



P.L. 114-95, The Every Student Succeeds Act (ESSA)
 Charter Schools Program (CSP) – Title IV, Part B
 January 19, 2016

Key Issue	ESSA Policy	Background
Authorization Levels	ESSA authorizes CSP at \$270 million for fiscal years 2017 and 2018, and \$300 million for fiscal years 2019 and 2020.	<p>CSP received \$253.2 million in FY 2015 and \$333.2 million in FY 2016 (an \$80 million increase over FY 2015).</p> <p>Note: For FY 2016, CSP has already been funded over the FY 2020 authorization level of \$300 million.</p>
Allocations – Facilities Financing Assistance	<p>Funds are allocated under ESSA as follows:</p> <ul style="list-style-type: none"> • 12.5% is reserved for <u>Facilities Financing Assistance</u> (which includes Credit Enhancement and State Facilities Incentive Program). 	<p>Under NCLB, Credit Enhancement and the State Facilities Incentive Grants were treated separately for funding purposes and did not receive a specific percentage allocation of funds. ESSA puts all funds for facilities in one section and sets aside 12.5% of funds for that purpose.</p> <ul style="list-style-type: none"> • Credit Enhancement will receive at least \$16 million in FY 2016. • State Facilities Incentive Program will receive up to \$10 million in FY 2016.
Allocations – National Activities	<ul style="list-style-type: none"> • 22.5% is reserved to carry out <u>National Activities</u>. 	<p>Under NCLB, the Secretary was required to reserve the greater of 5% or \$5 million (except that the amount reserved may not exceed \$8 million) to carry out National Activities that include providing charter schools with information regarding federal funds they are eligible to receive; evaluations or studies that include the impact of charter schools on student academic achievement; and providing technical assistance to grantees.</p> <p>The increased National Activities reservation under ESSA authorizes a federal competition for CMO grants for replication and expansion (which had been funded through appropriations legislation in the past, not the CSP). [See National Activities Sub-Allocations below for additional information on National Activities under ESSA]</p>
Allocations – State Grants to Support High Quality Charter Schools	<ul style="list-style-type: none"> • The remaining amount after the above reservations (65%) is for <u>State Grants to Support High Quality Charter Schools</u>. 	

Key Issue	ESSA Policy	Background
National Activities Sub-Allocations to CMO Competition and Non-State Grants.	Within the 22.5% reservation for National Activities: <ul style="list-style-type: none"> • Not more than 80% is reserved to award grants to CMOs for replication and expansion. • 9% is for grants to entities in States that aren't awarded a grant (current non-SEA grant program). • The remainder (at least 11%) is for technical assistance, dissemination of best practices, and evaluation. 	
Eligible State Entities	ESSA expands the list of eligible entities for State grants beyond an SEA to <u>also</u> include a: <ol style="list-style-type: none"> 1. State Charter School Board; 2. Governor; 3. Charter School Support Organization; and 4. State Charter School Board. 	Under NCLB, <u>only</u> SEAs were eligible to compete for State grant funding. As part of the application under ESSA, a State entity that is not an SEA must describe how it will: <ol style="list-style-type: none"> 1. Work with the SEA and the charter schools in the State to maximize charter school participation in federal and State programs; and 2. Work with the SEA to operate the program.
State Program and Allocations	State entities must use not less than 90% of their funds to award subgrants to eligible applicants to – <ol style="list-style-type: none"> 1. Open and prepare for the operation of new charter schools; 2. Open and prepare for the operation of replicated high-quality charter schools; or; 3. Expanded, high-quality charter schools In addition, the State entity must reserve not less than 7% of their funds to provide technical assistance to eligible applicants and authorized public chartering agencies in carrying out authorized activities and also work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools.	Under NCLB, SEAs were authorized to reserve not more than 10% of funds for dissemination activities.

