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Charter School Programs Authorized by the Elementary and Secondary Education Act (ESEA Title V-B): A Primer

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April 22, 2014

Congressional Research Service

7-5700

www.crs.gov

R43493

Summary

Charter schools are public schools of choice that are created in accordance with state laws and are publicly funded and tuition free. They are operated according to the terms of charters or contracts granted by public chartering agencies. The terms of charters typically provide charter school operators with increased autonomy over the operation of schools, often including exemptions from, or flexibility in the application of, many of the state or local regulations otherwise applicable to public schools. Enrollment in charter schools is normally open to applicants on a local educational agency (LEA)-wide or even statewide basis, and parents must actively choose to enroll their children in charter schools.

Under Title V-B-1 and V-B-2 of the Elementary and Secondary Education Act (ESEA), federal support is provided to assist with the opening of new charter schools and for the funding of charter school facilities.

- ESEA Title V-B-1 authorizes the Charter Schools Program, which provides grants to state educational agencies (SEAs), or charter school developers if a state's SEA chooses not to apply for a grant, to support the planning, program design, and initial implementation of public charter schools. Funds may also be used to provide dissemination grants to successful charter schools.
- ESEA Title V-B-1 authorizes the Secretary of Education to reserve funds for national activities, such as evaluation, technical assistance, and dissemination of best practices.
- ESEA Title V-B-1 authorizes the Per-Pupil Facilities Aid Program (more commonly referred to as the State Charter School Facilities Incentive Grants Program). Under this program, the Secretary provides competitive grants to states to pay the federal share of establishing or enhancing, and administering, a program that will provide facilities assistance to charter schools on a per-pupil basis.
- ESEA Title V-B-2 authorizes the Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation program (more commonly known as the Credit Enhancement program). Under this program, ED awards competitive grants to public or private nonprofit entities to demonstrate innovative ways to help charter schools acquire appropriate facilities.

While the charter school programs have not been reauthorized since the enactment of the No Child Left Behind Act (NCLB; P.L. 107-110) in 2002, they continue to receive funding through the annual appropriations process. In addition, since FY2010, substantive changes have been made to the programs through annual appropriations acts, including allowing or requiring the Secretary to make grants to nonprofit charter management organizations (CMOs) and other nonprofit entities for the replication and expansion of successful charter school models.

During the 112th and 113th Congresses, Congress has actively pursued both a comprehensive reauthorization of the ESEA, which would include amending and reauthorizing the Title V-B charter school programs, and stand alone legislation to reauthorize and amend the Title V-B programs independent of a comprehensive ESEA reauthorization. Most recently, the House Education and Workforce Committee ordered reported the Success and Opportunity through Quality Charter Schools Act (H.R. 10) by a vote of 36-3 on April 8, 2014. The bill would provide

for a reauthorization of the Title V-B charter school programs and make numerous changes to the current programs. It is beyond the scope of this report to discuss amendments that would be made to the charter school programs by these reauthorization bills.

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Introduction

Charter schools are public schools of choice that are created in accordance with state laws and are publicly funded and tuition free. They are operated according to the terms of charters or contracts granted by public chartering agencies, such as local educational agencies (LEAs) or state boards of education. The terms of charters typically provide charter school operators with increased autonomy over the operation of schools, often including exemption from, or flexibility in the application of, many of the state or local regulations otherwise applicable to public schools. This increased autonomy is often granted in exchange for the expectation of increased accountability for results or outcomes. Depending on the specific state law, charter schools may operate as their own LEA or as part of a traditional LEA. Funding for charter schools is normally provided on a per-pupil basis. As opposed to having neighborhood school catchment areas, enrollment in charter schools is normally open to applicants on an LEA-wide or even statewide basis, and parents must actively choose to enroll their children in charter schools. If more students apply for admission to a charter school than can be accommodated, students are normally admitted on the basis of a lottery.

The first charter school opened its doors in Minnesota in 1992, following the enactment of the first state charter school law in 1991. Other states followed suit with California, Colorado, Georgia, Massachusetts, Michigan, and New Mexico enacting charter school laws in 1992 and 1993. By 1999, 36 states and the District of Columbia had charter school laws. Currently, 42 states and the District of Columbia have charter school laws permitting the authorization of charter schools.¹ The growth in the number of charter schools and the number of students attending charter schools has been commensurate with the increase in the number of charter school state laws. For example, during the 2000-2001 school year, 1,941 charter schools were in operation,² serving about 459,000 students.³ Five years later, 3,689 charter schools were in operation,⁴ serving just over 1 million students.⁵ During the 2012-2013 school year, there were 6,004 charter schools in operation, accounting for 6.3% of all public schools.⁶ These schools served approximately 2.3 million students, accounting for 4.6% of all public school students.⁷

Under Title V-B-1 and V-B-2 of the Elementary and Secondary Education Act (ESEA), federal support is provided to assist with the opening of new charter schools and for the funding of charter school facilities. Title V-B-1 authorizes the Charter Schools Program, the Per-Pupil Facilities Aid program (more commonly referred to as the State Charter School Facilities

¹ Alabama, Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia do not have state charter school laws and, therefore, do not have charter schools.

