DEPARTMENT OF EDUCATION

34 CFR Part 76

State-administered Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) governing State-administered programs. These final 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 regulations will 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: These regulations are effective January 21, 2000.

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.

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SUPPLEMENTARY INFORMATION: On May 18, 1999, the Secretary published in the **Federal Register** (64 FR 27152) a notice of proposed rulemaking (NPRM) proposing to revise sections in EDGAR governing State-administered programs. These proposed amendments were designed to 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.

Prior to publishing the NPRM, the Department took a number of steps to consult with State and local officials regarding the statutory provision that these final regulations implement, and the specific measures the Secretary proposed to undertake to assist States and localities in meeting their obligations under it. In December 1998, the Department sent two letters to chief State school officers informing them of changes to the Public Charter Schools Program (PCSP) as a result of passage of the Charter School Expansion Act of 1998 (Act). The second letter specifically highlighted the requirement in section 10306 of the Act that the Secretary and States take measures to ensure that charter schools receive the Federal-to-State formula funds for which they are eligible within five months of opening for the first time or expanding their enrollment. In March 1999, Department officials discussed the new provision and our plans for implementing it with State and local officials, as well as charter school operators and developers, at our national conference on charter schools.

Since publication of the NPRM, we have consulted with State officials through an SEA chat room on the Department's internet web site, and at several meetings, including two national Title I meetings. In addition, we sent two letters to chief State school officers and State program directors specifically requesting comments on the NPRM.

In the preamble to the NPRM, the Secretary discussed on pages 27152 and 27153 the major provisions in the proposed regulations. These provisions would amend Part 76 of EDGAR by redesignating subpart H as subpart I, and adding a new subpart H. The proposed provisions included the following:

- For covered programs in which States and local educational agencies (LEAs) allocate funds by formula, a requirement that States and LEAs 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, a requirement that States and LEAs 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, a provision permitting, but not requiring, 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, a requirement that States and LEAs 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.
- A general prohibition against States and LEAs relying on enrollment or eligibility data from a prior year 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, even if allocations to other LEAs or public schools are based on a prior year's data.
- An exemption from the proposed regulations for SEAs and LEAs that do not allocate funds by formula or hold competitions among eligible applicants under a covered program.

These final regulations contain several significant changes from the NPRM. These changes are fully explained in the ''Analysis of Comments and Changes'' attached as an appendix to these final regulations. The changes pertain to the meaning of the term *significant expansion of enrollment;* the time period within which SEAs and LEAs are required to make allocations to charter schools that open or expand between November 1 and February 1; the entities that can provide the required 120-day notice to an SEA or LEA; and the penalty for a charter school's failure to comply with the 120-day notice requirement.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these final regulations.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

Some of the programs that are affected by these final 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 this order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(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: December 16, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends 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—How Does a State or Local Educational Agency Allocate Funds to Charter Schools?

General

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

76.791 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—How Does a State or Local Educational Agency Allocate 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 for which it is eligible under a covered program 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 Department's 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—

Academic year means the regular school year (as defined by State law, policy, or practice) and for which the State allocates funds under a covered program.

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, except that the term does not include a program or portion of a program under which an SEA awards subgrants on a discretionary, noncompetitive basis.

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

Significant expansion of enrollment means a substantial increase in the number of students attending a charter school 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 in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant.

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

Reponsibilities for Notice and Information

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

(a) *Notice.* At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide its SEA with written notification of that date.

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

(2)(i) 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.

(ii) An SEA is not required to provide funds to a charter school LEA until the charter school LEA provides the SEA with the required actual enrollment and eligibility data.

(c) *Compliance.* Except as provided in § 76.791(a), or the authorizing statute or implementing regulations for the applicable covered program, a charter school LEA must establish its eligibility and comply with all applicable program requirements on the same basis as other LEAs.

(Approved by the Office of Management and Budget under control number 1810–0623)

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

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

(a) *Information.* Upon receiving notice under § 76.788(a) 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.

(b) *Allocation of Funds.* (1) An SEA must allocate funds under a covered program in accordance with this subpart to any charter school LEA that—

(i) 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 the program;

(ii) In accordance with § 76.791(a), establishes its eligibility and complies with all applicable program requirements; and

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

(2) 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 reasonable estimates of projected enrollment at the charter school LEA.

(3)(i) The failure of an eligible charter school LEA or its authorized public chartering agency to provide notice to its SEA in accordance with § 76.788(a) relieves the SEA of any obligation to allocate funds to the charter school within five months.

(ii) Except as provided in § 76.792(c), an SEA that receives less than 120 days' actual notice of the date an eligible charter school LEA is scheduled to open or significantly expand its enrollment must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(iii) The SEA may provide funds to the charter school LEA from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

(Approved by the Office of Management and Budget under control number 1810–0623)

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

Allocation of Funds by State Educational Agencies

§ 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.

(b) 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.

(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 opens or significantly expands 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 proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(b) For each eligible charter school LEA that opens or significantly expands 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 proportionate amount of 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 or days during the academic year the charter school LEA will participate in the program as compared to the total number of months or days in the academic year.

