



April 18, 2022

Porscheoy Brice
U.S. Department of Education
400 Maryland Avenue, SW
Room 3E209
Washington, DC 20202-5970

Re: Docket ED-2022-OESE-0006

Dear Ms. Brice:

I am writing to provide the views of the National Alliance for Public Charter Schools (the Alliance) regarding the Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria (NPP) for the Charter Schools Program (CSP), as published by the U.S. Department of Education (ED or the Department) in the March 14 Federal Register. The National Alliance is the leading national nonprofit organization committed to advancing the public charter school movement.

Before providing our comments on specific provisions of the NPP, I must state that **the National Alliance and, I believe, the entire charter school community nationally, are strongly opposed to the package of proposals enumerated in the NPP.** The proposed rules would greatly complicate and confuse administration of a program that is already one of the Department's most complex competitive grant programs in terms of its requirements and accountability structures.¹ They would distort the mission and operation of federally supported charter schools, as framed in the authorizing legislation. The NPP selectively cites early charter school proponents, such as Albert Shanker, but fails to acknowledge the original intent of the congressional authors of the CSP program who believed that the very purpose of the program was to free schools from input management, deferring to state law and authorizers as to when a charter school should open or close. In 2022, the CSP already includes key definitions and significant new requirements added in 2016 amendments to the *Elementary and Secondary Education Act*—requirements that have barely had time to show their full impact as schools

¹ *Clearing the Air: An Analysis of the Federal Charter Schools Program* found that there's at least as much if not more reporting and accountability in place for CSP funds compared to other ED programs, even programs responsible for allocating significantly more resources (p. 31).

open with funds granted in FY 2018-21, the years for which funds have been awarded under those new rules.

The sheer volume of the proposed changes and the burden entailed would likely dissuade State entities (SEs), charter school developers, and charter management organizations (CMOs) from applying for aid. Many will read the priorities and requirements as making it less likely they will receive funding, and thus discourage applicants who desire to meet the needs of students from some of our country's most vulnerable populations. Further, the proposals have been put out for public comment very late in the fiscal year (with ED already well behind the normal schedule for CSP grantmaking), making it highly uncertain that the Department's understaffed charter schools office will be able to respond to the comments, make final decisions on the rules, launch competitions with at least 45 days to apply, manage the peer reviews, and make final decisions on the SE and Developer Grants before the end of the fiscal year. Each year that grants have been awarded under the new requirements established by the *Every Student Succeeds Act*, applications have been noticed by the end of March, and, even then, awards have not been completed until the very end of the fiscal year.

For those reasons, **we call on the Department to defer putting in place, until at least fiscal year 2023, any new priorities, requirements, definitions, or selection criteria for the three affected programs (SE Grants, Developer Grants, and CMO Grants)** and to hold all fiscal year 2022 competitions under the current statutory and regulatory requirements. ED should use the intervening time to engage in meaningful discussions with the community—including the charter school community—about new regulatory provisions, including the purposes of any changes in the program, the goals to be attained, and how those goals can most effectively and efficiently be met. The National Alliance stands ready to participate actively in those discussions.

In addition, we offer the following comments on specific provisions of the NPP.

1. Community Impact Analysis (Application requirement 1 for all competitions and selection criterion)

The NPP would require that an application for a Developer or CMO Grant, or for a subgrant under the SE Grants program, include a "community impact analysis." This analysis would include, among eight distinct elements:

- Descriptions of community support and unmet need for the proposed charter school, including information on over-enrollment of existing public schools and on such phenomena as demand for specialized instructional approaches;
- Descriptions of the applicant's targeted student and staff demographics and of how the applicant plans to maintain socioeconomically diverse student and staff populations;
- Evidence that the number of charter schools proposed to be opened, replicated, or expanded does not exceed the number of public schools needed to meet demand in the community; and



- A robust family and community engagement plan, covering, among other things, information on how families and community members are and were engaged in the vision and design for the school, on how the school will foster a collaborative culture that involves the families of all students in decision-making, and on how the school will hold enrollment and recruitment events on weekends or other non-work hours.

The notice would also make the quality of the community analysis a selection criterion under the Developer Grants and CMO Grants programs.