² National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2001>.

³ National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2001>.

⁴ National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2006>.

⁵ National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2006>.

⁶ National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/schools/page/overview/year/2013>.

⁷ National Alliance for Public Charter Schools, The Public Charter Schools Dashboard, available online at <http://dashboard.publiccharters.org/dashboard/students/page/overview/year/2013>.

Incentive Grants Program), and national activities. Title V-B-2 authorizes the Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation program (more commonly known as the Credit Enhancement program).

During the 112th and 113th Congresses, Congress has actively pursued both a comprehensive reauthorization of the ESEA, which would include amending and reauthorizing the Title V-B charter school programs, and stand alone legislation to amend and reauthorize the Title V-B programs independent of a comprehensive ESEA reauthorization. Most recently, the House Education and Workforce Committee ordered reported the Success and Opportunity through Quality Charter Schools Act (H.R. 10) by a vote of 36-3 on April 8, 2014. The bill would amend and reauthorize the Title V-B charter school programs.

This report is divided into three main parts. The first part examines the federal programs authorized under Title V-B of the ESEA that provide support to public charter schools. Each of the aforementioned programs is considered as is the national activities component of the Charter Schools Program. The second part of the report provides data on program appropriations. The third part of the report provides an overview of recent congressional efforts to reauthorize the charter school programs. The **Appendix** provides a brief legislative history of the federal charter school programs.

Federal Charter School Programs

Congress enacted the first federal charter school program in the mid-1990s, three years after the passage of the first state charter school law. The Charter Schools Program was initially authorized in 1994 under Title X, Part C of the ESEA with the enactment of the Improving America's Schools Act (IASA; P.L. 103-382). The No Child Left Behind Act (NCLB; P.L. 107-110) subsequently created the two charter school facilities support programs included in current law—State Charter School Facilities Incentive Grants and Credit Enhancement for Charter School Facilities Program. (The **Appendix** provides a more detailed legislative history of the charter school programs authorized under the ESEA.)

The charter school programs are authorized under Title V-B-1 and Title V-B-2 of the ESEA. Title V-B-1 authorizes the Charter Schools Program, national activities, and State Charter School Facilities Incentive Grants. Title V-B-2 authorizes the Credit Enhancement Program. The statutory purpose of Title V-B-1 is to increase national understanding of charter schools by

- providing funding for the planning, program design, and initial implementation of charter schools;
- evaluating the effects of such schools, including the effects of charter schools on students, student academic achievement, parents, and staff;
- expanding the number of “high-quality” charter schools; and
- encouraging states to provide support to charter schools for facilities financing in an amount that is similar to the amount provided to traditional public schools.

The statutory purpose of Title V-B-2 is to provide grants to eligible entities to enable them to demonstrate “innovative credit enhancement initiatives” that will assist charter schools in acquiring, constructing, and renovating facilities.

This part of the report provides an overview of each of the three charter school programs included in Title V-B of the ESEA. It also discusses national activities that are authorized under Title V-B-1. It concludes with a discussion of substantive changes that have been made to these programs through annual appropriations acts since FY2010.

Title V-B-1 Charter School Programs

Several charter school programs and activities are authorized under Title V-B-1.

- The Charter Schools Program, which provides grants to state educational agencies (SEAs) or, if a state’s SEA chooses not to apply for a grant, charter school developers, to support the planning, program design, and initial implementation of public charter schools. Funds may also be used to provide dissemination grants to successful charter schools.
- The Secretary of Education is authorized to reserve funds for national activities, such as evaluation, technical assistance, and dissemination of best practices.
- Under the Per-Pupil Facilities Aid Program (more commonly referred to as the State Charter School Facilities Incentive Grants Program), the Secretary provides competitive grants to states to pay the federal share of establishing or enhancing, and administering, a program which will provide facilities assistance to charter schools on a per-pupil basis.

Funding for Title V-B-1 programs and activities is provided through an overall appropriation for the Charter Schools Program. The first \$200 million appropriated for the Charter Schools Program is reserved for grants to states and eligible applicants for the planning, design, and initial implementation of public charter schools; for the dissemination of information about charter schools; for state revolving loan funds; and for national activities. The next \$100 million appropriated is reserved for the State Charter School Facilities Incentive Grants Program, in which competitive grants are awarded to states for the purpose of establishing and administering programs dedicated to funding charter school facilities, in whole or in part, on a per-pupil basis. Fifty percent of funds appropriated in excess of \$300 million are reserved for each of the two programs. In addition, the Secretary is permitted to reserve the greater of 5% or \$5 million of the annual amount appropriated for Title V-B-1 for national activities, except that the Secretary is prohibited from reserving more than \$8 million. However, recent appropriations acts have altered how funds provided for the Charter Schools Programs are shared among other Title V-B programs. For more information on these changes, see the subsequent section on “Substantive Changes to Program Authorizing Legislation Made through Annual Appropriations Acts.”