Key Issue	ESSA Policy	Background
	<p>Not more than 3% of funds are for administrative costs, which may include technical assistance.</p>	<p>ESSA authorizes State entities to use not more than 3% of funds for grant administration and technical assistance. Under NCLB, SEAs could use no more than 5% of funds on grant administration (with no reference to technical assistance).</p>
<p>Weighted Lotteries</p>	<p>Nothing under ESSA shall prohibit the Secretary from awarding grants to State entities that use a weighted lottery to give “slightly better chances” for admission to all, or a subset of, educationally disadvantaged students if:</p> <ul style="list-style-type: none"> • The use of weighted lotteries is not prohibited by State law; and • Weighted lotteries are not used for the purpose of creating schools exclusively to serve a particular subset of students. • ESSA also clarifies that nothing in the weighted lottery language shall be construed to prohibit schools from specializing in providing specific services for students with a demonstrated need for such services, such as students who need specialized instruction in reading, spelling, or writing. 	<p>In January 2014, the Department of Education updated CSP non-regulatory guidance to clarify the circumstances under which charter schools receiving CSP funds could use weighted lotteries in admissions and provided guidance on how existing grantees may request permission to amend their applications to allow for the use of weighted lotteries.</p> <p>Unlike the Department’s guidance, ESSA permits the use of weighted lotteries unless prohibited by State law.</p>
<p>Program Periods</p>	<p>A grant awarded to a <u>State entity</u> shall be for a period of not more than 5 years.</p> <ul style="list-style-type: none"> • A <u>subgrant</u> awarded by a State entity shall be for a period of not more than 5 years, of which an eligible applicant may use not more than 18 months for planning and program design. 	<p>Under NCLB, grants awarded to SEAs were for a period of not more than 3 years and subgrants awarded to eligible applicants were for a period of not more than 3 years of which the eligible applicant may use:</p> <ul style="list-style-type: none"> • Not more than 18 months for planning and program design; • Not more than 2 years for the initial implementation of a charter school; and • Not more than 2 years to carry out dissemination activities.
<p>Grant Awards (Distribution of Funds)</p>	<p>For each fiscal year for which funds are appropriated, the Secretary must:</p> <ul style="list-style-type: none"> • Award not less than 3 grants; and 	<p>In order to ensure new awards each year, ESSA requires the Department to award at least 3 grants and to fully obligate the first 2 years of those grants.</p>

Key Issue	ESSA Policy	Background
	<ul style="list-style-type: none"> Fully obligate the first 2 years of funds appropriated for the purpose of awarding grants under this section in the first fiscal year for which such grants are awarded. <p>Prior to the start of the third year of the grant period and each succeeding year of each grant awarded under this section to a State entity –</p> <ul style="list-style-type: none"> Review whether the State entity is using the grant funds for the agreed upon uses of funds and whether the full amount of the grant will be needed for the remainder of the grant period; and May, as determined necessary based on that review, terminate or reduce the amount of the grant and reallocate the remaining grant funds to other State entities. <p>For a fiscal year for which there are remaining grant funds, but the amount of such funds is insufficient to award a grant to a State entity, the Secretary shall use such remaining grant funds to supplement State grants, national activities, for grants in the following fiscal year, or to award one year of a grant to a high-scoring State entity.</p>	<p>Under ESSA, the Secretary is authorized to review (prior to the start of year 3 of the grant) whether the State entity is using grant funds on “agreed upon uses” and if the full grant amount will be needed for the remainder of the grant period.</p> <p>ESSA authorizes the Secretary to terminate or reduce the amount of the grant for State entities based on the review prior to the start of year 3 of the grant.</p>
Grant Limitations	<p>The Secretary may not award a grant to a <u>State entity</u> in a case in which such award would result in more than 1 grants being carried out in a State at the same time.</p> <p>An eligible entity may not receive more than 1 <u>subgrant</u> for each individual charter school for a 5-year period, unless the entity demonstrates to the State not less than 3 years of improved educational results.</p>	<p>Under NCLB, a charter school may <u>not</u> receive –</p> <ul style="list-style-type: none"> More than one grant for planning, program design and initial implementation of a charter school; or More than one grant for dissemination activities.
Assurances	<p>State entities must provide the following assurances as part of their application:</p> <ul style="list-style-type: none"> Each charter school receiving funds under the State entity’s program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions. 	<p>Under NCLB, priority was given to States that ensure that each charter school has a high degree of autonomy over the charter school's budgets and expenditures; it was not a required State assurance.</p>

Key Issue	ESSA Policy	Background
	<ul style="list-style-type: none"> • The State entity will support charter schools in meeting the educational needs of their students, including students with disabilities and English learners. • The State entity will ensure that the authorized public chartering agency of any charter school that receives funds under the State entity's program adequately monitors each charter school in recruiting, enrolling, and meeting the needs of all students, including children with disabilities and English learners. • The State entity will provide adequate technical assistance to eligible applicants to promote the inclusion of all students (including eliminating barriers to enrollment for foster and homeless youth), to promote retention through the use of fair disciplinary practice and to meet the educational needs of all students, including children with disabilities and English learners. • The State entity will promote quality authorizing, consistent with State law, such as through providing technical assistance to support each authorized public chartering agency in the State to improve such agency's ability to monitor the charter schools authorized by the agency, including by: <ul style="list-style-type: none"> ○ Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition; ○ Reviewing the schools' independent, annual audits of financial statements conducted in accordance with generally accepted accounting principles, and ensuring any such audits are publically reported; and 	<p>Under NCLB, the SEA application was required to include assurances that the SEA will require each subgrantee to submit an application to the SEA that includes a description of the educational program to be implemented by the proposed charter school, including –</p> <ul style="list-style-type: none"> • How the program will enable all students to meet challenging State student academic achievement standards; • The grade levels or ages of children to be served; and • The curriculum and instructional practices to be used.

