



Tuesday
May 18, 1999

Part VI

**Department of
Education**

**34 CFR Part 76
State-Administered Programs; Proposed
Rule**

DEPARTMENT OF EDUCATION**34 CFR Part 76****State-Administered Programs**

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) governing State-administered programs. These proposed regulations are necessary to implement a recent statutory change that affects all elementary and secondary education programs administered by the United States Department of Education (Department) under which the Secretary allocates funds to States on a formula basis. The proposed regulations would ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under these programs.

DATES: We must receive your comments on or before July 19, 1999.

ADDRESSES: Address all comments about these proposed regulations to Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C120, Washington, DC 20202-6140. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term "Charter Schools" in the subject line of your electronic message.

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

FOR FURTHER INFORMATION CONTACT: Leslie Hankerson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C120, Washington, DC 20202-6140. Telephone: (202) 205-8524. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

We invite you to submit comments regarding these proposed regulations.

The Secretary is particularly interested in public comments on whether the Department should regulate on what constitutes an expansion of enrollment, or allow States the flexibility to define the term within the context of the State procedures established under these proposed regulations. The Secretary is also particularly interested in public comments on the practical administrative issues that States and local educational agencies (LEAs) will need to address when allocating funds to charter schools under these proposed regulations. One issue that arises under programs that provide for formula allocations by State educational agencies (SEAs) to LEAs, such as Part B of the Individuals with Disabilities Education Act (IDEA), for example, is whether additional guidance is needed on the range of permissible options available to SEAs in meeting their obligations under these proposed regulations. To ensure that your comments are fully considered in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

Under the Department's Principles for Regulating, we regulate only if absolutely necessary, and then only in the least burdensome manner necessary. These proposed regulations contain some provisions that either repeat statutory requirements, give the Department's interpretations of the statute, or describe permissible, rather than required, ways of implementing the statute. The Secretary particularly requests public comment on whether any or all of these provisions should be removed from the regulations and issued instead in the form of guidance.

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

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3C120, Federal Office Building 6, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Background

Congress enacted the Charter School Expansion Act of 1998 (Act) on October 22, 1998. Among other things, the Act amended title X, part C of the Elementary and Secondary Education Act of 1965 (ESEA) and reauthorized the Public Charter Schools Program (PCSP) through fiscal year 2003. The Act also added a requirement under section 10306 of the ESEA that applies to all Department programs under which the Secretary allocates funds to States on a formula basis. Section 10306 requires the Secretary and States to take measures to ensure that eligible charter schools receive their commensurate share of funds under the covered programs in their first year of operation and in succeeding years when they expand their enrollment (20 U.S.C. 8065a).

These proposed regulations are necessary to ensure that States understand their responsibilities under section 10306 of the ESEA and take appropriate steps to fulfill those responsibilities. The Secretary encourages States to use these proposed regulations as a guide in meeting the requirements of section 10306 of the ESEA pending issuance of final regulations.

Summary of Proposed Provisions

The proposed provisions would amend Part 76 of EDGAR by redesignating subpart H as subpart I, and adding a new subpart H. For covered programs in which States and LEAs allocate funds by formula, this subpart would require States and LEAs to implement procedures that ensure that each charter school opening for the first time or significantly expanding its enrollment on or before November 1 of an academic year receives the full amount of funds for which it is eligible within five months of the date the charter school opens or significantly expands its enrollment. For each charter

school opening or significantly expanding its enrollment after November 1 but before February 1 of an academic year, this subpart would require States and LEAs to implement procedures that ensure that the charter school receives at least a *pro rata* portion of the funds for which the charter school is eligible within five months of the date the charter school opens or significantly expands its enrollment. For each charter school opening or significantly expanding its enrollment on or after February 1, this subpart would permit, but not require, States and LEAs to implement procedures to provide the charter school with a *pro rata* portion of the funds for which the charter school is eligible under a covered program. For covered programs in which States and LEAs award funds through a competitive process, this subpart would require States and LEAs to implement procedures that ensure that each eligible charter school scheduled to open during the academic year has a full and fair opportunity to compete to participate in the program.

