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ESEA: Charter Schools Program

Charter schools are public schools of choice that are created in accordance with state laws and are publicly funded and tuition-free. They are operated according to the terms of charters or contracts granted by a charter authorizer (e.g., local educational agency [LEA], state-level authority, institution of higher education). The terms of charters typically provide charter school operators with increased autonomy over the operation of schools, often including exemptions from, or flexibility in the application of, many of the state or local regulations otherwise applicable to public schools, in exchange for increased accountability. Students must apply to a charter school to gain admission. Charter schools often use lotteries to select new students if they have more applicants than available slots.

The first charter school opened its doors in Minnesota in 1992. Currently, 45 states and the District of Columbia have charter school laws. (The states without charter school laws are Montana, Nebraska, North Dakota, South Dakota, and Vermont.) As of the 2021-2022 school year, 7,847 charter schools served 3.67 million students.

While all laws authorizing charter schools are state laws, the first federal charter school program was enacted in 1994 as part of the reauthorization of the Elementary and Secondary Education Act (ESEA) by the Improving America's Schools Act (IASA; P.L. 103-382). This In Focus provides an overview of the Charter Schools Program (CSP) currently authorized by the ESEA.

ESEA Charter Schools Program

The CSP is authorized by Title IV-C of the ESEA. Purposes of the program include improving the U.S. education system and education opportunities by supporting innovation; providing financial assistance for the planning, design, and initial implementation of charter schools; increasing the number of high-quality charter schools; encouraging states to provide charter schools facilities financing; and strengthening the charter school authorizing process. The CSP supports charter schools that serve early childhood, elementary, and secondary school students by providing funding for the startup of new charter schools and the replication and expansion of high-quality charter schools, assisting charter schools in accessing credit to acquire and renovate facilities, and carrying out national activities (e.g., dissemination of best practices).

For the purposes of the CSP, a “high-quality” charter school is one that shows evidence of strong academic results; has no “significant” issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance; and has demonstrated success in “significantly increasing” student academic achievement for all students served by the charter school and subgroups of students (i.e., economically disadvantaged students,

students with disabilities, English learners, and racial/ethnic groups).

Multiple competitive grant programs comprise the CSP. Each is discussed briefly below.

Charter School Grants to State Entities

Section 4303 authorizes competitive grants to state entities (e.g., state educational agencies [SEAs], state charter school boards, governors). State entities must use at least 90% of the funds received to award subgrants to eligible applicants to enable them to open and prepare for the operation of a new charter school or replicate or expand an existing high-quality charter school. An eligible applicant is a *developer*, which is defined as an individual or group of individuals (e.g., teachers, school staff, parents, nonprofit organization) in the local community in which the charter school project will be implemented, that has applied to a public charter authorizer to operate a charter school and has “provided adequate and timely notice to that authority.” State entities must also use at least 7% of the funds to provide technical assistance to eligible applicants and authorized public chartering agencies. They may not use more than 3% of the funds for administrative costs.

Subgrants to eligible applicants shall be awarded for a period of not more than five years, of which an eligible applicant may use up to 18 months for planning and program design. Eligible applicants may also use funds to prepare teachers and other school staff through professional development and to hire and compensate staff during the planning period; acquire supplies, training, equipment, and educational materials; carry out renovations to comply with applicable statutes and regulations and conduct minor facilities repairs; cover one-time, start-up costs associated with providing student transportation; carry out community engagement activities; and provide other activities related to opening a charter school or replicating or expanding a high-quality charter school.

Developer Grants

As part of National Activities authorized in Section 4305(a)(2), charter school developers in states that do not have a current CSP grant to a state entity may apply directly to the Secretary of Education (the Secretary) for a competitive grant to open a new charter school or replicate or expand a high-quality charter school. If a grant is awarded, it must be used by the grant recipient in the same manner that funds are used by eligible applicants receiving a subgrant from their state.

Charter School Replication and Expansion of High-Quality Charter Schools Grants

These grants (referred to as Replication and Expansion grants), authorized under National Activities in Section

4305(b), provide grants to charter management organizations (CMOs; also referred to as the “eligible entity”) to replicate or expand one or more high-quality charter schools. A CMO is a nonprofit organization that operates or manages a network of charter schools connected by centralized support, operations, and oversight. Grants awarded to CMOs generally have the same terms and conditions as grants awarded to state entities under the CSP grants to state entities program.

