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Charter Schools: State Developments and Federal Policy Options

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ABSTRACT

Charter schools are public elementary or secondary schools which are released from a variety of state, local, and possibly federal regulations in return for new forms of accountability in terms of outcomes for pupils. Approximately one-half of the states authorize the establishment of charter schools, and a federal Public Charter Schools (PCS) program provides start-up funds for such schools. The House has passed (H.R. 2616), and the Senate is considering (S. 1380) legislation to modify and expand the PCS program. This report provides background information on charter schools and their characteristics, plus discussion and analysis of current legislation regarding the PCS program. Issues have also arisen regarding the participation of charter schools in other federal aid programs. This report will be updated regularly, to reflect both congressional action on legislation affecting charter schools and related developments in the states.

Charter Schools: State Developments and Federal Policy Options

Summary

Charter schools are a relatively new type of public school that is released from many of the forms of regulation that normally apply to public schools in return for increased accountability in terms of outcomes for pupils. More than one-half of the states have enacted legislation authorizing the establishment of charter schools in recent years, and approximately 800 charter schools are currently operating, although over one-half of the schools are located in only three states (Arizona, California, and Michigan). State charter school laws and policies vary widely with respect to the degree of autonomy provided to the schools, the number of charter schools that may be established, required qualifications for charter school applicants and teachers, and accountability criteria that charter schools must meet. In some states, individual charter schools are treated as if they were independent local educational agencies (LEAs), or school districts, that receive funding directly from the state and are not subject to the authority of the “regular” LEA serving their locality.

A federal Public Charter Schools (PCS) program supports the establishment of charter schools. While moderate in size, funding for this program has grown rapidly since it was first authorized in 1994. Charter schools can be supported under this program only if they are established under an enabling state statute, are exempted from significant state and local rules that would limit their flexibility, are created as or converted from public schools, are nonsectarian, do not charge tuition, comply with specified federal civil rights statutes, use a lottery to admit students if oversubscribed, and meet all applicable health and safety requirements. On November 7, 1997, the House passed H.R. 2616, the “Community-Designed Charter Schools Act of 1997,” a bill to increase authorized funding for the PCS program and increase support for charter schools in states meeting priorities such as providing financial autonomy to such schools. A similar bill, S. 1380, the “Charter School Expansion Act of 1997,” is being considered in the Senate.

Concerns have been expressed by some educational policymakers and analysts about possible barriers to equitable participation by charter schools in the full range of federal education assistance programs. This is especially an issue in states where charter schools are treated as separate LEAs because requirements such as minimum grant size thresholds or reporting and other administrative responsibilities may limit participation by charter school LEAs, especially in a school’s first year of operation.

Possible policy options regarding federal education programs in general include a variety of means for determining an appropriate share of federal program funds to be allocated to charter schools that are treated as separate LEAs, while assuring equitable participation of all charter schools in federally funded services, and alleviating administrative burdens associated with federal program participation on charter schools. Policy options specifically for the Public Charter Schools program include providing for allocation of funds by formula rather than at the discretion of the ED, modifying the special waiver authority for charter schools, focusing research on ways to strengthen accountability requirements for charter schools, and offering increased technical assistance to charter schools.

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Charter Schools: State Developments and Federal Policy Options

Introduction

Charter schools are a relatively new type of public school that is released from many of the forms of regulation that normally apply to public schools in return for increased accountability in terms of outcomes for pupils. More than one-half of the states have enacted legislation authorizing the establishment of charter schools in recent years, and several hundred charter schools are currently operating, although over one-half of the schools are located in only three states (Arizona, California, and Michigan). State charter school laws and policies vary widely, especially with respect to the degree of autonomy provided to the schools. In some states, individual charter schools are treated as if they were independent local educational agencies (LEAs), or school districts, that receive funding directly from the state and are not subject to the authority of the traditional LEA serving their locality.

A federal Public Charter Schools program helps to support the establishment of charter schools in the states where they are authorized. While moderate in size, funding for this program has grown rapidly since it was first authorized in 1994. On November 7, 1997, the House passed H.R. 2616, the “Community-Designed Charter Schools Act of 1997.” This legislation would revise the Public Charter Schools statute in several respects, primarily to extend and increase its authorization; give priority for grants to states that provide charter schools with financial autonomy, allow for increases in the number of charter schools, and periodically review the performance of such schools; and to expand technical assistance to charter schools, especially regarding their eligibility for federal aid programs. A similar bill — S. 1380, the “Charter School Expansion Act of 1997” — has been introduced in the Senate.

Concerns have been expressed by some education policymakers and analysts about possible barriers to equitable participation by charter schools in the full range of federal education assistance programs. This is especially an issue in states where charter schools are treated as separate LEAs because requirements such as minimum grant size thresholds or reporting and other administrative responsibilities may limit participation by charter school LEAs.

This report provides an overview and analysis of charter school legislation and related activity in the states, the federal Public Charter School program, and issues that have arisen regarding the participation of charter schools in other federal education assistance programs. More specifically, this report provides:

- a general description of charter schools;
- a discussion and analysis of the major characteristics of state charter school laws, especially in three states that we surveyed in detail (Arizona, California, and Minnesota);
- a review of the federal Public Charter Schools program;
- a description of the provisions of H.R. 2616, the “Community-Designed Charter Schools Act of 1997,” which has recently been passed by the House, and of S. 1380, the “Charter School Expansion Act,” which is being considered by the Senate;
- an analysis of the treatment of charter schools under major federal education assistance programs;
- a discussion of general issues regarding charter schools, such as start-up problems, accountability, facilities requirements, and the role of charter schools in school reform efforts; and
- federal policy options regarding both aid specifically for establishing charter schools and treatment of such schools under broader federal education aid programs.

Definition and Description of Charter Schools

Charter schools are public schools established under state law; they do not charge tuition; and they are nonsectarian. These schools enter into charters with authorized chartering entities and are granted varying degrees of autonomy from state and local rules and regulations. In exchange for this autonomy, they are held accountable for meeting the terms of their charters, including achievement of academic and related outcomes stipulated in the charters.

There is wide variation among the states in the terms and conditions under which charter schools can be established and operated. **Depending upon the particular state law**, these schools may be newly created or established from existing public or private schools; they may be established by private or public organizations, teachers, parents, or other private citizens. Students are not mandatorily assigned to these schools; rather, they choose these schools and are admitted if they meet admissions requirements, if any, and if space is available for them. Available data suggest that many of the charter schools established to date are relatively small.¹ In comparison

¹ A recent report published by the U.S. Department of Education — *A Study of Charter Schools, First Year Report*, by RPP International and the University of Minnesota, 1997 (hereafter cited as ED, *A Study of Charter Schools*) — indicates that more than 60% of charter schools in 1995-96 enrolled fewer than 200 students (p. 11). In addition, a survey by the Education Commission of the States of charter schools in seven states found that these schools had an average enrollment of 287 students each (as cited in Education Commission

(continued...)

to other public schools, charter schools are less likely to be elementary schools, and are more likely to serve students at a wide range of grade levels (e.g., grades 6 or 7 through 12, K through 8, or even K through 12).²

State Laws

Twenty-nine states plus the District of Columbia and Puerto Rico have thus far adopted legislation that authorizes the establishment of charter schools.³ This legislation has been adopted over a relatively brief time period — Minnesota was the first state to authorize charter schools, in 1991, while 10 states plus the District of Columbia have adopted charter school legislation only in 1996 and 1997 (thus far). The number of charter schools actually in operation currently also varies widely among the states. Reportedly, at the beginning of the current (1997-98) school year, there were 780 charter schools in operation nationwide, and an additional 69 schools approved but not yet operating. Fourteen states are reported as having 10 or more charter schools in operation in September 1997 — Alaska (15 schools), Arizona (247), California (125), Colorado (49), Connecticut (12), Florida (34), Georgia (21), Massachusetts (23), Michigan (110), Minnesota (25), New Jersey (13), North Carolina (34), Texas (19) and Wisconsin (17). Together, charter schools in these 14 states constitute 95% of the national total of such schools in operation. Over 60% of all current charter schools are in just 3 states — Arizona, California, and Michigan. Six states that currently authorize charter schools do not yet have any in operation.⁴

State charter school laws are often compared and contrasted with respect to a number of specific characteristics, several of which are noted below. More broadly, many analysts characterize charter school laws as providing “more” or “less” autonomy or freedom from regulation by state and local educational agencies. These two groups of state laws are not completely distinct — e.g., not all of the states categorized as providing “more” or “less” autonomy share every specific

¹ (...continued)

of the States, Charter Schools, *Education Watch*, Dec. 4, 1996, downloaded Jan. 1997 from the Internet (<http://www.ecs.org/ecs/242e.htm>). This compares to an average enrollment of 470 in all public elementary schools (most charter schools are elementary level schools). See, also: Buechler, Mark. *Charter Schools: Legislation and Results after Four Years*. Indiana Education Policy Center, p. 26 (Hereafter cited as Buechler, *Charter Schools*)

² ED. *A Study of Charter Schools*. p. 13.

³ The states (and the year in which charter school legislation was adopted) are: Alaska (1995); Arizona (1994); Arkansas (1995); California (1992); Colorado (1993); Connecticut (1996); Delaware (1995); District of Columbia (1996); Florida (1996); Georgia (1993); Hawaii (1994); Illinois (1996); Kansas (1994); Louisiana (1995); Massachusetts (1993); Michigan (1993); Minnesota (1991); Mississippi (1997); Nevada (1997); New Hampshire (1995); New Jersey (1996); New Mexico (1993); North Carolina (1996); Ohio (1997); Pennsylvania (1997); Rhode Island (1995); South Carolina (1996); Texas (1995); Wisconsin (1993); and Wyoming (1995). **Source:** The Center for Education Reform. *Charter School Highlights and Statistics*. Downloaded October 1, 1997 from the Internet (<http://edreform.com/pubs/chglance.htm>). (Hereafter cited as Center for Education Reform, *Charter School Highlights and Statistics*)

⁴ Center for Education Reform, *Charter School Highlights and Statistics*.

characteristic typically associated with these groups, and some state laws have characteristics associated with both categories. Nevertheless, state charter school laws are generally characterized⁵ as providing “**more**” **autonomy** if the laws:

- set either very high, or no, limits on the number of charters that may be granted;
- set few or no limits on what sorts of individuals or groups may apply for a charter;
- allow charters to be granted not only for conversion of existing public schools but also for totally new schools and/or existing schools that previously were private;
- authorize a wide variety of entities to grant charters (e.g., state education board(s), colleges and universities, local educational agencies, etc.);
- treat individual charter schools as if they were separate LEAs, and provide for the allocation of state, federal, and perhaps certain local, revenues directly to the charter schools, without “regular” LEAs being involved;
- provide financial and technical assistance for acquisition (purchase or leasing) of school facilities, meeting other school startup costs, and/or meeting the administrative responsibilities of participating in federal or state aid programs;
- specify that charter schools are entitled to receive federal, state, and perhaps local, revenues per pupil that are no less than those allocated to “regular” LEAs;
- waive a wide variety of state regulations, particularly with respect to labor-management relations (such as collective bargaining with teacher and other employee organizations), while releasing the schools completely (or almost so) from control or regulation by “regular” LEAs;
- do not require teachers or other staff to meet certification requirements that apply to such staff in “regular” LEAs and schools;
- provide relatively long-term charters that do not have to be renewed frequently (e.g., 5 years or longer); and
- allow flexibility in the selection of accountability criteria to be used to determine whether a charter should be renewed.

