OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

April 18, 2022

Ruth E. Ryder
Deputy Assistant Secretary for Policy and Programs
c/o Porscheoy Brice
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue SW, Room 3E209
Washington, DC 20202-5970

RE: Proposed Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program (CSP)
Docket ID ED-2022-OESE-0006

Dear Ms. Ryder:

The states of Oklahoma, Alaska, Arkansas, Florida, Georgia, Indiana, Louisiana, Mississippi, Missouri, New Hampshire, Ohio, South Carolina, Tennessee, Texas, Utah, and Virginia submit these comments in response to your invitation in the above-captioned docket. Many of our States have invested substantial time, resources, and legislative efforts in charter schools, and we view charter schools as important to providing high quality education to all children in our States. We appreciate the federal support for school choice in the Charter Schools Program, and we are concerned that some of your proposed changes would undermine the goals of the program.

The first purpose of Congress in creating the Charter Schools Program ("CSP") is to "improve the United States education system and education opportunities for all people in the United States by supporting innovation in public education in public school settings." 20 U.S.C. § 7221(1). The program is intended to provide an alternative to low-performing public schools in order to improve education, not merely to supplement offerings by traditional public schools.

Some of your changes are contrary to these goals. Two in particular cause us concern: your proposed community impact analysis requirement, and your proposed priority for charter schools that partner with school districts.

The community impact analysis requirement (Proposed Requirement 1) would incorrectly preference charter schools that serve areas with excess enrollment over charter schools that serve areas with underperforming schools. For example, subsection (a) requires that charter schools demonstrate demand through over-enrollment generally or an unmet need for specialized instruction, and it fails to consider evidence of demand for high quality education. Subsection (e) similarly requires evidence of demand without acknowledging that demand can arise from the lack of high-quality educational options.

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The partnership priority (Priority 2) unfairly penalizes charter schools that intend to compete with the local school district. Some charter schools serve roles that complement local school districts, while other charter schools serve roles that challenge the failures of local school districts. Giving a preference to charter schools that partner with local school districts would inappropriately penalize charter schools that compete, allowing underperforming local school districts an easy way to suppress competition. The necessary result would be decreasing the education opportunities for students in areas with underperforming schools.

We also have concerns that the number of proposed priorities, requirements, and assurances create an undue regulatory and administrative burden on grant applicants. The substantial number of proposed priorities, assurances, and requirements do not replace those already required under Every Student Succeeds Act ("ESSA") and under administrative regulations; instead, they are supplemental and increase the number of regulations and the administrative workload on grantees. The additional burden on grantees conflicts with 20 U.S.C. § 7221(h) requiring that grants under the CSP "result[] in a minimum of paperwork for any eligible applicant or charter school." Additional regulations and burdensome paperwork will decrease the number of charter schools and stifle innovative public educational opportunities, both of which are central to the purpose and intent of CSP grants under 20 U.S.C. § 7221(3) and 20 U.S.C. § 7221(i), respectively.

While we recognize that information requirements and funding priorities are not the same as funding requirements, we see no valid statutory basis for discouraging or giving lower ranks to applications that are consistent with the goals of the Charter Schools Program. Changing the preferences for funds will inevitably decrease the total funding awarded to charter schools that compete with underperforming public schools, even if the Department does not categorically bar all such schools from funding. That result is directly contrary to Congress's stated goal of improving education opportunities by increasing the number of innovative charter schools. Moreover, one of the signatories of this letter was a co-author of ESSA and attests that the intent of the legislation, as we describe in this letter, is accurate. Thus, we urge you not to adopt Proposed Requirement 1 or Priority 2.

We appreciate the opportunity to comment on your proposed rules and hope that you will decline to adopt the proposals that we have addressed in our comment.

Sincerely,

JOHN M. O'CONNOR
Oklahoma Attorney General

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Alaska Attorney General

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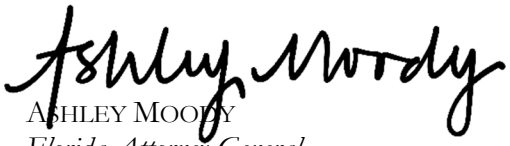

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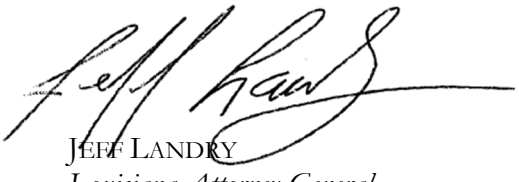

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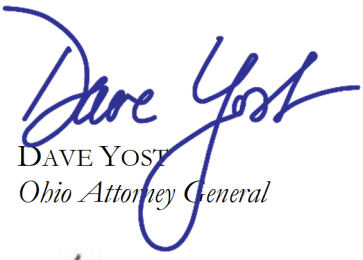

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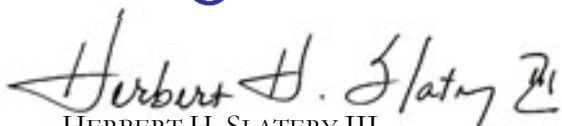

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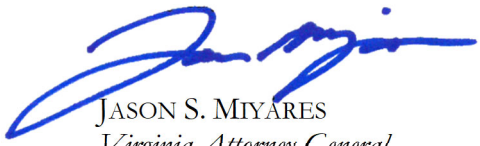

JASON S. MIYARES
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CC: Dr. Miguel A. Cardona, Secretary of Education