

**ATTACHMENT II**  
**Text of Proposed Amendment to 19 TAC**

**Chapter 33. Statement of Investment Objectives, Policies, and Guidelines of the Texas  
Permanent School Fund**

**Subchapter A. State Board of Education Rules**

**§33.67. Bond Guarantee Program for Charter Schools.**

- (a) Statutory provision. The commissioner of education must administer the guarantee program for open-enrollment charter school bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.
- (b) Definitions. The following definitions apply to the guarantee program for open-enrollment charter school bonds.
  - (1) Amortization expense--The annual expense of any debt and/or loan obligations.
  - (2) Annual debt service--Payments of principal and noncapitalized interest on outstanding bonded debt scheduled to occur during a charter district's fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the charter district is responsible for outstanding bonded indebtedness.
    - (A) The annual debt service will be determined by the current report of the bonded indebtedness of the charter district as reported by the MAC of Texas or its successor as of the date of the application deadline.
    - (B) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement or, if there is no official statement, debt service amounts based on the maximum rate permitted by the bond resolution or other bond proceeding that establishes a maximum interest rate for the bonds.
    - (C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter district.
  - (3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing. This application deadline does not apply to applications for issues to refund bonds previously guaranteed by the Bond Guarantee Program.
  - (4) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:
    - (A) requests guarantee of bonds through the Bond Guarantee Program; and
    - (B) authorizes the charter holder's administration to pursue bond financing.
  - (5) Bond--A debt security issuance approved by the attorney general, issued under the TEC, Chapter 53, to provide long-term financing with a maturity schedule of at least three years.
  - (6) Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.
  - (7) Bond resolution--The resolution, indenture, or other instrument adopted by the governing body of an issuer of bonds authorizing the issuance of bonds for the benefit of a charter district.

- (8) Charter district--An open-enrollment charter holder designated as a charter district under subsection (e) of this section, as authorized by the TEC, §12.135.
- (9) Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.
- (10) Debt service coverage ratio--A measure of a charter district's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense)/ annual debt service.
- (11) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.
- (12) Educational facility--A classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of a charter school.
- (13) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.
- (14) Long-term debt--Any debt of the charter district that has a term of greater than three years and is secured on a parity basis with the bonds to be guaranteed.
- (15) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding long-term debt for any succeeding fiscal year.
- (16) Nationally recognized investment rating firm--An investment rating firm that is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) and is demonstrating that it has:
- (A) had its current NRSRO designation for at least three consecutive years;
  - (B) provided credit ratings to each of the following:
    - (i) fifteen or more fixed income securities denominated in United States dollars and issued during the immediately preceding three years;
    - (ii) ten or more school districts in the United States;
    - (iii) one or more charter schools in the United States; and
  - (C) a documented separation of duties between employees involved in credit analysis and employees involved in business relationships with clients.
- (17) New money issue--An issuance of revenue bonds under the TEC, Chapter 53, for the purposes of:
- (A) the acquisition, construction, repair, or renovation of an educational facility of an open-enrollment charter school and equipping real property of an open-enrollment charter school, provided that any bonds for student or teacher housing must meet the following criteria:
    - (i) the proposed housing is contemplated in the charter or charter application; and
    - (ii) the proposed housing is an essential and integral part of the educational program included in the charter contract; or
  - (B) the refinancing of one or more promissory notes executed by an open-enrollment charter school, each in an amount in excess of \$500,000, that evidence one or more loans from a national or regional bank, nonprofit corporation, or foundation that customarily makes

loans to charter schools, the proceeds of which loans were used for a purpose described in subparagraph (A) of this paragraph; or

(C) both.

- (18) Open-enrollment charter--This term has the meaning assigned in §100.1001 of this title (relating to Definitions).
- (19) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.
- (20) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1001 of this title.
- (21) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1001 of this title.
- (22) Refunding issue--An issuance of bonds under the TEC, Chapter 53, for the purpose of refunding:
  - (A) bonds that have previously been issued under that chapter and have previously been approved by the attorney general; or
  - (B) bonds that have previously been issued for the benefit of an open-enrollment charter school under Vernon's Civil Statutes, Article 1528m, and have previously been approved by the attorney general.