(c) For each eligible charter school LEA that opens or significantly expands 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 proportionate amount of 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(b) and 76.789(b)(3):

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 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; and

(b)(1) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1, but before February 1 of an academic year, the SEA must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(2) The SEA may provide funds to the charter school LEA from the SEA's allocation under the program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

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

§ 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?

(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 programs or portions of 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?

(a) 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.

(b) In allocating funds to a charter school LEA based on adjustments made in accordance with paragraph (a) of this section, the SEA may use funds from the SEA's allocation under the applicable covered program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation 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 (or State), charter school LEA, and LEA must be read as references to LEA, charter school, and public school, respectively.

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

Appendix to the Preamble—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Need for Final Regulations

Comments: Five commenters expressed strong support for the issuance of final regulations in order to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the Federal-to-State formula funds for which they are eligible in a timely fashion. Two commenters objected to the issuance of final regulations as premature and inconsistent with the Department's regulatory principles. These commenters recommended that the Secretary issue the proposed regulations as nonregulatory guidance to determine whether final regulations are absolutely necessary.

Discussion: The Secretary believes that these final regulations are necessary to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible under the covered programs in accordance with the requirements of section 10306 of the Act. A number of State and local officials as well as charter school operators have raised questions about the proper interpretation of section 10306 of the Act, and have requested guidance from the Department regarding implementation of the provision. Due to a number of factors, including the importance of the statutory requirement and the high level of uncertainty regarding its interpretation, the Secretary believes that final regulations are necessary to ensure a uniform interpretation of the law among States. Also, consistent with the Department's Principles for Regulating, the provisions in these final regulations are intended to allow SEAs and LEAs maximum flexibility to develop procedures that will enable them to comply with the statutory requirement in a manner that minimizes any disruption in State and local administration of the covered programs.

Changes: None.

Need for Nonregulatory Guidance

Comments: Six commenters recommended that the Secretary issue nonregulatory guidance to assist States in implementing these final regulations. Three commenters specifically requested guidance on the effect of the regulations on State administration of funds under Part B of the Individuals with Disabilities Education Act (IDEA), including the funding formulas in the Grants to States Program and the Preschool Grants Program.

Discussion: The Secretary agrees that the issuance of nonregulatory guidance would be useful to assist States in implementing these final regulations. Accordingly, within the next several months, we intend to issue guidance that will address specific implementation issues relating to the various covered programs, including allocation issues under Part B of IDEA and Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA). For a discussion of the effect of these final regulations on Part B of IDEA, see ''Allocation of Funds'' in this ''Analysis of Comments and Changes.''

Changes: None.

Information Collection Requirements

Comments: One commenter requested that the Secretary describe in the final regulations the specific types of information SEAs and LEAs will be expected to collect under the regulations.

Discussion: The two provisions in these regulations that impose information collection requirements on SEAs, LEAs, and charter schools are §§ 76.788 and 76.789(a). Section 76.788 requires new and expanding charter schools to notify their SEA or LEA of the date the charter school is scheduled to open or expand, and to provide the SEA or LEA with eligibility and enrollment data.

Under § 76.789(a), SEAs and LEAs must provide timely and meaningful information to new and expanding charter schools.

In light of the potential administrative burden that compliance with the statutory requirement may place on States and localities, we believe it is important to allow States and LEAs as much flexibility as possible in determining the specific information they will need to collect from and provide to charter schools, and in developing the necessary procedures for transferring that information. We believe it would be counterproductive to include any additional specifications for the collection of information in these final regulations.

Changes: None.

Definition of Academic Year (§ 76.787)

Comment: One commenter recommended that the Secretary define *academic year* in the final regulations.

Discussion: We agree that defining *academic year* in these final regulations is useful, and considered several factors in crafting the definition. First, while all State laws require a minimum number of days that school districts must provide academic instruction, most States give their districts discretion to establish the actual opening dates and calendar of the school year. In a few cases, States establish the school calendar year for its LEAs. In either case, the opening dates of the school or *academic year* typically range from mid-August to mid-September. Another important factor that is incorporated into the definition is the use of the term *academic year* as a placeholder reference for the fiscal year or budget period for which a State allocates funds under a covered program.

Changes: We have revised § 76.787 to add a definition for the term *academic year.* The definition preserves State and local flexibility in establishing an academic year calendar, but references the fiscal period for which the State allocates funds under a covered program.

Definition of Charter School LEA (§ 76.787)

Comments: Two commenters objected to the definition of *charter school LEA* set forth in the proposed regulations because it would allow charter schools to be treated as an LEA for purposes of some covered programs but not others. These commenters expressed concern that charter schools will manipulate the system by claiming to be an LEA or a public school within an LEA for different programs, depending on whether the charter school deems it to be convenient. One commenter recommended that the definition of *charter school LEA* be based on State law.