In determining a charter school's eligibility to receive funds under a covered program during an academic year in which the charter school opens for the first time or significantly expands its enrollment, States and LEAs could not, under this subpart, rely on enrollment or eligibility data from a prior year, even if allocations to other LEAs or public schools are based on a prior year's data. These proposed regulations are based on statutory provisions that require eligibility to be determined based on current enrollment data of newly opened or expanded charter schools. This subpart would not apply to SEAs or LEAs that do not allocate funds or hold competitions among eligible applicants under an applicable covered program. Nor would this subpart have any effect on a charter school's eligibility to receive funds under a covered program during years in which the charter school is neither opening for the first time nor significantly expanding its enrollment. In those years, SEAs and LEAs should provide funds to charter schools meeting the statutory requirements for eligibility under the applicable program on the same basis as they provide funds to other LEAs and public schools. This subpart would override other Federal regulations to the extent that they are inconsistent with the provisions of this subpart.

General

Sections 76.785 through 76.787 describe the purpose of, define several

key terms, and identify the entities that would be governed by this subpart. This subpart would apply to all SEAs and LEAs that fund charter schools under a covered program, even if the State does not participate in the PCSP. Any State agency that is not an SEA but administers a covered program would also be required to comply with the provisions of this subpart that apply to SEAs. Examples of these State agencies include, but are not limited to, State vocational education agencies (Vocational Education Basic Grants and Tech-Prep Education), State agencies for higher education (Eisenhower Professional Development Grants), and the State agency that administers the Governor's Programs under the Department's Safe and Drug-Free Schools Program. Charter schools that are scheduled to open for the first time or significantly expand their enrollment during a given academic year, and wish to participate in a covered program in accordance with this subpart, would have to meet certain requirements.

The Secretary considers an expansion in enrollment to be significant when a charter school experiences a substantial increase in the number of eligible students under a covered program due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs at the charter school.

Section 76.787 defines several key terms that are used in this subpart. *Charter school* has the same meaning as provided in the authorizing statute for the PCSP, title X, part C of the ESEA. A charter school that meets this definition and meets the eligibility requirements of the applicable covered program could receive funds under the program in accordance with the requirements of this subpart, regardless of whether the charter school receives funds under the PCSP. In order for a charter school to meet the ESEA definition, the charter school, among other things, would have to be located in a State with a law specifically authorizing the establishment of charter schools. This subpart defines *charter school LEA* as a charter school that is treated as an LEA for purposes of the applicable covered program. Under this definition, a charter school could be treated as an LEA for purposes of some covered programs but not others.

This subpart defines a *covered program* as any elementary or secondary education program administered by the Department in which the Secretary allocates funds to States on a formula basis. This definition includes the Department's major formula grant

programs under which States sub-allocate funds to LEAs by formula, such as Title I, Part A (Basic Grants to LEAs) of the ESEA; Part B (Grants to States and Preschool Grants) of IDEA; and Titles I and II (Basic Grants and Tech-Prep, respectively) of the Carl D. Perkins Vocational and Technical Education Act of 1998. The covered programs also include programs such as Safe and Drug-Free Schools, Even Start Family Literacy, Goals 2000, and Adult Education and Family Literacy, under which the Secretary allocates funds to States by formula but States award some or all subgrants to LEAs and other eligible applicants through a competition. The term covered program does not include formula grant programs, such as Impact Aid or Indian Education, under which the Secretary allocates funds directly to LEAs.

Local educational agency would have the same meaning in this subpart as it has in the authorizing statute for the applicable covered program. For covered programs authorized under the ESEA, for example, the Title XIV definition of LEA would apply; for covered programs authorized under Part B of IDEA, LEA would have the same meaning as provided in section 602 of IDEA and 34 CFR 300.18. Because both the ESEA and IDEA definitions of LEA rely heavily on State law, the Secretary generally defers to States in determining whether a charter school is an LEA for purposes of a covered program. The State determination must be consistent with Federal and State law, however, and may not violate any established State policies or practices. The Secretary urges States to develop clear policies for determining whether charter schools in the State are LEAs or public schools within an LEA for purposes of a covered program.

