

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

### Subchapter A. State Board of Education Rules

#### §33.2. Distributions to the Available School Fund.

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §5(a)(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF, excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, §4, as determined under the Texas Constitution, Article VII, §5(a)(1).

*Statutory Authority: The provisions of this §33.2 issued under the Texas Constitution, Article VII, §5(a)(2) and (f).*

*Source: The provisions of this §33.2 adopted to be effective April 21, 2010, 35 TexReg 3027.*

#### §33.3. Duties and Responsibilities of the State Board of Education Related to the Texas Permanent School Fund Corporation.

- (a) The Texas Constitution, Article VII, §§1-8, establish the Available School Fund, the Texas Permanent School Fund (PSF), and the State Board of Education (SBOE) and specify the standard of care SBOE members must exercise in managing PSF assets. In addition, the constitution directs the legislature to establish suitable provisions for supporting and maintaining an efficient public free school system, defines the composition of the PSF and the Available School Fund, and requires the SBOE to set aside sufficient funds to provide free instructional materials for the use of children attending the public free schools of this state. The members of the SBOE serve as fiduciaries of the PSF.
- (b) Pursuant to Texas Education Code, Chapter 43, Subchapter B, the SBOE delegated the authority to manage and invest the PSF to the Texas PSF Corporation, a special-purpose governmental corporation that is an instrumentality of the state of Texas with all necessary and implied powers to accomplish its purpose. The SBOE has the following duties and responsibilities with respect to the Texas PSF Corporation:
  - (1) establish by rule the terms of the five members of the SBOE appointed to the Texas PSF Corporation Board of Directors;
  - (2) adopt the certificate of formation for the Texas PSF Corporation;
  - (3) approve the adoption and amendment of the Texas PSF Corporation bylaws; and
  - (4) act as the sole member of the Texas PSF Corporation.

*Statutory Authority: The provisions of this §33.3 issued under the Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.*

*Source: The provisions of this §33.3 adopted to be effective March 1, 2023, 48 TexReg 1043.*

#### §33.4. Ethical Standards for Members of the State Board of Education.

- (a) Definitions. For purposes of this section, the following definitions have the following meanings.
  - (1) Commissioner--the commissioner of education. As the commissioner is an employee of the Texas Education Agency (TEA), any provisions that apply to TEA employees apply to the commissioner.
  - (2) Official act or official action--a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

- (3) Permanent School Fund (PSF) service provider--any person who provides services to the PSF or relating to the management or investment of the PSF, including, but not limited to, external investment managers and consultants, banks, custodians, and professional services (attorneys, accountants, etc.). Notwithstanding the foregoing, for all purposes under this section, the term PSF service provider excludes State Board of Education (SBOE) members, TEA employees, and private fund managers. PSF service providers who provide services to the Texas PSF Corporation are covered by the Texas PSF Corporation's ethics policy.
  - (4) Personal securities transactions--
    - (A) transactions for a member's or employee's own account, including an individual retirement account; or
    - (B) transactions for an account, other than an account over which the member or employee has no direct or indirect influence or control, in which the member or employee (or the member's or employee's spouse, minor child, or other dependent relative):
      - (i) is an income or principal beneficiary or other equity owner of the account; or
      - (ii) receives compensation for managing the account for the benefit of persons other than the member or employee or his or her family.
  - (5) Private fund manager--a person who controls a non-publicly traded investment fund or other investment vehicle (including, but not limited to, a partnership, limited liability company, trust, association, or other entity) in which the PSF is invested. A private fund manager may include the vehicle's sponsor, general partner, managing member, manager, advisor, or other agent thereof. For purposes of this section, private fund managers are not considered to be PSF service providers.
  - (6) Publicly traded securities--securities of a class that is listed on a national securities exchange or quoted on the NASDAQ national market system in the United States or that is publicly traded on any foreign stock exchange or other foreign market.
  - (7) Relative--an individual related within the third degree by consanguinity (blood relative) or the second degree by affinity (marriage) determined in accordance with Texas Government Code, §§573.021-573.025. For purposes of this definition:
    - (A) examples of a relative within the third degree by consanguinity are a child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, or nephew;
    - (B) examples of a relative within the second degree by affinity are a spouse, an individual related to a spouse within the second degree by consanguinity, or a spouse of such an individual;
    - (C) an individual adopted into a family is considered a relative on the same basis as a natural born family member; and
    - (D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.
  - (8) Texas Education Agency (TEA) employee--a person employed by TEA who provides advice to the SBOE, commissioner, or TEA concerning the PSF.
- (b) General principles. Under Texas Education Code (TEC), §43.0031, members of the SBOE, the commissioner, TEA employees, and persons providing services to the SBOE relating to the PSF are subject to general ethical standards relating to the PSF. The PSF is held in public trust for the benefit of the schoolchildren of Texas. The members of the SBOE serve as fiduciaries of the PSF in accordance with the Texas Constitution, Article VII, §5(f). SBOE members or anyone acting on their behalf shall aspire to the highest standards of ethical conduct and shall comply with the provisions of this section, the Texas Constitution, Texas statutes, and all other applicable provisions governing the responsibilities of a fiduciary.
- (c) General ethical standards.