Discussion: We disagree that allowing a charter school to be treated as an LEA for purposes of some covered programs and a public school within an LEA for purposes of other covered programs will lead to widespread manipulation of the system by charter schools. Each of the Federal statutes governing the covered programs defines *LEA* for purposes of the programs authorized under the statute. Because these definitions are broad and rely heavily on State law, the Secretary generally will defer to the State on the question of whether a charter school is an LEA or a public school within an LEA.

As a general rule, however, a charter school cannot be an LEA and a public school within an LEA under the same Federal definition. Title XIV of the ESEA defines *LEA* for purposes of programs authorized under the ESEA. Because both the Title I Program and the Safe and Drug-Free Schools and Communities Program are authorized under the ESEA, for example, a charter school could not be an LEA for purposes of Title I and a school within an LEA for purposes of Safe and Drug-Free Schools. Likewise, because the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) adopts the ESEA definition of *LEA*, a charter school could not be treated differently for purposes of ESEA programs and programs authorized under Perkins III.

IDEA, on the other hand, contains its own definition of *LEA.* Therefore, it is conceivable that a charter school could be treated as an LEA for purposes of ESEA and Perkins III programs, and a public school within an LEA for purposes of programs authorized under Part B of IDEA. The charter school would have to be treated consistently, however, under the Preschool Grants Program and the Grants to States Program, since both of these programs are authorized under Part B of IDEA.

One possible exception to the general rule that a charter school cannot be treated as an LEA and a public school within an LEA under different covered programs that rely on the same Federal definition of *LEA*, is where a State law provision specifically authorizes charter schools to elect to be treated as an LEA or a public school within an LEA for purposes of a particular program. In such a case, the Secretary generally will defer to State law.

Changes: None.

Definition of Significant Expansion of Enrollment (§ 76.787)

Comments: Six commenters requested that the Secretary include in the final regulations a definition for *significant expansion of enrollment* in order to avoid unnecessary conflict between States and charter schools. Two of these commenters recommended that the term be defined based on congressional intent and the Secretary's considerations in the preamble to the proposed regulations. One commenter opposed defining the term in the final regulations but suggested, instead, that the final regulations include a provision specifically authorizing States to define the term.

Discussion: We agree that defining *significant expansion of enrollment* in these final regulations is necessary to clarify a major component of the regulations. Consistent with the overall intent of these final regulations, however, we believe that the term should be defined in a manner that gives meaning to the statutory provision upon which these regulations are based, while allowing States maximum flexibility in implementing the statutory and regulatory requirements. The requirements in these final regulations are not triggered by minor increases in enrollment caused by normal turnover. Rather, these regulations apply to substantial increases in enrollment that are caused by significant, or abnormal, events.

A charter school for the performing arts, for example, may offer two educational programs that focus on music and art. If the charter school were to add a third educational program in dance, and the addition of that educational program resulted in a substantial increase in the number of students attending the charter school, then the SEA or LEA serving the charter school would be required to comply with these final regulations when providing funds to the charter school under a covered program. It is not enough for a charter school to experience a significant event, but the event must also result in a substantial increase in the number of students attending the charter school.

Changes: We have revised § 76.787 to define the term *significant expansion of enrollment.* The definition is similar to the definition set forth in the preamble to the proposed regulations, but is broader in that it focuses on substantial increases in a charter school's overall enrollment without regard to student eligibility for program funds. In addition, SEAs are given flexibility to treat any expansion of enrollment as significant.

120–Day Notice Requirement (§ 76.788(a))

Comments: One commenter supported the 120-day notice requirement, but recommended that charter schools also be required to provide auditable enrollment information to the State or LEA at the time the charter school provides the notice. Another commenter opposed the 120-day notice requirement because of the delay that many charter schools encounter in receiving approval of their charters. This commenter recommended that the regulations be revised to require charter schools to notify the State or LEA of the date the charter school is scheduled to open or expand 60 days before the charter school opens or expands, or within 30 days of the date the charter school receives its charter.

Discussion: We believe that it is unreasonable to expect a charter school that has not yet opened or expanded to be able to provide auditable enrollment information to its SEA or LEA. It is not unreasonable, however, to expect a charter school to know, at least 120 days in advance, the date the charter school anticipates opening or expanding. Most successful charter schools will spend at least 120 days planning prior to opening for the first time or significantly expanding their enrollment. Because SEAs and LEAs may be required to reserve a portion of funds under each covered program for eligible charter schools that open or expand during the academic year, SEAs and LEAs will need to know as early as possible the number of charter schools that are scheduled to open or expand. Moreover, these final regulations do not preclude a prospective charter school from notifying its SEA or LEA of the date the charter school is scheduled to open, pending final approval of its charter.

Changes: None.

Penalty for Charter School's Failure to Provide Notice (§ 76.789(b)(3))

Comments: One commenter objected to the language in the proposed regulations that would allow an entity other than the charter school to notify the State or LEA of the date the charter school is scheduled to open or expand. A second commenter recommended that the regulations be revised to require a charter school that fails to meet the 120-day notice requirement to wait for the next grant cycle to receive funds under the applicable covered program.

