

promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

#### *Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State Governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

#### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not

expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

#### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or

tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

#### **List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 29, 2005

**Brent Wahlquist,**

*Regional Director, Appalachian Region.*

[FR Doc. 05–17002 Filed 8–25–05; 8:45 am]

**BILLING CODE 4310–05–P**

## **DEPARTMENT OF EDUCATION**

### **34 CFR Part 226**

#### **State Charter School Facilities Incentive Program**

**AGENCY:** Office of Innovation and Improvement, Department of Education.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary issues these proposed regulations to administer the State Charter School Facilities Incentive program. Under this program, the Department of Education (“Department”) provides competitive grants to States to help charter schools meet their need for facilities.

**DATES:** We must receive your comments on or before September 26, 2005.

**ADDRESSES:** Address all comments about these proposed regulations to Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–6140. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov>; or you may send your Internet comments to us at the following address: [comments@ed.gov](mailto:comments@ed.gov).

You must include the term “state incentive” in the subject line of your electronic message.

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

**FOR FURTHER INFORMATION CONTACT:** Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 205–9765 or via Internet: [charter.facilities@ed.gov](mailto:charter.facilities@ed.gov).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **SUPPLEMENTARY INFORMATION:**

##### **Invitation To Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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

During and after the comment period, you may inspect all public comments about these proposed regulations in room 4W259, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

##### **Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### **Background**

These proposed regulations would apply to the State Charter School Facilities Incentive program, which is authorized under title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107-110, enacted January 8, 2002) (Act). The purpose of this

program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to States to create new or enhance existing per-pupil facilities aid programs on behalf of charter schools.

In this notice, we are proposing to establish selection criteria and funding priorities for this program's discretionary grant competitions after fiscal year (FY) 2004. The proposed criteria are designed to award grants to States that are assisting charter schools with meeting their facility needs, but still have an unmet need. The proposed criteria also would be used to assess the quality of the applicant's plan, the proposed grant project team, and the proposed budget. These criteria would appear in § 226.12 and are similar to the criteria that the Department used to award grants under this program in FY 2004.

Section 226.14 of the proposed regulations would include two competitive preference priorities. The proposed priority in § 226.14(a) is designed to meet the need for facilities in areas with the greatest need for public school choice. In some cases, there are an insufficient number of classroom seats to provide public school choice. Under the proposed priority in § 226.14(b), we would award additional points to States that have not previously received a grant under the program.

Section 226.21 of the proposed regulations would clarify that construction and the purchase of real property are allowable expenditures under this program. Under 34 CFR 75.533, these expenditures are prohibited unless either the program statute or the implementing regulations explicitly authorize them. Because expenditures for construction and the purchase of real property are critical to implementing successful school facility programs, we are proposing that they be authorized in the implementing regulations. Proposed § 226.21 also lists other allowable uses of grant funds under this program.

Proposed § 226.22 indicates the types of expenditures that would fall under the five percent cap on administrative expenses. This proposed regulation is based on a statutory cap of five percent that applies to evaluation, technical assistance, and dissemination. Proposed § 226.22 is designed to maximize the amount of funds available for charter schools while still providing States with sufficient funds to adequately administer the program.

#### **Executive Order 12866**

##### *1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

##### Summary of Potential Costs and Benefits

The Secretary believes that these regulations are necessary to clarify complex statutory provisions. As noted elsewhere in this notice, these proposed regulations add clarity where the statute is ambiguous or reorganize statutory material to facilitate a better understanding of the statute's requirements. Nearly all of the benefits and costs of these proposed regulations stem from the underlying statute and not the regulations. The costs associated with these proposed regulations are not only minimal but are also justified in terms of the benefits that applicants for these discretionary grants will receive. The statute requires an application, but the types of information that would be collected through the proposed selection criteria should be readily available to applicants under this program and would impose minimal burden on applicants.

##### *2. Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

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

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 226.1 *What is the State Charter School Facilities Incentive program?*)

- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

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

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be tangentially affected by these proposed regulations are small grantees and, tangentially, small charter schools that ultimately benefit from services provided by grantees. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small charter schools affected because the proposed regulations would not impose excessive regulatory burdens on those entities or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, because the statute requires State Charter School Facilities Incentive applicants to apply to the Department if they wish to receive discretionary funds, it would be difficult for the Department to award funds without the application information specified in the proposed regulations. The proposed regulations will ensure that applicants do not provide a significant amount of information that is already available to the Department.

The proposed regulations would impose minimal requirements for all applicants and minimal requirements with which grant recipients must

comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the State Charter School Facilities Incentive program.

#### Paperwork Reduction Act of 1995

Sections 226.12, 226.13, and 226.14 of these proposed regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

*Collection of Information:* State Charter School Facilities Incentive Grant program.

The Department will use the information collected through the selection criteria and competitive preference priorities to determine whether to fund applicants. Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We estimate the annual reporting and recordkeeping burden for this collection of information to average 40 hours for each respondent for 10 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 400 hours.

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

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/news/fedregister](http://www.ed.gov/news/fedregister).

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

You may also view this document in PDF at the following site: <http://www.ed.gov/programs/charterfacilities/index.html>.

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

(Catalog of Federal Domestic Assistance Number 84.354A State Charter School Facilities Incentive program.)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these proposed amendments to 34 CFR Chapter II.

#### List of Subjects in 34 CFR Part 226

Charter Schools, Education, Educational facilities, Elementary and secondary education, Grant programs—education, Report and recordkeeping requirements, Schools.

