

Elementary and Secondary Education Act  
Title V Part D — Public Charter Schools

# Section-by- Section Summary

Elementary and Secondary  
Education Reauthorization  
Act of 2011 – Senate Draft

---

Chad A. Miller, Senior Director of Federal  
Advocacy, [Chad@publiccharters.org](mailto:Chad@publiccharters.org)  
(202) 521-2836

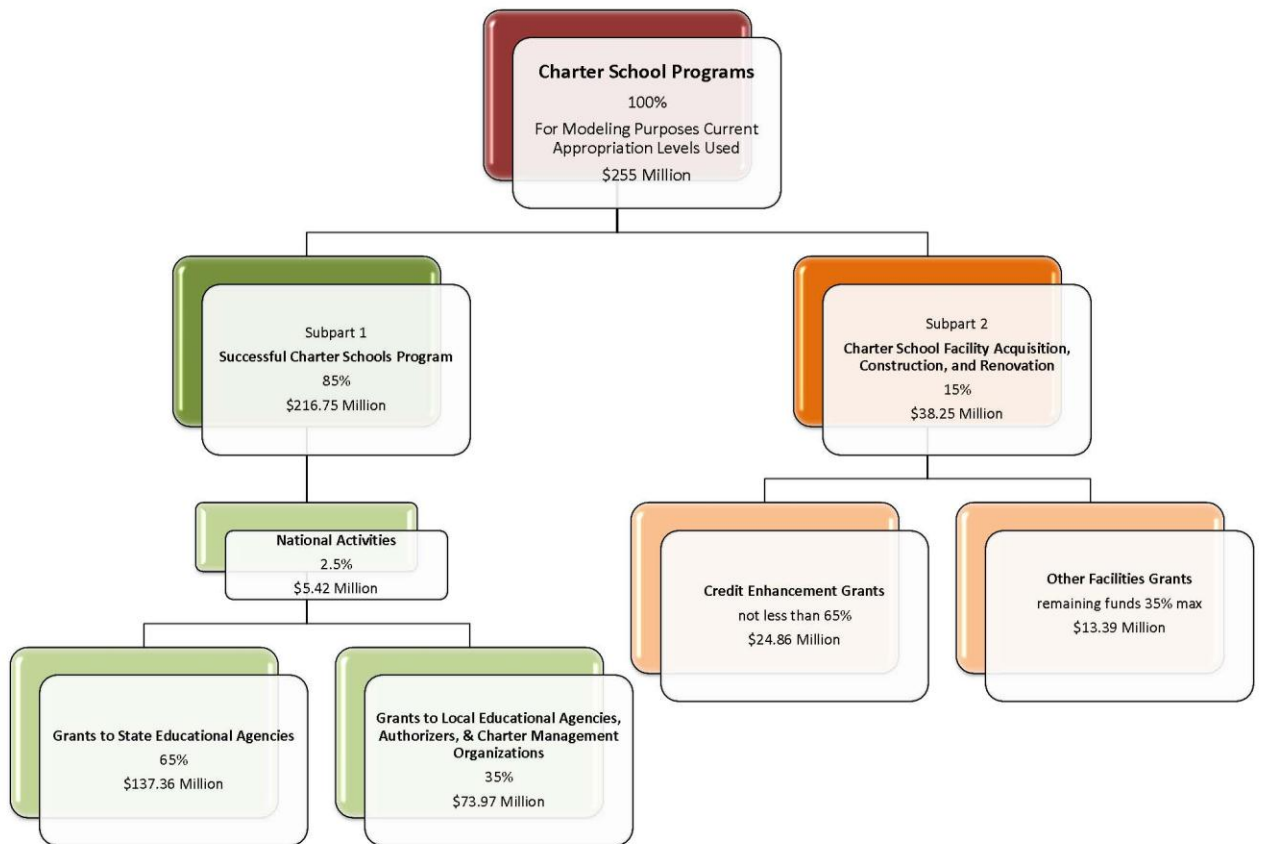
Kristin Yochum, Director Intergovernmental  
Affairs, [Kristin@publiccharters.org](mailto:Kristin@publiccharters.org)  
(202) 289-9808

Celia Alicata, Federal Policy Manager  
[Celia@publiccharters.org](mailto:Celia@publiccharters.org)  
(202) 289-2201