The National Alliance has many concerns about these requirements, which would subject charter schools to several new conditions to which “traditional” public schools are not held accountable. Charter schools serve a more diverse student population than traditional public schools, and their teachers and leaders are also more diverse.² Program requirement 1(e) in particular is problematic because it implies that charter schools should open only in districts whose schools are over-crowded (which has never been a condition of their creation), requiring evidence that the number of charter schools proposed to be opened “does not exceed the number of public schools needed to accommodate the demand in the community.” (1)(a) references “over-enrollment” of district schools. Neither of these requirements take into consideration:

- the number of seats in high-quality schools accessible to all students;
- possible shifts of students from private schools into charter schools;
- availability of enrollment data. Detailed enrollment data can be challenging to gain access to, especially in districts that do not have open-enrollment policies; or
- that hiring a firm to conduct an impact analysis can cost a small operator \$15,000 or more, funds it wouldn’t have access to prior to receiving a grant or subgrant.

Charter schools have frequently succeeded in communities whose schools were not achieving acceptable student outcomes and thus were losing enrollment, with families seeking better choices for their children. The CSP has always supported the creation of additional high-quality educational options for children in all communities that need them, not just in districts with over-crowded schools; this must continue. The program should particularly encourage the opening of charter schools in communities where children attend low-performing schools and do not have other high-quality options, whether or not a district is operating at capacity.

² According to the most recently available data (2019-20 school year), 69.7% of charter school students as compared to 52.9% of district school students. Source: <https://data.publiccharters.org/digest/charter-school-data-digest/who-attends-charter-schools/>. Regarding charter teachers, 32% of charter school teachers are non-white compared to 20% for district schools, based upon the most recent data available from NCES (2017-18 school year). Source: https://nces.ed.gov/programs/digest/d19/tables/dt19_209.21.asp?current=yes. Regarding charter leaders, 33.5% of charter leaders are of color as compared to 21.4% for district schools, based upon the most recent data available from NCES (2017-18 school year). Source: https://nces.ed.gov/surveys/ntps/tables/ntps1718_2019082201_a12n.asp



Further, the language in 1(b) would hold charter schools responsible for maintaining diverse student and staff populations (without defining “diverse”), even in communities that are not diverse, such as those affected by historical neighborhood red lining. The language would thus make it difficult to open schools in rural areas, on Native American lands, and in heavily Black or Hispanic urban neighborhoods, the very communities that might stand to benefit most from high quality public schools. Similarly, charter schools would be required to maintain diverse staff populations, even if the surrounding communities are not diverse and even if neighboring public schools do not have diverse staffs. The rules would make it particularly difficult to fund the creation of culturally affirming schools that target underserved demographic groups. The following are examples of such schools:

- The Tsalagi Tsunadeloquasdi Cherokee Language Charter School is specifically designed to help keep the Cherokee Language alive in Tahlequah, Oklahoma, the seat of the Cherokee Nation, and the newly opened Comanche Charter School in Lawton, Oklahoma provides high-quality education for students with an emphasis on indigenous culture. Most Oklahoma charter schools are designed to support specific marginalized communities, such as the racially segregated North Tulsa and East Tulsa, South Oklahoma City's Hispanic communities, and Oklahoma's 39 Native American Tribes within their historic reservation boundaries. According to Oklahoma leaders, forcing these schools to take action to attract more affluent white students in the name of diversity would be offensive and would require them to bring students from other communities into their schools.
- In the neighborhoods where Green Dot schools are located, such as East Los Angeles or South Memphis, the demographic breakdowns are frequently 90 percent or more of one race or ethnicity. Not only have many of the neighborhoods Green Dot serves been historical victims of outright segregation and discrimination, but today gentrification threatens many of these same communities with displacement and erasure.

In addition, the language would allow only one model of charter school—one in which family and community members are heavily involved in the design of the school and in its day-to-day operations—ignoring the many other varieties of charter schools that have achieved successful results. Again, this is not a requirement that traditional public schools must meet.

Requirement (1)(b), which requires student and staff diversity, does not acknowledge that charter schools are open-enrollment schools, and, as such, have enrollment driven by parent choices and geographic location, which might not make it possible to ensure student diversity. It also states that diversity efforts must be undertaken “consistent with applicable legal requirements.” Who will resolve these inconsistencies for applicants? The peer reviewers? Will ED provide applicants with timely guidance on how to reconcile meeting this application requirement while also complying with state law? The only tools charter schools have to impact their lottery when they are oversubscribed is to weight educationally disadvantaged students.