Responsibilities for Notice and Information

Sections 76.788 and 76.789 describe the responsibilities of the entities that would be governed by this subpart to provide notice and information. A charter school that is scheduled to open for the first time or significantly expand its enrollment during the academic year and wishes to receive funds under a covered program in accordance with this subpart would be required to provide its SEA (or other responsible State agency) or LEA, as appropriate, with at least 120 days' written notice of the date the charter school is scheduled to open or significantly expand its enrollment. An eligible charter school that fails to comply with this notice requirement still would receive its allocation under the applicable covered

program, but the responsible SEA or LEA would not necessarily be bound by the time periods specified in § 76.793. Unless the SEA or LEA receives actual notice of the date the charter school is scheduled to open or significantly expand its enrollment from another source (e.g., an authorized chartering agency) at least 120 days before that date, the SEA or LEA would be required only to make allocations to the eligible charter school within a reasonable period of time after the charter school opens or significantly expands its enrollment.

In order to receive funds under a covered program, a charter school must establish its compliance with all applicable program requirements on the same basis as other LEAs. Upon request, a charter school must also provide its SEA or LEA with any data or information that is readily available to the charter school and that the SEA or LEA believes will assist it in estimating the amount of funds the charter school may be eligible to receive under a covered program when the charter school actually opens or significantly expands its enrollment. An SEA or LEA might request, for example, pre-registration lists or enrollment data from the prior academic year. While an SEA or LEA could not require a charter school to create any new data or information prior to opening or significantly expanding its enrollment, once the charter school has opened or significantly expanded its enrollment, it would be required to provide the SEA or LEA with actual enrollment and eligibility data at a time reasonably required by the SEA or LEA. If a charter school fails to provide any required enrollment or eligibility data to its SEA or LEA, the SEA or LEA could withhold funds from the charter school until the charter school provides the data.

While enrollment or eligibility data from a prior year may be used to estimate a charter school's projected enrollment on or after the date the charter school opens or significantly expands its enrollment, in accordance with §§ 76.791(a) and 76.796(b), an SEA or LEA could not use a prior year's data to determine the charter school's eligibility to participate in a covered program or to make any required adjustments to allocations under a covered program. This subpart would not preclude an SEA or LEA, however, from relying on data from a prior year to determine the amount of funds a charter school that is not opening for the first time or significantly expanding its enrollment is eligible to receive under a covered program.

Once an SEA or LEA has received notice of the date a charter school is scheduled to open or significantly expand its enrollment, § 76.789 of this subpart would require the SEA or LEA to provide the charter school with timely and meaningful information about each covered program in which the charter school may be eligible to apply to participate. The SEA or LEA would be required to provide this information to the charter school, regardless of whether the charter school complies with the notice requirement in § 76.788(a), if the SEA or LEA receives actual notice of the date the charter school is scheduled to open or significantly expand its enrollment through some other means or source. In cases where the responsible SEA or LEA also serves as the authorized chartering agency, for example, the SEA or LEA is likely to have actual notice of the date the charter school is scheduled to open or significantly expand its enrollment, even if the charter school does not provide official notice in accordance with § 76.788(a).

Under this subpart, an SEA or LEA would be considered to have provided timely information to a charter school if the charter school receives the information well enough in advance to be able to take the necessary steps to apply to participate in the program, but not so far in advance that the information is of little or no use to the charter school. An SEA or LEA would be considered to have provided meaningful information to a charter school if the information is complete and in a format that is clear and understandable.

Allocation of Funds

Section 76.790 describes the circumstances under which SEAs and LEAs would have to comply with this subpart. In order for a charter school to receive funds from an SEA or LEA in accordance with this subpart, the charter school would have to (1) open for the first time or significantly expand its enrollment during the academic year; (2) meet the eligibility requirements of the applicable covered program; and (3) comply with § 76.788(a) (notice). In order to ensure that charter schools receive the funds for which they are eligible in accordance with this subpart, paragraph (b) of § 76.790 would permit SEAs and LEAs to reserve funds or make initial allocations to eligible charter schools based on estimates of the projected enrollment at the charter school on or after the date the charter school opens or significantly expands its enrollment.