⁵ See, for example, Center for Education Reform, *Charter School Highlights and Statistics*. Also, see Finn, Chester E., et al. *Charter Schools in Action: What Have We Learned?*, The Hudson Institute, 1996, downloaded Jan. 1997 from the Internet (<http://www.al.com/hudson/charters>). (Hereafter cited as Finn, *Charter Schools in Action*)

In contrast, state charter school laws are often described as providing “less” **autonomy** if the laws:

- set relatively low limits on the number of charters that may be granted in any year, or in the aggregate;
- allow only limited types of individuals or groups (e.g., certified teachers) to apply for charters;
- allow charters to be granted only for conversion of existing public schools (often requiring the approval of the existing school’s staff and/or parents);
- authorize only one, or a very small number, of entities to grant charters;
- treat charter schools as part of a “regular” LEA for such purposes as allocation of revenues;
- provide little or no financial or technical assistance for acquisition of facilities, other startup costs, or meeting administrative responsibilities under federal or state aid programs;
- either do not specify the level of local, state, or federal revenues that charter schools are entitled to receive, or specify that they are to receive an amount per pupil that is less than the amount received by schools in “regular” LEAs;
- waive only a limited number of state and/or local regulations, often excluding all aspects of labor-management relations from waiver, and/or require that all waivers be individually negotiated with the entity authorized to grant the charter;
- require teachers and other staff to meet certification requirements and other qualifications that apply to public school staff statewide;
- limit charters to a relatively brief time period (e.g., 2-3 years); and
- allow little or no flexibility in the selection of accountability criteria which will be the basis for determining whether charters should be renewed.

Thus far, there seems to be a correlation between the degree of autonomy provided by a state’s charter school law and the number of schools that are established. For example, most of the states with 10 or more charter schools at the beginning of the 1997-98 school year have been identified by several analysts as having charter legislation that provides “more” autonomy. This may seem quite unsurprising, given that one of the criteria distinguishing “more” from “less” autonomous is the limit on the number of schools that may be established. However, in many states offering “less” autonomy to charter schools, the number of schools established thus far is well below any limit that has been set. Thus, the variance in number of schools among states seems to result more from differences in incentives

to establish schools, or barriers to establishing schools other than explicit numerical limits.

Specific State Laws. We provide below more specific information on the charter school laws of three states — Arizona, California, and Minnesota. These states were selected because they are among those with the largest number of charter schools in operation and/or the longest-existing charter school laws, and because they exemplify a varied range of charter school policies.⁶

Arizona. In Arizona, charters to operate schools may be granted by the State Board of Education, a State Board of Charter Schools, or “regular” LEAs. Schools chartered by one of the two state boards have more autonomy than those chartered by a “regular” LEA. The state-chartered schools are generally treated as separate LEAs, and receive state and federal revenues directly via the state education agency (SEA). In contrast, schools chartered by “regular” LEAs have less autonomy, and are generally treated as being part of that “regular” LEA, even if they are not located within the geographical boundary of that LEA (as is sometimes the case).

Arizona places no limits on the number of charters that may be granted by “regular” LEAs; a limit of 25 per year is placed on the number of charters that may be granted by each of the two state boards. A distinctive characteristic of the Arizona legislation is that charters may be granted for a period of up to 15 years without renewal. Reportedly, this relatively long time period for charters was adopted to make it easier for charter schools to make long-term commitments to lease or purchase facilities. However, with such a lengthy time period before charters must be renewed, it may be difficult to enforce charter school accountability requirements.

The number of charter schools in Arizona has grown rapidly since charters were first authorized in 1994. There were no charter schools until the 1995-96 school year, when 46 schools began operations. In 1996-97, there are a total of 164 charter schools, 96 chartered by a state board and the remainder by “regular” LEAs. A very wide variety of groups and schools may receive a charter, including new schools and formerly private schools (as long as they were not religiously-affiliated schools). Arizona is often characterized as being the state where it is easiest to receive a charter and begin school operations, as well as being a state where charter schools are highly autonomous, at least if chartered by a state entity. Charter schools in Arizona are granted a “blanket” waiver of a wide range of state regulations that apply to other public schools. Teachers in Arizona charter schools need not be certified, and the schools need not engage in collective bargaining with teacher organizations.

California. In California, charter schools may be established only by, and through negotiation with, the “regular” LEA within whose geographic boundaries the proposed charter school would be located. However, a refusal by such LEA to grant a charter may be appealed to a county appeals board and further to a county education agency, which then would be authorized to grant the charter directly. Charter applications may be approved only if either one-half of the teachers at a

⁶ Information in these summaries comes from a variety of sources, including telephone conversations with state education agency staff.

school to be converted into a charter school, or at least 10% of the LEA's total public school teachers, "sign off" on the application.

Charter schools are generally treated as part of the "regular" LEA in which the school is located. Under federal formula grant programs such as Elementary and Secondary Education Act (ESEA) Title I, the charter school — if eligible, applying the same standards as apply to other public schools in the LEA — receives a share of the LEA's grant. The LEA submits a "joint" application for funds that includes any charter schools in the LEA. The state charter school law provides for direct allocation of federal and state funds to charter schools, bypassing the LEA, but the SEA has not yet implemented these provisions. A pilot project testing direct allocations to charter schools is scheduled to begin sometime in 1997.

The statute authorizing charter schools in California in 1992 limits their total number to 100 schools statewide, with no more than 10 in a single LEA. However, the state board of education has been "administratively" authorizing the granting of additional charters, and there are reportedly 125 charter schools currently in operation. Some of the charter schools are independent study or home school programs connected through computer networks — i.e., not conventional "school facilities" at all. Charter schools in California are granted a "blanket" waiver of a wide range of state regulations that apply to other public schools. Charters are granted for a period of 5 years. Teachers in California charter schools need not be certified, and the schools need not engage in collective bargaining with teacher organizations.

While Arizona is clearly one of the states offering "more" autonomy to charter schools, California is a mixed example, with characteristics of both the "more" autonomous (e.g., charters have been granted to a wide variety of school types; teachers need not be certified, and the charter schools need not engage in collective bargaining with teacher organizations) and the "less" autonomous (e.g., charters are generally granted only by, and through negotiation with, "regular" LEAs; certain proportions of local public school teachers must "sign off" on a charter application) state laws. Nevertheless, according to most analysts, the "more" autonomous aspects of the California law predominate, and they place the state in that category.

Minnesota. Minnesota adopted the Nation's first charter school law in 1991. The authorized number of charter schools was originally "capped" under the Minnesota law; the initial cap was 8 schools, which was later raised to 40 schools. As of July 1997, there is no cap on the number on charter schools that may be approved in Minnesota. The number of operating charter schools has grown from 2 in 1992-93 to 25 in 1997-98. Many of the schools serve a largely disadvantaged student population.

Schools must apply for a charter to a "regular" LEA (not necessarily the one for the area in which the school would be located) or a variety of public and private institutions of postsecondary education in the state. Refusals to approve charter applications may be appealed to the state board of education in some cases. Charters are granted for a period of up to 3 years; charter schools must report data on pupil participation and outcomes annually.

All charter schools are treated as separate LEAs in Minnesota. The statute authorizing establishment of charter schools provides generally that these schools should receive state and federal program funds directly. The schools receive no local funds. The funding provided by the state to charter schools is approximately equal to the state average revenue per pupil for general purposes.

Amendments to Minnesota's charter school legislation that were adopted in July 1997 include provision of start-up grants and facilities leasing funds, in addition to elimination of the cap on the number of charter schools. One-time start-up grants are the greater of \$50,000, or \$500 per enrolled pupil, for each new charter, in addition to funds that may be available under the federal Public Charter Schools program. Annual lease grants to charters are equal to \$425 per enrolled pupil. Charter schools are also eligible for state categorical funds, as well as relevant federal grants.

Formerly private schools may become public charter schools in Minnesota. Local collective bargaining agreements for teachers and other unionized staff do not apply when charter schools are established, although a charter school's teachers may form and receive recognition of their own bargaining unit afterward. Teachers at a charter school must be certified, and a majority of a charter school's board must consist of teachers at the school. An existing public school may be converted into a charter school only if at least 90% of the school's teachers support the conversion.

Federal Law

Public Charter Schools Program.⁷ The Public Charter Schools (PCS) program, authorized in 1994 in Title X, Part C of the Elementary and Secondary Education Act, is intended to support the design, initial implementation, and evaluation of charter schools. Under this authority, funds are provided, for up to 3 years, to SEAs in states with charter school laws to support a grant program for "eligible applicants" (the individuals or groups seeking to establish and administer charter schools applying in partnership with the entities authorized to grant charters) to assist them in planning their educational program and in the initial implementation of their school. Eligible applicants can apply directly to the U.S. Secretary of Education (ED) for funding if their state is not participating.

According to the statute authorizing the PCS program, in determining grant amounts for each participating state, or individual schools in states where the SEA does not participate in the program, the Secretary is to consider the following selection criteria: (1) the contribution the funds will make to helping educationally disadvantaged and other students meet state education standards; (2) the degree of flexibility provided by the state education agency (SEA) to charter schools; (3) the ambitiousness of the objectives of the state's charter school program; (4) the quality of the strategy for assessing the achievement outcomes of charter schools; and (5) the likelihood that a state's grant program supported with these federal funds will meet

⁷ Another federal program whose funds could be used to support charter schools is the Goals 2000: Educate America Act (P.L. 103-227). Under Goals 2000, SEAs are authorized to use state grant (Title III) funds reserved at the state level (not more than 10% of total state grants) for various reform activities including promoting public charter schools.

its objectives and improve education.⁸ Peer review panels, who are not ED staff, evaluate state and LEA applications with respect to these criteria, and make recommendations to the Secretary of Education regarding the number of points to be awarded; a maximum of 20 points may be assigned to each criterion. The Secretary of Education is solely responsible for making final decisions regarding whether to approve applications, and the dollar amount awarded to successful applicants, taking into account both the total points assigned to an application and the amount of funds requested by the state or LEA⁹. There is no state matching requirement.

For participating SEAs and charter schools, the Public Charter Schools program provides substantial authority to the Secretary to waive federal statutory or regulatory requirements. If requested in an approved application, the Secretary is authorized to waive **any** statutory or regulatory requirement over which he or she “exercises administrative authority” (except for the definition of a “charter school” for purposes of this federal program) if such a waiver would further the purposes of the program.

SEAs are permitted to reserve up to 5% of their grants annually for administrative expenses. The Secretary of ED may reserve up to 10% of the program’s annual appropriation for peer review of applications, an evaluation of charter schools,¹⁰ and other activities supporting this program, such as dissemination of model state charter school laws and dissemination of information on successful charter schools. Up to 20% of grants may be reserved by SEA to establish revolving loan funds, from which new charter schools may borrow to help begin operations.

Charter schools can be supported under this program only if they meet specific requirements. Among these requirements are the following: the school is exempted from significant state and local rules that would limit management and operational flexibility; it is created as a public school or is converted from an existing public school¹¹; it is nonsectarian in its programs, admissions, policies, and employment, and is not affiliated with a sectarian entity; it does not charge tuition; it complies with specified federal civil rights statutes;¹² it uses a lottery to admit students if the number

⁸ For LEAs that apply directly to ED for PCS funds (in states that do not participate in the program), there are 6 criteria. Four of these criteria are essentially the same as (2)-(5) above. The fifth LEA grant criterion is “the quality of the proposed curriculum and instructional practices,” and the sixth is “the extent of community support for the application.” As with state applications, a maximum of 20 points may be assigned by ED staff on the basis of each criterion.

⁹ In practice, the amount of PCS funds requested by each state has been closely related to the number of charter schools the state anticipated approving and/or supporting.

¹⁰ A \$2.1 million contract was awarded in 1995 for a 4-year evaluation of charter schools.

¹¹ According to staff of the Public Charter Schools office in ED, the Department has interpreted this provision as allowing charter schools that are created through conversion of formerly private schools to receive aid under the program, as long as they meet all other eligibility criteria.