Dated: August 23, 2005.

**Nina Shokraii Rees,**

*Assistant Deputy Secretary for Innovation and Improvement.*

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 226 to read as follows:

### PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

#### Subpart A—General

Sec.

226.1 What is the State Charter School Facilities Incentive program?

226.2 Who is eligible to receive a grant?

226.3 What regulations apply to the State Charter School Facilities Incentive program?

226.4 What definitions apply to the State Charter School Facilities Incentive program?

#### Subpart B—How Does the Secretary Award a Grant?

226.11 How does the Secretary evaluate an application?

226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

226.13 What statutory funding priority does the Secretary use in making a grant award?

226.14 What other funding priorities may the Secretary use in making a grant award?

#### Subpart C—What Conditions Must Be Met by a Grantee?

226.21 How may charter schools use these funds?

226.22 May grantees use grant funds for administrative costs?

226.23 May charter schools use grant funds for administrative costs?

**Authority:** 20 U.S.C. 1221e-3; 7221d(b), unless otherwise noted.

#### Subpart A—General

##### § 226.1 What is the State Charter School Facilities Incentive program?

(a) The State Charter School Facilities Incentive program provides grants to States to help charter schools pay for facilities.

(b) Grantees must use these grants to—

(1) Establish new per-pupil facilities aid programs for charter schools;

(2) Enhance existing per-pupil facilities aid programs for charter schools; or

(3) Administer programs described under paragraphs (b)(1) and (2) of this section.

(Authority: 20 U.S.C. 7221d(b))

##### § 226.2 Who is eligible to receive a grant?

States are eligible to receive grants under this program.

(Authority: 20 U.S.C. 7221(b))

##### § 226.3 What regulations apply to the State Charter School Facilities Incentive program?

The following regulations apply to the State Charter School Facilities Incentive program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 226.

(Authority: 20 U.S.C. 1221e-3; 7221d(b))

##### § 226.4 What definitions apply to the State Charter School Facilities Incentive program?

(a) *Definitions in the statute.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended (ESEA):

Charter school

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant

Application

Award

Department

EDGAR

Facilities

Grant

Grantee

Project

Public

Secretary

(c) *Other definition.* The following definition also applies to this part:

*Construction means—*

(1) Preparing drawings and specifications for school facilities projects;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities as described in 34 CFR 222.172(b);

(4) Erecting or building school facilities; and

(5) Inspections or supervision related to school facilities.

(Authority: 20 U.S.C. 7221d(b); 7221i(1))

#### Subpart B—How Does the Secretary Award a Grant?

##### § 226.11 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 226.12 and the competitive preference priorities in § 226.13 and § 226.14.

(b) The Secretary informs applicants of the maximum possible score for each criterion and competitive preference priority in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7221d(b))

##### § 226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

The selection criteria for this program are as follows:

(a) *Need for facility funding.* (1) The need for per-pupil charter school facility funding in the State.

(2) The extent to which the proposal meets the need to fund charter school facilities on a per-pupil basis.

(b) *Quality of plan.* (1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance

(State and Federal) declining over a five-year period.

(2) The flexibility charter schools have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team.* (1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget.* (1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 5205(b)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State experience.* The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid, access to State loan or bonding pools, and the use of Qualified Zone Academy Bonds.

(Authority: 20 U.S.C. 7221d(b))

**§ 226.13 What statutory funding priority does the Secretary use in making a grant award?**

The Secretary shall award additional points under a competitive preference priority regarding:

(a) *Periodic Review and Evaluation.* The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years unless

required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) *Number of High-Quality Charter Schools.* The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which the State applies for a grant under this competition.

(c) *One Authorized Public Chartering Agency Other than an LEA, or an Appeals Process.* The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency (LEA), such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) *High Degree of Autonomy.* The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(Authority: 20 U.S.C. 7221b; 7221d(b))

**§ 226.14 What other funding priorities may the Secretary use in making a grant award?**

(a) The Secretary may award points to an application under a competitive preference priority regarding the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under title I of the ESEA;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of low-income students.

(b) The Secretary may award points to an application under a competitive preference priority for applicants that

have not previously received a grant under the program.

(c) The Secretary may elect to consider the points awarded under these priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 226.12 of this part.

(Authority: 20 U.S.C. 7221d(b))

**Subpart C—What Conditions Must Be Met by a Grantee?**

**§ 226.21 How may charter schools use these funds?**

(a) Charter schools that receive grant funds through their State must use the funds for facilities. Except as provided in paragraph (b) of this section, allowable expenditures include:

- (1) Rent.
- (2) Purchase of building or land.
- (3) Construction.
- (4) Renovation of an existing school facility.

(5) Leasehold improvements.  
 (6) Debt service on a school facility.  
 (b) Charter schools may not use these grant funds for purchasing land when they have no immediate plans to construct a building on that land.

(Authority: 20 U.S.C. 7221d(b))

**§ 226.22 May grantees use grant funds for administrative costs?**

State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program.

(Authority: 20 U.S.C. 7221d(b))

**§ 226.23 May charter schools use grant funds for administrative costs?**

(a) Except as provided in paragraph (b) of this section, charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with EDGAR and the Office of Management and Budget Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

(b) Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities.

(Authority: 20 U.S.C. 1221e-3; 7221d(b))

[FR Doc. 05-17049 Filed 8-25-05; 8:45 am]

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