Further, the community impact requirement potentially conflicts with the CSP authorizing statute, which requires State Entity applicants to provide a “description of how the State entity



will support diverse charter school models, including models that serve rural communities.”³ How will applicants meet this statutory requirement and support culturally affirming models, while at the same time not being penalized by peer reviewers?

Finally, communities of color could be disproportionately and adversely impacted by requirement 1(b). The provision’s clear intent to prioritize integrated school models exclusively may have a chilling effect on a community and/or families of color who may seek to open/enroll in a different mission-oriented school—a school, for instance, offering a pedagogical model that is in high demand by families of color in the community but one that may not attract “enough” white students to satisfy Provision 1(b). A school seeking to serve these families/community of color may simply be deterred by Provision 1(b) from applying for CSP monies, even though these monies often provide funds/supports essential to opening a successful school. If such a school should choose to go ahead and apply for CSP monies, instead of having an equal shot at funding to support its planning and opening, the school would face a competitive disadvantage when its application is evaluated by peer reviewers. The school would face heightened barriers to opening, and the families and community of color that the school intended to serve could be disproportionately negatively impacted. In fact, 1(b) could potentially trigger a Title VI OCR complaint alleging disparate impact on a community/families of color, illustrating how ill-conceived provision 1(b) is.

We note further that the CSP statutory and regulatory language already places considerable emphasis on family and community involvement⁴ and thus question why a plethora of new requirements would be needed. Footnote 3 on page 14193 of the notice does not support the assertion that there is a lack of community engagement in chartering schools: the study has nothing to do with charter schools. Finally, we note that the new requirements would likely be particularly unworkable in the CMO Grants program, because applicants for those grants typically receive multi-year awards and have not yet identified all of the specific communities they will serve over the life of the grant at the time they submit their applications.

For these reasons, we believe the new requirements for an additional community impact analysis are completely unnecessary and call on the Department to remove them from the package. **As a lesser alternative, we would be willing to discuss how applicants could be**

³ ESEA Section 4303(f)(1)(G).

⁴ As examples: (1) ESEA Section 4303(f)(1)(C)(i)(IV) requires that SE Grants subgrant applications include a description of how the applicant will solicit and consider input from parents and members of the community on the implementation and operation of each charter school that will receive funds; (2) ESEA Section 4303(f)(1)(C)(i)(VI) requires that SE Grants subgrant applications include a description of how the applicant will support the use of effective parent, family, and community engagement strategies in operating each charter school that will receive funds; (3) ESEA Section 4303(g)(1) requires ED to consider, when awarding SE Grants, the State entity’s plan for soliciting and considering input from parents and other members of the community on the implementation and operation of charter schools in the State; (4) ESEA Section 4303(h)(5) authorizes SE Grant subgrantees to use subgrant funds to carry out community engagement activities; and (5) the Final Priorities, Requirements, Definitions, and Selection Criteria for the CMOs program, issued by the Department on November 30, 2018, require (as requirement (f) applicants to describe how they will solicit and consider input from parents and other members of the community on the implementation and operation of each replicated or expanded charter school, including in the area of school governance.



required to submit evidence that authorizers have considered, or will consider, certain factors when approving a school's charter (ED might make suggestions, through "such as" language, that an analysis include such items as information on charter school waiting lists in the local area or data on access to seats in high quality schools, as well as the educational outcomes for traditional public schools in the community). Anything more prescriptive would be damaging to the program and, thus, unacceptable.

2. Community Impact Analysis and Desegregation (1(h), assurance and CMO/developer selection criteria)

We recognize both the importance of and the state's compelling interest in reducing racial isolation in our country's public schools. In fact, in many states, charter schools offer "diverse by design" school models and missions, which help address the racial isolation created by long-standing housing patterns and practices. Not only do "diverse by design" charter schools serve as part of the solution to racial isolation, these charter schools advance a community's voluntary efforts to create socioeconomically, racially, and culturally diverse learning environments. They exemplify another way charter schools help school districts achieve their goals—in this case, voluntary integration goals. However, as noted previously in this comment, not all charter school models are "diverse by design" nor should they be expected to be.