Discussion: We agree that the charter school should bear primary responsibility for notifying the SEA or LEA of the date the charter school is scheduled to open or expand. Allowing an unspecified number of entities other than the charter school to place the SEA or LEA on notice could lead to unnecessary conflict between SEAs and LEAs and charter schools. In some cases, however, it may be more efficient for the responsible authorized public chartering agency to notify the SEA or LEA of the scheduled opening or expansion dates for its charter schools, rather than require each charter school to provide the notice individually.

We also agree that SEAs and LEAs should not be required to meet the five-month funding requirement with respect to charter schools that open or expand on or before November 1, if the charter school fails to comply with the 120-day notice requirement. As stated above, SEAs and LEAs will need to know as early as possible the number of charter schools that may be eligible to receive funds under a covered program in order to ensure that the funds are available for the charter school when it actually opens or expands.

Changes: We have revised § 76.788(a) to specify that a charter school or its authorized public chartering agency must notify the SEA or LEA of the date the charter school is scheduled to open or expand. We have revised proposed § 76.788(a)(2) (§ 76.789(b)(3) in these final regulations) further to specify the time period within which SEAs and LEAs must provide funds to charter schools that open or expand before November 1, but fail to provide 120 days' notice. Finally, we have revised § 76.789 to delete the reference to notice provided through some means other than § 76.788(a).

Estimates of Projected Enrollment (§§ 76.788(b)(1) and 76.789(b)(2))

Comments: One commenter recommended that the regulations require States and LEAs to rely on reasonable and objective data in estimating the amount of funds to reserve for charter schools under a covered program, and specifically authorize SEAs and LEAs to gather the data or require the charter school to provide it. Another commenter proposed that the final regulations include a new provision requiring estimates of projected enrollment to be based on the characteristics of the currently enrolled population, previous year enrolled population, or existing applications for enrollment at the charter school. Several commenters expressed opposition to the use of assumed proportionality (*i.e.*, surrounding LEAs' proportionate demographic characteristics) in projecting enrollment at a charter school that is scheduled to open or expand. Another commenter objected to the use of the term ''available'' in the provision requiring charter schools to provide to the SEA or LEA any available data or information that the SEA or LEA may reasonably require to assist it in estimating the amount of funds to reserve for the charter school. This commenter stated that SEAs and LEAs should be able to collect any data that they may reasonably require.

Discussion: Section 76.789(b)(2) authorizes an SEA or LEA to reserve an appropriate amount of funds or make an initial allocation to eligible charter schools based on projected data. Accordingly, § 76.788(b)(1) requires a charter school to provide its SEA or LEA with any ''available'' data or information that the SEA may reasonably require to make these projections.

We agree that any data upon which an SEA or LEA relies to estimate the amount of funds to reserve for a new or expanding charter school should be reasonable. We believe that adoption of the remaining suggestions in the comments, however, would add unnecessary prescription to these final regulations. It is important to understand that these provisions concern only projected data that would be used until actual data are available. Under § 76.796, any allocations based on projected data that are inaccurate must be adjusted. Obviously, an SEA or LEA would want any projected data it uses to be as accurate as possible in order to reduce the need to make adjustments. Although these provisions require the new or expanding charter school to provide any available data to its SEA or LEA, there is nothing in these final regulations that would preclude an SEA or LEA from collecting the data itself.

It should also be noted that SEAs and LEAs are not required to use projected data. Rather, the SEA or LEA could reserve funds off the top of its total allocation and wait until actual data are available before making any allocations to charter schools.

Changes: We have revised § 76.789(b)(2) to require any estimates of a charter school's projected enrollment to be reasonable.

Actual Enrollment and Eligibility Data (§ 76.788(b)(2))

Comments: One commenter recommended that charter schools be required to provide the SEA or LEA with actual enrollment and eligibility data within 60 days of opening or expanding.

Discussion: Section 76.788(b)(2) requires a charter school to provide actual enrollment and eligibility data to the SEA or LEA at a time the SEA or LEA may reasonably require. We do not believe it would be appropriate to prescribe a specific period in the regulations for submitting the data. In many instances, 60 days would be unnecessarily long and might create difficulties for SEAs and LEAs in making funds available to eligible charter schools within five months. In other instances, depending on the specific circumstances, 60 days may not be sufficiently long. We believe these final regulations appropriately provide flexibility to each SEA and LEA to set a reasonable timeframe for collecting actual enrollment and eligibility data from charter schools.

Changes: None.

Timely and Meaningful Information (§ 76.789)

Comments: One commenter recommended that the Secretary define *timely and meaningful information* in the final regulations, while another commenter requested clarification of the meaning of the term in either the regulations or nonregulatory guidance.

Discussion: Section 76.789 requires SEAs and LEAs to provide charter schools with timely and meaningful information about each covered program in which the charter school may be eligible to participate, including notice of any upcoming competitions. We have refrained from defining *timely and meaningful* information in these final regulations because we do not believe that a single definition can comprehensively address all covered programs. Essentially, this provision requires SEAs and LEAs to provide charter schools with the information they reasonably need to know in order to make an informed decision about whether to apply to participate in a particular covered program, and the steps they need to take to do so. For example, for each covered program, we would expect an SEA to provide basic program information, such as the program's purpose, target population, eligibility requirements, application packages, dates of any competitions, copies of the statute, relevant regulations and guidance, etc. In terms of timing, the SEA should provide the information as early as possible to afford the charter school a genuine opportunity to apply to participate in the applicable covered program.