(c) Bond eligibility.

- (1) Only those combination, new money, and refunding issues as defined in subsection (b)(9), (17), and (22), respectively, of this section are eligible to receive the guarantee. The bonds must, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm and must be issued on or after September 28, 2011.
- (2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds.
  - (A) As with any open-enrollment charter holder applying for approval for the guarantee, the charter holder for which the refunding bonds are being issued must meet the requirements for charter district designation specified in subsection (e)(2) of this section and the requirements for initial approval specified in subsection ~~(f)(2)(A)~~ ~~[(f)(3)(A)]~~ of this section.
  - (B) The charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the charter holder. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.
  - (C) For issues that refund bonds previously guaranteed by the BGP, the charter holder must demonstrate that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded.
  - (D) The refunding transaction must comply with the provisions of subsection ~~(f)(4)(A)-(C)~~ ~~[(f)(5)(A)-(C)]~~ and (E) of this section.
- (3) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the charter holder making the application must present data that

demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

- (4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.
- (d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.
- (1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by taking the net capacity determined under §33.65 of this title (relating to Bond Guarantee Program for School Districts), subtracting the total amount of outstanding guaranteed bonds, and then determining the percentage of the difference that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner. The commissioner's determination of the number of students enrolled in open-enrollment charter schools in this state and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open-enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP. The commissioner shall hold 5.0% of the charter school available capacity in reserve each month.
  - (2) Up to half of the total capacity of the PSF to guarantee bonds for charter districts may be used to guarantee charter district refunding bonds.
- (e) Application process and application processing. An open-enrollment charter holder must apply to the commissioner for the guarantee of eligible bonds by submitting an application electronically through the website of the MAC of Texas or its successor. Before an application for the guarantee will be considered, a charter holder must first be determined by the commissioner to meet criteria for designation as a charter district for purposes of this section. The application submitted through the website of the MAC of Texas or its successor will serve as both a charter holder's application for designation as a charter district and its application for the guarantee.
- (1) Application submission and fee. As part of its application, an open-enrollment charter holder must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The open-enrollment charter holder may not submit an application for a guarantee before the governing body of the charter holder adopts a board resolution as defined in subsection (b)(4) of this section.
    - (A) The amount of the application fee is the amount specified in §33.65 of this title.
    - (B) The fee is due at the time the application for charter district designation and the guarantee is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.
    - (C) The fee will not be refunded to an applicant that:
      - (i) is designated a charter district but is not approved for the guarantee; or
      - (ii) receives approval for the guarantee but does not sell its bonds before the expiration of its approval for the guarantee.
    - (D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee.
  - (2) Eligibility to be designated a charter district.

- (A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open-enrollment charter holder must:
- (i) have operated at least one open-enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;
  - (ii) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;
  - (iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;
  - (iv) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;
  - (v) have had, for the past three years, an audit as required by §100.1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified or unmodified opinions;
  - (vi) have received an investment grade credit rating from a nationally recognized investment rating firm as defined in subsection (b)(16) of this section as specified by the TEC, §45.0541, within the last year; and
  - (vii) not have materially violated a covenant relating to debt obligation in the immediately preceding three years.
- (B) For an open-enrollment charter holder to be designated a charter district and have its application for the guarantee considered by the commissioner, **the following requirements must be met. [each open-enrollment charter school operated under the charter must] :**
- (i) **Each open-enrollment charter school operated under the charter must** not have an accreditation rating of Not Accredited-Revoked . **;** **and]**
  - (ii) **Each open-enrollment charter school operated under the charter must not** ~~[must] have an unacceptable [a] rating [of met standard or met alternative standard] as its most recent state academic accountability rating. **The open-enrollment charter school must also:** ~~[However, if an open enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to be designated a charter district and apply for the guarantee.]~~~~
  - (iii) **In addition, the open-enrollment charter holder must have either:**
    - (I) **have an average score, adjusted for charter schools being assessed under alternative accountability standards, of all the open-enrollment charter schools under the charter holder on the first index or domain of the achievement indicators referenced in the TEC, §39.053(c), greater than or equal to the 50th percentile score for this index or domain for all open-enrollment charter schools in the state; or**
    - (II) **have an average score, adjusted for charter schools being assessed under alternative accountability standards, of all the open-enrollment charter schools under the charter holder on the second**

index or domain of the progress indicators referenced in the TEC, §39.053(c), greater than or equal to the 75th percentile score for this index or domain for all open-enrollment charter schools in the state.