Under § 76.791, the determination of whether a charter school is eligible to receive funds under a covered program must be based on actual enrollment or other eligibility data for the charter school on or after the date the charter school first opens or significantly expands its enrollment. For the year a charter school is opening or significantly expanding its enrollment, an SEA or LEA would be precluded from determining the charter school's eligibility to participate in a covered program on the basis of enrollment or eligibility data from a prior year, even if eligibility determinations for other LEAs and public schools under the program normally are based on data from a prior year. Thus, an SEA or LEA could not deny funding to an otherwise eligible charter school merely because the amount of funds LEAs or public schools are eligible to receive under the program is based on data from a prior year. Nor could an SEA or LEA deny funding to an otherwise eligible charter school merely because the charter school is not open or has not significantly expanded its enrollment as of the date the SEA or LEA makes allocations to other LEAs or public schools under the applicable covered program.

Section 76.792 would require SEAs and LEAs to implement procedures to ensure that eligible charter schools receive their commensurate share of funds under a covered program. Eligible charter schools that first open or significantly expand their enrollment on or before November 1 of an academic year would receive their full allocations under a covered program, and eligible charter schools that first open or significantly expand their enrollment between November 1 and February 1 would receive a *pro rata* share of funds. The *pro rata* amount would be based on the number of months during the academic year that the charter school will participate in the applicable program compared to the total number of months in the academic year. Although eligible charter schools that open on or after February 1 would not necessarily receive any funds under a covered program, this subpart would give States discretion to implement procedures to provide eligible charter schools in this category with a *pro rata* portion of funds.

The Secretary recognizes the potential administrative burden that the new statutory requirement may place on States and localities and, accordingly, intends to allow SEAs and LEAs maximum flexibility to develop procedures under this subpart that will enable them to comply with section

10306 of the ESEA in a manner that minimizes any disruption in State and local administration of covered programs. Examples of procedures SEAs and LEAs could implement include reserving an appropriate amount of funds from their total allocation under a covered program; reserving an appropriate amount of funds from the allocation to a particular LEA or public school based on the number of students from that LEA or public school who are expected to attend the charter school; and using, for charter school allocations, any carryover, reallocation, State or local administration, or other discretionary funds that may be available at the State and local levels.

Section 76.793 specifies the time periods within which SEAs and LEAs would be required to make allocations to eligible charter schools under this subpart. SEAs and LEAs with at least 120 days' notice of the date an eligible charter school is scheduled to open or significantly expand its enrollment would be required to make allocations to a charter school that first opens or significantly expands its enrollment on or before November 1 of an academic year within five months. SEAs and LEAs would also be required to make allocations to eligible charter schools that first open or significantly expand their enrollment between November 1 and February 1 of an academic year within five months. In accordance with § 76.788(a)(2), SEAs and LEAs would not be required to meet these deadlines if they do not receive actual notice of the date an eligible charter school is opening or significantly expanding its enrollment at least 120 days before the opening or expansion.

Section 76.794 addresses the applicability of this subpart to covered programs in which SEAs and LEAs award funds on a competitive basis. Because the ultimate decision on whether to fund an eligible applicant under a discretionary covered program lies within the discretion of the SEA or LEA, a charter school could be eligible to participate in a discretionary covered program and still not receive funding under the program. Accordingly, § 76.794(a) applies to competitive discretionary programs and would require SEAs and LEAs to provide charter schools that are scheduled to open for the first time or significantly expand their enrollment on or before the closing date of any competition with a full and fair opportunity to apply to participate in the program.