- (1) SBOE members must comply with all laws applicable to them, which may include one or more of the following statutes: Texas Government Code, §572.051 (Standards of Conduct; State Agency Ethics Policy), §552.352 (Distribution or Misuse of Confidential Information), §572.002 (General Definitions), §572.004 (Definition: Regulation), §572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense), §572.058 (Private Interest in Measure or Decision; Disclosure; Removal from Office for Violation), §572.021 (Financial Statement Required), §2252.908 (Disclosure of Interested Parties), Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), and Chapter 305 (Registration of Lobbyists); Texas Penal Code, Chapter 36 (Bribery and Corrupt Influence) and Chapter 39 (Abuse of Office); and TEC, §43.0032 (Conflicts of Interest) and §43.0033 (Reports of Expenditures). The omission of any applicable statute listed in this paragraph does not excuse violation of its provisions.
  - (2) SBOE members must be honest in the exercise of their duties and must not take actions that will discredit the PSF.
  - (3) SBOE members shall be loyal to the interests of the PSF to the extent that such loyalty is not in conflict with other duties that legally have priority.
  - (4) SBOE members shall not use nonpublic information gained through their relationship with the PSF to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of PSF as a reference or the communication to others of the fact that a relationship with PSF exists, provided that no misrepresentation is involved.
  - (5) This section is adopted to satisfy the requirements of TEC, §43.0031.
- (d) Conflicts of interest.
- (1) A conflict of interest exists whenever SBOE members, the commissioner, or TEA employees have business, commercial, or other relationships, including, but not limited to, personal and private relationships, that could reasonably be expected to diminish their independence of judgment in the performance of their duties. Conflicts include, but are not limited to, beneficial interests in securities, corporate memberships, trustee positions, familial relationships, or other special relationships that could reasonably be considered a conflict of interest with the fiduciary duties to the PSF. Further, TEC, §43.0032, requires disclosure and no participation in a matter affected by the possible conflict of interest, unless a waiver is granted, when an SBOE member, the commissioner, a TEA employee, or a person who provides services to the SBOE that relate to management or investment of the PSF has a business, commercial, or other relationship that could reasonably be expected to diminish a person's independence of judgment in the performance of the person's responsibilities relating to the PSF. Such business, commercial, or other relationship is defined to be a relationship that is prohibited under Texas Government Code, §572.051, or that would require public disclosure under Texas Government Code, §572.058, or a relationship that does not rise to this level but that is determined by the SBOE to create an unacceptable risk to the integrity and reputation of the PSF investment program.
  - (2) Any person who has a possible conflict of interest as defined in paragraph (1) of this subsection shall, upon discovery, promptly disclose the possible conflict to the commissioner and the chair and vice chair of the SBOE on a disclosure form prescribed by the commissioner.
- (e) Prohibited transactions and interests. SBOE members, the commissioner, and TEA employees may not:
- (1) engage in any personal securities transaction when the person has actual knowledge that the Texas PSF Corporation is trading such securities or has acquired information through his or her position that is not otherwise available to the public. An SBOE member, the commissioner, or a TEA employee may otherwise buy or sell a publicly traded security of an issuer that is held by the Texas PSF Corporation;
  - (2) accept or solicit any gifts, favors, services, or benefits that might reasonably tend to influence the person in the discharge of his or her duties for the PSF or that the person knows, or should know, is being offered with the intent to influence the person's conduct on behalf of the PSF;