Often, school districts employ "choice" strategies to voluntarily integrate their schools—magnet programs and inter-district enrollment are two common strategies. High-quality charter schools should be part of a district's voluntary integration efforts. Charter schools offer unique missions, everything from STEM and arts education to language immersion models and expeditionary learning programs. Like magnet programs, these charter schools attract students and families from all backgrounds. The more high-quality the program, the more all students and families want to enroll.

Finally, federal appellate case law and Office of Civil Rights (OCR) practice have long held that all charter schools opening and operating in a host district subject to an active court-ordered desegregation plan or with an OCR settlement agreement must abide those court orders and settlement agreements. There is no question about this. The federal courts and OCR have addressed it, and charter schools around the country have abided.

The process is clear: when an authorizer approves a new charter school to operate in a district under an active desegregation order, the school must go to the federal court enforcing the desegregation order and seek permission to open. The federal trial court then requests briefing and testimony to determine if the new charter school will interfere with the school district's obligations under the existing desegregation order. The court considers a wide range of factors (all set forth in case law), and only allows the new charter school to open once the court is convinced the school's existence will not hamper the district's legal obligations under the court order. If needed, the federal trial court attaches conditions of operation on the charter school—it all depends on the specific facts and circumstances of the charter school and the district in question. The same process applies to new charter schools opening in districts with active OCR settlement agreements. The new school, once approved by the authorizer, must engage in



discussion with and ultimately obtain approval from OCR before it can open. And the federal supervision does not stop there. These charter schools must go back to federal court or OCR every year to illustrate their efforts and the outcomes of those efforts; if the court or OCR is not satisfied, the court or OCR can impose enrollment and other operational conditions.

The proposed rule does not acknowledge the full extent of federal oversight—through the federal courts or through OCR (or, on occasion, DOJ)—for charter schools in the context of desegregation orders and/or settlement agreements. Adding federal and state peer reviewers and monitoring into this matrix of federal oversight is simply unnecessary and far outside the scope of their expertise, especially given the expertise brought by the federal courts and/or OCR to this issue.

Moreover, simply using a school’s demographic proportions, as proposed in this NPP application requirements and selection criteria, as well as using the undefined term “racial isolation” do not provide the context needed to fairly determine a school’s level of segregation. That approach also does not allow for the reliable assessment of the total level of segregation across schools in the defined community.

For example, documenting that a school’s student population is “projected” to be 90% Black students and 10% White students *without reference to the demographics of the community from which that school draws students* can result in analyses and conclusions that are arbitrary. If the demographics of that community are 90% Black and 10% White, then that school perfectly reflects the amount of integration present in the community from which it draws students. The school may reflect racial homogeneity (because the community is racially homogenous), but the school—even with a student body that is 90% Black and 10% White—is not increasing racial segregation in the district or racial isolation for its students.

Segregation is about more than just the percentages of students with a particular race or ethnicity at a particular school. It’s also about the racial and ethnic demographics of a school’s surrounding community and the distribution of students across all schools in that community, including private, parochial, magnet, charter, and traditional district schools. At a minimum, to reliably measure segregation levels, one must utilize methodologies that consider how students from certain racial groups are distributed *across all* schools because the composition of one school’s student body affects the students available to be distributed among the other schools. There are many different methodologies for conducting this analysis—the Urban Institute’s Dissimilarity Index is an example of just one of them.⁵

⁵ The Segregation Contribution Index (SCI) is an example of a tool, developed by the Urban Institute in 2020, that can be used to assess how much an individual school contributes to segregation in a given school district. The SCI uses a Dissimilarity Index and rejects the use of absolute measures and comparisons. Notably, however, the SCI can only measure the potential segregative effect of existing schools; it cannot measure the potential segregative effect of new, replicating and/or expanding schools because the sophisticated statistical calculations required to



State and federal peer reviewers will not have the legal or statistical tools from this notice or the requisite technical expertise to guide their evaluation. Given that the points for the selection criteria depend on this evaluation for the CMO and developer notice, and that it is impossible to fairly evaluate, this portion of the selection criteria should be dropped.

3. Contracts with For-Profit Providers (application requirement 2; assurances)

The NPP would require that Developer Grant and CMO Grant applications, as well as applications for SE Grant subgrants, include extensive information on the applicant’s existing and proposed contracts with for-profit entities. Developer and CMO grantees, as well as individual schools receiving CSP funding, would be required to post essentially the same information on their websites. Further, a charter school receiving funding under any of the three programs would be required to provide certain assurances regarding its contracts. The notice also specifies that no CSP-supported school may enter into a contract that gives the contractor full or substantial administrative control over the school or over its programmatic decisions.