An SEA or LEA generally provides a charter school with a full and fair opportunity to participate in a discretionary covered program if it

provides the charter school with timely and meaningful information about the program, including notice of the dates of any upcoming competitions. When awarding funds under competitive discretionary programs, an SEA would not be required to provide a full and fair opportunity to apply to participate to any charter school LEA that is scheduled to open after the closing date of a subgrant competition. Nor would the SEA be required to delay a subgrant competition in order to allow a charter school LEA that has not yet opened to compete for funds under a covered program. Paragraph (b) of § 76.794 would specify that SEAs and LEAs would not be required to comply with the requirements of this subpart when distributing funds under discretionary covered programs in which the SEA or LEA does not hold a competition. When distributing funds under noncompetitive discretionary programs, however, SEAs and LEAs are encouraged to consider charter schools on an equitable basis with other LEAs and public schools.

Adjustments

Under § 76.796, an SEA or LEA that allocates more or fewer funds to a charter school than the amount for which the charter school is eligible to receive under a covered program would be required to make appropriate adjustments. While SEAs and LEAs would have the flexibility to make the adjustments during the same year if they choose, they would not be required to make any adjustments until the succeeding year when they make allocations under the applicable covered program.

Any required adjustments to allocations for a given academic year must be based on actual enrollment or eligibility data for the charter school on or after the date the charter school opens or significantly expands its enrollment. The adjustments may not be based on enrollment or eligibility data from a prior year, even if allocations to other LEAs and public schools under the applicable covered program are based on a prior year's data.

Applicability of This Subpart to LEAs

Section 76.799 clarifies that this subpart would apply to LEAs that are responsible for funding charter schools under covered programs on the same basis as the subpart would apply to SEAs. In accordance with existing Federal regulations applicable to the covered programs, the State would be directly responsible for ensuring that LEAs meet the requirements of section

10306 of the ESEA as well as this subpart.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 76.785 *What is the purpose of this subpart?*)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small LEAs and charter schools. The requirements in these proposed regulations would benefit charter schools by ensuring that they receive the Federal-to-State formula funds for which they are eligible within their first year of operation and in subsequent years when they significantly expand their enrollment. The flexibility in these proposed regulations would benefit charter schools by improving customer service, and States by easing the increased administrative burden that is anticipated as a result of the statutory requirement.

Paperwork Reduction Act of 1995

Sections 76.788, 76.789, 76.792, and 76.794 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted copies of these sections to

the Office of Management and Budget (OMB) for its review.

Collection of Information: State-Administered Programs—Allocation of Funds to Charter Schools

These regulations would affect charter schools, LEAs, and SEAs (and other State agencies that administer covered programs). SEAs and LEAs will need and use the information to determine whether a charter school is eligible to receive funds under a covered program, to estimate the amount of funds the charter school is eligible to receive, and to ensure that the charter school receives that amount.

The Department estimates that SEAs will incur approximately 48.5 burden hours in the first year, and approximately 30.5 burden hours in subsequent years. The Department estimates the annual burden for charter schools and LEAs to be approximately 2.5 hours. The total annual reporting and recordkeeping burden for charter schools, SEAs, and LEAs after the first year will be determined by the number of eligible charter schools that open or significantly expand their enrollment each academic year.

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

We consider your comments on these proposed collections of information in—

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

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments

full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>

<http://www.ed.gov/news.html>

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects in 34 CFR Part 76

Administrative practice and procedure, Compliance, Eligibility, Grant administration, Reporting and recordkeeping requirements.

Dated: May 12, 1999.

Richard W. Riley,
Secretary of Education.

The Secretary proposes to amend part 76 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for part 76 is revised to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474, 6511(a), and 8065a, unless otherwise noted.

2. Subpart H of part 76 is redesignated as subpart I.

3. A new subpart H is added to part 76 to read as follows:

Subpart H—Allocation of Funds to Charter Schools

General

Sec.

76.785 What is the purpose of this subpart?

76.786 What entities are governed by this subpart?

76.787 What definitions apply to this subpart?

Responsibilities for Notice and Information

76.788 What are a charter school LEA's responsibilities under this subpart?

76.789 What are an SEA's responsibilities under this subpart?

Allocation of Funds by State Educational Agencies

76.790 Under what circumstances must an SEA comply with the requirements of this subpart?

76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?

76.794 How does an SEA allocate funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

Adjustments

76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?