- (3) accept employment or engage in a business or professional activity while serving as an SBOE member or a TEA employee that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of his or her position concerning the PSF;
  - (4) accept employment or compensation while serving as a member or employee that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of his or her duties;
  - (5) make personal investments that could reasonably be expected to create a substantial conflict of interest between the member's or employee's private interest and the interests of the PSF;
  - (6) intentionally or knowingly solicit, accept, or agree to accept any gifts, favors, services, or benefits for the exercise of the member's or employee's authority or performance of the member's or employee's duties;
  - (7) purchase, sell, exchange, or lease property to or from the Texas PSF Corporation if such person holds an interest in the property (whether direct or indirect);
  - (8) purchase, sell, or exchange any interest in an entity with the Texas PSF Corporation if such person holds an interest in the entity (whether direct or indirect);
  - (9) accept offers, under any circumstances, by reason of their official position to trade in any security or other investment on terms more favorable than those available to the general investing public or, in the case of private market investments, a similarly situated investor;
  - (10) lend to or borrow from the Texas PSF Corporation, PSF service providers, private fund managers, or other third parties with which the Texas PSF Corporation has a business relationship, unless such entities are normally engaged in such lending in the usual course of their business, and then only on customary terms offered to others under similar circumstances to finance proper and usual activities; or
  - (11) act as a representative or agent of a third party, including a PSF service provider or private fund manager, in connection with the acquisition of services or an investment for the Texas PSF Corporation.
- (f) Gifts and entertainment. An SBOE member, the commissioner, or a TEA employee (or the spouse, minor child, or dependent relative thereof) may not:
- (1) accept any gift or benefit, unless such gift is a permissible gift as defined in subsection (g) of this section;
  - (2) solicit, offer, or accept a gift or benefit (for the personal benefit of the member or employee or for the benefit of a third party), regardless of whether it is a permissible gift, that the member or employee knows, or should know, is being offered or given because of the member's or employee's official position, in exchange for an official act, or with the intent to influence the member's or employee's conduct on behalf of the PSF;
  - (3) solicit, accept, or agree to accept an honorarium in consideration for services that the member or employee would not have been requested to provide but for his or her official position or duties;
  - (4) accept any gift or benefit from a lobbyist, or a person who is required to be registered as a lobbyist, that is not expressly permitted by Texas Government Code, Chapter 305; or
  - (5) accept a gift or benefit if the source of the gift or benefit is not identified or if the member or employee knows, or has reason to know, that a prohibited gift is being offered through an intermediary.
- (g) Definition of permissible gift. The term "permissible gift" means a gift or benefit that is offered or accepted in compliance with all applicable statutes and rules and is one of the following:
- (1) an occasional gift that is not cash or money, including checks, gift cards, or negotiable instruments, and does not exceed \$50 in value;

- (2) food, lodging, entertainment, and transportation, if accepted as a guest (i.e., the donor is present) and, if required, the member or employee reports the gift as required by law;
  - (3) an item is given in the context of a personal relationship, such as kinship, or a professional or business relationship that is independent of the member's or employee's official capacity; or
  - (4) transportation, lodging, and meals in connection with attendance at a conference or similar event in which the member or employee renders services, such as speaking, if the services are more than perfunctory.
- (h) Receipt of prohibited gift. A member or employee who receives a gift that is not a permissible gift should return the gift to its source or, if that is not possible or feasible, donate the gift to a recognized tax-exempt charitable organization or governmental entity.
- (i) Contributions and solicitation of support.
- (1) All SBOE members, the commissioner, and TEA employees (and their respective agents) shall follow all applicable laws governing campaign contributions, including, without limitation, the rules promulgated by the Securities and Exchange Commission relating to political contributions by certain investment advisors.
  - (2) An SBOE member shall not request that a PSF service provider or private fund manager make any gift or donation to a school or other charitable interest on behalf of or at the request of a member.
- (j) Compliance and enforcement.
- (1) The SBOE will enforce this section through its chair or vice chair or the commissioner.
  - (2) Any violation of this section will be reported to the chair and vice chair of the SBOE and the commissioner, and a recommended action will be presented to the SBOE by the chair of the SBOE or the commissioner.
  - (3) The ethics advisor of TEA shall respond to inquiries from SBOE members, the commissioner, and TEA employees concerning the provisions of this section. The ethics advisor may confer with the general counsel.
- (k) Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission or TEA's ethics advisor. TEA employees shall complete all ethics training required by TEA.

*Statutory Authority: The provisions of this §33.4 issued under Texas Education Code, §43.0031.*

*Source: The provisions of this §33.4 adopted to be effective March 1, 2023, 48 TexReg 1043.*

### **§33.6. Bond Guarantee Program for School Districts.**

- (a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of Texas Education Code (TEC), Chapter 45, Subchapter C.
- (b) Definitions. The following definitions apply to the guarantee program for school district bonds.
  - (1) Annual debt service--payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.
    - (A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.
    - (B) The annual debt service does not include:
      - (i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