The National Alliance agrees with the Department that greater transparency is needed regarding contracts between charter schools and outside entities. Some of the requirements in the notice are consistent with recommendations previously put forward by the National Alliance for Public Charter Schools. However, for several reasons, described below, the package of requirements, taken as a whole, is unclear and confusing and thus is unlikely to bring about the intended benefits to the program. It is also unclear to what extent the proposed rules build on existing CSP guidance or set a new standard.

For one thing, the requirements would govern charter schools’ contracts with “for-profit management organizations,” a term that is not defined in the notice and that has no clear meaning. If a school contracts with an entity for delivery of food service, or back-office business operations, or special education-related therapies, and thus has the entity “manage” those functions in the school, does that mean that the entity is a management organization? We have no idea.

Secondly, the notice would require applicants to provide information on any current or *proposed* contracts with for-profit management organizations. If a grantee or subgrantee enters into a contract at some point during the life of its grant or subgrant that it did not describe in its application (because it did not have a firm proposal for that contract at the time of the application), would that be acceptable?

measure segregative effect simply cannot be done based on projections of enrollment. After all, projections may estimate the number of students of particular races, ethnicities and SES status, but those enrollment projections cannot estimate with any degree of certainty from where the students will come; in other words, how the racial and SES composition of the other schools in the community will change—a fundamental piece of the segregation calculation/analysis—cannot be estimated through enrollment projections.



Thirdly, the language on contracts that give a provider full or substantial administrative control over a school is problematic because: (1) the term “substantial” is undefined and unclear; and (2) the rules regarding the acceptability of those contracts are inconsistent. In some places, the notice calls for information on contracts with providers whether or not a contract gives a provider full or substantial control, implying that such contracts are allowable. In other places the notice clearly states that they are not allowable. Further, the use of the term “substantial” is not necessary or warranted by 34 CFR 75.701 and 76.701. Rather than layering on an additional requirement that will be confusing for grantees, particularly administration by SE grantees without additional guidance, the term “substantial” should be dropped and the standard simply require compliance with the non-profit entity having administrative control of the grant.

Fourth, there are two factors currently considered in CSP monitoring that are not included in this NPP. Those two considerations are:

- i. Whether the charter school’s governing board is selected by or includes members who are employees of the for-profit entity.
- ii. Whether the charter school has an independent attorney, accountant, and audit firm that works for the charter school and not the for-profit entity.

Instead of using a vague and difficult to define term like “substantial” control, we support including current guidance in program assurances as a means of ensuring that every non-profit charter school governing board operates independently from the for-profit entity, and thereby the non-profit charter school retains exclusive control of the CSP grant. Many states already have such provisions, and implementing them will create less confusion and thus will be more likely to achieve its intended impact. The NPP does not justify the need to create a new standard and as previously stated will only lead to confusion in implementation, especially by states.

In sum, the provisions on contracts with private entities, while well-intentioned, will be confusing to implement and will be unlikely to produce the desired results. If this regulation is reconsidered or withdrawn, **we call on ED to make changes as noted in Attachment B and to engage with us in the coming year on how to address this important issue.**

4. Priority for Collaboration of Charter Schools with Districts and District-Operated Schools

The NPP would add, under Developer Grants and CMO Grants, a new funding priority for applicants that propose collaboration between charter schools and school districts or district-operated schools. An applicant seeking this priority would be required to include in its application a letter from each participating district or school demonstrating its commitment to the collaboration. Similarly, State entities, when conducting subgrant competitions, would be required to give priority either to applicants that propose collaboration with districts or district-funded schools, or that propose community-centered charter schools, or both.

The National Alliance strongly supports and encourages the collaboration of charter schools with the traditional schools and districts in their communities as well as the sharing of best



practices. The CSP authorization includes considerable language encouraging such collaboration;⁶ the National Alliance has supported that language and has worked with members of the community on identification of best practices for coordination. However, the proposed language would essentially give school districts a veto over creation of charter schools, depending on whether ED (and State entities, for subgrant competitions) implements the priority as an absolute priority or as a competitive preference priority that is given a significant number of competitive points.