¹² Those specified are the Age Discrimination Act of 1975, Title VI of the Civil Rights Act (discrimination on basis of race, color, or national origin), Title IX of the Education

of eligible applicants exceeds available capacity; and it meets all applicable federal, state, and local health and safety requirements.

The program's annual authorization of appropriations, budget request, and appropriation for FY1995 through FY1999 are provided in the table below.

**Table 1. Funding for Public Charter Schools Program
FY1995 to FY1999**

Fiscal year	Authorization	Budget request	Appropriation
1995	\$15,000,000	\$15,000,000	\$6,000,000
1996	such sums as may be necessary	\$20,000,000	\$18,000,000
1997	“	\$40,000,000	\$50,987,000
1998	“	\$100,000,000	\$80,000,000
1999	“	\$100,000,000	

FY1995 grants were made to 10 states (Arizona, California, Colorado, Georgia, Louisiana, Massachusetts, Michigan, Minnesota, Oregon, and Texas), and to two schools in New Mexico. These states and schools received second year funds in FY1996, along with an additional nine states (Alaska, Connecticut, Delaware, Florida, Illinois, Kansas, New Jersey, North Carolina, and Wisconsin), the District of Columbia, Puerto Rico, and an additional school in New Mexico, which received first year funds. FY1997 grants were made to all of the 19 states, the District of Columbia and Puerto Rico, and the 3 schools that received first or second year grants earlier, plus the states of Pennsylvania and South Carolina, and 2 charter schools in Hawaii.

Legislation to Amend the Public Charter Schools Program. On November 7, 1997, the House passed H.R. 2616, the “Community-Designed Charter Schools Act of 1997.” This bill would revise the Public Charter Schools statute in several respects, primarily to extend and increase its authorization; give priority for grants to states that provide charter schools with financial autonomy, allow for increases in the number of charter schools, and periodically review the performance of such schools; and to expand technical assistance to charter schools, especially regarding their eligibility for federal aid programs.

H.R. 2616 would completely replace the current text of ESEA Title X, Part C. An additional purpose would be established for the program — to help states and LEAs increase the number of charter schools to 3,000 nationwide by the year 2000.

¹² (...continued)

Amendments of 1972 (discrimination on the basis of gender), Section 504 of the Rehabilitation Act of 1973 (discrimination on the basis of disability), and Part B of the Individuals with Disabilities Education Act.

H.R. 2616 would modify the definition of charter schools eligible for assistance under this program in 3 respects.¹³ First, the current reference to schools established under “an enabling State statute” would be changed to “a specific State charter school statute.”¹⁴ Second, the new definition would specify that an eligible charter school is “a school to which parents choose to send their children.” Third, the H.R. 2616 definition of eligible charter schools states that they must have “a written performance contract with the authorized public chartering agency in the state.”

H.R. 2616 would increase the period during which a charter school may receive a grant under this program from the current 3 years to 5 years, up to 30 months of which could be used for planning; existing recipients of 3 year grants would be eligible for a 2-year extension of their grants. The apparent purpose of this amendment is to give charter schools additional time to become established before federal PCS aid is terminated.

The process for allocating funds to states (or individual charter schools in states where the SEA does not participate in this program) would remain discretionary; no allocation formula would be adopted (see later discussion of this issue). The 5 selection criteria described above would also continue from current law, and a sixth would be added (for grants to SEAs) — the number of charter schools created in the state. The bill would also establish new priorities for the awarding of Public Charter School grants; these new priorities would apply to appropriations in excess of the FY1997 appropriation of \$51 million in fiscal years 1998-2000, and would apply to all appropriations beginning in FY2001. The priorities are:

- the state charter school law provides each charter school with “a high degree of autonomy over its budgets and expenditures”;
- the number of charter schools in the state may be increased each year; and
- state law provides for “periodic” review and evaluation of charter schools to determine whether they are meeting or exceeding performance goals established for them.

In applying these, ED is to give first priority to states meeting all of these priorities, next to those meeting 2 of them, and finally to those meeting only 1 of these priorities.

There are certain ambiguities or questions regarding the 3 priorities and their implementation. While the second priority seems clear, the first and third are subject

¹³ States would remain free to establish charter schools that do not meet all, or even any, of these definitional criteria. Such schools would simply not be eligible for aid under the PCS program, although they might be eligible for federal aid under other programs.

¹⁴ This seems likely to affect only 1 state — Oregon — which has received PCS funds on behalf of schools chartered under broad statutory authorization for alternative schools, not a specific charter school law. The Oregon legislature has considered, but not yet adopted, specific charter school legislation in recent years. Charter schools in Oregon might, nevertheless, be eligible for continuation grants, even without the adoption of new state charter school legislation.

to substantial interpretation. How will it be determined that a state provides “a high degree of autonomy over its budgets and expenditures”? How does this concept differ from treatment of charter schools as separate LEAs? How would this priority apply to states where there are different classes of charter schools, some of which have much more fiscal autonomy than others (e.g., Arizona or Massachusetts)? How frequently would school reviews or evaluations have to occur in order to be “periodic” — annually? How substantial must be such a review or evaluation? What would be the influence of the number of charter schools in each state, the 3 priorities, and the 6 selection criteria in determining grant amounts?

In their application for assistance under the PCS program, SEAs would be required to describe how they will inform charter schools of the federal aid programs for which they might be eligible, and how they will ensure that charter schools will receive their “appropriate share” of federal program funds allocated by formula. The current authority for states to reserve up to 20% of their PCS grants to establish revolving loan funds for new charter schools would be eliminated under H.R. 2616. This authority has reportedly been used in 2 states (California and Michigan) and the District of Columbia.

The share of PCS appropriations that may be reserved by the Secretary of Education for national activities would be reduced from the current 10% to the lesser of 5% or \$5 million under H.R. 2616, and several changes are made to the activities to be undertaken with the reserved funds. New specified national activities include: (a) 1 or more competitively awarded contracts to increase access by charter schools to private capital markets to finance the acquisition of facilities; (b) provision of information to charter schools on federal program funds they are eligible to receive, and assistance in applying for such funds; (c) technical assistance to charter schools.; and (d) dissemination of information on the “best practices” in charter schools. Funds would also be used to complete the ongoing national study of charter schools, the first interim report of which was published in the spring of 1997.

H.R. 2616 would address the issue of first-year grants under ESEA Title I by requiring ED and the SEAs to take “such measures...as are necessary” to “ensure that every charter school receives the Federal funding for which it is eligible in the calendar year in which it first opens” as well as any year when a charter school’s enrollment is increased. The measures that might be taken are not specified. It might be difficult to implement this provision, since SEAs may not have sufficient authority to take actions they consider to be necessary for this purpose, such as reserving shares of Title I funds based on estimated enrollments of pupils from low income families in charter schools until actual enrollment data are available.

The bill would require SEAs and LEAs to assure that all relevant records are transferred to charter schools when pupils enroll in them; and to assure that in the implementation of this legislation, paperwork burdens are minimized on charter schools.

The bill would specifically authorize the appropriation of \$100 million for the PCS program for FY1998 (the amount that would be provided under the House version of H.R. 2264), and would authorize “such sums as may be necessary” for

FY1999-2002. The program is currently authorized at “such sums as may be necessary” through FY1999.

Finally, H.R. 2616 would explicitly authorize the use of funds under ESEA Title VI, Innovative Education Program Strategies, for charter schools. Since this is a block grant program under which funds may be used for a wide variety of activities, it may be assumed that states and LEAs already have authority to use ESEA Title VI funds to help pay start-up costs for charter schools, so this provision’s effects may be largely symbolic.

A similar bill has been introduced in the Senate, S. 1380, the “Charter School Expansion Act of 1997.” While similar in thrust to H.R. 2616, there are numerous significant differences between S. 1380 and the House-passed bill. First, S. 1380 provides that the priority criteria to be applied in allocating appropriations in excess of \$51 million each year are: (a) the number of charter schools in a state increased significantly in the preceding year, (b) the state charter school law provides for at least 1 chartering agency other than LEAs, or at least one or more agencies to which LEA refusal to grant a charter may be appealed, (c) the state charter school law provides an automatic waiver of most state and local education laws and regulations, except those related to health, safety, and civil rights, and (d) the state law provides for periodic review to determine whether a charter school is meeting the academic goals established for it. In contrast, the analogous provisions of H.R. 2616 focus on the possibility of future increases in the number of charter schools in a state, not increases which have already occurred; contain no reference to multiple chartering agencies or avenues of appeal; have no reference to automatic waiver of most state and local regulations, but do refer to the degree of autonomy allowed to charter schools; and have similar language regarding periodic review of the performance of charter schools.

Second, S. 1380 has no provisions similar to those in H.R. 2616 which extend the period during which a charter school may receive a PCS grant, or eliminate the authority to use PCS grants to establish a statewide revolving loan fund for charter schools. Third, S. 1380 has a type of provision not found in H.R. 2616 — a requirement that the U.S. Secretary of Education consult with charter school operators when developing any rules or regulations affecting the PCS program, or other ED programs, especially ESEA title I and the IDEA. Finally, both S. 1380 and H.R. 2616 have similar provisions regarding the definition of charter schools eligible to participate in the PCS program, and state assurances that charter schools will receive their commensurate share of funds under state-administered federal education programs.

The Senate Committee on Labor and Human Resources held a hearing on S. 1380 on March 31, 1998. Further Senate consideration of this bill has not yet been scheduled.

Charter Schools for the District of Columbia. The FY1996 District of Columbia appropriations legislation (P.L. 104-134) authorized establishment of charter schools in the District of Columbia. These schools could be established as new schools or from existing public or private schools. Charters could be granted by the board of education, a public charter school board, or other entity that may be

authorized by the city council. Thus far, the public charter school board has not been established, and only the board of education has actually granted any charters.

District of Columbia charter schools are operated as independent LEAs. They have to meet requirements similar to those described above for the federal Public Charter Schools program (e.g., non-sectarian, comply with civil rights statutes, admit students by lottery if oversubscribed). The number of charter schools is limited to 10 in the initial year, and not more than five could be chartered by each of the chartering authorities in subsequent years. Charters can be revoked if terms of the charter are violated or there is fiscal mismanagement. Two charter schools began operations in the District of Columbia during the 1996-97 school year.

ED Guidance on Treatment of Charter Schools Under Federal Education Programs. ED has thus far disseminated guidance on the treatment of charter schools only with respect to the largest federal elementary and secondary education program, ESEA Title I. In March 1998, ED published “nonregulatory guidance” on allocation of ESEA Title I funds to charter schools. This document emphasizes the importance of providing to charter schools the share of Title I funds for which they are eligible. In particular, SEAs and LEAs are “strongly encouraged,” but not required, to provide Title I grants to charter schools in their first year of operation, and specific accommodations that might make this possible are mentioned as being allowed.

According to John Fiegel of the Public Charter Schools program office, and Patricia Lines of the Office of Educational Research and Improvement, ED staff are currently attempting to develop such guidance for other ED programs, especially those authorized by the Individuals with Disabilities Education Act (IDEA).¹⁵

It appears that ED staff have left decisions regarding the treatment of charter schools under the large “state-administered” elementary and secondary education programs¹⁶ to be decided by the affected states. SEA staff in two of the states contacted for this report (Minnesota and California) indicated that they had received informal, verbal guidance from ED in resolving problems associated with federal programs and charter schools, and that ED had provided them with some degree of flexibility in these cases, although ED has been constrained from providing flexibility with respect to statutory allocation formulas. Some SEA staff indicated a preference for taking the initiative and making necessary accommodations for the special characteristics of charter schools without necessarily consulting ED first. In at least one state (Minnesota), ED has emphasized in an IDEA monitoring visit the need for the SEA to ensure IDEA compliance by charter schools.