Changes: None.

Eligibility (§§ 76.788(c) and 76.789(b)(1)(ii))

Comments: Several commenters recommended that the Secretary clarify that charter schools must meet the same program and eligibility requirements as other LEAs and public schools in order to receive funds under an applicable covered program, and that the proposed regulations would not require a State or LEA to provide funds to charter schools if the State or LEA does not provide funds to other LEAs and public schools under the program. Two of these comments were made with specific reference to Title I and Part B of IDEA.

Discussion: Based on section 10306 of the Act, which these regulations implement, and its legislative history, it is clear that charter schools must receive the proportionate amount of funds for which they are eligible under the covered programs. In the absence of statutory or other regulatory language to the contrary, these final regulations should not be interpreted to afford any special rights or privileges to charter schools with regard to program eligibility. Thus, an SEA or LEA is not required to comply with these final regulations with respect to a new or expanding charter school that does not meet the eligibility and other program requirements of the applicable covered 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, however, SEAs and LEAs may not 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.

Nor do these final regulations require an SEA or LEA to provide funds to an eligible charter school if the SEA or LEA does not provide funds to other eligible LEAs or public schools under the program. Under Title I, for example, an LEA may choose to provide funds or services to eligible public schools in its district. If the LEA opts to provide services, rather than funds, to the Title I-eligible public schools in its district, these regulations would not require the LEA to provide funds to new or expanding charter schools. For a discussion of whether these final regulations require LEAs to provide funds to new and expanding charter schools under Part B of IDEA if the LEA does not provide funds to other eligible public schools, see ''Allocation of Funds'' in this ''Analysis of Comments and Changes.''

Changes: We have revised proposed §§ 76.788(b)(1)(ii) and 76.790(a)(2) (§§ 76.788(c) and 76.789(b)(1)(ii), respectively, in these final regulations) to clarify that a charter school must establish its eligibility and comply with all applicable program requirements in order to receive funds under these final regulations.

Date on Which a Charter School Opens or Expands (§§ 76.792–76.793)

Comments: Two commenters expressed support for the provisions in the regulations that require States and LEAs to provide funds to charter schools that open or expand prior to February 1. One of these commenters noted that its State law requires charter schools to open between August 15 and September 15. Another commenter recommended that the regulations be revised either to eliminate any requirement that States provide funding to charter schools that open after November 1, or to give States more flexibility in providing funds to charter schools that open after that date. Another commenter stated that the *pro rata* calculation should be flexible enough to allow States to use days rather than months.

Discussion: We agree that February 1 is a reasonable cut-off date for States to be required to provide some funding to eligible charter schools under the covered programs. Because these final regulations require States to provide only a *pro rata* portion of funds to eligible charter schools that open or expand between November 1 and February 1, charter schools will have an incentive to open or expand before November 1, thereby easing the potential administrative burden on States.

On the other hand, some charter schools may be unable to open or expand prior to November 1. While it would be unfair to require these charter schools to forgo entirely the funds for which they are otherwise eligible under a covered program, States should be given additional flexibility in providing funds to the charter schools. Such flexibility will ease further the potential administrative burden that funding charter schools opening or expanding late in the academic year poses for States and local school districts.

Changes: We have revised § 76.792(b) to allow States to use days to calculate the *pro rata* allocation for charter schools that open or expand between November 1 and February 1 of an academic year. We have also revised § 76.793 to require SEAs and LEAs to provide funds to charter schools that open or expand on or before November 1 within five months, and to give SEAs and LEAs additional flexibility in providing funds to charter schools that open after November 1. Specifically, for charter schools that open or expand between November 1 and February 1, we have added a new paragraph requiring SEAs and LEAs to provide funds to those charter schools on or before the date the SEA or LEA provides funds to LEAs and public schools under the program for the succeeding academic year.

Comments: One commenter stated that the final regulations should apply only to charter schools that have actually opened or significantly expanded their enrollment, rather than to charter schools that are scheduled to open or expand.

Discussion: Many States and LEAs make allocations under the covered programs, particularly Title I and Part B of IDEA, in the spring or summer preceding the academic year for which the allocations are made. Therefore, in order to give meaning to section 10306 of the Act, which these final regulations implement, and ensure that funds are available for charter schools that open or expand during the academic year, it may be necessary for SEAs and LEAs to reserve a portion of funds under a particular covered program. In the absence of some advance notification to the SEA or LEA of a charter school's plans to open or expand, the SEA or LEA would have no way of knowing whether to reserve funds, or the amount of funds to reserve, for a charter school. Likewise, while it may be appropriate in some cases, a charter school should not be required to wait until after it opens to receive information about upcoming application deadlines or ongoing competitions under the covered programs in which the charter school is eligible to apply to participate.