The Department must understand that collaboration goes both ways and that a failure of charter schools and their local traditional schools or districts to collaborate will frequently stem from the district or traditional school officials' unwillingness to do so, not the other way around. District and traditional school officials often see charter schools as competitors or interlopers, even when traditional schools are not performing well and even if local families want what the charter schools have to offer. Districts and traditional schools are thus likely to see the new priority language as a mechanism for blocking the creation of new charter schools in their communities and to withhold participation in collaborative agreements, even when the traditional schools are not succeeding and when charter schools would provide families with new, high-quality choices.

In addition, the priority only envisions one type of partnership—one that is codified in a memorandum of understanding (MOU). Sometimes partnerships between charter schools and districts are implemented by willing partners that may not have the political capital to push through a formal MOU (which they have found is not necessary to carry out the planned collaborative activity). Moreover, the process required to develop and have the district sign an MOU can be labor-intensive, involve legal costs, and take at least six months from inception of the collaboration idea. In addition, the administration of the next CMO Grants competition in this coming December and January would likely come after this year's district board elections, so any MOU that is signed could be revoked by a newly elected board.

This priority, because it would do little to foster true partnerships and has great potential to block applicant funding, would thus undermine one of the major objectives of the charter school movement (and the CSP) over the course of its history: giving new, high-quality choices to students and families who are not being well-served by the traditional system. We therefore ask ED to withdraw this priority language for all competitions, but especially the SE competition.

5. Prohibition on Providing Implementation Funds to Charter Schools that Have Not Yet Obtained a Facility

The NPP would require each applicant for an SE Grant or subgrant, a CMO Grant, or a Developer Grant to provide an assurance that it will not use or provide "implementation funds"

⁶ See, for example, ESEA Sections 4303(f)(1)(A)(iv), 4303(f)(1)(A)(vii)(II), 4303(f)(1)(A)(ix), 4303(f)(1)(A)(xiii)(B)(iii), 4303(f)(2)(F), and 4305(b)(5)(B).



until after the school has received a charter and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate.

We find this new requirement acceptable but ask ED to clarify that funds for planning and program design could still be provided to and used by a charter school that does not yet have a facility. Further, the Department should clarify that planning and program design include such important activities as curriculum development; hiring and training staff (and compensating them during the planning period); carrying out community engagement activities; and purchasing books, other materials, supplies, and equipment for the school. It is important to recognize that the acquisition of facilities often takes a great deal of time, particularly when it involves negotiation with the local school district over the use of excess classroom space, and frequently is not completed until shortly before a school opens its doors. It would be unfortunate if this new assurance language were misinterpreted as prohibiting the use of funds for important preparatory activities by schools that do not yet have facilities.

6. Peer Reviewers Second-guessing Authorizing Decisions (all application requirements)

One of the fundamental flaws of the proposed regulations is that they empower federal and state peer reviewers to second-guess decisions that are central to the charter school authorizing process, such as whether there is “sufficient” demand (such as in application requirement 1) for a school to be financially viable. The community impact analysis (application requirement and selection criterion), in particular, will require federal and state reviewers to examine evidence justifying whether a school should open in the manner envisioned by these regulations, not state charter school law. Moreover, charter school authorizers are better positioned to calibrate the evidence required to meet state law and the burden that should be placed on an individual applicant to obtain data from multiple school districts and conduct required analyses. Peer reviewers in this NPP are also in the position of reviewing contractual relationships—an expertise that isn’t necessarily typical of reviewers, especially if they lack specific definitions and guidance from Department staff.

Authorizing looks at qualitative and quantitative evidence and requires local context—context that cannot be recreated through the narrow lens prescribed as “impact” in these regulations, that, in some cases, conflicts with state law when it comes to prioritizing schools that represent local communities and their needs. For this reason, the proposed regulations’ underlying structure of providing for peer review assessment of the need for an individual school is effectively requiring a re-chartering of each school, not using state charter school law but instead non-statutory federal regulatory criteria. They come very close to narrowing the Elementary and Secondary Education Act (section 4310) definition of a charter school and changing the type of school that is deemed eligible for funding by this program.