¹⁵ Further, the National Association of State Directors of Special Education has prepared a handbook on charter schools as part of an ED-funded project. See Lange, Cheryl M. *Charter Schools and Special Education: A Handbook*. Project FORUM, Alexandria, VA, 1997.

¹⁶ The “state-administered” programs include ESEA Titles I, II, IV, and VI, IDEA Part B, the Adult Education Act, and (with respect to secondary schools) the Carl D. Perkins Vocational and Applied Technology Education Act.

Selected Problems or Issues Regarding Federal Programs and Charter Schools

While experience with charter schools is still quite limited in most states, certain problems or issues have arisen in the states we surveyed or have been mentioned in available research and evaluation literature. These problems and issues are discussed below. The list below should be considered to be preliminary and by no means exhaustive. It should also be kept in mind that this report considers only education assistance programs administered by ED. Such non-ED programs as the school lunch and breakfast programs of the Department of Agriculture, or support of science education by the National Science Foundation or the Department of Energy, are not considered.

To help provide context for this discussion of implementation of federal aid programs in charter schools, **Table 2** (below) contains summary data on charter school participation in the two largest state-administered programs of the U.S. Department of Education — ESEA Title I (education for disadvantaged children) and IDEA Part B (education for children with disabilities) — in the states of Arizona, California, and Minnesota.

Table 2. Treatment of Charter Schools Under ESEA Title I, Part A, and IDEA, Part B, in the States of Arizona, California, and Minnesota

	Arizona (schools chartered by a state board only)	California	Minnesota
Amount, and share of state total, of allocations to charter schools under ESEA Title I, Part A, for the latest available year	\$949,401 (0.98% of state total for 1996-97)	\$3,088,889 (0.43% of state total for 1995-96)	\$284,798 (0.36% of state total for 1996-97)
For 1996-97, the number of children, and the share of the state total, counted in making ESEA Title I, Part A allocations enrolled in charter schools	747 (0.54% of state total)	NA	329 (0.33% of state total)
For the latest available year, the total number of pupils enrolled in charter schools, and share of state total enrollment	approximately 15,000-17,000 (1.9-2.2% of state total for 1996-97)	36,308 (0.66% of state total for 1995-96)	2,000 (estimated; 0.24% of state total for 1996-97)
Amount, and share of state total, of allocations to charter schools under IDEA Part B for 1996-97	\$58,793 ^a (0.34% of state total)	NA	\$31,776 (0.10% of state total)
For the latest available year, the number of children, and the share of the state total, counted in making IDEA Part B allocations enrolled in charter schools	259 (0.34% of state total for 1995-96)	NA	96 (0.10% of state total for 1996-97)

^a This amount of IDEA Part B funds has been reserved for allocation to charter schools, but none of these funds had yet been allocated to charter schools as of Jan. 1997.

As shown in **Table 2**, for Arizona and Minnesota, the share of state total funds under IDEA Part B that was allocated to charter schools in the latest available year is precisely equal to the share of children with disabilities (counted in the IDEA formula) who were enrolled in charter schools. In the case of ESEA Title I, Part A, the share of funds allocated to charter schools exceeds the share of poor and other children counted in the Title I formulas who are enrolled in charter schools. This may result primarily from the low Title I grant eligibility threshold for charter schools treated as separate LEAs (see number one, below). For California, insufficient data are available (mainly because charter schools are generally treated as being part of “regular” LEAs) for conclusions to be drawn.

Additional, albeit limited, data on charter school participation in federal aid programs is provided in ED’s *A Study of Charter Schools* (p. 23-24). The authors of this report surveyed states with charter schools operating in 1995-96 to determine

how many charter schools were eligible for, and how many actually received, ESEA Title I funds. According to this survey, out of a national total of 225 responding charter schools, 137 (61%) indicated that they were eligible for ESEA Title I grants, but only 65 of these (47% of schools reported as eligible) actually received Title I funds in that year. However, no information is reported on possible reasons for this low rate of participation of potentially eligible charter schools in the Title I program.

Issues Specific to the Individuals With Disabilities Education Act (IDEA).

The Individuals with Disabilities Education Act (IDEA) authorizes 10 programs to support and improve early intervention and special education for infants, toddlers, children, and youth with disabilities. The IDEA Amendments of 1997, P.L. 105-17, revised and extended these programs. P.L. 105-17 includes four new provisions specifically on charter schools, as well as other amendments generally affecting charter schools.

IDEA includes three formula grant programs, authorized in parts B and C, to assist states in serving children with disabilities in different age ranges. Further, part D of IDEA authorizes seven discretionary grant programs to support reform, research, personnel development, information dissemination, and other national activities on early intervention and special education. The centerpiece of IDEA is the grants to states program, which helps SEAs, LEAs, and other agencies to serve school-age children with disabilities. The 1997 IDEA Amendments added four new provisions specifically on charter schools:

- Charter schools that are part of a LEA and the disabled children who attend them must be treated equitably by the LEA. The LEA must serve those children with disabilities enrolled in charter schools in the same way it serves children with disabilities enrolled in other public schools. In addition, the LEA must provide IDEA funds to charter schools in the same manner as it provides IDEA funds to other public schools. Prior law did not address the treatment of non-LEA charter schools. This provision, in part, is intended to ensure that non-LEA charter schools get their “fair share” of IDEA aid.¹⁷
- Unless explicitly authorized under the state’s charter school statute, a SEA may not require charter schools that are LEAs under state charter school law to file a consolidated IDEA application with another LEA. In general, SEAs may require small LEAs to file joint applications for IDEA assistance to promote effective services. This provision is intended to preserve the autonomy of LEA charter schools.
- Providing direct services to disabled children in charter schools is among the authorized activities for the newly created special subgrants to LEAs under the grants to states program. The 1997 Amendments require a SEA to make special IDEA subgrants to LEAs when its allotment under the grants to states program increases by a certain amount. LEAs are

¹⁷ The Senate and House committee reports accompanying P.L. 105-17 state that charter schools are expected to be in full compliance with part B of IDEA.

required to use these special subgrants for capacity building to improve outcomes for children with disabilities. Among the enumerated uses of these subgrants is providing services for children in charter schools. This provision is intended to ensure disabled students in charter schools have access to IDEA resources.

- SEAs must include representatives of charter schools on their IDEA advisory panels. This provision is intended to give charter schools a voice in the review and development of state policy on special education.

A revision in P.L. 105-17 not directly aimed at charter schools but potentially having a significant effect on them is a change in the substate formula under the grants to states program. Assistance is distributed according to formula among and within states. Under prior law, SEAs were prevented from making IDEA awards to LEAs if the grant would otherwise be less than \$7,500. This provision effectively cut off many LEA charter schools from IDEA aid. Under the 1997 IDEA Amendments, this provision is dropped. Thus, LEA charter schools no longer need to reach a certain threshold before receiving an IDEA grant.

ED's proposed regulations for the IDEA, as amended by P.L. 105-17, were released on Oct. 22, 1997. Among other things, the proposed rules would clarify that a public charter school is eligible to receive aid under the IDEA state grant program if it meets the definition of a LEA.¹⁸ A new rule would also be established for the treatment of non-LEA charter schools.¹⁹ In addition, ED recently released a study it sponsored on charter schools and special education.²⁰ It provides information on various IDEA issues for charter schools.

Issues Specific to ESEA Title I, Education for the Disadvantaged.²¹ In order to be eligible to receive grants under ESEA Title I, Part A, a LEA or school must have minimum threshold numbers or percentages of children from low-income families. These thresholds differ for LEAs and schools. The minimum for a LEA is at least 10 children from low-income families and these children must constitute at least 2% of the LEA's total school-age population. If a LEA receives a Title I grant, individual schools are generally eligible to receive a share of those funds only if their number or percentage of pupils from low-income families is among the highest in the LEA, or if the percentage is at least above 35%.²² Thus, the school eligibility

¹⁸ Proposed section 300.17, note, 62 F.R. 55071 (Oct. 22, 1997).

¹⁹ Proposed section 300.241, 62 F.R. 55083 (Oct. 22, 1997).

²⁰ Lange, Cheryl M. *Charter Schools and Special Education: A Handbook*. Project FORUM, Alexandria, VA, 1997.

²¹ For a discussion of some additional, longer-term issues regarding ESEA Title I allocations and charter schools, see the CRS general distribution memorandum, *Possible Implications of Charter School Legislation for Title I, Elementary and Secondary Education Act*, October 17, 1995. 5 p.

²² The specific statutory and regulatory provisions for school eligibility to participate in Title I are relatively extensive and detailed. For a discussion of these provisions, see *Education for* (continued...)

threshold varies widely in different LEAs. In relatively high poverty LEAs, only schools with 50%, 60%, or even higher percentages of their pupils from low-income families are eligible for Title I grants.

When charter schools are treated as separate LEAs, it may be easier for them to qualify for ESEA Title I, Part A, basic grants, the formula under which the majority of Title I funds are allocated.²³ When treated as separate LEAs, the relatively low LEA eligibility thresholds described above apply to individual charter schools. Thus, such charter schools may qualify for basic grants even if their number and percentage of pupils from low-income families are quite low.

In contrast, depending on the distribution of pupil poverty rates and numbers among the schools of different LEAs, other public schools (including charter schools that are *not* treated as separate LEAs) generally must meet much higher thresholds in order to qualify for Title I basic grants. Thus, it is likely to be much easier for a charter school to qualify for a Title I basic grant if treated as a separate LEA than as a school in a “regular” LEA.

In contrast, it may be more difficult for charter schools treated as separate LEAs to qualify for grants under the second currently-funded ESEA Title I, Part A formula — concentration grants. In general, a LEA may receive concentration grants only if it is in a county meeting either of the thresholds of 6,500 children from low-income families or a low-income child percentage of 15%, *and* if the LEA itself also meets one of these thresholds. If a LEA receives concentration grant funds, then these funds are combined with the LEA’s basic grants, and distributed jointly to schools meeting the same eligibility criteria as for basic grants (described above).

A charter school treated as a separate LEA may be eligible for a concentration grant if it meets the 6,500/15% eligibility criteria, and is in a county meeting one of these criteria. The 15% criterion may not be especially difficult for charter schools to meet, and may be substantially below the eligibility standard for basic grants in many high-poverty urban or rural LEAs. However, no charter school is likely to meet the 6,500 child criterion. There may be cases of charter schools meeting neither the 6,500 nor the 15% threshold, and therefore not eligible to receive concentration grant funds, but they would be eligible if considered to be part of the “regular” LEA in which they are located.

Charter schools have no geographic service boundaries, and were not yet in existence when the 1990 census was compiled. However, all Title I allocation formulas, especially concentration grants, are geographically based — grants are determined by the number of children in low-income families *and* the percentage these children represent of the total school-age population in the LEA where they reside.

²² (...continued)

the Disadvantaged: Analysis of 1994 ESEA Title I Amendments Under P.L. 103-382. CRS Report 94-968 EPW, by Wayne Riddle. p. 29-30.

²³ In FY1997, approximately 86% of ESEA Title I, Part A funds were allocated as basic grants, the remainder as concentration grants (which are discussed further below).

There are no direct means of determining the number of “census poverty” children attending charter schools, which “regular” LEAs they came from (where population counts must be reduced), or the total school-age population with which they should be compared to determine the low-income child rate. The problem is exacerbated in a state such as Minnesota, with its statewide public school choice policies in addition to numerous charter schools.

In practice, states have been using a variety of methods to estimate the number of children from low-income families attending charter schools, and comparing these estimates to the total enrollment of the school to estimate the low-income child percentage for the charter school LEAs. Some recognition of the existence of this problem, and explicit, statutory authorization to use alternative techniques to estimate formula populations for charter schools, would be helpful to the affected states.