Key Issue	ESSA Policy	Background
	<ul style="list-style-type: none"> ○ Holding charter schools accountable to the academic, financial, and operational quality controls agreed to between the charter school and the authorized public chartering agency involved, such as through renewal, non-renewal, or revocation of the school's charter; ● The State entity will work to ensure that charter schools are included with the traditional public schools in decision-making about the public school system in the State; and ● The State entity will ensure that each charter school in the State makes publicly available, consistent with the dissemination requirements of the annual State report card, information to help parents make informed decisions about the education options available to their children, including: <ul style="list-style-type: none"> ○ Information on the educational program; ○ Student support services; ○ Parent contract requirements (as applicable), including any financial obligations or fees; ○ Enrollment criteria (as applicable); and ○ Annual performance and enrollment data, disaggregated by subgroups. 	<p>Under NCLB, the SEA application had to include assurances that the SEA will require each subgrantee to submit an application to the SEA that includes a description of how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school.</p>
<p>Priority – State Grants</p>	<p>In awarding grants, the Secretary shall give priority to a State entity, to the extent that the entity meets the following criteria:</p> <ol style="list-style-type: none"> 1. The State entity is located in a State that – <ul style="list-style-type: none"> ○ Allows at least one entity that is not an LEA to be an authorized public chartering agency for developers seeking to open a charter school in the State; or 	<p>Under NCLB, priority was given to States that:</p> <ol style="list-style-type: none"> 1. Provide for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years unless required more frequently by state law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under state law or the school's charter.

Key Issue	ESSA Policy	Background
	<ul style="list-style-type: none"> ○ In the case of a State in which LEAs are the only authorized public chartering agencies, the State has an appeals process for the denial of an application for a charter school. <ol style="list-style-type: none"> 2. The State entity is located in a State that ensures equitable financing, as compared to traditional public schools, for charter schools and students in a prompt manner. 3. The State entity is located in a State that provides charter schools one or more of the following: <ul style="list-style-type: none"> ○ Funding for facilities. ○ Assistance with facilities acquisition. ○ Access to public facilities. ○ The ability to share in bonds or mill levies. ○ The right of first refusal to purchase public school buildings. ○ Low- or no-cost leasing privileges. 4. The State entity is located in a State that uses charter schools and best practices from charter schools to help improve struggling schools and LEAs. 5. The State entity supports charter schools that support at-risk students through activities such as dropout prevention, dropout recovery, or comprehensive career counseling practices. 6. The State entity has taken steps to ensure that all authorizing public chartering agencies implement best practices for charter school authorizing. 	<ol style="list-style-type: none"> 2. Demonstrate progress, in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools. 3. Provide for one authorized public chartering agency that is not an LEA, such as a state chartering board, for each individual or entity seeking to operate a charter school; or in the case of a state in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school. 4. Ensure that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.
Local uses of funds	An eligible applicant receiving a subgrant must use funds on one or more of the following activities:	Under NCLB, an eligible applicant receiving a grant or subgrant was authorized to use funds <u>only</u> for –

Key Issue	ESSA Policy	Background
	<ol style="list-style-type: none"> 1. Preparing teachers, school leaders, and specialized instructional support personnel, including through paying the costs associated with: <ul style="list-style-type: none"> ○ Providing professional development; and ○ Hiring and compensating (during the eligible applicant’s planning period) teachers, school leaders and/or specialized instructional support personnel. 2. Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials). 3. Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction). 4. Providing one-time, startup costs associated with providing transportation to students to and from the charter school. 5. Carrying out community engagement activities, which may include paying the cost of student and staff recruitment. 6. Providing for other appropriate, non-sustained costs related to the above activities when such costs cannot be met from other sources. 	<ol style="list-style-type: none"> 1. Post-award planning and design of the educational program, which may include – <ul style="list-style-type: none"> ○ Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and ○ Professional development of teachers and other staff who will work in the charter school; and 2. Initial implementation of the charter school, which may include– <ul style="list-style-type: none"> ○ Informing the community about the school; ○ Acquiring necessary equipment and educational materials and supplies; ○ Acquiring or developing curriculum materials; and ○ Other initial operational costs that cannot be met from state or local sources. <p>The term ‘<u>eligible applicant</u>’ means a developer that has –</p> <ul style="list-style-type: none"> • Applied to an authorized public chartering authority to operate a charter school; and • Provided adequate and timely notice to that authority <p>The term ‘<u>developer</u>’ means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.</p>
<p>Facilities Financing Assistance</p>	<p>ESSA clarifies that funds from the Credit Enhancement program can be used for pre-development costs such as soil-testing, lead paint or asbestos screening that are necessary to commence or continue the operation of a charter school.</p>	

