan program, to use cash-based accounting.

G-7. May grantees commingle their grant funds?

No. Under the terms of the performance agreements grantees sign, they may not commingle their grant funds with other funds, even if they use the funds for the same purpose.