Additional Issues Involving Multiple Federal Programs. Additional problems or issues that have arisen with respect to federal aid programs and charter schools are discussed below. These issues affect charter school participation in multiple federal programs, including but not limited to the IDEA and/or ESEA Title I.

Data Requirements for Making Grants Under Title I, IDEA, and Other Federal Programs, Especially for the First Year of School Operations. Many new charter schools are being initiated each year. Without prior year enrollment data, it is very difficult to determine the amount of the grant, if any, for which they would be eligible under ESEA Title I, the IDEA, and other federal programs. Thus, states may be forced to use indirect methods to estimate grants, or prohibit schools from receiving funds under these programs in their initial year of operation. For example, Arizona used projected enrollment data to provide ESEA Title I grants to 10 new charter schools in 1995-96, but found that ultimate, actual enrollments were significantly different from the projections. The state has therefore discontinued this practice, requiring schools to have had previous year enrollments in order to receive Title I grants.

In recent years, Minnesota has provided some Title I “reallocation” funds to eligible charters in their first year of operation. These “reallocation” funds are amounts returned from previous year grants because they exceeded the maximum 15% share of Title I funds that a LEA may carry over from one year to the next. These funds previously were simply reallocated to other eligible LEAs statewide. However, this is unlikely to be a satisfactory long-term solution to the first year grant problem for charter schools, in part because LEAs are more frequently meeting the 15% carryover limit, and in part because of the growth in the number of new charter schools each year. Further, this partial and temporary solution has been available only for Title I grants; no IDEA funds have been provided to Minnesota charters in their first year of operation.

Recently published ED “nonregulatory” guidance provides additional examples of ways in which SEAs and LEAs may attempt to provide ESEA Title I grants to charter schools in their initial year of operation. However, this guidance does not require that such first-year grants be provided to charter schools, or any other type of public school, under ESEA title I or other ED programs. The “first-year grant problem” has long existed with respect to receipt of federal education aid for schools

of all types. It was rarely a focus of attention in the past, since the number of newly-established public schools each year was relatively quite small. The existence and rapid growth of charter schools has caused this problem to be considered to be more urgent to many simply because of the relatively large number of charter schools established each year. This is an issue that the Congress may wish to consider at greater length in the future with respect to all public schools, not just charter schools.

Administrative Burdens. The reporting, evaluation, and other accountability or administrative requirements associated with federal education assistance programs may be particularly difficult for charter schools treated as separate LEAs to meet. Such schools are likely to have fewer administrative staff than all but the smallest of “regular” LEAs. In fact, some small charter schools have virtually no full-time or administrative staff. Several charter schools contract with consultants for the performance of some administrative tasks associated with participation in federal programs.

One possibility for reducing administrative burdens for charter schools is the waiver authority noted in the description above of the Public Charter Schools program. In addition, many charters have contracted with consultants to perform many administrative tasks, especially accounting responsibilities.

Unwillingness to Participate. Because of difficulties such as those described above, charter schools in states where they are treated as separate LEAs may choose not to participate in federal assistance programs for which they would be eligible. For example, SEA staff in Minnesota stated that some charter schools eligible for ESEA Title I grants do not apply for them, in part to avoid the accompanying administrative responsibilities.

Lack of Formal, Published Guidance From Either ED or State Statutes on Implementation of Federal Aid Programs in Charter Schools. As indicated in the previous section of this report, ED has published guidance on implementation of only one federal aid program in charter schools, although it is the largest such program, ESEA Title I. A review of policy analyses and state charter school statutes indicates that issues related to federal aid programs are addressed infrequently and in broad, vague terms. Often, state statutory provisions are limited to simple statements that charter schools are to receive funds for which they would be eligible under applicable state and federal programs. However, the staff of at least some SEAs have taken the initiative to develop relatively comprehensive policies regarding allocation of federal (and state) program funds to charter schools.

Ignorance of Program Provisions or Requirements on the Part of Charter School Staff. Primarily with respect to the IDEA, there is concern that charter school operators are frequently unaware of the requirements of federal law, and may be unwittingly in violation of IDEA requirements. To address this potential problem, SEAs in Arizona and Minnesota, for example, have conducted seminars for charter school administrators to educate them on their responsibilities under the IDEA. Some schools in these and other states have also contracted with consultants who specialize in such areas as IDEA compliance.

In many cases, charter schools may be effectively ignorant of grant possibilities not because of a lack of information but rather by the opposite problems — an overwhelming amount of information and insufficient staff to sift through it. Charter schools treated as LEAs may receive so many notices of grants and other funding opportunities that they are unable to which of them are worth pursuing.

General Issues Regarding Charter Schools

This section provides brief analyses of several key issues that have arisen regarding charter schools.

Role of Charter Schools in School Reform Efforts. Charter schools are presently attracting substantial attention because they combine at least four elements that are common to several school reform efforts and strategies that are currently being debated in many states and localities. They are schools of choice, open to enrollment by pupils of the relevant grade level and interests throughout the LEA, or in many cases the state, in which they are located. Another common theme of many current school reform proposals is regulatory flexibility. Charter schools are released from a (varying) range of state and local regulations, and are therefore primary examples of regulatory flexibility in practice. A related theme of several contemporary school reform strategies is outcome accountability. This is also a component of the charter school concept, although (as is discussed below) it is perhaps the least developed one thus far. A final common element to many current education reform proposals is entrepreneurial innovation by teachers and other school staff. This is also quite consistent with the charter school concept, with its emphasis on initiative taken by school founders and staff.

While charter schools are consistent with several elements of numerous current school reform efforts, their limitations should be kept in mind as well. As noted earlier, charter schools are a fast-growing but relatively recent phenomenon. A large majority of the schools in operation are in a small number of states, and most of the schools have been open for only a short period of time. It is currently unclear how widely charter schools will spread, or how effective they will be in improving pupil outcomes. Further, a few of the charter schools that have been established have experienced financial or governance difficulties that have resulted in closure of the schools relatively soon after they began operations. Some have also raised questions regarding the qualifications of some successful charter school applicants or the adequacy of state and local oversight of charter schools.²⁴

Start-Up Problems. The literature on charter school implementation identifies a number of factors that appear to affect the successful initial implementation of charter schools. A survey of charter school developers regarding barriers to developing and implementing charter schools, conducted as part of ED's *A Study of Charter Schools* (p. 34-35), found the following problems to be cited most frequently: lack of start-up funds (cited by 59% of developers), lack of planning time (42%), inadequate operating funds (37%), inadequate facilities (35%), and state or local board opposition (25%).

²⁴ See, for example: Off to Market. *Education Week*, Apr. 19, 1997. p. 34-39.

Many charter schools appear to be operating at a lower expenditure per pupil rate than other local public schools. Although charter schools in some states are entitled to all or nearly all of the operating revenue they would have received or benefitted from as regular schools within a public school district (e.g., the charter schools sponsored by local school districts in Arizona receive funds equal at least to the per pupil expenditures of the sponsoring school district), in others, charter schools receive only a portion of those funds (e.g., in Colorado, charter schools receive at least 80% of the state and local per pupil operating revenue of their local school districts, subject to negotiation of a higher percentage in individual charters; also, SEA staff in Minnesota estimate that charters receive an average of approximately 80% as much in operating funds as other public schools in the state). Issues involving the flow of federal funds to charter schools are considered separately above.

Although some charter schools have access to low-cost use of public school or other public buildings (e.g., recreation centers), or former private school buildings, that would otherwise be unused, charter schools generally have substantial difficulty in obtaining and paying for appropriate facilities. Few states provide funds for capital expenses (i.e., rent or purchase of facilities and equipment), although some states (e.g., Minnesota) are now providing lease grants to charter schools. There may be few appropriate facilities immediately available in a locality at any cost. State loan guarantees that are frequently provided to regular LEAs are rarely made available to charter schools, limiting their access to private loan markets to finance the acquisition or renovation of facilities. Frequently, whatever facilities are obtained require substantial renovation, and owners may be loath to invest in these when the short terms of charters (3-5 years in most cases) provide no guarantee of long-term returns on their investment. Arizona has addressed this issue by authorizing 15 year charter terms, although this raises concerns about accountability.

Also, with the exception of such states as Arizona and Minnesota, charter schools typically receive no start-up funding for current operations, which may be important to meet expenses that are incurred before regular operating funds begin to flow. Federal funds, such as those from the federal Public Charter School program (described above) are being used to help pay start-up costs as well.

Few states fund technical assistance for charter schools to help their staff and administrators address the wide range of educational as well as administrative duties and responsibilities that often are not typical for an individual public school. These range from designing a curriculum to administering a budget. Consultants are often available to perform some of these technical functions, albeit at a cost. In Minnesota, the SEA has recently made a grant to the state charter school association, a non-governmental group, to provide certain forms of technical assistance to charter schools, especially (but not only) with respect to IDEA compliance.

Accountability and Outcomes. A key aspect of the charter school concept is that these schools will be held accountable for academic results.²⁵ From a policy

²⁵ Charter schools are also held accountable for proper management of public funds. To date, a few charter schools have lost their charters as a result of financial improprieties. (See: (continued...))

perspective, this should involve identification in each school's charter of the academic outcomes that should be attained, determination of how those outcomes will be measured and reported, and delineation of the process through which a charter school will be rewarded for attaining its objectives (i.e., through extension of the charter) or penalized for failing to do so (i.e., termination of the charter).

Several factors appear to complicate the process of holding charter schools accountable for academic results. Although state laws provide for this accountability, Finn, *et al.* in *Charter Schools in Action* report that "most states are still in the developmental stage [regarding evaluation of charter schools] and some have still not developed solid accountability and evaluation plans." Some researchers suggest that traditional standardized assessments in use in many states may be inappropriate for gauging the academic progress of students in charter schools that are using non-traditional organization, curricula, and instructional practices.²⁶ These standardized assessments may be particularly problematic for charters using other kinds of assessments internally to measure student progress, such as performance assessments or portfolios of student work. Another issue is that, reportedly, some school charters contain relatively limited academic objectives and little specification of how progress toward those objectives is to be measured.

Similarly, although one of the primary objectives for the charter school movement is to improve the educational performance of students in these schools, it is still too early to reach any conclusions about the impact charter schools will have on academic achievement. As observed by Finn, *et al.* in *Charter Schools in Action*:

There is — let us say it plainly and early — one big gap in our (and everyone else's) information base: we do not yet know how much and how well the students in charter schools are learning, or whether their academic achievement will surpass that of similar youngsters enrolled in more conventional schools.

Political Support for Charter Schools. The charter school concept has attracted support from a wide range of individuals and groups who frequently do not agree on education policy issues or strategies. Several advocates of public schools support charter schools as a preferable alternative to proposals for increased public support of private schools, through vouchers or other mechanisms. Some teachers see charter schools as a means through which they might have increased freedom to use the instructional techniques and materials they consider to be most effective, and to have greater autonomy with respect to a wide range of school policies. Some analysts who emphasize varying pupil needs or parental preferences support the growth of charter schools as a means toward increasing the range of available educational options.

²⁵ (...continued)

Stecklow, Steve. Arizona Takes the Lead in Charter Schools — For Better or Worse. *Wall Street Journal*, Dec. 24, 1996; and Schmidt, Peter. Citing Debts, L.A. Board Revokes School's Charter. *Education Week*, Dec. 14, 1994.

²⁶ Buechler, *Charter Schools*, p. 35-36.

At the same time, some advocates of a maximum degree of school choice, including increased public funding of private schools where feasible, support charter schools as an improvement in this respect over traditional public schools, or as the maximum degree of public support of school choice that is politically feasible, or perhaps as a partial movement toward eventual adoption of public-private school vouchers. Further, some advocates of home schooling support charters as a means whereby public funds may be used to support computer networks or other resources for use in home schools or other independent study programs (as has occurred in California and Michigan).