Credit Enhancement (CE) Grants

Under this program, authorized by Section 4304, grants are made to public or private entities (or a combination of the two) for the development of credit enhancement initiatives to assist charter schools in acquiring, constructing, or renovating facilities. The Secretary is required to award not less than three grants on a competitive basis to eligible entities. An eligible entity is required to deposit funds received into a reserve account. These funds may be used to guarantee, insure, and reinsure bonds, notes, evidences of debt, and interests therein; guarantee and insure leases of personal and real property; facilitate financing by identifying lending sources and encouraging private lending to, or for the benefit of, charter schools; and facilitate the issuance of bonds by charter schools or other public entities for the benefit of charter schools.

Charter School Facilities Incentive Grants (FIG)

This program, also referred to as the Per-Pupil Facilities Grant Program, is authorized by Section 4304(k). It is a competitive grant program that provides funds to states to establish or enhance and administer per-pupil facilities allowances to help charter schools obtain facilities. The

federal share of the per-pupil facilities aid program decreases from 90% in the first year of the grant to 20% by the fifth year of the grant. The grants are designed to provide an incentive for states to share in the costs of funding charter school facilities. Only SEAs that have enacted a state law authorizing per-pupil annual facilities aid for charter schools may apply.

Grants for Other National Activities

Under National Activities in Section 4305(a)(3), the Secretary may award dissemination and evaluation grants. Dissemination grants are used to disseminate best practices and provide technical assistance to state entities in awarding subgrants under Section 4303 and eligible entities and states receiving Credit Enhancement and Facilities Incentive Grants, respectively, under Section 4304. Evaluation grants may be awarded by the Secretary to evaluate the impact of the CSP, including its effect on student achievement.

Appropriations

While current CSP statutory language specifies certain percentages of the total appropriation that should be allocated to each of the aforementioned programs, Congress has annually included provisions in the Department of Education (ED) Appropriations Act to modify these requirements. For example, while ESEA provisions state that the Replication and Expansion grants should receive not more than 18% of the total appropriation, the FY2022 ED Appropriations Act specified that \$140 million must be used for this purpose. Without this stipulation, \$79.2 million would have been provided for these grants. **Table 1** provides appropriations for each of the CSP programs for FY2017 through FY2023.

Table 1. Appropriations for the ESEA Charter Schools Program
(dollars in millions)

| Program | FY2017 | FY2018 | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 ^a |
|----------------------------------|---------|---------|----------------------|---------|--------------------|---------|---------------------|
| Grants to State Entities | \$162.5 | \$197.8 | \$216.6 | \$214.1 | \$220.8 | \$215.3 | NA |
| Developer Grants | \$3.6 | \$17.9 | \$5.8 | \$10.9 | \$5.9 | \$9.5 | NA |
| Replication and Expansion Grants | \$97.9 | \$119.9 | \$135.0 | \$140.0 | \$140.0 | \$139.8 | NA |
| Credit Enhancement | \$56.3 | \$39.9 | \$48.8 | \$55.0 | \$55.2 | \$57.7 | NA |
| Facilities Incentive Grants | \$10.0 | \$10.0 | \$6.0 | \$5.0 | \$4.7 | \$2.3 | NA |
| National Activities | \$11.3 | \$14.0 | \$15.0 | \$15.0 | \$13.3 | \$15.0 | NA |
| Peer review of applications | \$0.6 | \$0.5 | \$0.6 | \$0.1 | \$0.0 ^b | \$0.4 | NA |
| Total | \$342.2 | \$400.0 | \$427.9 ^c | \$440.0 | \$440.0 | \$440.0 | \$440.0 |

Source: Table prepared by CRS based on data available from the U.S. Department of Education, Budget Service, Justifications of Appropriations Estimates to Congress, various years.

Notes: Details may not add to totals due to rounding. In addition, for two fiscal years the details available from ED do not add exactly to the total. For FY2020, the details exceed the total by \$137,000. For FY2022, the details are less than the total by \$47,000.

- FY2023 appropriations were not enacted until March 15, 2022. The budget justifications containing the relevant information were released prior to this date and did not reflect statutory provisions regarding how the funds should be used across the grant programs for FY2023.
- \$36,000 was provided for this purpose.
- ED reprogrammed \$12,141,000 from the Charter Schools Program and provided it to the Magnet Schools Assistance Program and Statewide Family Engagement Centers. Prior to the reprogramming, appropriations for the Charter Schools Program were \$440,000,000.

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