On the other hand, it is important to note that these final regulations do not require SEAs or LEAs to provide any funds to charter schools before the charter school actually opens or significantly expands its enrollment. Under § 76.789(b)(2), for example, SEAs and LEAs may either allocate funds to or reserve funds for charter schools based on estimates of projected enrollment. Moreover, § 76.788(b)(2)(ii) specifically states that an SEA or LEA is not required to provide funds to a charter school that fails to provide the enrollment or eligibility data the SEA or LEA reasonably requires. Thus, although an SEA or LEA may provide funds to a charter school before the charter school actually opens or expands, nothing in these final regulations requires them to do so.

Changes: We have revised § 76.792 to clarify further that SEAs and LEAs are not required to provide any funds to a charter school that has not yet opened or expanded.

Use of Term Full Amount of Funds (§ 76.792)

Comments: One commenter recommended that the Secretary replace the term *full amount of funds* in § 76.792(a) of the regulations with the term *commensurate share of funds* in order to eliminate any ambiguity that use of the former term may cause. This commenter and a second commenter also stated that the Secretary should define or clarify the meaning of the term *commensurate share*.

Discussion: The intent of these final regulations is to require SEAs and LEAs to provide to each eligible charter school the amount of funds the charter school would receive under each program's statutory allocation formula if the charter school is included in the SEA or LEA's initial allocation. Under many of the covered programs, LEAs and public schools receive the proportionate amount of funds for which they are eligible, based on the total amount of funds that are available under the program and the program's statutory allocation formula.

These regulations are not intended to guarantee each charter school a particular funding level, or entitlement, that may be conditional based upon the appropriation level for any covered program. We agree that use of the term *full amount* does not convey this intent clearly, but are concerned that the term *commensurate share* may lack clarity as well. We believe that the term *proportionate amount* best conveys the intent of these final regulations. *Changes:* We have replaced the term *full amount of funds* in § 76.792(a) with the *term proportionate amount of funds.* We have also inserted the term *proportionate amount of funds* in §§ 76.792(b) and 76.792(c) to clarify further the purpose of these final regulations as discussed above.

Allocation of Funds (§§ 76.792–76.794)

Comments: One commenter stated that the final regulations should clarify that SEAs and LEAs are not required to send 100 percent of the funds for which a charter school is eligible to the charter school within the time periods specified in the regulations, but that they are required only to ensure that the appropriate amount of funds flow to the charter school. We believe the commenter meant that the SEA or LEA is not required to make one lump sum payment to the charter school at the beginning of the grant period.

Discussion: The commenter is correct in that these final regulations do not require SEAs and LEAs to send 100 percent of the funds for which a charter school is eligible to the charter school within the prescribed time periods. Department regulations prohibit recipients of Federal funds from earning excess interest on those funds. Therefore, when awarding subgrants under the covered programs, SEAs and LEAs are generally required only to ensure that the appropriate amount of grant funds are made available for draw down by the subgrant recipient—in this case, the charter school. The subgrant recipient, in turn, draws down funds on an as needed basis. Thus, while SEAs and LEAs are not actually required to send funds to the charter school, they are required to ensure that the proportionate

amount of funds for which the charter school is eligible is made available to the charter school within the time periods specified in these final regulations.

Changes: None.

Comments: One commenter requested that language be included in the final regulations specifically authorizing States to use non-Federal funds to supplement allocations to LEAs. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: States must follow applicable program requirements when allocating funds to LEAs under a covered program. While an SEA may use non-Federal funds to supplement LEA allocations that are reduced as a result of the SEA's compliance with section 10306 of the Act and these final regulations, the State may not substitute non-Federal funds for Federal funds when awarding subgrants under a covered program.

Changes: None.

Comments: One commenter requested that the Secretary revise the regulations to make the provisions governing competitive discretionary grant programs applicable to noncompetitive discretionary grant programs, so that prospective charter school applicants that fail to meet the application deadline for either type of discretionary grant program would be required to wait for the next grant cycle in order to receive funds under the program.

Discussion: Under § 76.794(b), SEAs and LEAs are completely exempt from the requirements of these final regulations when allocating funds under noncompetitive discretionary programs. Therefore, as a practical matter, SEAs and LEAs could require any school, including new and expanding charter schools, that fail to meet the application deadline to wait until the next grant cycle to apply for funds under these programs. Two of the covered programs under which SEAs or LEAs have total discretion either to provide services directly or award funds to subgrantees on a noncompetitive basis are Migrant Education and Neglected and Delinquent Children. In addition, a number of programs, such as Part B of IDEA and Safe and Drug-Free Schools, require SEAs to allocate a majority of funds on a formula basis, but also allow a portion of funds to be distributed on a discretionary basis. For these programs, the SEA would not be required to comply with these final regulations when distributing the discretionary portion of the funds on a noncompetitive basis. If the SEA distributes the discretionary portion of the funds on a competitive basis, § 76.794(a) would apply.