- (ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.
  - (C) 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 order or other bond proceeding that establishes a maximum interest rate for the bonds.
- (2) 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.
  - (3) Average daily attendance (ADA)--total refined average daily attendance as defined by TEC, §42.005.
  - (4) Bond--a debt security issuance approved by the attorney general, issued under TEC, §45.003 or §45.004, to provide long-term financing with a maturity schedule of at least three years.
  - (5) Bond Guarantee Program (BGP)--the guarantee program that is described by this section and established under TEC, Chapter 45, Subchapter C.
  - (6) Bond order--the order adopted by the governing body of a school district that authorizes the issuance of bonds and the pricing certificate, if any, establishing the terms of the bonds executed pursuant to such order.
  - (7) 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 Texas Government Code, Chapter 1207. 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.
  - (8) Enrollment growth--growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.
  - (9) 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; and
      - (ii) ten or more school districts 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.
  - (10) New money issue--an issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. An issuance of bonds for the purpose of constructing teacher or student housing is eligible for the guarantee for new money only if it is an integral part of the educational mission of the school district as determined by the commissioner. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

- (A) time warrants or loans entered under TEC, Chapter 45, Subchapter E; or
  - (B) any other type of loan or warrant that is not supported by bond taxes as defined by TEC, §45.003.
- (11) Notes issued to provide interim financing--an issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:
- (A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;
  - (B) approved by the attorney general or issued in accordance with proceedings that have been approved by the attorney general; and
  - (C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.
- (12) Refunding issue--an issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under TEC, §45.003.
- (13) Total debt service--total outstanding principal and interest on bonded debt.
- (A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.
  - (B) The total debt service does not include:
    - (i) the amount of debt service to be paid on the bonds for which the reservation is sought; or
    - (ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that TEA has sufficient evidence of the discharge or defeasance of such debt.
  - (C) 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 order or other bond proceeding that establishes a maximum interest rate for the bonds.
- (c) Data sources.
- (1) The following data sources will be used for purposes of prioritization:
- (A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;
  - (B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;
  - (C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

- (D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.
- (2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.
- (d) Bond eligibility.
  - (1) Only those combination, new money, and refunding issues as defined in subsection (b)(7), (10), and (12), respectively, of this section are eligible to receive the guarantee.
  - (2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.
    - (A) As with any district applying for approval for the guarantee, the district issuing the refunding bonds must meet the requirements for initial approval specified in subsection (g)(2)(A) of this section.
    - (B) The bonds to be refunded must have been:
      - (i) previously guaranteed by the Permanent School Fund (PSF) or approved for credit enhancement under §61.1038 of this title (relating to School District Bond Enhancement Program);
      - (ii) issued on or after November 1, 2008, and before January 1, 2010; or
      - (iii) issued as notes to provide interim financing as defined in subsection (b)(11) of this section.
    - (C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. 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.
    - (D) The refunding transaction must comply with the provisions of subsection (g)(4)(A)-(C) of this section.
  - (3) If a district 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 applicant district 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.
- (e) Determination of PSF capacity to guarantee bonds.
  - (1) Each month the commissioner will estimate the available capacity of the PSF. If necessary, the commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (g)(3) of this



section. The calculation of capacity will be based on a multiplier of three and one-half times the cost value of the PSF with the proviso that under no circumstances could the capacity of the fund exceed the limits set by federal regulation. The commissioner may increase or decrease the multiplier to prudently manage fund capacity and preserve the AAA credit rating of the PSF. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

- (2) The SBOE may establish an amount of capacity to be held in reserve of up to 5.0% of the fund's capacity. The amount to be held in reserve may be increased or decreased by a majority vote of the SBOE based on changes in the cost value, asset allocation, and risk in the portfolio, or may be increased or decreased by the commissioner as necessary to prudently manage fund capacity and preserve the AAA credit rating of the PSF. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.
  - (3) The net capacity of the PSF to guarantee bonds is determined by subtracting the amount to be held in reserve, as determined under paragraph (2) of this subsection, from the total available capacity, as described in paragraph (1) of this subsection.
- (f) Application process and application processing.
- (1) Application submission and fee. A district must apply to the commissioner for the guarantee of eligible bonds or the credit enhancement of eligible bonds as authorized under §61.1038 of this title by submitting an application electronically through the website of the MAC of Texas or its successor. The district must submit the information required under 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 district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.
    - (A) The application fee is \$1,500.
    - (B) The fee is due at the time the application for the guarantee or the credit enhancement 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 TEA.
    - (C) The fee will not be refunded to a district that:
      - (i) is not approved for the guarantee or the credit enhancement; or
      - (ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.
    - (D) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.
  - (2) Application prioritization and processing. Applications will be prioritized based on districts' property wealth per ADA, with the application of a district with a lower property wealth per ADA prioritized before that of a district with a higher property wealth per ADA. Applications may also be prioritized for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in TEC, §44.031(h). All applications received during a calendar month will be held until up to the 15th business day of the subsequent month. On or before the 15th business day of each month, the commissioner will announce the results of the prioritization and process applications for initial approval for the guarantee, up to the available net capacity as of the application deadline, subject to the requirements of this section.
    - (A) Approval for guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds.

