To: Jana Wilcox Lavin, Chief Executive Officer, Opportunity 180

From: Stefan Huh, CPA, Past Federal CSP Director, Past Project Director, DC OSSE CSP Grant

Date: November 3, 2024

Subject: Disbursing CSP Reimbursements to Closing Charter School

SUMMARY:

The closure of a public charter school, while unfortunate, is not unusual, and does not disqualify an eligible subrecipient of federal CSP funds from receiving reimbursement for allowable, allocable, and reasonable expenditures incurred prior to the closure decision. In addition, the effective closure of charter schools is aligned with the legislative intent of the program, the notice inviting applications, and past communications from the Federal office to grantees and the field. Providing Eagle Charter School of Nevada ("Eagle") with timely reimbursement for allowable CSP expenditures is 1) essential for ensuring a smooth closure in accordance with the applicable Nevada Revised Statute (NRS) governing charter school closures; and, 2) complies, and is aligned with, Federal regulations, and the U.S. Department of Education's practice for its own direct (non-SEA) grantees.

BACKGROUND

Eagle (an eligible applicant) applied for the FY 24 CSP grant and Opportunity 180 (State Entity) made an award to Eagle under the CSP grant program to be reimbursed for certain allowable expenses under the grant. The State Entity subsequently put on hold Eagle's CSP grant due to Eagle's closure. The question presented is whether the notice of termination by a charter authorizer or the subsequent closure of a charter school prevents a State Entity from disbursing CSP grant dollars for otherwise allowable expenses to an eligible applicant under the CSP grant program. As the following discussion and analysis makes clear, the closure of a charter school does not and should not prevent the disbursement of funds under these circumstances.

DISCUSSION & ANALYSIS

Charter School closures, and the role of ED and state grantees, has garnered attention by the ED Office of the Inspector General, Congress, the ED Charter Schools Program office.

In 2018, the ED Office of the Inspector General issued a final audit report, "Nationwide Audit Oversight of Closed Charter Schools"[1]. The objective of the audit was to determine whether ED sufficiently monitors State educational agencies to, among other factors, ensure that:

- Close-out procedures for Federal funds received by a charter school are performed in accordance with Federal law and regulations; and
- Assets acquired with Federal funds by a charter school that closed are disposed of in accordance with Federal laws and regulations.

The following Federal laws, regulations, and policy interests should be considered when determining whether a charter school that is closing or closed should receive CSP grant proceeds:

1. Chater Schools Program Statute (ESSA)
2. OMB's Uniform Guidance
3. Generally Accepted Accounting Principles ("GAAP")
4. Dept. of Ed direct grantee practice
5. Charter School Ecosystem and Credibility

1. **Charter Schools Program Statute (ESSA)**

The reauthorized Charter Schools Program provides clear direction on eligibility for Federal funds, as well as the expected role of State Entities in fostering a system of effective charter school fiscal oversight.

Regarding eligibility for CSP funds, there are two key considerations under ESSA for determining whether a subrecipient should receive reimbursement for costs incurred under the program statute:

[1] Final Audit Report, Control Number ED-OIG/A02M0011: A02M0011 - Nationwide Audit of Oversight of Closed Charter Schools

a) Whether the subrecipient was an eligible applicant at the time it incurred the grant expenditure; and

b) Whether the expenditures were incurred to enable the subrecipient to open and prepare for the operation of a new charter school.

In the case of Eagle, both requirements are satisfied, as Eagle was both an eligible applicant and subrecipient and incurred valid expenditures consistent with statute.

Importantly, the subsequent revocation of the school's charter and impending closure does not disqualify the school from receiving reimbursement for expenditures incurred under the grant. In fact, the risk that some charter schools will close, or fail to even open, during the term of their subgrant is inherent to the program and anticipated by program statute.