- (3) Application processing. All applications received during a calendar month that were submitted by open-enrollment charter holders determined to meet the criteria in paragraph (2) of this subsection will be held until the 15th business day of the subsequent month. On the 15th business day of **that** ~~each~~ month, the commissioner will announce the results of the pro-rata allocation of available capacity [if pro-rata allocation is necessary] and process applications for initial approval for the guarantee, up to the available capacity as of the application deadline, subject to the requirements of this section.
    - (A) If the available capacity is insufficient to guarantee the total value of the bonds for all applicant charter districts, the commissioner will prioritize the allocation of the available capacity by ranking the applicants based on a score that is a composite of the percentage of economically disadvantaged students enrolled at the charter district multiplied by 25% and the charter district's average score on the first index or domain of the achievement indicators referenced in the TEC, §39.053(c), multiplied by 75%. The commissioner will award the full amount to each charter district in rank order. If there is insufficient capacity to award the full amount of an application, all of the remaining capacity would be awarded [allocate the available capacity on a pro-rata basis to each applicant charter district. For each applicant, the commissioner will determine the percentage of the total amount of all applicants' proposed bonds that the applicant's proposed bonds represent. The commissioner will then allocate to that applicant the same percentage of the available capacity], but in no event will an allocation be equal to an amount less than \$500,000.
    - (B) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (f) of this section.
    - (C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section is the same as or higher than that of the PSF.
  - (4) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.
  - (5) Notice of application status. Each open-enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.
  - (6) Reapplication. If an open-enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(4) ~~(f)(5)~~ of this section, the charter holder may reapply in a subsequent month. An application that was denied approval for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.
- (f) Approval for the guarantee; charter district responsibilities on receipt of approval.
- (1) Approval for the guarantee and charter renewal or amendment.
    - (A) If an open-enrollment charter holder applies for the guarantee within the 12 months before the charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the guarantee may not be issued before the successful renewal of the charter.

- (B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the guarantee for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

~~[(2) Initial and final approval provisions:]~~

~~[(A) The commissioner may require an applicant charter district to obtain final approval for the guarantee as described in paragraph (4) of this subsection if:]~~

~~[(i) during the monthly estimation of PSF capacity described in §33.65 of this title, the commissioner determines that the available capacity of the PSF as described in §33.65 of this title is 10% or less; or]~~

~~[(ii) during the monthly estimation of the available capacity of the PSF to guarantee bonds for charter districts described in subsection (d) of this section, the commissioner determines that the available capacity of the PSF to guarantee bonds for charter districts is 10% or less.]~~

~~[(B) If the commissioner has not made such a determination:]~~

~~[(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and]~~

~~[(ii) an applicant charter district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.]~~

~~(2) [(3)] Initial approval.~~

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of all open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner's review will include review of the following:

- (i) the purpose of the bond issue;
- (ii) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following ~~[, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter district's eligibility for consideration for the guarantee]~~ :

- (I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;
- (II) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the charter district will not be eligible for consideration for the guarantee; or

- (III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the charter district will not be eligible for consideration for the guarantee;
  - (iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §53.40;
  - (iv) **the state financial accountability rating of all open-enrollment charter schools operated under the charter [whether the TEA has required the charter district to submit a financial plan under §109.1101 of this title (relating to Financial Solvency Review) in the last three years]** ;
  - (v) the audit history of the charter district and of all open-enrollment charter schools operated under the charter;
  - (vi) the charter district's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;
  - (vii) any interventions and sanctions to which the charter district has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;
  - (viii) formal complaints received by the TEA that have been made against the charter district, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;
  - (ix) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter;
  - (x) any unresolved corrective actions that are less than one year old; and
  - (xi) whether the charter district is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation.
- (B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted is the charter district's first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.
- (C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee written notice of initial approval.