# Elementary and Secondary Education Reauthorization Act of 2011

Sponsored by: Sen. Harkin (IA-D) and Sen. Enzi (WY-R)



**Successful Charter Schools Program**  
**Subpart 1**

**NUTS and BOLTS**

- Subpart 1 establishes an award program for the purpose of providing grants to eligible entities to create, expand, or replicate one or more high-performing charter schools by providing subgrants to developers.
  - Eligible entities must use not less than 90 percent of the funds for this purpose.
- 85% of the total Charter School Programs funds available will be used to carry out this subpart.
- From the amount available for this subpart, the Secretary may reserve not more than 2.5 percent for national activities to carry out research, development, data collection, technical assistance, outreach, and dissemination activities.
- Eligible entities include a:
  - State educational agency;
    - Not less than 65 percent of funds (after the 2.5% National Activities Reservation) must be awarded to state educational agencies.
  - Local educational agency, except a charter school that is considered a local educational agency under State law;
  - Charter school authorizer; or
  - Charter management organization;
    - Not more than 35 percent of funds may be awarded to LEAs, Authorizers, or CMOs.

**GRANT AMOUNTS, LIMITATIONS, RESERVATIONS AND DIVERSITY OF PROJECTS****Sec. 5412**

- For grants awarded under this subpart, the Secretary shall consider:
  - the geographic diversity of the eligible entities, including the distribution of grants among urban, suburban, and rural areas; and
  - the number of eligible entities in a State that are receiving grants under this subpart in any fiscal year.
- In determining the amount of each grant to be awarded, the Secretary shall consider:
  - the number of operating charter schools under the jurisdiction or in the service area of the eligible entity;
  - the number of students, including students on charter school waiting lists, that will be served by high-performing charter schools that receive funds; and
  - the amount of funds that is needed to implement the activities described in the approved application.
- Grants are awarded for an initial period of not more than 3 years.

- The Secretary may extend grants for 2 years, if the eligible entity is achieving the objectives of the grant and has shown improvement on the performance measures and targets.
- An eligible entity may not receive more than 1 grant at a time.
- A developer may not receive more than 1 subgrant at a time.
- An eligible entity that receives a grant:
  - may use up to 5 percent of grant funds for administrative expenses associated with improvement of the eligible entity's oversight or management of charter schools; and
  - in the case of a state education agency, local education agency or charter authorizer, shall use 5 percent of grant funds for improving authorizer quality, including monitoring systems and procedures for revoking or not renewing charters.

## **APPLICATIONS AND ASSURANCES**

### **Sec. 5413**

An eligible entity application shall include:

- How the eligible entity will use grant funds to create, expand, or replicate 1 or more high-performing charter schools.
- The need for the charter schools that the eligible entity seeks to support, including information that demonstrates the interest of parents and communities in increasing charter school enrollment capacity, such as the number of students who are on waiting lists for charter schools under the jurisdiction of the eligible entity.
- The performance measures the eligible entity will use to measure outcomes.
- How the eligible entity will provide information and support to parents, families, and students regarding the available charter school options in a simple, clear, and easily accessible format and, to the extent practicable, in a language that such parents, families, and students can understand.
- How the eligible entity will coordinate the grant funds received under this subpart with other Federal, State, and local funds.
- How the eligible entity will ensure that each charter school:
  - Meets the definition of a charter school as defined by the federal Charter School Programs.
  - Provides equitable access and effectively serves the needs of all students, including children with disabilities and English learners, and implements outreach and recruitment practices that include families of such students.

- How the eligible entity will award subgrants to developers, on a competitive basis and through a high-quality peer review process, including a description of the subgrant application.
- How the eligible entity will target subgrants to high-performing charter schools that plan to serve students who attend schools that have been identified through the State accountability and improvement system described in section 1116 (school performance).
- The eligible entity's record of success in creating, expanding, replicating, managing, and overseeing high-performing charter schools, and closing unsuccessful schools.
- How the eligible entity will hold charter schools accountable if such schools do not meet the objectives specified in the performance contract, including by closing unsuccessful schools.
- How charter school authorizers are approved, monitored, held accountable for establishing rigorous standards, periodically reviewed, and re-approved based on the performance of the charter schools, including in the areas of student safety, financial management, and compliance with all applicable statutes and regulations.