The monitoring guidelines provides additional evidence that the subsequent revocation of the school's charter and impending closure does not disqualify the school from receiving reimbursement for expenditures incurred under the grant. In the course of a monitoring visit, the ED CSP monitors will review the State Entities' documentation across a number of indicators per the ED Monitoring Handbook[2]. Indicators relevant to this case include:

a. <u>Monitoring Indicators 1.2 Eligible Applicants, & 1.3, Definition of Charter School</u>: ensure that subrecipients were eligible applicants throughout the period of Federal funding;
b. <u>Monitoring Indicator 3.2 Fiscal Control and Fund Accounting Procedures</u>: that the State Entity monitored subgrantees to ensure proper disbursement, accounting, and use of Federal funds;
c. <u>Monitoring Indicator 3.3 Use of CSP Funds</u> – The State entity ensures subgrantees' use of Federal funds is allowable, allocable, and/or reasonable; and,
d. <u>Monitoring Indicator 3.4: Charter School Closure</u> – The State Entity ensures that charter schools operate in accordance with State regulations regarding charter school closure.

[2] State Entity Monitoring Handbook for FY18 Grantees – February 2021. Note: the ED monitoring framework has remained consistent for 20 years; with minor revisions each year. The most recent handbook should be consulted. For the full handbook, visit: CSP-SE-Monitoring-Handbook-FY18-Grantees.pdf

None of the indicators in ED's Monitoring Framework prevent a State Entity grantee from reimbursing a charter school for allowable expenditures incurred during the subaward period.

In addition to eligibility for start-up grant funding, ESSA established the expectation that State Entities grantees would lead the design of an effective system of charter school fiscal oversight. Here are a few examples of specific sections of ESSA:

- A State Entity is to reserve not less than 7 percent of grants funds to "provide technical assistance to eligible applicants and authorized public chartering agencies in carry out the activities described in paragraph (1), and work with authorized public chartering agencies in the state to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools."[3]
- A State Entity applying for a federal grant is required describe their program, including:
  - How they will work with eligible applicants to ensure that eligible applicants access all Federal Funds that such applicants are eligible to receive[4];
  - How they will ensure that authorizers, in collaboration with surrounding LEAs, establish clear plans and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools[5]

[3] Section 4303, Subparts (b)(2)-(c)(1)(B)
[4] Section 4303, Subparts (f)(1)(A)(iii)
[5] Section 4303, Subparts (f)(1)(a)(iv). It is worth emphasizing the importance of closing charter schools receiving all eligible reimbursable funds, to facilitate the process of assisting students in attending other public schools.

2. Uniform Guidance[6]:

In addition to ESSA, we can look to the following sections of the Uniform Guidance to determine whether a subrecipient should receive reimbursement for otherwise allowable costs.

1. §200.344 Closeout
2. §200.403 Factors affecting allowability of costs.
3. §200.404 Reasonable Costs
4. §200.405 Allocable Costs

The Uniform Guidance provides a two-pronged test for whether the unreimbursed expenditures meet costs standards.

1. Whether the costs were incurred by an eligible applicant; and,
2. Whether the costs were necessary and reasonable for the performance of the Federal award.

Based on the facts and circumstances in the case of Eagle, the unreimbursed expenditures meet these costs standards, as they were incurred by an eligible applicant, and were necessary and reasonable for the performance of the Federal award. Again, the subsequent closure of the charter school has no bearing on the allowability of costs.

3. GAAP

In addition to the program statute and uniform guidance, Generally Accepted Accounting Principles (GAAP) are an important consideration for whether 1) Eagle should receive these grant proceeds and 2) the State Entity grantee should distribute these grant proceeds.

Eagle was an eligible subrecipient at the time of the subgrant award and during the period in which they obligated and incurred CSP grant expenditures, and therefore, Eagle must record the grant expenditures as valid Federal grant expenditures in their general ledger and year-end financial statements. As of their fiscal year-end of 6/30/24, the unreimbursed expenditures must be recorded as a Grant Receivable from the State Entity, consistent with GAAP and the Uniform Guidance.

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[6] See OMB Uniform Guidance, Title 2, Subtitle A, Chapter II, Parter 200, Subpart E: eCFR :: 2 CFR Part 200 Subpart E -- Cost Principles

In the course of an independent financial audit and/or a Single Audit, an independent auditor may require Eagle to send a confirmation letter to the State Entity to validate the collectability of the receivable. In that scenario, the State Entity would need to confirm the existence and validity of the receivable. It does not appear that there would be justification to deny Eagle's reimbursement, outside of compliance with any requirements attached to the grant award which Eagle can still address and cure.