As stated in the preamble to the NPRM, the Secretary encourages SEAs and LEAs to consider charter schools on the same basis as other LEAs and public schools when providing funds on a discretionary, but noncompetitive, basis. Nevertheless, it is not the intent of these regulations to restrict in any way the discretionary authority of SEAs and LEAs with respect to these funds.

Changes: We have revised the definition of *covered program* in § 76.787 to clarify that noncompetitive discretionary programs are not covered by these final regulations, even though funds are allocated to the State on a formula basis. We have also revised § 76.794(b) accordingly.

Comments: One commenter requested guidance on how LEAs can meet the requirements of these final regulations when allocating funds to new or expanded charter schools under Part B of IDEA.

Discussion: There is nothing in section 10306 of the Act, these final regulations, or the IDEA Amendments of 1997 that would compel an LEA to make allocations of Part B funds to charter schools that are public schools of that LEA, if the LEA does not make allocations of such funds to its other schools. Under section 613(a)(5) of IDEA, if an LEA provides Part B funds or services to public schools of the LEA, it must provide those funds or services in the same manner to charter schools that are public schools of the LEA. Likewise, if the LEA has eligibility criteria that its public schools must meet in order to receive Part B funds and the charter school meets those criteria, the LEA must provide Part B funds to the new or expanded charter school in the same manner that the LEA provides such funds to its other public schools. If an LEA allocates Part B funds to its public schools on a formula basis, in accordance with § 76.791 of these final regulations, the eligibility determination for the new or expanded charter school may not be based on enrollment or eligibility data from a prior year. In addition, funding allocations made on a formula basis must be made within the time periods specified in § 76.793 of these final regulations.

As stated in the Office of Special Education Programs (OSEP) Memorandum 99–12, if an LEA provides Part B funds to charter schools that are public schools within the LEA, a State can require that allocations of Part B funds be transferred from the LEA where the child was previously served and counted, or would have been served, to the LEA that distributes Part B funds to the charter school where the child is attending. In addition, the State can require that the funds be transferred from the public school of the LEA where the child was previously served and counted, or would have been served, to the charter school of the same LEA where the child is attending.

Changes: None.

Comments: One commenter requested guidance on how SEAs can meet the requirements of these final regulations when providing funds to new or expanded charter school LEAs under the current formula in the IDEA Preschool Grants Program and the permanent formula that will become effective for the IDEA Grants to States program when the appropriation for that program exceeds $4,924,672,200.

Discussion: Under the formula at sections 611(g)(2)(B) and 619(g)(1) of Part B of IDEA, the State allocation to each eligible LEA is the total of three amounts—the base payment, the population payment, and the poverty payment. The base payment is the amount the LEA would have received for the base year had the State allocated 75 percent of its award to the local level (for the Grants to States Program, the base year is the fiscal year preceding the first fiscal year in which the amount appropriated for the program is more than $4,924,672,200; for the Preschool Grants Program, the base year is Federal fiscal year 1997). Therefore, the amount of Part B funds that a State must use to make base payments is set at 75 percent of the State's base year grant, and remains the same for each subsequent fiscal year. Federal regulations at 34 CFR 300.712(b)(2) and 34 CFR 301.31(b) provide information on when base payments must be adjusted. Because of section 10306 of the Act and these final regulations, base payments must also be adjusted when a charter school experiences a significant expansion of enrollment as defined in § 76.787 of these final regulations.

When calculating base payments for new or expanded charter school LEAs, States must use the method described in 34 CFR 300.712(b)(2)(i) and 34 CFR 301.31(b)(1). Thus, if a charter school LEA opens for the first time or significantly expands its enrollment, the State must divide the base allocation for LEAs that would have been responsible for serving children with disabilities now being served by the charter school LEA, among the charter school LEA and affected LEAs based on the relative numbers of children with disabilities currently provided special education by each of the LEAs. Once the base payment for affected LEAs and the charter school LEA is calculated using the method described above, the State may use its State set-aside funds to supplement the subgrant of an LEA whose base payment is decreased as a result of having its base allocation divided. However, supplements provided for this purpose do not change the amount of the base payment the LEA is entitled to receive, and the SEA is not required to continue to provide these supplemental funds in future years.

The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction. The population payment should be allocated to new or expanded charter schools based on the number of elementary and secondary school children enrolled in the charter school. Under § 76.791 of these final regulations, the State may not rely on enrollment data from a prior year in calculating the new or expanded charter school's population payment, even if population payments to other LEAs are based on a prior year's enrollment data.

The poverty payment (15 percent of the remaining flow through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children living in poverty, as determined by the SEA. The poverty factor chosen must be applied uniformly to all eligible subgrantees. For example, if the State uses aggregate data on children who are eligible for free or reduced-price meals under the United States Department of Agriculture's National School Lunch Program, this data must be applied to the new or expanded charter school LEA to determine its poverty payment. Under § 76.791, the State may not rely on enrollment or eligibility data from a prior year in calculating the new or expanded charter school LEA's poverty payment, even

if poverty payments to other LEAs are based on data from a prior year.