Charter Schools Program

The Charter Schools Program authorized by Title V-B-1 provides competitive grants to support the planning, program design, and initial implementation of charter schools, and the dissemination of information on charter schools. For the purposes of the program, section 5210 defines a charter school as a public school that

- is exempt from significant state and local rules that inhibit autonomy;

- is created by a developer⁸ as a public school or converted from a traditional public school, and is operated under public direction;
- operates in pursuit of a specific set of educational objectives established by the school and agreed to by the chartering agency;
- provides elementary and/or secondary education;
- is nonsectarian;
- does not charge tuition;
- complies with various federal laws, including the Individuals with Disabilities Education Act (IDEA) and civil rights laws;
- uses a lottery to admit students if oversubscribed;
- agrees to comply with federal and state audit requirements that apply to other public schools;
- meets federal, state, and local health and safety requirements;
- operates in accordance with state law; and
- has a written performance contract that addresses student performance and state assessments.

Application Process and Priorities

Under this program, state educational agencies (SEAs) in states with charter school laws may apply for grants.⁹ SEAs subsequently make competitive grants to new charter schools. If the SEA in a state that has a charter school law does not opt to apply for a grant, a charter school developer may apply directly to the U.S. Department of Education (ED) for a grant.

The Secretary is required to give priority to SEA applications from states (1) where the state provides for periodic review and evaluation of each charter school by the chartering agency at least once every five years to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic achievement requirements and goals established for charter schools under state law or by the school's charter and (2) that meet one or more of the following criteria:

- The state has demonstrated progress in increasing the number of high-quality charter schools held accountable under the terms of their charter for meeting educational objectives.
- The state provides for one chartering agency that is not a LEA and allows for an appeals process if only LEAs function as chartering agencies.

⁸ A developer is defined as “an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.”

⁹ From FY2002-FY2012, the District of Columbia and every state except Alabama, Kentucky, Maine, Mississippi, Montana, Nebraska, North Dakota, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wyoming received grants under this program.

- The state ensures each charter school has a “high degree of autonomy” over its budget and expenditures.

The five-year review must determine whether the charter school is meeting the terms of its charter and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under state law or the school’s charter. Further, in determining the grant amount to be awarded, the Secretary of Education (hereafter referred to as the Secretary) must take into account the number of public charter schools operating or approved to operate in the state.

Student Lotteries

Under the definition of a charter school, in order to be eligible to receive charter school program funds, a school must conduct a lottery if there are more applicants than can be admitted. Non-regulatory guidance issued by ED addresses various issues related to the use of a lottery. In general, a charter may only exempt students from a lottery if they are “deemed to have been admitted to the charter school already” and, thus, do not need to reapply. There are five categories of applicants who may be exempted on this basis:

1. Students who are enrolled in a public school at the time it is converted to a public charter school;
2. Students who are eligible to attend and are living in the attendance area of a public school at the time it is converted to a traditional public school;
3. Siblings of students already admitted to or attending the same charter school;
4. Children of a charter school’s founders, teachers, and staff, provided the total number of students admitted under this exemption “constitutes only a small percentage of the school’s total enrollment;” and
5. Children of employees in a work-site charter school, provided the total number of students admitted under this exemption “constitutes only a small percentage of the school’s total enrollment.”¹⁰

In addition, ED has also provided guidance on the use of weighted lotteries to admit students to a charter school. First, under certain circumstances, a school may conduct a weighted lottery whereby additional weight is given to individual students who are identified as part of a specified set of students provided the charter school does not reserve or set aside seats for individual or sets of students. A charter school is permitted to weight its lottery to give a “slightly better chance for admission” to students exercising their public school choice options under ESEA Title I-A in order to provide greater choice to students covered by those provisions.¹¹ In addition, a charter school may also weight its lottery to give “slightly better chances for admission” to all or a subset of disadvantaged students if permitted by state law. The non-regulatory guidance defines educationally disadvantaged students as students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent

¹⁰ U.S. Department of Education, *Charter Schools Program: Title V, Part B of the ESEA, Nonregulatory Guidance*, January 2014, item E-4, <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>.

¹¹ For more information about the public school choice option under ESEA Title I-A, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner.

students, and homeless students.¹² However, weighted lotteries cannot be used to create schools to serve only a particular subset of students.¹³

SEA Use of Funds

An SEA must use the funds received to award subgrants to one or more charter schools. In addition, the SEA may not reserve more than 10% of the overall grant amount for dissemination grants, more than 5% for administrative expenses, or more than 10% for the establishment of a revolving loan fund. The latter may be used to make loans to eligible applicants that have received a subgrant under terms to be determined by the SEA for the initial operation of the charter school until such time as the recipient begins to receive ongoing operational support from state and local sources.

SEAs provide subgrants to charter schools in the form of three-year planning and implementation grants. The charter school may not use funds provided under the grant for more than 18 months for planning and program design and not for more than two years for initial implementation of a charter school. If an SEA chooses to award dissemination grants, they may only be awarded to charter schools that have been in operation for at least three consecutive years and have demonstrated overall success including success in improving student achievement, high levels of parent satisfaction, and the management and leadership to overcome start-up problems and establish a financially viable charter school. Under current law, a charter school may not receive more than one planning and implementation grant nor more than one dissemination grant.