The State Entity grantee should accrue these unreimbursed expenditures as a Federal Grant Expenditure and include in their SEFA as Expenditures Passed Through to Sub-Recipients. While there still may be sub-recipient administrative reporting requirements, a conservative accounting approach under GAAP would be to recognize these grant expenditures and record a current liability for the amount to be reimbursed.

4. Department of ED, Non-SEA Standard Grantee Practice

The Non-SEA Developer Grant program provides further guidance on whether the subsequent closure of a charter school prevents a State Entity from disbursing CSP grant dollars for otherwise allowable expenses to an eligible applicant under the CSP grant.

ED administers the Non-SEA ("Developer Grants") program for charter schools located in states without an active State Entities grant. In the course of administering the Developer Grant program, ED has encountered grantees who have incurred allowable costs, prior to an authorizer's closure decision. In these cases, ED closes the grant in accordance with Federal regulations, which includes liquidating any remaining obligated funds based on the grantees' submission of final reimbursement requests. Again, the operating standard is whether, at the time expenditures were incurred, the cost items were reasonable, allocable, and allowable. Assuming those tests are met, ED does not deny a reimbursement request.

Because ED does not deny reimbursement requests to otherwise eligible applicants who have subsequently closed, there is no reason for the SEA to deny reimbursement.

5. Charter School Ecosystem Credibility

Charter schools operate within an ecosystem comprised of a variety of stakeholders: banks and other lenders; vendors providing goods and services; landlords; attorneys; and, other professionals. To promote a healthy marketplace where charter schools can thrive, there must be trust—trust that contractual relationships will be honored; uninterrupted funding flows; a reasonable expectation that grant receivables will be collected; and the orderly closure of charter schools and disposition of assets.

Reimbursing Eagle for its outstanding CSP receivable reinforces this trust within the ecosystem, which will redound to the benefit of all charter schools and stakeholders.

CONCLUSION/RECOMMENDATION

Given the facts and circumstances in this situation, we believe that the State Entity grantee must reimburse Eagle for allowable CSP expenditures incurred prior to the authorizer's closure decision. The State entity should not encounter any adverse action by ED in the course of a monitoring visit (conducted by ED's third party contractor for monitoring) as the monitoring protocol does not include any reference to a prohibition on reimbursing closing charter school for allowable expenditures. On the contrary, the monitoring handbook encourages State entities to administer the program in a manner that ensures effective closure of charter schools and adherence, through documentation, of Federal cost principles.

Finally, accrual of these costs, as a Federal expenditure by the State Entity and as Federal revenue by the subgrantee, is consistent with GAAP, as these do not appear to be Disallowed Costs.

REFERENCES:

- Title IV, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA) (20 U.S.C. 7221-7221j). Part C – EXPANDING OPPORTUNITY THROUGH QUALITY CHARTER SCHOOLS
- ED Dear Colleague Letter – Guidance Regarding the Oversight of Charter Schools Program and Regulatory Requirements, Including the Uniform Administrative Requirements, Cost Principes, and Audit Requirements for Federal Awards (August 2016*), see page 4, Charter School Closure*: https://oese.ed.gov/files/2019/11/CSP-Letter-to-SEA-on-Uniform-Guidance-FINAL-08.04.2016.pdf
- Uniform Guidance Excerpt, §200.344 Closeout (see Appendix A)
- Notice Inviting Applications for Fiscal Year 2020 for CSP Grants to State Entities, CFDA number 84.282A (see Application Requirements (I)(A)
(4), page 2 of attached PDF)
- Monitoring Handbook for State Entity Grantees (see Indicator 3.4)
- Nevada charter school law

Appendix A – OMB Uniform Guidance

§200.344 Closeout[7]

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.

[7] Title 2,Subtitle A, Chapter II, Part 200, Subpart D

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

(i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.