~~(3) [(4)]~~ Final approval. ~~[The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A charter district must receive final approval before completing the sale of the bonds for which the charter district has received notification of initial approval.]~~

- (A) A charter district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.



- (i) The charter district must receive written confirmation from the TEA that the capacity continues to be available and must continue to meet the requirements of subsection (e)(2) of this section before proceeding with the public or private offer to sell bonds.
    - (ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.
  - (B) A charter district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the bond issuer's board of directors no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.
    - (i) The charter district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.
    - (ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.
  - (C) The TEA will process requests for final approval from charter districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.
  - (D) A charter district may provide written notification as required by this paragraph by facsimile transmission, by email, or in another manner prescribed by the commissioner.
- (4) ~~(5)~~ Charter district responsibilities on receipt of approval.
- (A) Once a charter district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the charter district or the attorney general before the expiration of the 180-day period.
  - (B) If applicable, the charter district must comply with the provisions for final approval described in paragraph (3) ~~(4)~~ of this subsection to maintain approval for the guarantee.
  - (C) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the charter district must reapply for a guarantee.
  - (D) A charter district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.
  - (E) The charter district must provide evidence of the final investment grade rating of the bonds to the TEA after receiving initial approval but before the distribution of the preliminary official statement for the bonds or, if the bonds are offered in a private placement, before approval of the bond sale by the governing body of the charter district.
  - (F) A charter district must identify by legal description any educational facility purchased or improved with bond proceeds no later than 30 days after entering into a binding commitment to expend bond proceeds for that purpose. The charter district must identify at that time whether and to what extent debt service will be paid with any source of revenue other than state funds.
- (g) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation

will not prejudice the right of the State Board of Education (SBOE) to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

- (h) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP are defeased, the charter district must notify the commissioner in writing within ten calendar days of the action.
- (i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.
- (j) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond resolution provision requiring an interest rate change. The guarantee does not extend to any obligation of a charter district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.
- (k) Notice of default. A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before the maturing or matured principal or interest becomes due, notify the commissioner.
- (l) Payment from Charter District Bond Guarantee Reserve Fund and PSF.
  - (1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the TEA division responsible for administering the PSF of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under the TEC, §45.0571, to the charter district's paying agent the amount necessary to pay the maturing or matured principal or interest.
  - (2) If money in the reserve fund is insufficient to pay the amount due on a bond under paragraph (1) of this subsection, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the charter district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.
  - (3) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.
  - (4) To ensure that the charter district reimburses the reserve fund and the PSF, if applicable, the commissioner will withhold from state funds otherwise payable to the charter district the amount that the charter district owes in reimbursement.
  - (5) Funds intercepted for reimbursement under paragraph (4) of this subsection will be used to fully reimburse the PSF before any funds reimburse the reserve fund. If the funds intercepted under paragraph (4) of this subsection are insufficient to fully reimburse the PSF with interest, subsequent payments into the reserve fund will first be applied to any outstanding obligation to the PSF.
  - (6) Following full reimbursement to the reserve fund and the PSF, if applicable, with interest, the comptroller will further cancel the bond or coupon and forward it to the charter district for which

payment was made. Interest will be charged at the rate determined under the Texas Government Code (TGC), §2251.025(b). Interest will accrue as specified in the TGC, §2251.025(a) and (c). For purposes of this section, the "date the payment becomes overdue" that is referred to in the TGC, §2251.025(a), is the date that the comptroller makes the payment to the charter district's paying agent.

- (m) Bonds not accelerated on default. If a charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the charter district's default.
- (n) Reimbursement of Charter District Bond Guarantee Reserve Fund or PSF. If payment from the Charter District Bond Guarantee Reserve Fund or the PSF is made on behalf of a charter district, the charter district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.
- (o) Repeated failure to pay. If a total of two or more payments are made under the BGP on the bonds of a charter district, the commissioner may take action in accordance with the provisions of the TEC, §45.062.
- (p) Report on the use of funds and confirmation of use of funds by independent auditor. A charter district that issues bonds approved for the guarantee must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district's independent auditor must confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the guarantee.
- (q) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter C, or with the requirements of this section, including by making any material misrepresentations in the charter holder's application for charter district designation and the guarantee, constitutes a material violation of the open-enrollment charter holder's charter.