76.797 When is an SEA required to make adjustments to allocations under this subpart?

Applicability of This Subpart to Local Educational Agencies

76.799 Do the requirements in this subpart apply to LEAs?

Subpart H—Allocation of Funds to Charter Schools**General****§ 76.785 What is the purpose of this subpart?**

The regulations in this subpart implement section 10306 of the Elementary and Secondary Education Act of 1965 (ESEA), which requires States to take measures to ensure that each charter school in the State receives the funds under a covered program for which the charter school is eligible during its first year of operation and during subsequent years in which the charter school expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.786 What entities are governed by this subpart?

The regulations in this subpart apply to—

(a) State educational agencies (SEAs) and local educational agencies (LEAs) that fund charter schools under a covered program, including SEAs and LEAs located in States that do not participate in the United States Department of Education's (Department) Public Charter Schools Program;

(b) State agencies that are not SEAs, if they are responsible for administering a covered program. State agencies that are not SEAs must comply with the provisions in this subpart that are applicable to SEAs; and

(c) Charter schools that are scheduled to open or significantly expand their enrollment during the academic year and wish to participate in a covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.787 What definitions apply to this subpart?

For purposes of this subpart—

Charter school has the same meaning as provided in title X, part C of the ESEA.

Charter school LEA means a charter school that is treated as a local educational agency for purposes of the applicable covered program.

Covered program means an elementary or secondary education program administered by the Department under which the Secretary allocates funds to States on a formula basis.

Local educational agency has the same meaning for each covered program as provided in the authorizing statute for the program.

(Authority: 20 U.S.C. 8065a)

Responsibilities for Notice and Information**§ 76.788 What are a charter school LEA's responsibilities under this subpart?**

(a) *Notice.* (1) At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA must provide its SEA with written notification of that date. (2)(i) The failure of an eligible charter school LEA to comply with paragraph (a)(1) of this section relieves the SEA of its obligation to comply with § 76.793, unless the SEA receives actual notice of the date the charter school LEA is scheduled to open or significantly expand its enrollment from another source at least 120 days before that date.

(ii) An SEA that does not receive at least 120 days' actual notice of the date an eligible charter school LEA is scheduled to open or significantly expand its enrollment must provide funds to the charter school LEA within a reasonable period of time after the charter school LEA opens or significantly expands its enrollment, consistent with the requirements of this subpart.

(b) *Information.* (1) In order to receive funds, a charter school LEA must—

(i) Provide to the SEA any available data or information that the SEA may reasonably require to assist the SEA in estimating the amount of funds the charter school LEA may be eligible to receive under a covered program; and

(ii) Establish its compliance with all applicable program requirements on the same basis as other LEAs.

(2) Once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide actual enrollment and eligibility data to the SEA at a time the SEA may reasonably require. An SEA may withhold funds from a charter school LEA until the charter school LEA provides the SEA with the required actual enrollment and eligibility data.

(Authority: 20 U.S.C. 8065a)

§ 76.789 What are an SEA's responsibilities under this subpart?

Upon receiving notice, under § 76.788(a)(1) or otherwise, of the date a charter school LEA is scheduled to open or significantly expand its enrollment, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate, including notice of any upcoming competitions under the program.

(Authority: 20 U.S.C. 8065a)

Allocation of Funds by State Educational Agencies**§ 76.790 Under what circumstances must an SEA comply with the requirements of this subpart?**

(a) An SEA must comply with the requirements of this subpart with respect to any charter school LEA that—

(1) Opens for the first time or significantly expands its enrollment during an academic year for which the State awards funds by formula or through a competition under a covered program;

(2) Meets the eligibility requirements of the applicable covered program; and

(3) Meets the requirements of § 76.788(a).

(b) In order to meet the requirements of this subpart, an SEA may allocate funds to, or reserve funds for, an eligible charter school LEA based on estimates of projected enrollment at the charter school LEA on or after the date the charter school LEA actually opens or significantly expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.791 On what basis does an SEA determine whether a charter school LEA that opens or significantly expands its enrollment is eligible to receive funds under a covered program?