With respect to federal education funding provided under Title I-A of the ESEA and any other funds that ED allocates to states on a formula basis, SEAs (and the Secretary) are required to take measures to ensure that new charter schools receive federal funding for which they are eligible within five months of opening. They are required to ensure that similar measures are taken to ensure that charter schools that expand their enrollment receive the federal funds for which they are eligible within five months of the expansion.

Planning and Implementation Grants

Charter schools receiving a planning and implementation grant may only use funds for post-award planning and design of the school's program and initial implementation. According to non-regulatory guidance issued by ED,¹⁴ planning activities may include "refinement of the desired educational results and the methods for measuring progress toward achieving those results" and professional development for staff who will work at the charter school.

¹² According to the non-regulatory guidance (item E-5), a school may not weight its lottery by gender or hold separate lotteries for boys and girls. For more information, see U.S. Department of Education, *Charter Schools Program: Title V, Part B of the ESEA, Nonregulatory Guidance*, January 2014, <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>.

¹³ It should be noted that the use of race/ethnicity in admitting students through a weighted lottery or exempting them from the requirements of a non-weighted lottery may be permissible under limited circumstances, such as for purposes of complying with court-ordered desegregation. For more information, see U.S. Department of Education, *Charter Schools Program: Title V, Part B of the ESEA, Nonregulatory Guidance*, January 2014, items E-3 and E-6, <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>.

¹⁴ U.S. Department of Education, *Charter Schools Program: Title V, Part B of the ESEA Nonregulatory Guidance*, January 2014, section D, <http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>.

The non-regulatory guidance also provides examples of initial implementation activities which may include informing the community about the charter school, acquiring equipment and educational materials and supplies, acquiring or developing curricular materials, and “other initial operational costs that cannot be met from State or local sources.” More specifically, initial implementation costs may include costs associated with establishing and implementing office functions, costs associated with the installation of technology (e.g., installation of computers and telephones), and personnel expenses incurred before or after the school’s opening. With respect to the latter, the expenses must be associated with initial implementation activities and should not be part of ongoing operations. The grant funds may also be used for rental or occupancy costs for a “reasonable period of time” in preparation for the school’s opening. It should be noted that grant funds may not be used for construction but may be used for “necessary maintenance, repair, or upkeep of buildings and equipment that neither add to the permanent value of the property nor appreciably prolong its life, but merely keep it in an efficient operating condition.”

Dissemination Grants

As previously noted, an SEA may use up to 10% of its Charter Schools Program grant to award dissemination subgrants to successful charter schools (referred to as “assisting charter schools”) to assist other charter schools in adapting all or part of the charter school’s program or to disseminate information about the charter school. Dissemination activities may include

- assisting other individuals with the planning and start-up of one or more traditional public schools or public charter schools that are independent of the assisting charter school and its developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;
- developing partnerships with traditional public schools or public charter schools that are designed to approve student academic achievement in each of the schools participating in the partnership;
- developing curriculum materials, assessments, and other materials that promote student achievement and are based on the successful practices of the assisting charter school; and
- conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools.

National Activities

Funds reserved for national activities are to be used to carry out several activities.

- Funds are to be used to provide charter schools with information about federal funds that they are eligible to receive as well as other federal programs in which they may participate. The Secretary is also to use funds to assist charter schools in applying for federal education funds that are allocated by formula. The Secretary may choose to work directly with charter schools to provide this information and assistance or may choose to work indirectly through SEAs.
- The Secretary is to conduct evaluations and studies that include the evaluation of the effect of charter schools on student academic achievement. These studies should provide information about students attending charter schools, the

- professional qualifications of charter school teachers, and the turnover of the teaching force.
- Using funds provided for national activities, the Secretary is to provide information to applicants for Title V-B-1 programs, assistance to applicants in completing their applications, assistance in the planning and startup of charter schools, and training and technical assistance to existing charter schools. Funds are also to be used to disseminate information to other public schools about best or promising practices in charter schools.
 - The Secretary is also to use funds to collect data on the financial resources available to charter schools and to disseminate information to charter schools about financial resources and descriptions of successful programs.
 - Funds are to be used to provide technical assistance, carry out evaluations, or disseminate information related to the State Charter School Facilities Incentive Grants.

Recent appropriations acts have altered how funds provided for national activities are to be used. For more information on these changes, see the subsequent section on “Substantive Changes to Program Authorizing Legislation Made through Annual Appropriations Acts.”

State Charter School Facilities Incentive Grants Program

The State Charter School Facilities Incentive Grants Program (also known as the Per-Pupil Facilities Grant Program) is a competitive grant program that provides matching funds to states to establish or enhance and administer per-pupil facilities allowances to help charter schools obtain facilities. The grants are designed to provide an incentive for states to share in the costs of funding charter school facilities. Only SEAs that have enacted a state law authorizing per-pupil annual facilities aid for charter schools may apply. The program is authorized under national activities (section 5205(b)). To date, California, the District of Columbia, Indiana, Minnesota, and Utah have received funding under this program.

In awarding grants, the Secretary must use the same priority criteria established for the Charter Schools Program. Funds must be used to establish new per-pupil facilities aid programs, increase the funding level for existing per-pupil facilities aid programs, and administer per-pupil facilities aid programs. Charter schools receiving funds under the program may use the funds to pay rent, purchase a school building, purchase land, construct a building, renovate an existing school facility, make leasehold improvements, or pay debt service on a school facility.