Nevertheless, others remain opposed to charter schools, at least in their “more” autonomous versions. Teacher organizations sometimes oppose charter school laws that release such schools from general requirements to engage in collective bargaining, or that allow non-certified teachers to work in charter schools. Some individuals fear that widespread establishment of charter schools might lead to increased segregation of pupils by race, economic class, or academic achievement level. In particular, some have been concerned that charter schools will tend to attract primarily white pupils or pupils from advantaged family backgrounds, although charter schools initiated thus far appear to have attracted more, not fewer, pupils from non-white racial groups than the average for their state.²⁷ Some public school advocates oppose state laws that allow formerly private schools to be converted into public charter schools, or fear that charter schools are a way-station leading to ultimate widespread adoption of public-private school voucher programs. Finally, some are simply concerned about the rapid growth of charter schools in some states (such as Arizona), and/or about the weakness and ambiguity of the accountability provisions of many charter school laws, and fear the unintended consequences of this growth, such as the instability that has resulted from some charter schools closing soon after they began operations.

Effects of Charter Schools on the Conventional Public Schools and LEAs “Left Behind”. Finally, some observers are concerned about the potential impact of charter schools on the conventional public schools and LEAs which charter school pupils leave behind. In many cases, these effects are marginal, as only a very small percentage of pupils leave such conventional public schools to enroll in charter schools. However, in a few localities currently, and potentially many more localities in the future, the effects might be much more substantial. Charter school advocates often argue that the competition provided by charter schools will force public schools to improve their services. However, others are concerned that the loss of pupils and

²⁷ A survey of 43 charter schools in 7 states by Chester E. Finn and others, under the auspices of the Hudson Institute, found that 63% of the students enrolled in their sample of schools were minority group members (Finn, *Charter Schools in Action*). According to the authors, this compared to a 34% minority enrollment rate in the surveyed states. See, also, Buechler, *Charter Schools*, p. 27. In addition, ED’s *A Study of Charter Schools* found that the percentage of minority group pupils in charter schools was either similar to, or higher than, statewide averages in states with significant numbers of charter schools in 1995-96. The authors of this study also cautioned that these findings should be considered as preliminary and tentative, since they were generally based on small, and growing, numbers of charter schools. This study also found that charter schools were generally below state average percentages of disabled or LEP students.

funds may have a less constructive impact on conventional public schools and LEAs, seriously weakening the system for pupils left behind.

It is too soon yet to predict which of these hypotheses is more likely to prove correct. Only one study has thus far been published which focuses specifically on the effects of charter on conventional public school systems.²⁸ This report is based on case studies in 25 LEAs scattered throughout the Nation. The author concludes, “Typically, school districts had not responded with swift, dramatic improvements at the time of this study. The majority of districts had gone about business-as-usual and responded to charters slowly and in small ways. ... Certain innovations ... had rarely occurred: few superintendents, principals, and teachers in district schools were thinking of charter schools as educational laboratories or were attempting to transfer pedagogical innovations from charters to the district schools; districts were still building large school facilities and were rarely creating smaller schools; the large urban districts studied rarely had responded in meaningful ways to charter laws and charter schools.”²⁹ Specific impacts on conventional public schools and LEAs generally included a loss of funds, loss of specific types of students to “niche-focused” charter schools, and increased difficulties in predicting future student enrollment and planning for educational services.

Nevertheless, a minority of about one-quarter of the surveyed LEAs “had responded energetically to the advent of charters and significantly altered their educational programs.”³⁰ “These changes included opening schools organized around a specific philosophy or theme, creating ‘add-on’ programs such as an after-school program or all-day kindergarten, and offering more diverse activities or curricular resources,” as well as efforts to “improve public relations and ... to aggressively market their schools to the public.”³¹

Federal Policy Options

The federal policy options discussed in the remainder of this report are grouped into two categories — options for treatment of charter schools under federal education assistance programs in general, and options regarding specifically the Public Charter Schools Program. The first group includes options that would require legislative action, others that could be implemented through administrative action by ED, and the option of taking no new action at all. All of the options regarding the Public Charter Schools Program would require revisions to the statute authorizing this program.

Possible Options for Treatment of Charter Schools Under Federal Education Assistance Programs. Selected possible models for treatment of charter schools under federal education assistance programs are described below. The focus

²⁸ Rofes, Eric. *How are school districts responding to charter laws and charter schools?*. Policy Analysis for California Education. April 1998. 23 p.

²⁹ Rofes, Eric. p. 2.

³⁰ Rofes, Eric. p. 2.

³¹ Rofes, Eric. p. 12.

is primarily on options for allocating federal aid to charter schools, and on establishing responsibility for meeting the various accountability, reporting, and other administrative requirements that currently accompany the receipt of federal funds.

1. *If state law treats charter schools as separate LEAs, then a proportional share, based on the relevant statutory allocation formulas, of the state's funds under all of the state-administered programs,³² or at least most such programs,³³ would be allocated directly to charter schools by the **state education agency (SEA)**. If the state law does not treat charter schools as separate LEAs, then each LEA would be required to provide for "equitable participation" of charter schools in the receipt of either federal funds or services funded with federal assistance.*

Under this option, as well as options 2 and 3, states would be divided into two categories: (a) those which treat charter schools as separate LEAs for purposes of allocating federal and state funds (e.g., Minnesota, Massachusetts, or schools chartered by a state entity in Arizona); and (b) those which do not treat charter schools as separate LEAs in these processes (i.e., they are treated as schools for which a "regular" or conventional LEA is at least partially responsible, as in such states as California, Colorado, or schools chartered by a "regular" LEA in Arizona). If there is any uncertainty regarding the category in which a state should be placed, it might be left to the state³⁴ to select the category most consistent with its policies regarding charter schools.

In states where charter schools are *not* treated as separate LEAs, under each of options 1-3, there would be no requirement for direct (i.e., from the SEA to the school) allocation of funds to charter schools. Instead, the LEA responsible for each charter school would be required to provide "equitable" access to funds and/or services supported by federal funds to eligible pupils attending charter schools. Either little, or extensive, detail might be provided by statute, committee/conference reports, or regulations, regarding the meaning of "equitable participation." Selected advantages and disadvantages of this approach to charter schools that are not treated as separate LEAs are discussed only once, with respect to option 1.

³² The state-administered programs include: ESEA Title I, Parts A (Grants to LEAs for the Education of Disadvantaged Children), B (Even Start), C (Migratory Children), and D (Neglected or Delinquent Children); ESEA Title II (Eisenhower Professional Development Program); ESEA Title IV (Safe and Drug-Free Schools and Communities); ESEA Title VI (Innovative Education Program Strategies); ESEA Title VII, Part C (Immigrant Education); IDEA Part B (with respect to school-age children); the Goals 2000: Educate America Act; the Adult Education Act; the Carl D. Perkins Vocational and Applied Technology Education Act; the School-to-Work Opportunities Act; and the Library Services and Technology Act (LSTA).

³³ The exclusion of some state-administered programs from options 1-3 might be considered — e.g., the programs that allocate funds to states by formula, but have no substate formula, and instead they allocate grants within states competitively (Even Start, Goals 2000, and the LSTA).

³⁴ There may be difficulty in determining which state entity should have the responsibility for making this determination: the SEA, the Governor, a state charter school board (if any), etc.

In states where charter schools are treated as separate LEAs, under option 1, the substate allocation formula³⁵ for each relevant program would be applied to all LEAs, including charter schools. The elimination or modification of minimum grant size thresholds for charter school LEAs would need to be considered. These thresholds were originally designed with traditional, multiple-school LEAs in mind, not single-charter school LEAs, and they may present significant barriers to charter school participation in some programs. At the same time, current requirements that activities supported with federal funds be of “sufficient size, scope, and quality” to offer “reasonable promise” of being substantial and effective would presumably still be relevant to charter school LEAs.

Advantages: Separate LEA charter schools would be assured of receiving a share of state-administered program funds that is proportional to their enrollment of pupils in relevant population groups. Minimum grant thresholds that may currently limit participation of charter schools in federal programs could be modified or eliminated.

LEAs (and states, in their monitoring capacity) would be required to provide an “equitable” level of federal funds and/or services purchased with federal funds to charter schools that are treated as part of “regular” LEAs, while maintaining a degree of flexibility in deciding how to implement this requirement. The “equitable participation” concept has been used for years with respect to participation of private school pupils in many federal education programs.

Disadvantages: The provision for charter schools that are *not* treated as separate LEAs is somewhat vague, regardless of the level of detail with which the “equitable participation” provision is described. Some private school officials have regularly complained that they still do not receive their “fair share” of funds under some of these programs (such as ESEA Title I). However, efforts to specify the meaning of “equitable participation” in detail may reduce flexibility and create as many difficulties as they resolve.

In the case of the IDEA, the significance of such “equitable participation” language may depend on whether it is interpreted and implemented in a manner similar to the equitable participation requirement now in IDEA on private schools. Under current law, LEAs must ensure the equitable participation of disabled children enrolled in private schools in programs assisted by Part B of IDEA. In general, private school children with disabilities are provided access to the LEA’s special education program; no funds are shifted to private schools so that they may purchase special education services for their disabled students. If this model were applied to new equitable participation language on charter schools, it seems unlikely that IDEA Part B funds would “follow” a disabled child to the charter school; rather it seems more likely that the LEA would simply retain responsibility for the special education of the child, and perhaps transport the child to a traditional public school for services or assign special education staff to the charter school. In any event, applying

³⁵ If a state-administered program that does not have a statutory substate allocation formula is included in this option (e.g., Goals 2000), then the state might be given discretion in determining what share of funds to allocate to charter schools, or the state might be required to distribute to charter schools a proportional share of funds based on total enrollment.

equitable participation language to charter schools would probably translate into service arrangements between the LEA and charter school rather than funneling part B funds to the charter school.

For charter schools that *are* treated as separate LEAs, states will sometimes have difficulty in obtaining relevant allocation formula data for charter schools or otherwise applying allocation formulas to them. If minimum grant size thresholds were modified or eliminated to accommodate charter school LEAs, this may increase the dispersal of funds under programs such as ESEA Title I, reducing the concentration of aid on relatively high poverty schools. With respect to ESEA Title I, Part A, as was discussed above, charter schools treated as separate LEAs may sometimes receive Title I grants in situations where they would not be eligible for funds if treated as part of a “regular” LEA in which they are located. However, unless minimum grant thresholds were reduced for charter schools, it would be difficult for them to participate in IDEA Part B.

This approach would conflict with the general strategy of programs that do not have a substate allocation formula specified in the federal statute. An alternative could be to require states to select a formula to be used for substate allocation, and to apply this formula to all LEAs, including charter schools. A disadvantage of this approach is that it is inconsistent with state-administered programs that provide for competitive/discretionary selection of substate grantees (such as Even Start or Goals 2000). Alternatively, it could simply be made clear that charter schools are eligible to compete for grants under these programs.

As with all of options 1-3, the provisions for charter schools would vary by state, with greater authority to receive federal funds directly (via the SEA) provided to charter schools where these are treated as separate LEAs. However, the establishment of a single rule for all charter schools would presumably violate the policies of at least some states.

2. *Same as option 1, but funds would be allocated specifically via the state’s “charter school board” or whatever statewide entity or official is primarily responsible for granting charters and overseeing charter schools.*

Option 2 is quite similar to option 1, with much the same advantages and disadvantages. The primary difference between options 1 and 2 is that under the latter, funds would be reserved for and allocated by the state charter school board rather than the SEA.

Not every state that treats charter schools as separate LEAs has a state charter school board. For example, charter schools in Massachusetts, which are treated as separate LEAs, are under the authority of the state’s Secretary of Education, who is appointed by the Governor, and there is no state charter school board. Thus, option 2 refers broadly to whatever statewide entity or official is primarily responsible for granting charters and overseeing charter schools. It is assumed that decisions regarding identification of this entity or office would be left to the states.