In addition, the current CSP office level of staffing does not permit oversight of SE peer review processes, and perhaps even federal peer reviewer scoring. We have seen evidence of SEA peer reviewers, in particular, not adhering to a rubric in their review, inconsistent scoring of the same application by reviewers, or the SEA using a rubric that isn’t aligned to the CSP requirements. WestEd reviews these rubrics but that does not take place until halfway through



the grant, which is too late to remediate. Unfortunately, opening charter schools has become so politicized that peer reviewer selection in some states has become an opportunity to slow the allocation of funds, or impose extraneous criteria, in order to prevent charter school growth. The NPP does not recognize the extent to which current requirements are being used to block the opening of certain schools using non-statutory criteria. To the extent that the NPP is including requirements to ensure that the proposed budget aligns with the anticipated pipeline in a state for SE grants, layering on more criteria to evaluate without definitions or parameters is not the answer. For CMO grants, application requirement 3 could provide important new information to evaluate a budget request.

7. Burden hours and administrative costs

Charter support organizations have played an increasingly large role in administering SE grants. One of the advantages of them receiving these grants is their interest in identifying leaders and developing them to lead high quality schools. One of the disadvantages is their size and scale. Current administrative funds from the CSP are barely sufficient to administer a high-quality program. Additional requirements, such as overseeing the requirement for subgrantees to develop a community impact analysis, will only further tax them without increasing applicant quality. The additional burden also applies to CMO grantees applying for multiple sites. Attachment C provides one CMO's analysis of what would be additionally required as a result of these requirements. Application requirement 3 is the most important for ensuring that the authorizer considerations are appropriately factored into the application review and budget approval.

In addition to the content of this letter, we are including several questions as an addendum, Attachment A. We request that the Department respond to these questions on record in the notice of final priorities, requirements, definitions, and selection criteria regarding any of the referenced provisions that is retained in the final notice (if ED elects to publish one).

Thank you for the opportunity to comment on these proposals. Because they would have such a major and detrimental impact on charter schools nationally, we would welcome the opportunity to engage on them further with ED officials. Again, we call on the Department not to go forward with these proposals at this time, and instead to convene discussions with the charter school community about any potential changes in the operation of the Charter Schools Program.

Sincerely,



Nina Rees
President and CEO



ATTACHMENT A - Questions

- 1. Requirement that the community impact analysis include a description of how a charter school will establish and maintain a diverse student population:** Under the community impact analysis, how would peer-reviewers evaluate diversity without a definition? How would they evaluate whether there are enough schools needed to accommodate “demand in the community”? Is the Department planning to check on whether each school meets its diversity goals and, when they are not met, to take away funds? How will peer-reviewers (and ED staff) account for factors that can complicate diversity efforts, such as local enrollment policies and weighted lotteries, when deciding if a school will be sufficiently diverse? Given that charter schools are open enrollment and subject to parent choice, how will ED monitors decide when a charter school has enrolled the “wrong” demographics?
- 2. In proposed requirement 2 (f)** the applicant must ensure that the school will not close if the contract is severable. What does it mean to be able to operate in this case? It might be helpful to clarify the property that should be kept by the school, such as desks, books, etc. to establish a clearer standard.
- 3. Culturally affirming schools;** Is it the intent of this requirement to deprioritize funds for schools supporting the cultural and language needs of tribes and native populations? If there are two developer applications, would the “diverse by design” Montessori that serves a more affluent population be prioritized over a tribal-led school because one is more “isolating”?
- 4. Contracts with for-profit organizations:** Applicants and schools would be required to submit and report information on their current and planned contracts with for-profit private management organizations. What is a management organization? If a developer or CMO doesn't discuss a contract in the application (because it doesn't have a fully developed proposal for it), could the entity enter into that contract later on? The notice also states that a charter school may not enter into a contract that gives a for-profit organization full or substantial administrative control over the school or over programmatic decisions. What is the definition of “substantial”? What standard will ED use in determining whether a grantee has met this new standard?
- 5. SE subgrant priorities:** Under the statute, a recipient of an SE Grant must, in making subgrants, ensure that subgrants are distributed throughout different areas (including suburban, and rural areas) and that they assist charter schools representing a variety of educational approaches. The NPP would require that SEs also give priority to applicants proposing a community-centered approach or to those proposing a collaboration with districts or district-operated schools. Would SE grantees have flexibility to determine how to weight or whether to make the NPP priorities invitational?