Competitive grants are awarded to SEAs for a period of up to five years. As previously discussed, the authorizing legislation specifies when grants can be made under this program. The federal share of the cost of the program cannot be more than 90% during the first year of the program, 80% during the second year, 60% during the third year, 40% during the fourth year, and 20% during the fifth year. Since FY2008, annual Labor, Health and Human Services, and Education and Related Agencies (L-HHS-ED) appropriations bills have specified a certain amount of funding that the Secretary may use or is required to use for this program specifically or for this program in conjunction with the Credit Enhancement for Charter School Facilities program (see **Table 1** for appropriations data).

Credit Enhancement for Charter School Facilities Program

Under this program, funding is authorized for grants to public¹⁵ or private entities (or a combination of the two)¹⁶ for the development of credit enhancement initiatives to assist charter schools in acquiring, constructing, or renovating facilities.¹⁷ Award recipients are required to deposit their grant funds into a reserve account¹⁸ to be used for one or more of the following purposes:

- Guaranteeing, insuring, and reinsuring bonds, notes, loans, or other types of debt that will be used to assist charter schools to acquire, renovate, and construct school facilities needed to begin or continue the operation of these schools.
- Guaranteeing or insuring leases of personal or real property that are needed to begin or continue the operation of the charter schools.
- Facilitating financing by potential lenders, encouraging private lending, and other similar activities that directly promote lending to or for the benefit of charter schools.
- Facilitating the issuance of bonds by charter schools or other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance designed to obtain or attract investors (such as retaining bond counsel and underwriters and consolidating multiple charter school projects into a single bond issue).¹⁹

According to ED, reserve account funds are not intended to pay directly for charter schools' facility costs or be the primary source for the repayment of loans. The program is designed to enhance the credit of charter schools and to leverage non-federal funds to pay facility costs and repay loans. Funds from the reserve account should only be used to pay creditors and lenders in "rare instances." In addition, reserve account funds are not intended to be a primary source of funding to make lease payments. Reserve account funds may not be used for down payments on facilities or to make loans.²⁰

¹⁵ Public entities include state and local governments.

¹⁶ Grants may not be made to for-profit entities. A grantee, however, could contract with for-profit entities for supplies, equipment, construction, and other services, but may not subcontract the administration of the grant. (U.S. Department of Education, Office of Innovation and Improvement, *The Credit Enhancement for Charter School Facilities Program: Guidance*, November 18, 2008, item A.4, at <http://www.ed.gov/programs/charterfacilities/facilitiesguidance.pdf>.)

¹⁷ The Secretary is required to award at least three grants from available funds unless the Secretary determines that the funds are insufficient to meet the three grant minimum requirement.

¹⁸ A grantee is required to deposit the funds received into a reserve account to assist one or more charter schools access private sector capital to support the acquisition of an interest in improved or unimproved real property necessary for operations or the construction of new facilities, or the renovation and repair of existing facilities necessary for operations. The funds in the reserve account must be invested in obligations issued or guaranteed by the United States or a state or be invested in similar low-risk securities. Any earnings on funds in the reserve account must be deposited in the reserve account and used for program purposes.

¹⁹ U.S. Department of Education, Office of Innovation and Improvement, *The Credit Enhancement for Charter School Facilities Program: Guidance*, November 18, 2008, item F.1, at <http://www.ed.gov/programs/charterfacilities/facilitiesguidance.pdf>.

²⁰ *Ibid.*, section F.

The grantee may use up to 0.25% of the original grant for administrative costs. Funds reserved for administration are not deposited into the reserve account.

In terms of grant awards, according to ED, some of the program grantees have been community development financial institutions (CDFIs).²¹ CDFIs tend to focus their efforts on project financing and economic development in low-income communities. Other grantees have included nonprofit organizations, state public finance authorities, and one local public finance authority.

Substantive Changes to Program Authorizing Legislation Made Through Annual Appropriations Acts

Substantive changes have been made to the charter school programs through the annual Labor, Health and Human Services, and Education and Related Agencies (L-HHS-ED) appropriations acts since FY2008.²² While these changes have not amended Title V-B, they have altered how the funds provided for the charter school programs can be used. Since FY2008, the annual appropriations acts have either permitted or required the Secretary to use a certain amount of funding provided for the Charter Schools Program for the State Charter School Facilities Grants and the Credit Enhancement for Charter School Facilities Program. Beginning in FY2010, the acts have also permitted or required to the Secretary to use funds to make multiple awards to nonprofit charter management organizations (CMOs)²³ and other nonprofit entities for the replication and expansion of successful charter school models.

In addition, the appropriations acts have authorized the Secretary to exceed the cap established on funding for national activities. Concurrent with the increase in funding for national activities, the Secretary is also required to use these funds, in part, for improving quality and oversight of charter schools and for providing technical assistance and grants to authorized public chartering agencies in order to increase the number of high-performing charter schools. The FY2014 annual appropriations bill also permits Title V-B charter school program funds to be used to support preschool education.