Advantages: This option would give control over allocation of federal funds to charter schools to the state’s primary entity that is responsible for granting charters

and overseeing school operations. State charter school boards or similar state entities might be more interested in maximizing the opportunities for these schools to receive federal funds than are some SEAs.

Disadvantages: This option would be inconsistent with the current policy of allocating funds under virtually all federal state-administered programs to or through only SEAs at the state level. In some states, allocation of funds via a state charter school board or similar entity might be contrary to state policies or even state constitutional provisions designating the SEA as the body with primary responsibility for education policy.

3. *In states where charter schools are treated as separate LEAs, the funds that would go to charter schools — based on **either** the relevant allocation formulas, or on a single, enrollment-based formula — under all (or most) of ED’s state-administered programs would be combined into a “**block grant**” to be distributed to the charter schools by the SEA. These funds could be used by charter schools for any of the purposes authorized under any of the state-administered programs.*

Under this option, each state with charter schools that are treated as separate LEAs would reserve from the state’s grant under every (or most) state-administered program(s) an amount for charter school LEAs. The amount to be reserved would be based on either:

- (a) the current federal and/or state substate allocation formulas for each of the federal programs (i.e., pupils in low-income families for ESEA Title I, Part A funds, etc.); or
- (b) a consolidated and simplified formula that considers only the total enrollment in charter schools compared to all public schools in the state.³⁶

Under (a), both the aggregate amount reserved for charter schools, and the share of this amount that is allocated to each charter school, would be based on the separate, current formulas for substate allocation under the relevant federal programs. Under (b), the share of funds from each federal program that is reserved for charter schools in the aggregate, and allocated to each charter school, would be based on a combined and simplified formula based only on total enrolled pupils.³⁷

However the amount of funds to be allocated to separate-LEA charter schools is determined, these funds could be used by the charter schools for any purpose

³⁶ The “single formula based on total enrollment” approach was recommended in a March 1996 report on charter schools in California by a commission appointed by state government officials. *The Charter Movement: Education Reform School by School*. State of California, Little Hoover Commission, Mar. 1996. p. 6.

³⁷ Thus, if charter schools overall enrolled 5% of a state’s total pupils in elementary and secondary schools, and a particular school had one-tenth of those pupils, then 5% of the state’s total funds under federal state-administered programs would be reserved for charter schools, and 0.5% of the state total funds would go to the particular school.

authorized under **any** of the federal programs whose funds have been combined. Thus, the combined grant would be a **block grant** to the charter schools.

Since block grant funds could be used for any activity authorized under any of the combined grants, it is assumed that recipient schools would not necessarily be subject to all of the accountability and reporting requirements of the state-administered programs. Charter schools might be subject to: (a) only the accountability provisions of the programs that authorize the activities they actually undertake (e.g., the accountability requirements of the IDEA if some or all funds are used for IDEA purposes); or (b) new forms of accountability requirements. A somewhat limited or simplified set of aggregate accountability requirements might be most consistent with the alternative (b).³⁸

Advantages: This option might be most consistent with the charter school concept's emphasis on flexibility and minimization of regulation. It would maximize the opportunity for charter schools to focus federal aid on their greatest educational needs. With charter schools allowed to use federal aid for a wide variety of purposes, it would be relatively straightforward to minimize administrative responsibilities to a level that would be manageable for individual schools acting as LEAs.

This approach would also be consistent with efforts to promote the block grant approach to federal education assistance in general, if that were deemed to be a desirable goal. It might be viewed as an initial, experimental phase of consolidating federal programs into block grants.

This strategy might provide a substantial incentive for the establishment of new charter schools, or for the treatment of charter schools as separate LEAs in states that do not currently do so, because of the wide range of flexibility that would be available to the eligible charter schools in their use of federal funds.

Disadvantages: The primary purposes implicit in the individual federal aid programs would be jeopardized if recipient charter schools were allowed to use any of the funds they receive for any of the purposes of any of the state-administered federal programs. Opponents of block grant strategies likely would view this option as an initial effort to adopt block grants in general.

Major questions would arise regarding the accountability of charter schools for effective use of federal funds. If funds under all or most state-administered programs could be used as a block grant, how would the charter schools demonstrate "appropriate" use of the federal aid? While the general accountability provisions of state charter school laws might also be used as the basis of accountability for federal

³⁸ The accountability requirements for schoolwide programs under ESEA Title I, Part A, might possibly be a model for such simplified, aggregate accountability requirements. In essence, these requirements provide that academic achievement (measured on the basis of state-selected curriculum and pupil performance standards and assessments linked to these) improve for pupils overall, and achievement levels be reported for certain portions of the pupil population (economically disadvantaged pupils, pupils with disabilities, limited English proficient pupils, etc.).

aid, these state laws may not address some of the primary purposes or goals of the federal programs.

Of all of the options discussed in this report, this would lead to the greatest inconsistency in treatment of separate-LEA charter schools and all other public schools. The implicit incentive to establish charter schools that are treated as separate LEAs might be strong.

The option of reserving funds for, and allocating them to, charter schools under a combined and simplified formula that considers only total enrollment is implicitly based on an assumption that the demographic characteristics of charter school pupils will be similar to those for the state as a whole, which is unlikely to be true in many individual cases — charter schools might receive shares of federal funds that are either substantially higher or lower than would be justified by their share of the specific pupil groups counted in federal allocation formulas.³⁹ In either case, the targeting of federal funds on high-need schools would be reduced.

Specifically with respect to the IDEA, its inclusion in a block grant scheme for charter schools that are treated as LEAs raises some special considerations. First, would the full range of requirements under the IDEA be included as “strings” attached to the block grant? Although the charter school may have flexibility in the use of funds, it might still be required to adhere to the mandate of providing a free appropriate public education to all children with disabilities. Second, given the expense of special education services generally, some charter schools might use a large share or even all of their federal block grant to serve their disabled pupils.

4. Rely on existing waiver authority under the Public Charter Schools legislation, or enact new, program-specific waivers, to resolve issues regarding charter schools and federal aid programs.

As was mentioned earlier in this report, the Public Charter Schools program statute contains authority for the Secretary of Education to waive “any statutory or regulatory requirement over which the Secretary exercises administrative authority except any such requirement relating to the elements of a charter school” (e.g., that the school is nonsectarian, does not charge tuition, is a public school, etc.) if the waiver is requested as part of an application for aid under this program, and “the Secretary determines that granting such a waiver will promote the purpose of this part” (ESEA Title X, Part C, Section 10304(e)).

An alternative to relying on the waiver authority under the Public Charter Schools program might be to establish separate waiver authorities in selected major ED programs, such as the IDEA, with regard to charter schools. Using the example

³⁹ A recent study of a sample of charter schools (Finn, *Charter Schools in Action*) concluded that these schools enrolled higher proportions of pupils with disabilities or from low-income families than the public schools of their states as a whole. If these findings may be applied to charter schools in general, the use of a simplified, total enrollment formula to determine charter schools’ share of federal program funds would result in lower grants to charter schools than use of the statutory formulas.

of the IDEA, the advantage of this approach would be that it would bring consideration of such waivers within ED's Office of Special Education Programs and ensure that those officials most familiar with the intricacies of the IDEA were involved. Such waiver authority would be customized to the IDEA, especially regarding the due process rights of children with disabilities and their parents. Such waiver authority could apply to any IDEA provision or only to particular grant allocation provisions. Further, such authority could establish standards that applicants would have to meet before the Secretary may grant a waiver (e.g., the waiver might be granted only if the Secretary determined that it would be in the best interest of children with disabilities), or procedures to follow before granting a waiver (such as an opportunity for the SEA or public to comment prior to a final decision).

Advantages: The Public Charter Schools program waiver authority could be invoked without further legislative action. While this waiver authority has been used quite infrequently thus far,⁴⁰ it is very broad, and might be used to resolve many of the issues that have arisen regarding the implementation of federal aid programs in charter schools. While the authority is limited to states participating in the Public Charter Schools program, most states that authorize charter schools participate in the program.⁴¹

Separate waiver authorities for individual major ED programs would have the advantage of being tailored to accommodate program-specific issues and concerns.

Disadvantages: The Public Charter Schools program waiver provision authorizes the U.S. Secretary of ED to waive federal program requirements, but does not require him or her to do so. The Secretary might choose not to grant some of the waivers that might be requested. Further, in spite of the broad language of this waiver authority, the Secretary might determine that some kinds of requirements could not be waived. At the same time, the virtually unlimited breadth of this authority might lead to the granting of waivers with which many in Congress would object.

This waiver authority would not apply to states that do not participate in the Public Charter Schools program. Further, applications for aid under the Public Charter Schools program are made via the SEA in most states. In some cases, individual charter schools, or a state entity (other than the SEA), may wish to waive federal program regulations, but the SEA would not agree. Under this waiver authority, the SEA could apparently block such waiver requests.

⁴⁰ According to John Fiegel of the Public Charter Schools program office at ED, only one waiver has been requested, and granted, thus far. The state of Massachusetts requested that the program be administered via the office of the state Secretary of Education, rather than the SEA, because in that state the Governor, acting through the Secretary, has primarily responsibility for granting charters and overseeing charter schools.

⁴¹ Thus far, 21 states plus the District of Columbia, Puerto Rico, and individual schools in New Mexico and Hawaii have received grants under the Public Charter Schools program; in comparison, 29 states plus District of Columbia and Puerto Rico have authorized the establishment of charter schools (although some of these laws were adopted recently, and no charter schools have yet been established in some of these states).

A major disadvantage of separate waiver authorities for individual major ED programs is that they would require legislative action to amend each program's authorizing statute.

5. *Require ED to study issues regarding charter schools and federal aid programs, and to issue guidance and take other administrative actions (to the extent possible) and/or make recommendations to the Congress based on the findings of the study.*

This is, in effect, the approach currently being taken by ED, at least with respect to the IDEA, although thus far the study has resulted in little published guidance.

Advantages: Charter schools are still a new phenomenon, although their numbers are growing rapidly in some states. It is not clear that all of the significant problems regarding implementation of federal programs in charter schools have been identified. Further, the variation in the nature and significance of these problems in states with different charter school laws is not well understood.

It is possible that without further study of issues regarding federal programs and charter schools, any statutory action may exacerbate as many problems as it resolves. This option would give states and ED additional time to identify and resolve these problems themselves.

Disadvantages: While the problems regarding implementation of federal programs in charter schools may not yet be fully identified or understood, there are several known problems that need to be addressed without delay. In addition, concrete actions could be accompanied by a mandate for further study of these issues by ED.

A Cross-Cutting Issue

An additional issue that is associated with all of the options discussed above concerns the administrative responsibilities of charter schools participating in federal assistance programs. Each of the state-administered federal education programs has a number of reporting, accountability, and other administrative requirements that must be met by LEAs participating in the program.⁴² These requirements were devised under an implicit assumption that they would generally be applied to multiple-school LEAs with a central administrative staff (although even many conventional LEAs are quite small⁴³ and may have few schools and limited administrative staff). Charter schools that are treated as separate LEAs may typically have too few staff to be able to meet many of these requirements, and may therefore fail to participate in federal programs for which they would otherwise be eligible.

⁴² Occasionally, current law reduces or eliminates these requirements for certain LEAs, especially LEAs of small enrollment size. For example, the ESEA Title I requirements regarding selection of participating schools (ESEA Section 1113(a)) are waived for LEAs with fewer than 1,000 enrolled pupils.