Additional SEA application requirements include:

- A description of the State's laws, policies, or procedures, if applicable, that address:
  - how decisions are made to close unsuccessful charter schools, and how student academic achievement and growth are primary factors in such decisions;
  - how charter schools are monitored and held accountable for providing equitable access and effectively serving the needs of all students, including students with disabilities and English learners; and
  - how a charter school that is considered a LEA under State law will comply with the Individuals with Disabilities Education Act.
- Information about the eligible entity's record of funding charter schools, including funding charter school facilities.
- Information about the number of charter schools in the State that:
  - have been closed or have had charters revoked or not renewed in the preceding 5-year period, and the reasons for such closures, revocations, or non-renewals;
  - have been identified through the State accountability and improvement system in the preceding 5-year period;
  - have met objectives specified in the performance contract; and
  - are high-performing charter schools, and the percentage of such charter schools as compared to the total number of charter schools in the State.

Additional LEA application requirements include policies and procedures for:

- Ensuring that charter schools have equitable access to school facilities and that charters are not denied access to public school facilities;
- Complying with Individuals with Disabilities Education Act; and
- Supporting public school choice.

Additional charter school authorizer application requirements include:

- A demonstration of explicit and clear policies and procedures in place for the approval, monitoring, renewal, and closure of charter schools, and an assurance that such policies and procedures make student academic achievement and growth for all students and for each subgroup of students a primary factor in such decisions.
- A description of how the authorizer will make publicly available:
  - information about the criteria and procedures for granting, denying, revoking, and renewing charters for charter schools; and
  - the results of decisions relating to the granting, denial, revocation, and renewal of charters for charter schools, including performance data and other relevant information on which each decision is based.
- Information about the number of charter schools that:
  - the charter school authorizer has authorized that have been closed or have had charters revoked or not renewed by the eligible entity in the preceding 5-year period, and the reasons for such closures, revocations, or non-renewals;
  - have been identified through the State accountability and improvement system;
  - the authorizer has authorized that are high-performing charter schools, and the percentage of such charter schools as compared to the total number of charter schools that the charter school authorizer has authorized; and
  - have met the objectives specified in the performance contract.

Additional charter management organization application requirements include a description of:

- The qualifications of such eligible entity's management team; and
- A multi-year financial and operating model for each of the high-performing charter schools that such eligible entity will create, expand, or replicate under the grant.

## Special Rule

- The Secretary may award a grant to a developer who plans to open a charter school in a service area where no eligible entity will be awarding subgrants.

**SELECTION CRITERIA AND PRIORITIES****Sec. 5414**

- The Secretary shall consider the following criteria when awarding grants to eligible entities:
  - the quality of the application;
  - the record of success in creating, expanding, replicating, managing, and overseeing high-performing charter schools;
  - the record of discontinuing funding or closing low-performing charter schools, including, by revoking or not renewing the charters of such charter schools, and the commitment to discontinuing funding or closing low-performing charter schools in the future;
  - the extent to which subgrants will be targeted to serving students who attend schools that have been identified through the State accountability and improvement system;
  - the quality of the plan for supporting subgrant recipients, through such activities as technical assistance, in order to:
    - improve student academic achievement and growth for all students and for each subgroup of students; and
    - promote effective outreach to, and recruitment of, students who are children with disabilities and students who are English learners, and the parents and families of such students.
  - the extent to which the State provides for, and enforces, high-quality standards for charter school authorizers, including by establishing standards for rigorous and periodic reviews.
- In addition to the criteria for eligible entities, in the case of an SEA the Secretary shall consider the extent to which the SEA:
  - ensures that charter schools receive equitable funding and a commensurate share of Federal, State, and local revenues compared to public schools in the State, including equitable State funding to support early childhood education and care programs operated by charter schools in the State; and
  - provides charter schools with equitable access to funds for facilities, assistance for facilities acquisition, access to public facilities, the ability to share in the proceeds of bonds and levies, or other support related to facilities.
- In addition to the criteria for eligible entities, in the case of an LEA the Secretary shall consider:

- if charter schools are operating within the area served by the LEA, the extent to which the LEA has policies and procedures in place to ensure that charter schools have equitable access to school facilities or are not denied access to available public school facilities.
  - the extent to which the eligible entity demonstrates support for public school choice.
- In addition to the criteria for eligible entities, in the case of a charter school authorizer the Secretary shall consider:
    - the authorizer's record of success in authorizing, supporting, and overseeing high-performing charter schools.
  - In addition to the criteria for eligible entities, in the case of a charter management organization the Secretary shall consider:
    - the quality of the eligible entity's management team; and
    - the quality and sustainability of the eligible entity's multi-year financial and operating model.
  - A priority is given to eligible entities for the following:
    - Serve students from low-income families.
    - Serve a diverse student population.
    - In the case of an SEA:
      - From states that do not have a law that prohibits, or effectively inhibits, increasing the number of high-performing charter schools.
      - From states that provide for, and adequately support, 2 or more charter school authorizers, of which not less than 1 is a statewide charter school authorizer; or
      - In the case of a State in which local educational agencies are the only charter school authorizers:
        - Allow for an appeals process to another authorizer that will issue a final determination; and
        - Require charter school authorizers to indicate an affirmative interest in serving as charter school authorizers; and
      - That have a policy or procedure in place that ensures that charter schools are reauthorized or have their charter renewed not less than once every 5 years.

## USES OF FUNDS

### Sec. 5415

- Each eligible entity shall:
  - Use not less than 95 percent of the remaining funds after reservations described in Sec. 5412, to award subgrants to 1 or more developers to create, expand, or replicate high-performing charter schools.
  - Provide developers who are receiving a sub grant with support and technical assistance in:

- improving student academic achievement and growth;
  - effectively serving the needs of all students, including students who are children with disabilities and English learners; and
  - implementing outreach and recruitment practices that includes families of students who are children with disabilities and English learners.
- Directly, or through a partnership with a nonprofit organization (such as a community-based organization), develop and implement parent, family, and student information, outreach, and recruitment programs to provide information and support about the public school choice options available.
- Up to 1 percent of grant funds can be used to disseminate information to public schools in the eligible entity's jurisdiction or service area about lessons learned through the grant activities, in order to:
    - successfully address the education needs of all students, including students who are children with disabilities and English learners; and
    - replicate high-performing charter school models.

## **SUBGRANTS**

### **Sec.5416**

- Each developer that desires to receive a subgrant must submit an application to the appropriate eligible entity including such information and assurances as the eligible entity may reasonably require.

#### Use of funds:

- A developer that receives a subgrant shall use funds to create, expand, or replicate high-performing charter schools.
- The following activities may be included:
  - Up to 15 months of planning and program design.
  - Recruiting and providing preparation, induction, and professional development for teachers, school leaders, and other staff who will work in a charter school.
  - Acquiring necessary equipment, supplies, and educational materials, including curricula, assessments, and instructional materials.
  - Professional development and implementation of systems for the delivery of appropriate services for students who are children with disabilities and English learners, including through centralizing, purchasing, or sharing the provision of such services with other organizations.
  - Providing transportation to students to and from the school.
  - Paying operational costs for a charter school that cannot be met through State or local funding sources.
  - Directly, or through a partnership with a nonprofit organization (such as a community-based organization), develop and implement parent, family, and student information, outreach, and recruitment programs to provide information and support about the public school choice options available.

- Developing and implementing effective outreach and recruitment strategies to inform families of students who are children with disabilities and students who are English learners about the charter school, the charter school admissions process, and the charter school's plan to effectively provide appropriate educational and related services to such students.
- Evaluating and disseminating information, including through technical assistance, about the effectiveness of the activities supported by the subgrant; however, not more than 1 percent funds may be used for this purpose.

## **REPORTING REQUIREMENTS**

### **Sec. 5417**

- Each eligible entity shall establish performance measures and annual targets, approved by the Secretary, for the charter schools that are created, expanded, or replicated with funds provided through a grant or sub grant under this subpart.
- Such measures and targets shall include, at a minimum:
  - the number of students enrolled in each charter school;
  - the number of students enrolled in each high-performing charter school;
  - the number of students enrolled in each high-performing charter school who were formerly attending a school that has been identified through the State accountability and improvement system described in section 1116;
  - student academic achievement and growth, including performance on the State academic assessments;
  - student retention rates;
  - student graduation rates, and student rates of enrollment and persistence in institutions of higher education; and
  - other measures required by the Secretary.
- Each eligible entity receiving a grant shall submit an annual report to the Secretary containing the above information.
- Each developer receiving a subgrant from an eligible entity shall provide the eligible entity with the data necessary to comply with the requirements of this section.