Table 1 summarizes the differences between program authorizing legislation requirements related to appropriations for the charter school programs authorized under Title V-B and the general changes to these requirements that have been made through appropriations bills since FY2008.

²¹ U.S. Department of Education, *Justifications of Appropriation Estimates to the Congress: Fiscal Year 2015*, <http://www2.ed.gov/about/overview/budget/budget15/justifications/h-iit.pdf>.

²² For more information, see P.L. 110-161 (FY2008 appropriations), P.L. 111-8 (FY2009 appropriations), P.L. 111-117 (FY2010 appropriations), P.L. 112-10 (FY2011 appropriations), P.L. 112-74 (FY2012 appropriations), P.L. 113-6 (FY2013 appropriations), and P.L. 113-76 (FY2014 appropriations).

²³ According to ED, “A CMO is an organization that operates or manages multiple charter schools by centralizing or sharing certain functions and resources among schools.” (U.S. Department of Education, *Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools: Eligibility*, <http://www2.ed.gov/programs/charter-rehqcs/eligibility.html>.)

Table I. Summary of Authorization of Appropriation Provisions for Charter School Programs and Activities Authorized Under Title V-B of the ESEA and Changes to These Requirements Made through Annual Appropriations Acts Since FY2008

ESEA Citation	Program/Activity	Program Authorizing Legislation	Changes Made by Appropriations Acts Since FY2008
Title V-B-1	Charter Schools Program	Initially, \$200 million is provided for these activities. Half of any funds in excess of \$300 million are also provided for these activities.	Provide an appropriation for this program from which the Secretary is permitted or required to use funds for specified purposes.
	National activities	National activities may receive the greater of 5% of the amount appropriated for Title V-B-1 or \$5 million but is capped at \$8 million.	Specify a new funding level in excess of the cap specified under current law. Since FY2010, permit or require the Secretary to use funds to make grants to nonprofit charter management organizations (CMOs) or other nonprofit entities for the replication and expansion of successful charter school models.
	State Charter School Facilities Incentive Grants	Initially, any funding in excess of \$200 million but not greater than \$300 million is provided for this program. Half of any funds in excess of \$300 million are also provided for this program.	Permit or require the Secretary to use a certain amount of the appropriation for the Charter Schools Program for the State Charter School Facilities Incentive Grants.
Title V-B-2	Credit Enhancement for Charter School Facilities Program	Separate authorization providing funds for this program.	Permit or require the Secretary to use a certain amount of the appropriation for the Charter Schools Program for the Credit Enhancement for Charter School Facilities Program.

Source: Table prepared by CRS, April 11, 2014, based on CRS analysis of ESEA current law and various annual appropriations acts: P.L. 110-161 (FY2008 appropriations), P.L. 111-8 (FY2009 appropriations), P.L. 111-117 (FY2010 appropriations), P.L. 112-10 (FY2011 appropriations), P.L. 112-74 (FY2012 appropriations), P.L. 113-6 (FY2013 appropriations), and P.L. 113-76 (FY2014 appropriations).

In addition to making changes to funding provisions and the use of funds, since FY2010, the annual appropriations acts have also added requirements related to SEA applications for funds under the Charter Schools Program. First, these applications must describe a plan to monitor and hold accountable authorized public chartering agencies through various activities such as technical assistance or professional development to improve the capacity of these agencies to authorize, monitor, and hold accountable charter schools. Second, each SEA application must include assurances that state law, regulations or policies require that each charter school (1) operates under a legally binding charter or performance contract between the school and the school’s authorized public chartering agency that describes the rights and responsibilities of both the school and the chartering agency, (2) conducts annual, timely, and independent audits of the school’s financial statement that are filed with the school’s chartering agency, and (3)

demonstrates improved student academic achievement. Third, the SEA application must include an assurance that state law, regulations, or policies require authorized public chartering agencies to use increases in student academic achievement for all students and student subgroups²⁴ as the most important factor when determining whether to renew or revoke a school's charter.

Program Appropriations

Table 2 details appropriations for the charter school programs authorized under Title V-B of the ESEA. Appropriations for the State Charter School Facilities Incentive Grants were included in the overall appropriation for the Charter Schools Program (Title V-B-1) through FY2007. Appropriations for the Credit Enhancement for Charter School Facilities Program were provided as a separate line item in appropriations bills from FY2003 through FY2007. Beginning in FY2008, appropriations bills have permitted or required the Secretary to use a certain amount of funding from the appropriation for the Charter Schools Program to support the State Charter School Facilities Incentive Grant Program and the Credit Enhancement for Charter School Facilities Program.

²⁴ For more information about student subgroups, see CRS Report R41533, *Accountability Issues and Reauthorization of the Elementary and Secondary Education Act*, by Rebecca R. Skinner.