Section 76.790(b)(2) of these final regulations provides the SEA with flexibility to allocate funds to eligible charter school LEAs based on reasonable estimates of projected enrollment at the charter school LEA. Under § 76.796, the SEA would be required to make appropriate adjustments to the subgrants of the new or expanded charter school LEA and affected LEAs based on actual enrollment and eligibility data. Under § 76.797(a), any required adjustments would have to be made on or before the date the SEA allocates funds to LEAs for the succeeding academic year.

The requirements in section 10306 of the Act and these final regulations apply only when a State or LEA allocates funds under a covered program to a charter school during its first year of operation or during subsequent years when the charter school significantly expands its enrollment. In all other years, an SEA or LEA allocates Part B funds to charter schools in the same manner as it allocates funds to other eligible LEAs and public schools. The only entities that are eligible to receive Part B funds under IDEA are entities that are established as LEAs under State law and those charter schools that are public schools of an LEA where that LEA distributes Part B funds to its other public schools.

Changes: None.

Comments: One commenter requested guidance on how an SEA or LEA reallocates funds if a charter school closes. Although this comment was made with specific reference to Part B of IDEA, the discussion that follows is applicable to all of the covered programs.

Discussion: Neither section 10306 of the Act nor these final regulations prescribe closeout or reallocation procedures for SEAs or LEAs to follow if and when a charter school closes. Therefore, as a general rule, if a charter school that has received funds in accordance with these final regulations closes, SEAs and LEAs should follow the same procedures that are used to close out subgrants and reallocate funds for other eligible entities under the applicable program.

Changes: None.

Adjustments (§§ 76.796–76.797)

Comments: Three commenters expressed support for the requirement in the proposed regulations that States and LEAs make adjustments to allocations to charter schools based on actual enrollment and eligibility data. One of these commenters recommended that the regulations include a provision specifically authorizing charter schools to challenge the amount of the SEA or LEA's allocation, while another commenter recommended that the regulations prescribe additional remedies for States to recover overpayments. A fourth commenter opposed any requirement that States make adjustments for underpayments to charter schools, and a fifth commenter recommended that the Secretary delete the provision authorizing States and LEAs to make adjustments to allocations in the succeeding year. The fifth commenter questioned the usefulness of § 76.797, in light of the ability of States to recover overpayments from charter schools through offset of subsequent allocations.

Discussion: If an SEA or LEA has allocated more or fewer funds to a charter school than the amount for which the charter school is eligible based on actual enrollment or eligibility data, § 76.796 requires the SEA or LEA to make appropriate adjustments. The purpose of this provision is to ensure that charter schools receive the amount of funds they are eligible to receive—no more and no less. Accordingly, it requires SEAs and LEAs to make adjustments to charter school allocations for both overpayments and underpayments, as well as appropriate adjustments to the allocations of other LEAs and public schools. For example, if projected enrollment data result in an SEA allocating too few funds to a charter school LEA, the SEA would be required to adjust upward the charter school LEA's allocation when actual enrollment data are available. Similarly, if the SEA reserves more funds off the top of its total allocation than are needed to make allocations to eligible charter school LEAs, the SEA must return the excess funds to its other LEAs in proportion to their initial allocations. Our nonregulatory guidance will provide program-specific examples of how adjustments can be made.

If a charter school LEA believes its allocation under a covered program is inaccurate, it, like any other LEA, may appeal to the SEA under section 432(a) of the General Education Provisions Act. Moreover, nothing in § 76.796 is intended to limit the remedies otherwise available by law to SEAs or LEAs to recoup overpayments of funds.

Section 76.797 requires SEAs and LEAs to make any necessary adjustments on or before the date the SEA or LEA allocates funds to LEAs for the succeeding academic year. In other words, an SEA may make adjustments immediately, when it makes the next year's allocations, or anytime in between. This provision affords SEAs and LEAs flexibility to make adjustments when it is most convenient, provided those adjustments are made no later than when the SEA or LEA provides funds to LEAs and public schools for the succeeding academic year.

Changes: None.

Applicability of Provisions to LEAs (§ 76.799)

Comments: One commenter stated that the regulations should be expanded to address LEA-specific circumstances.

Discussion: Section 76.799(a) specifies that LEAs that are responsible for funding charter schools under a covered program are subject to the same requirements as SEAs. In § 76.799(b), we also explain that the terms *LEA, charter school*, and *public school* should be read in place of the terms *SEA* (or State), *charter school LEA*, and *LEA*, respectively, in these regulations to accomplish the requirement. When these substitute references are applied, these regulations already instruct LEAs on their responsibilities to new and expanding charter schools when allocating funds under the covered programs. Within the next several months, the Department also expects to issue nonregulatory guidance that will provide additional program-specific guidance for SEAs, LEAs, and charter schools.

Finally, as noted in the preamble to the NPRM, States are directly responsible for ensuring that LEAs meet the requirements of section 10306 of the Act and these final regulations. Accordingly, the Department expects that some SEAs may also provide guidance to LEAs on these matters. The Secretary believes that all of these measures are a satisfactory means of providing the expanded LEA-specific guidance that the commenter seeks, and that further regulations on this issue are unnecessary at this time.

Changes: None.

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