## **FEDERAL FORMULA ALLOCATION DURING FIRST YEAR AND FOR SUCCESSIVE ENROLLMENT**

### **EXPANSIONS**

#### **Sec. 5418**

- For purposes of the allocation to schools by the States or their agencies of funds under part A of title I, and any other Federal funds which the Secretary allocates to States on a formula basis, the Secretary and each SEA shall take such measures to ensure that every charter school receives the Federal funding for which the charter school is eligible not later than 5 months after the charter school first opens, notwithstanding the fact that the identity and characteristics of the students enrolling in that charter school are not fully and completely determined until that charter school actually opens. The measures similarly shall ensure that every charter school expanding its

enrollment in any subsequent year of operation receives the Federal funding for which the charter school is eligible not later than 5 months after such expansion.

- The measures described above shall include provision for appropriate adjustments, through recovery of funds or reduction of payments for the succeeding year, in cases where payments made to a charter school on the basis of estimated or projected enrollment data exceed the amounts that the school is eligible to receive on the basis of actual or final enrollment data.
- For charter schools that first open after November 1 of any academic year, the State, in accordance with guidance provided by the Secretary and applicable Federal statutes and regulations, shall ensure that such charter schools that are eligible for the funds described in subsection (a) for such academic year have a full and fair opportunity to receive those funds during the charter schools' first year of operation.

## **NATIONAL ACTIVITIES**

### **Sec. 5420**

- The Secretary may reserve up to 2.5 percent of funds for this subpart for national activities to carry out research, development, data collection, technical assistance, outreach, and dissemination activities, including:
  - Research, technical assistance, and other activities to assist eligible entities in improving the entity's capacity to-
    - create, expand, replicate, operate, or support high-performing charter schools;
    - support charter school authorizers to improve quality; and
    - work to turn around schools that have been identified through the State accountability and improvement system.
  - Providing for the research and dissemination of information about specific charter school models and program characteristics for which there is strong evidence of a significant impact on improving student academic achievement and growth for all students;
  - Developing and implementing activities that help parents, families, students, and the community identify and access high-performing charter schools;
  - Providing for the collection of information regarding the financial resources available to charter schools (including access to private capital) and widely disseminating to charter schools any such relevant information and model descriptions of successful programs; and
  - Carrying out other related activities.

**Charter School Facility Acquisition, Construction and Renovation****Subpart 2****NUTS AND BOLTS**

- This program awards grants to eligible entities to improve access to facilities and facilities financing for high-performing charter schools and assist such schools to address the cost of acquiring, constructing, and renovating facilities.
- Not less than 65 percent of funds made available for this subpart must be used to support Credit Enhancement Grants.
- No more than 35 percent of funds made available for this subpart must be used to support other Facilities Grants.
- Eligible entities include a:
  - State educational agency;
  - Local educational agency;
  - Nonprofit entity;
  - State financing authority; or
  - Consortium of any entities described above.

**GRANTS TO ELIGIBLE ENTITIES****Sec. 5433****Credit Enhancement Grants**

- The Secretary shall award grants on a competitive basis to eligible entities to enable such eligible entities to demonstrate innovative methods of assisting high-performing charter schools to address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans or bond financing.

**Other Facilities Grants**

- The Secretary shall award grants on a competitive basis to eligible entities to:
  - Improve access to facilities and facilities financing for high-performing charter schools, through methods that may include:
    - leveraging State and local facilities funds, including the cost of implementing school bond programs that include high-performing charter schools;
    - implementing open-facilities-access programs or making available renovated or adapted space for high-performing charter schools; and
    - assist with constructing or improving, at low cost, facilities for high-performing charter schools through innovative methods; and
  - Support state educational agencies in the establishment, enhancement, and administration of a per-pupil facilities aid program through Federal payments that shall be not more than:

- 90 percent of the cost, for the first fiscal year for which the program receives assistance under this subsection;
- 80 percent in the second such year;
- 60 percent in the third such year;
- 40 percent in the fourth such year; and
- 20 percent in the fifth such year

#### State Share of Per-Pupil Facilities Aid Program

- A State receiving a grant under this program may partner with 1 or more organizations to provide not more than 50 percent of the State share of the cost of establishing, enhancing, or administering the per-pupil facilities aid program.