Table 2. Appropriations for the Charter School Programs Authorized Under Title V-B of the Elementary and Secondary Education Act: FY2002–FY2014

Dollars in thousands

Program	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014
Charter School Programs (Title V-B-1)	\$200,000	\$198,700	\$218,702	\$216,952	\$214,782	\$214,783	\$211,031	\$216,031	\$256,031	\$255,519	\$254,836	\$241,507	\$248,172
Credit Enhancement for Charter School Facilities (Title V-B-2)	\$0	\$24,838	\$37,279	\$36,981	\$36,611	\$36,611	a	b	c	d	e	f	g
Total	\$200,000	\$223,538	\$255,981	\$253,933	\$251,393	\$251,394	\$211,031	\$216,031	\$256,031	\$255,519	\$254,836	\$241,507	\$248,172

Source: Table prepared by CRS, April 11, 2014, based on data available from the U.S. Department of Education (ED), Budget Service for various years (tables dated 1/23/14, 4/25/13, 12/27/11, 5/16/11, 8/4/09, 12/19/07, 3/20/07, 7/24/06, 11/24/04, 1/2/04, and 3/21/03).

Notes: The Charter School Facilities Incentive Grants (also known as the Per-Pupil Facilities Grant) is authorized under Title V-B-1, Section 5205(b) under national activities. It did not have a separate authorization level and did not receive separate appropriations. In its budget tables, ED also refers to the Charter School Facilities Incentive Grants as the State Facilities Incentive Grants.

- a. For FY2008, appropriations language permitted the Secretary of Education to use up to \$24,783,000 for Charter School Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- b. For FY2009, appropriations language permitted the Secretary of Education to use up to \$21,031,000 for Charter School Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- c. For FY2010, appropriations language permitted the Secretary of Education to use up to \$23,082,000 for Charter School Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- d. For FY2011, appropriations language permitted the Secretary of Education to use up to \$23,036,000 for Charter School Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- e. For FY2012, appropriations language required the Secretary of Education to use no less than \$22,957,000 for State Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- f. For FY2013, appropriations language required the Secretary of Education to use no less than \$21,756,000 for State Facilities Incentive Grants and Credit Enhancement for Charter School Facilities.
- g. For FY2014, appropriations language required the Secretary of Education to use not less than \$11,000,000 for State Facilities Incentive Grants and not less than \$12,000,000 for Credit Enhancement for Charter School Facilities.

Table 3 specifies how much funding was provided for Charter Schools Program grants to SEAs and non-SEAs (in instances where ED has reported these data separately), Grants to Charter Management Organizations as permitted through appropriations acts since FY2010, State Charter School Facilities Incentive Grants, peer review of new applications for Title V-B-1 programs and activities, national activities, and Credit Enhancement Grants for Charter School Facilities. These data reflect what ED provided (or anticipates providing) to each activity based on the parameters established by the ESEA and appropriations acts.

Table 3. Funding for Specific Charter School Programs and Activities Authorized Under Title V-B of the ESEA: FY2009–FY2014

Dollars in thousands

Program or Activity	FY2009	FY2010	FY2011	FY2012	FY2013	Estimated FY2014
Charter Schools Program: Grants to state educational agencies (SEAs)	\$188,317 ^a	\$172,868 ^a	\$189,858	\$183,833	\$177,320	\$144,653
Charter Schools Program: Grants to Non-SEAs	b	b	\$7,448	\$6,920	\$6,657	\$9,208
Grants to Charter Management Organizations	c	\$50,000	\$25,000	\$31,070	\$29,130	\$60,111
State Charter School Facilities Incentive Grants	\$12,706	\$14,782	\$13,000	\$12,000	\$10,000	\$11,000
Peer review of new applications for Title V-B-1 programs and activities	\$175	\$81	\$250	\$150	\$47	\$200
National activities	\$6,533	\$10,000	\$9,980	\$9,827	\$5,353	\$11,000
Credit Enhancement for Charter School Facilities	\$8,300	\$8,300	\$10,036	\$11,036	\$13,000	\$12,000
Total	\$216,031	\$256,031	\$255,572^d	\$254,836	\$241,507	\$248,172

Source: Table prepared by CRS, April 11, 2014, based on CRS analysis of U.S. Department of Education, *Justifications of Appropriation Estimates to Congress*, FY2011, FY2012, FY2013, FY2014, and FY2015.

Notes: The amount of funding reported for the Credit Enhancement for Charter School Facilities includes funds used for peer review of new applications.

- a. Funding includes all funding for the Charter Schools Program, including grants to SEAs and non-SEAs.
- b. Funding for this program is included in the total for the Charter Schools Program: Grants to SEAs.
- c. No authority existed to make grants under this program until FY2010.
- d. The total amount of funding for FY2011 when broken out by program/activity funding exceeds the FY2011 appropriation by \$53,000. This may be related to the Credit Enhancement for Charter Schools Facilities program for which the cost of peer reviewing applications for FY2011 grants was \$53,000. It is possible that the funds were double counted by ED.