⁴³ In 1994-95, 21.5% of all LEAs in the Nation had total enrollments of fewer than 300 pupils; however, these LEAs enrolled only 1.0% of all pupils. Similarly, 26.3% of all LEAs, enrolling 5.3% of all pupils, had enrollment of 300-999 pupils.

Under any of the options discussed above (especially 1-3), there may be a range of alternative ways to relieve charter schools of some of these administrative responsibilities or to help them meet the requirements. These may include the following:

- Charter schools might be explicitly authorized, and encouraged to contract for administrative services by the “regular” LEA serving the area in which the charter school is located, or by the SEA, other state entity, an intermediate educational agency (where these exist), or non-government consultants.⁴⁴
- SEAs or “regular” LEAs might be required (as a condition of their receipt of federal funds) to provide technical assistance and/or administrative services to charter schools. The Comprehensive ESEA Technical Assistance Centers might also be required to pay particular attention to the needs of charter schools for such assistance.
- The current waiver authority in the Public Charter Schools program statute (ESEA Title X, Part C, Section 10304(e)) might be more widely used, or at least information on possibilities for waiving federal regulations for charter schools under the current authority might be more broadly disseminated.
- A variety of federal program requirements might be waived for all LEAs with low enrollment, whether they are charter schools or conventional LEAs.
- Charter schools might be explicitly authorized to use a share of the funds they receive under federal programs to meet administrative requirements as well as to serve pupils. Actually, the share of federal program funds that can be used for LEA-level administration is not limited under many programs currently. However, an emphasis on this approach would have the disadvantage of reducing the level of funds available for pupil services.
- Options 1-4, discussed above, could be evaluated in part on the basis of their implications for administrative responsibilities and costs for charter schools. For example, option 3, with its block grant approach, would likely minimize administrative responsibilities and costs to a greater extent than at least options 1 and 2.
- All requirements for relevant federal aid programs might be reviewed, and those which are deemed to be least appropriate to apply to charter schools might be waived for such schools.⁴⁵

⁴⁴ Arguably, charter schools are already authorized to contract for such administrative services, or at least are not prevented from doing so by any provision of federal law.

⁴⁵ The ESEA Title I requirement exemptions in the District of Columbia charter school legislation (P.L. 104-134) are an example of this approach.

Options Regarding Aid Specifically for Charter Schools. The current provisions of the Public Charter Schools program were described earlier in this report. The levels of congressional and Presidential interest in this program have been rising. The House Committee on Education and the Workforce has held a series of hearings early in the 105th Congress on charter school developments as part of a series of hearings entitled, *Education at a Crossroads: What Works and What's Wasted?* Funding for the federal Public Charter Schools program has grown from \$6 million in FY1995 to almost \$51 million in FY1997, and a further increase to \$100 million has been proposed by the Administration for FY1998, and the House-passed version of FY1998 appropriations legislation (H.R. 2264) would provide this amount. President Clinton highlighted the charter schools budget increase as one of the 10 points in his "Call to Action for American Education in the 21st Century," introduced during the 1997 State of the Union message.

There may be provisions of the current statute that are more consistent with a very small, demonstration grant program than with a larger program funded at \$50 million or more per year. Other issues have arisen during the period since initial adoption of this legislation that it might now be worthwhile to take into consideration. The Chairman of the House Subcommittee on Early Childhood, Youth, and Families has announced that the Subcommittee intends to consider legislation to revise the Public Charter Schools program in the near future. A selection of possible revisions to the Public Charter Schools legislation are discussed below.

Replace the Current Discretionary Grantmaking Process with an Allocation Formula. Currently, Public Charter School program funds are allocated among states (or LEAs that apply directly in non-participating states) with acceptable applications at the discretion of the Secretary of ED. As was noted earlier in this report, in determining grant amounts for each participating state (or LEA), the Secretary is to consider such factors as the contribution the funds will make to helping educationally disadvantaged and other students meet state education standards, the degree of flexibility provided by the SEA to charter schools, the ambitiousness of the objectives of the state's Charter School program, the quality of the strategy for assessing the achievement outcomes of charter schools, and the likelihood that a state's grant program supported with these federal funds will meet its objectives and improve education.

Typically, funds are allocated at the Secretary's discretion under ED programs with funding levels below approximately \$50-100 million, and are distributed under an allocation formula when programs are funded above this level.⁴⁶ Some programs explicitly provide for discretionary allocation at certain appropriation levels, and allocation by formula above this appropriation level.⁴⁷ If appropriations significantly in excess of the FY1997 level (\$50.1 million) were to be provided for FY1998 or

⁴⁶ One exception to this pattern is the Bilingual Education program (ESEA Title VII), which is funded at \$117.2 million for FY1997 for instructional services, and under which grants are made at the discretion of the Secretary.

⁴⁷ For example, the Even Start program (ESEA Title I, Part B) provides for discretionary allocation of appropriations below \$50 million, and formula allocation when appropriations are \$50 million or above.

beyond, as requested by the Administration, the Congress might want to consider amending the statute to provide for an allocation formula. The primary argument in favor of providing discretion to ED is that the Secretary could take into consideration factors such as those mentioned above in deciding how to allocate available funds. However, especially in the case of relatively large programs, the Congress has traditionally chosen to limit such discretion, assuming that funds could be most equitably distributed according to an objective formula.

Such a formula would presumably be limited to states that have adopted charter school laws, although there are many alternative provisions that might be considered in determining how to allocate funds among these states — e.g., in proportion to total school-age population (to reflect possible demand for charter schools), in proportion to the number of school-age children in poor families (to reflect both demand for charter schools and ability to pay for them with state and local funds), in proportion to the number of charter schools in operation and the enrollment in them (to reflect immediate need and provide an incentive to establish more schools), etc. Some have suggested that the allocation of federal charter school funds among and within states in proportion to enrollment of high need (disadvantaged, disabled, or limited-English proficient) pupils, or to provide special incentives for charter schools that enroll pupils from diverse backgrounds, would be most consistent with the traditional federal role of attempting to provide more equitable educational opportunities for such pupils.⁴⁸

Modify the priorities applied in making discretionary allocations. An alternative approach is employed in the 2 charter school bills being considered by the 105th Congress. Rather than establishing an allocation formula for the PCS program, both H.R. 2616 and S. 1380 would establish new priority criteria to guide the discretionary allocation of PCS funds among the states. These new priorities would affect appropriations in excess of \$51 million until FY 2001, and all funds thereafter. This approach has the advantage of clarifying congressional intent as to the purpose of the PCS program, as reflected in the fund distribution process, while maintaining administrative flexibility and perhaps minimizing disruption of current allocation patterns, which have been based on a discretionary process. The primary disadvantage is that ED officials would retain a substantial degree of discretion in allocating the funds under a program that is rapidly growing in size.

Modify the Regulatory Waiver Authority for Aided Charter Schools. As was noted above, the current charter school waiver authority is potentially broad, but is little used. At the same time, a number of concerns have arisen with respect to participation by charter schools in major federal education assistance programs. It might be worthwhile to consider modifying the waiver authority to require broader dissemination of information about it to states and charter schools, and to more explicitly state that the authority could and should be used to resolve problems or remove barriers that have arisen with respect to participation in the IDEA, ESEA Title I, and other ED programs.

⁴⁸ See the testimony of Amy Stuart Wells, professor at the University of California at Los Angeles, before the House Committee on Education and the Workforce, Apr. 9, 1997.

A contrasting potential concern arises from the fact that unlike other regulatory waiver authorities affecting ED programs, there are extremely few limits on the kinds of requirements that may be waived under the Public Charter Schools authority. This authority applies to “any statutory or regulatory requirement over which the Secretary exercises administrative authority except any requirement relating to the elements of a charter school.” Based on this language alone, the waiver authority might include several types of requirements that cannot be waived under any other waiver authority affecting ED programs — examples include requirements involving fiscal accountability, parental involvement, civil rights, or IDEA requirements for pupils with disabilities. While it may be unlikely that the current Public Charter Schools waiver authority would be used to waive these types of regulations, such use of the authority is not explicitly prohibited, and some might consider it desirable to add such limitations explicitly, while others might prefer to leave in place the potential authority for waiving these types of requirements.

Reduce the Share of Appropriations that May Be Reserved for Use by the U.S. Secretary of Education. Currently, the Secretary of ED may reserve up to 10% of the total appropriation for the Public Charter Schools program for peer review of application, an evaluation, and technical assistance, and other national level activities. As the program’s appropriation rises to \$51 million or potentially more per year, this percentage may seem unnecessarily high, and it might be considered desirable to require a higher share of funds to be allocated to states and LEAs. Alternatively, the maximum reservation by the Secretary might be specified as the **lesser** of 10% or some specific dollar amount per year. As noted above, both H.R. 2616 and S. 1380 would reduce the authorized reservation to the lesser of 5% of total appropriations or \$5 million.

Clarify the Intent of the Legislation Regarding Eligibility for Aid of Charter Schools That Were Formerly Private Schools. As noted earlier, charter schools eligible for aid under this program must be “created by a developer as a public school, or ... adapted by a developer from an existing public school” (sec. 10306(1)(B)). According to staff of the Public Charter Schools office in ED, the Department has interpreted this provision as allowing charter schools that are created through conversion of formerly private schools to receive aid under the program, as long as they meet all other eligibility criteria. Nevertheless, some have expressed concern about assisting formerly private schools converted to charter schools under this program, or may have interpreted the legislative language as making only new or converted public schools — not private school conversions — eligible for aid. Committee and conference reports on the Improving America’s Schools Act are not particularly helpful in clarifying the intent of the authors of the legislation on this point. Given the potential for confusion, a clarification of legislative intent might be useful.

If the statute were to be clarified to eliminate private school conversions from eligibility, some might find any prohibition against aiding charter schools that were previously private schools to be unnecessary and/or undesirably limiting to states in establishing their charter school programs. While it appears that relatively few state charter school laws may allow the conversion of formerly private schools (Minnesota is one example of a state where such conversions are allowed), a restriction against aiding them under this program may be perceived by the affected states and schools

as an unwarranted federal intrusion into matters that should be left to state discretion. Whether or not a school was formerly private, it becomes a public school when it earns charter status. Further, given the lack of a “supplement, not supplant” requirement⁴⁹ in the legislation, and the consequent ability of states to transfer funds their own funds among different charter schools, any possible restriction may have little practical effect — federal aid might be allocated to other charter schools in the state, freeing some state funds to be directed to the formerly private schools. Also, there would be an inconsistency between the Public Charter Schools and other ED programs, since the converted schools are eligible for aid under the IDEA, ESEA, etc.

Provide Technical Assistance to Charter Schools, Especially with Respect to Their Participation in Other Federal Education Aid Programs. The authorization of national activities under the Public Charter Schools program might be modified to emphasize the provision of technical assistance to states, LEAs, and schools regarding charter school operations in general, and particularly with respect to participation of charter schools in federal education aid programs. As was discussed above, a number of issues have arisen with respect to such participation, and there has been little published guidance from ED on these issues. The establishment of one or more technical assistance clearinghouses, or at least identifiable centers within the comprehensive technical assistance centers authorized under Title XIII, Part A, of the ESEA, might provide helpful guidance on these questions. As was discussed earlier, H.R. 2616 would emphasize the provision of technical assistance to charter schools by both ED and SEAs.

Focus Research on the Development of Accountability Measures for Charter Schools. As was discussed earlier in this report, it seems increasingly clear that accountability provisions are a major point of weakness in the charter school concept and many current school charters. While the mandated evaluation of the Public Charter Schools program is already required to focus on the impact of these schools on pupil achievement, the primary importance of developing and evaluating alternatives for establishing accountability through achievement testing and alternative measures might be emphasized in any revision of this legislation.

⁴⁹ I.e., a requirement that federal funds be used only to supplement, and not to supplant (or replace) state and local source funds that would otherwise be available to charter schools.