#### Grant Amount

- The Secretary shall consider:
  - the quality of the application submitted;
  - the number of students that are served or may be served by high-performing charter schools that would receive assistance; and
  - the amount of funds that is needed to implement the activities described in the approved application.

#### Supplement not Supplant

- Funds made available under this section shall be used to supplement, and not supplant, State and local public funds expended to provide programs for charter schools.

### **CHARTER SCHOOL OBJECTIVES**

#### **Sec. 5434**

- An eligible entity shall use the funds to 1 or more high-performing charter schools to accomplish 1 or both of the following objectives:
  - The acquisition of an interest in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.
  - The construction of new facilities, or the renovation, repair or alteration of existing facilities necessary to commence or continue the operation of a charter school.

### **APPLICATIONS AND SELECTION CRITERIA**

#### **Sec. 5435**

Applications shall include:

- A description of the activities that the eligible entity proposes to carry out;
- A demonstration that the eligible entity will consider the quality of a charter school when determining:
  - which charter schools will receive assistance under this subpart;
  - how much grant assistance will be provided to each charter school; and
  - the type of assistance that each charter school will receive.

- A description of the eligible entity's record of successfully carrying out the activities proposed;
- If applicable, the eligible entity's record of leveraging private-sector funding and a description of how the proposed activities will leverage the maximum amount of private-sector financing capital relative to the amount of government funding;
- An explanation of how the eligible entity possesses sufficient expertise in education to evaluate the likelihood of success of a charter school program for which facilities financing is sought;
- In the case of an application submitted by an eligible entity that includes 1 or more State or local educational agencies, a description of the agency's policies and procedures for ensuring that charter schools have equitable access to school facilities; and
- Such other information as the Secretary may reasonably require.

Selection Criteria—when awarding the grants, the Secretary shall consider:

- The quality of the application;
- The extent to which the eligible entity proposes to support high-performing charter schools that plan to enroll a large percentage of students from low-income families;
- The geographic diversity of the eligible entities, including the distribution of grants between urban and rural areas; and
- The number of eligible entities in a State that are receiving grants under this subpart in any fiscal year.

## **RESERVE ACCOUNT**

### **Sec. 5436**

#### Use of Funds

- An eligible entity receiving a grant under this subpart shall, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the funds received under this subpart (other than funds used for administrative costs) in a reserve account. Amounts deposited in such account shall be used by the eligible entity for 1 or more of the following purposes:
  - Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein, the proceeds of which are used for facilities aid.
  - Guaranteeing and insuring leases of personal and real property.
  - Facilitating financing by identifying potential lending sources, 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 by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors

and the consolidation of multiple charter school projects within a single bond issue).

#### Investment

- Funds received and deposited in the reserve account shall be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities.

#### Reinvestment of Earnings

- Any earnings on funds received shall be deposited in the reserve account and used in accordance with such subsection.

### **LIMITATION ON ADMINISTRATIVE COSTS**

#### **Sec. 5437**

- An eligible entity may use not more than 2.5 percent of the funds received under this subpart for the administrative costs.

### **AUDITS AND REPORTS**

#### **Sec. 5438**

- The financial records of each eligible entity shall be maintained in accordance with generally accepted accounting principles and shall be subject to an annual audit.
- Each eligible entity shall submit a report to the Secretary annually of its operations and activities and shall include:
  - A copy of the most recent financial statements and any accompanying opinion on such statements.
  - A copy of any report made on an audit of financial records of the eligible entity that was conducted during this reporting period.
  - If applicable, an evaluation by the eligible entity of the effectiveness of the federal funds in leveraging private funds.
  - A listing and description of the charter schools served during the reporting period, including the performance of such charter schools in increasing student achievement and growth.
  - A description of the activities carried out by the eligible entity to assist charter schools in meeting the objectives in Sec. 5434.
  - A description of the characteristics of lenders and other financial institutions participating in the activities.
- The Secretary shall provide a comprehensive report to Congress on the activities conducted under this subpart.

### **Authorization of Appropriations**

- There are authorized to be appropriated to carry out Part D of Title V (Public Charter Schools) such sums as may be necessary for fiscal year 2012 and each of the succeeding 4 fiscal years.