(a) For purposes of this subpart, an SEA must determine whether a charter school LEA is eligible to receive funds under a covered program based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA opens or significantly expands its enrollment. For the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

(b) Except as provided in § 76.788(b)(2), a charter school LEA must receive the funds for which it is eligible in accordance with this subpart, even if the charter school LEA opens or significantly expands its enrollment after the date the SEA makes allocations to other LEAs under an applicable covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.792 How does an SEA allocate funds to eligible charter school LEAs under a covered program in which the SEA awards subgrants on a formula basis?

(a) For each eligible charter school LEA that is scheduled to open or significantly expand its enrollment on or before November 1 of an academic

year, the SEA must implement procedures that ensure that the charter school LEA receives the full amount of funds for which the charter school LEA is eligible under each covered program.

(b) For each eligible charter school LEA that is scheduled to open or significantly expand its enrollment after November 1 but before February 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives at least a *pro rata* portion of the funds for which the charter school LEA is eligible under each covered program. The *pro rata* amount must be based on the number of months during the academic year the charter school LEA will participate in the program as compared to the total number of months in the academic year.

(c) For each eligible charter school LEA that is scheduled to open or significantly expand its enrollment on or after February 1 of an academic year, the SEA may implement procedures to provide the charter school LEA with a *pro rata* portion of the funds for which the charter school LEA is eligible under each covered program.

(Authority: 20 U.S.C. 8065a)

§ 76.793 When is an SEA required to allocate funds to a charter school LEA under this subpart?

Except as provided in §§ 76.788(a)(2) and 76.788(b)(2), for eligible charter school LEAs that open or significantly expand their enrollment before February 1 of an academic year, the SEA must allocate funds to the charter school LEA within five months of the date the charter school LEA opens or significantly expands its enrollment.

(Authority: 20 U.S.C. 8065a)

§ 76.794 How does an SEA award funds to charter school LEAs under a covered program in which the SEA awards subgrants on a discretionary basis?

(a) *Competitive programs.* (1) For covered programs in which the SEA awards subgrants on a competitive basis, the SEA must provide each eligible charter school LEA in the State that is scheduled to open on or before the closing date of any competition under the program a full and fair opportunity to apply to participate in the program.

(2) An SEA is not required to delay the competitive process in order to allow a charter school LEA that has not yet opened or significantly expanded its enrollment to compete for funds under a covered program.

(b) *Noncompetitive discretionary programs.* The requirements in this subpart do not apply to discretionary covered programs under which the SEA does not award subgrants through a competition.

(Authority: 20 U.S.C. 8065a)

Adjustments

§ 76.796 What are the consequences of an SEA allocating more or fewer funds to a charter school LEA under a covered program than the amount for which the charter school LEA is eligible when the charter school LEA actually opens or significantly expands its enrollment?

(a) An SEA that allocates more or fewer funds to a charter school LEA than the amount for which the charter school LEA is eligible, based on actual enrollment or eligibility data when the charter school LEA opens or significantly expands its enrollment, must make appropriate adjustments to the amount of funds allocated to the charter school LEA as well as to other LEAs under the applicable program.

(b) Any adjustments to allocations to charter school LEAs under this subpart must be based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA first opens or significantly expands its enrollment, even if allocations or adjustments to allocations to other LEAs in the State are based on enrollment or eligibility data from a prior year.

(Authority: 20 U.S.C. 8065a)

§ 76.797 When is an SEA required to make adjustments to allocations under this subpart?

The SEA must make any necessary adjustments to allocations under a covered program on or before the date the SEA allocates funds to LEAs under the program for the succeeding academic year.

(Authority: 20 U.S.C. 8065a)

Applicability of This Subpart to Local Educational Agencies

§ 76.799 Do the requirements in this subpart apply to LEAs?

(a) Each LEA that is responsible for funding a charter school under a covered program must comply with the requirements in this subpart on the same basis as SEAs are required to comply with the requirements in this subpart.

(b) In applying the requirements in this subpart (except for §§ 76.785, 76.786, and 76.787) to LEAs, references to SEA (and State in §§ 76.794(a) and 76.796(b)), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

(Authority: 20 U.S.C. 8065a)

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