Key Issue	ESSA Policy	Background
	ESSA requires that no less than 50% of the funds be used for facilities to support Credit Enhancement activities.	
Title I Allocations	NEW OR SIGNIFICANTLY EXPANDING CHARTER SCHOOLS. – For purposes of implementing the hold harmless protections in sections 1122(c) and 1125A(g)(3) [funding under Title I made available to LEAs] for a newly opened or significantly expanded charter school under this part, an SEA shall calculate a hold-harmless base for the prior year that, as applicable, reflects the new or significantly expanded enrollment of the charter school.”	ESSA codifies current Department of Education guidance that requires new and expanding charter schools to receive a Title I allocation in accordance with hold harmless requirements, despite having a smaller (or no) student count on which to base the hold harmless calculation.
Priority – CMO Grants for Replication and Expansion	<p>In awarding grants to CMOs for replication and expansion under ESSA, the Secretary shall give priority to eligible entities that:</p> <ul style="list-style-type: none"> • Plan to operate or manage high-quality charter schools with racially and socioeconomically diverse student bodies; • Demonstrate success in working with schools identified by the State for comprehensive support and improvement; • Propose to use funds to expand or replicate high-quality charter schools that serve high school students; or • Propose to operate or manage high-quality charter schools that focus on dropout recovery and academic reentry. 	<p>The FY 2015 CMO competition (which has been funded through appropriations) included two absolute priorities that applicants must meet to be considered for funding.</p> <ul style="list-style-type: none"> • The first priority required applicants to have experience operating or managing more than one high-quality charter school. Under the FY 2015 CMO competition, a “high-quality charter school” is a school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years, based on certain factors). Note: This priority is not included in ESSA. • The second priority required applicants to demonstrate that at least 60% of all students in the charter schools it currently operates or manages are individuals from low-income families. Note: This priority is not included in ESSA. • Competitive priorities included the following competitive priorities: schools serving high need students, promoting diversity, and novice applicants.
Definition of a Charter School	<p>Under ESSA, a “charter school” is defined as follows (new language is noted in bold):</p> <p>(1) CHARTER SCHOOL. – The term ‘charter school’ means a public school that –</p>	<p>Under ESSA, feeder patterns are now permitted and pre-K students may be served.</p> <p>In addition, under NCLB, both State and Federal audit requirements could be waived. ESSA would require audit requirements to be explicitly waived by the State, and eliminates references to waiving Federal audit requirements.</p>

Key Issue	ESSA Policy	Background
	<p>(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;</p> <p>(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;</p> <p>(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;</p> <p>(D) provides a program of elementary or secondary education, or both;</p> <p>(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;</p> <p>(F) does not charge tuition;</p> <p>(G) complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the 'Family Educational Rights and Privacy Act of 1974'), and part B of the Individuals with Disabilities Education Act;</p> <p>(H) is a school to which parents choose to send their children, and that –</p> <p>(i) admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) [Requirements for Use of Lottery], if more students apply for admission than can be accommodated; or</p> <p>(ii) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate</p>	<p>ESSA permits the use of weighted lotteries unless prohibited by State law.</p>

Key Issue	ESSA Policy	Background
	<p>prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described above;</p> <p>(I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;</p> <p>(J) meets all applicable Federal, State, and local health and safety requirements;</p> <p>(K) operates in accordance with State law;</p> <p>(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and</p> <p>(M) may serve prekindergarten or postsecondary students.</p>	<p>ESSA authorizes charter schools to also serve Pre-K and/or postsecondary students.</p>
<p>New Definitions: CMO, CSO and High Quality Charter School</p>	<p>ESSA adds the following <u>new</u> definitions to CSP:</p> <p>(3) CHARTER MANAGEMENT ORGANIZATION. – The term ‘charter management organization’ means a non-profit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight.</p> <p>(4) CHARTER SCHOOL SUPPORT ORGANIZATION. – The term ‘charter school support organization’ means a nonprofit, nongovernmental entity that is not an authorized public chartering agency, which provides on a statewide basis –</p> <p>(A) assistance to developers during the planning, program design, and initial implementation of a charter school; and</p>	

Key Issue	ESSA Policy	Background
	<p>(B) technical assistance to operating charter schools.</p> <p>(7) EXPAND. – The term ‘expand’, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school.</p> <p>(8) HIGH-QUALITY CHARTER SCHOOL. – The term ‘high-quality charter school’ means a charter school that –</p> <p>(A) shows evidence of strong academic results, which may include strong academic growth as determined by a State;</p> <p>(B) has no significant issues in the areas of student safety, operational and financial management, or statutory or regulatory compliance;</p> <p>(C) has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and</p> <p>(D) has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for the groups of students described in section 1111(c)(2), except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.</p> <p>(9) REPLICATE. – The term ‘replicate’, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law.</p>	