6. **Information to be included in CMO applications:** As we have noted in this letter, the NPP would require CMO and Developer Grant applications, and SE Grant subgrant applications, to include, as part of the community impact analysis, considerable information on the specific communities in which the applicant will operate schools (e.g., descriptions of community support and unmet demand, community demographics and enrollment trends). Yet CMOs typically have not identified, at the time of the application, all the specific communities in which they will open schools over the life of a multi-year grant. Will this traditional way of planning and launching high-quality schools, which has supported students and families across the country, continue, or will CMOs now be required to identify all their intended school sites (and complete a community impact analysis for each one) up front?
7. **How would the department define “racial isolation” for purposes of scoring by peer reviewers?**
8. **How would the department define “diversity” for purposes of scoring by peer reviewers? Would it only be a racial consideration, as opposed to economic, or other categories of educationally disadvantaged students?**
9. **Requirements that the community impact analysis include descriptions of unmet demand for a charter school and information on the number of schools needed to accommodate demand in the community:** How does ED intend that applicants meet those requirements, and how will peer-reviewers make judgments on these elements of the analysis? What evidence is ED looking for?



ATTACHMENT B – Suggested Edits to Application Requirement 2 and Assurances

For-Profit - Proposed Application Requirement	Comment
<p>For any existing or proposed contract with a for-profit management organization (including a non-profit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization exercises full or substantial administrative control over the charter school or the CSP project, the applicant must include—</p>	<p>“Proposed” is too vague to be consistently evaluated in a grant competition. Additional clarity is needed.</p> <p>What is the definition of a “for profit management company”?</p> <p>Elsewhere the NPP prohibits contracts that give the contractor full or substantial control. This language implies that they’re perfectly fine, so long as the required information on them is provided. It is very confusing.</p>
<p>(b) A detailed description of the terms of the contract, including the cost (i.e., fixed costs and estimates of any ongoing costs or fees) and percentage such cost represents of the school’s total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable appropriate), duration, roles and responsibilities of the management organization, and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;</p>	<p>Require this provision only for the CMO/Developer competition and make this an assurance for SE subgrants so that they can ensure that this aligns with their oversight process and because it is unclear how these requirements would be scored as selection criteria.</p> <p>In addition, states should be able to use existing criteria for determining whether management fees are appropriate and requirements for determining fair market value.</p>
Assurance	
<p>(a) Each charter school receiving CSP funding must provide an assurance that it has not entered into and will not enter into a contract with a for-profit management organization, including a non-profit management organization operated by or on behalf of a for-profit entity, under which the management organization exercises full or substantial administrative control over the charter school and, thereby, the CSP project.</p>	<p>Remove “substantial” as a criterion.</p>
<p>(b)(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (e.g., food services or payroll services) and that otherwise comply with statutory and regulatory requirements;</p>	<p>Remove “substantial”</p>
<p>(c) ADD</p>	<p>Add provisions related to board independence and separate auditors and attorneys, as described in comments in section 3.</p>



<p>Members of the charter school's governing board are not selected, removed or controlled by the for-profit entity or employees of the for-profit entity.</p> <p>The charter school has an independent attorney, accountant, and audit firm that works for the charter school and not the for-profit entity.</p>	
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ATTACHMENT C: 60 Burden hours estimate is problematic

CSP Grant Item	Hours Estimate	Third-Party Cost (If Contracted Out)
Grant Narrative (includes multiple review rounds, generation and cleaning of CMO operational and academic data, proofing). Contract cost may increase with new requirements.	80	\$20,000
Grant Evaluation (includes engagement with, refining, and finalizing partnership with third-party grant evaluator) - Cost included in grant budget if successful	15	
Grant Budget (includes multiple review rounds, built out of per-school, HQ, staffing, contracted services, materials)	40	\$5,000
Community Impact Evaluation (includes historical and projected future district and charter school regional growth, research into district growth modeling, demographic and district performance data)	80	\$25,000
District Partnership (includes development of partnership plan, engagement with district school partner, development of strategy to engage and secure support of district leadership, legal engagement for development and review rounds of MOU, preparation for private and public participation at board meetings if partnership is voted on). Partnership would likely include multiple CMO staff leadership time. Principal, ED/CEO to engage with district school and/or district leadership/board.	80	
Grant Appendices (includes development, formatting, compilation, and submission of standard CSP appendices)	40	\$2,500
TOTAL	335	\$52,500