Recent Legislative Action

During the 112th Congress, the House Education and Workforce Committee and the Senate Health, Education, Labor, and Pensions (HELP) Committee ordered reported bills that would have provided for a comprehensive reauthorization of the ESEA. The Elementary and Secondary Education Reauthorization Act of 2011 (S. 3578; S.Rept. 112-221) would have amended and reauthorized the charter school programs as part of a comprehensive ESEA reauthorization bill. The Encouraging Innovation and Effective Teachers Act (H.R. 3990; H.Rept. 112-459 Part 1), one of two bills that would have collectively provided for a comprehensive reauthorization of the ESEA, expressed the sense of the House of Representatives that the charter school programs should be amended as they would have been amended under H.R. 2218 (Empowering Parents through Quality Charter Schools Act). H.R. 2218 would have amended and reauthorized the charter school programs without providing for a comprehensive reauthorization of the ESEA. The bill received bipartisan support and was passed on the House floor on September 13, 2011, by a vote of 365-54.²⁵

During the 113th Congress, both the House and Senate have considered legislation to reauthorize the ESEA. On June 12, 2013, the HELP Committee considered and ordered reported the Strengthening America's Schools Act (S. 1094) by a strictly partisan vote of 12-10. The House Education and Workforce Committee also considered and ordered reported a bill that would reauthorize the ESEA. On June 19, 2013, on a strictly partisan vote of 23-16, the Success for All Students Act (H.R. 5) was ordered reported. H.R. 5 was subsequently considered and amended on the House floor. The amended version of H.R. 5 was passed on July 19, 2013, by a vote of 221-207. It is unclear whether S. 1094 will be considered on the Senate floor. Both H.R. 5 and S. 1094 would amend and reauthorize the Charter Schools Program as part of a comprehensive ESEA reauthorization bill.

Similar to the 112th Congress, the House Education and Workforce Committee has also acted to move a stand-alone bill to amend and reauthorize the charter school programs. On April 1, 2014, Representatives Kline and Miller introduced the Success and Opportunity through Quality Charter Schools Act (H.R. 10). H.R. 10 was considered by the House Education and Workforce Committee on April 8, 2014. The bill was ordered reported by a vote of 36-3.

It is beyond the scope of this report to discuss changes that would be made to the charter school programs by these reauthorization bills.

²⁵ For more information, see Roll No. 705 in the 112th Congress.

Appendix. Legislative History of the Charter Schools Program

This section provides a summary of the initial authorization of the Charter Schools program in 1994. This was followed by substantial amendments to the program in 1998 and 2002, as well as the enactment of two additional programs related to charter schools.

Initial Program Authorization

The Charter Schools Program was initially authorized in 1994 in Title X, Part C of the ESEA with the enactment of the Improving America's Schools Act (IASA; P.L. 103-382). Under the Charter Schools program, the Secretary of Education (hereafter referred to as the Secretary) was authorized to make grants of up to three years to state educational agencies (SEAs) for implementation of charter school grant programs for local educational agencies (LEAs). Charter schools were defined as public schools that, under the terms of state statutes, were exempted from significant state or local rules and were committed to the achievement of specific educational objectives. These schools either had to be a newly created public school or be converted from an existing traditional public school by an individual or group of individuals, such as teachers, administrators, parents, or community members. Among other requirements, charter schools were required to be nonsectarian, were not permitted to charge tuition, had to comply with specified civil rights statutes, and had to admit students through lotteries if the number of applicants exceeds enrollment capacity. The schools had to receive their charters from an SEA, LEA, or other public entity so authorized under state law and approved by the Secretary as being a chartering agency.

Charter School Expansion Act of 1998

The Charter Schools Program was subsequently amended by the Charter School Expansion Act of 1998 (P.L. 105-278). P.L. 105-278 only amended the Charter Schools program and did not provide for a comprehensive reauthorization of the ESEA. Among other changes, P.L. 105-278 established a priority to award grants to states that (1) provide charter schools with financial autonomy; (2) have increased their number of charter schools; (3) either authorize multiple agencies to grant charters or allow charter applicants to appeal rejections of their applications; and (4) periodically review the performance of charter schools. P.L. 105-278 also expanded technical assistance to charter schools, especially regarding their eligibility for federal aid programs, and required that charter schools receive the federal aid for which they are eligible beginning in their first year of operation.

No Child Left Behind Act

The Charter Schools Program was next amended by the No Child Left Behind Act (NCLB; P.L. 107-110) in 2002, which provided for a comprehensive reauthorization of the ESEA. This act largely left intact changes that had been made to the Charter Schools Program through P.L. 105-278 and moved the program from Title X-C of the ESEA to Title V-B-1. In addition, two new programs related to charter school facilities were enacted under NCLB. The first program, Per-Pupil Facilities Aid program (more commonly known as State Charter Schools Facilities Incentive Grants; section 5205(b)), provides competitive grants to states to help establish or

enhance, and administer, a per-pupil facilities aid program for charter schools. The second program, Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation (more commonly known as the Credit Enhancement for Charter School Facilities Program; Title V-B-2), authorizes ED to make grants to three or more entities to help charter schools improve their credit in order to obtain private sector capital to acquire, lease, renovate, or construct appropriate facilities.

Substantive Changes to the Charter School Programs Made through Appropriations Acts

Substantive changes have been made to the charter school programs through the annual Labor, Health and Human Services, and Education and Related Agencies (L-HHS-ED) appropriations acts since FY2010. These changes have affected program funding, the uses of funds by the Secretary and charter schools, and the SEA application process for grants under the Charter Schools Program. However, these changes have not amended the law authorizing the charter school programs. A more detailed discussion of these changes is included in the main body of this report in the section on “Substantive Changes to Program Authorizing Legislation Made Through Annual Appropriations Acts.”

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