- (B) Approval for guarantees will be awarded based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process. If PSF net capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.
- (C) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (g) of this section.
- (D) An applicant school 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)(9) of this section is the same as or higher than that of the PSF.
- (3) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.
- (4) Notice of application status. Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline.
- (5) Reapplication. If a 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 (g)(4) of this section, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months.
- (g) Approval for the guarantee; district responsibilities on receipt of approval.
  - (1) Initial and final approval provisions.
    - (A) If, during the monthly estimation of PSF capacity described in subsection (e)(1) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (3) of this subsection.
    - (B) If the commissioner has not made such a determination:
      - (i) the commissioner will consider the initial approval described in paragraph (2) of this subsection as both the initial and final approval; and
      - (ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (2) 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) 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 TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:
      - (i) the purpose of the bond issue;
      - (ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:
        - (I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

- (II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or
    - (III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;
  - (iii) the district's compliance with statutes and rules of TEA; and
  - (iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of TEC, §45.0031 and §45.005.
- (B) The following limitation applies to applications for new money issues of bonds for which the election authorizing the issuance of the bonds was called after July 15, 2004. The commissioner will limit approval for the guarantee to a district that has, at the time of the application for the guarantee, less than 90% of the annual debt service of the district with the highest annual debt service per ADA, as determined by the commissioner annually, or less than 90% of the total debt service of the district with the highest total debt service per ADA, as determined by the commissioner annually. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(8) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(13) of this section.
- (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 district whose application has received initial approval for the guarantee written notice of initial approval.
- (3) Final approval. The provisions of this paragraph apply only as described in paragraph (1) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.
- (A) A district that has received initial approval must provide a written notice to 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 district must receive written confirmation from TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.
    - (ii) 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 district that received confirmation from TEA in accordance with subparagraph (A) of this paragraph must provide written notice to TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the school board of trustees no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

- (i) The district must receive written confirmation from TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.
    - (ii) TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.
  - (C) TEA will process requests for final approval from 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 district may provide written notification as required by this paragraph by facsimile transmission or by email in a manner prescribed by the commissioner.
- (4) District responsibilities on receipt of approval.
  - (A) Once a 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 district or the attorney general before the expiration of the 180-day period.
  - (B) 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 district must reapply for a guarantee.
  - (C) If applicable, the district must comply with the provisions for final approval described in paragraph (3) of this subsection to maintain approval for the guarantee.
  - (D) A 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.
- (h) Financial exigency. The following provisions describe how a declaration of financial exigency under §109.2001 of this title (relating to Financial Exigency) affects a district's application for guarantee approval or a district's previously granted approval.
  - (1) Application for guarantee of new money issue. The commissioner will deny approval of an application for the guarantee of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.
  - (2) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the guarantee of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.
  - (3) Application for guarantee of refunding issue. The commissioner will consider an application for the guarantee of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.
- (i) 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 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.

- (j) 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 order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within ten calendar days of the action.
- (k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.
- (l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.
- (m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.
- (n) Payments. For purposes of the provisions of 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 the terms of the bond order. 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.
- (o) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of 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 order provision requiring an interest rate change. The guarantee does not extend to any obligation of a 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.
- (p) Notice of default. A school 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 maturity date, notify the commissioner.
- (q) Payment from PSF.
  - (1) Immediately after the commissioner receives the notice described in subsection (p) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.
  - (2) 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 PSF.
  - (3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward it to the school district for which payment was made. Interest will be

charged at the rate determined under the Texas Government Code, §2251.025(b). Interest will accrue as specified in the Texas Government Code, §2251.025(a) and (c).

- (r) Bonds not accelerated on default. If a school 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 school district's default.
- (s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of TEC, §45.061.
- (t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of TEC, §45.062.

*Statutory Authority: The provisions of this §33.6 issued under the Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.*

*Source: The provisions of this §33.6 adopted to be effective March 1, 2023, 48 TexReg 1043.*

### **§33.7. 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 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 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 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 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 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:  $(\text{Excess of revenues over expenses} + \text{interest expense} + \text{depreciation expense} + \text{amortization expense}) / \text{annual debt service}$ .
- (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 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 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 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 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)(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)(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 multiplying the net capacity determined under §33.6 of this title (relating to Bond Guarantee Program for School Districts) by 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 the percentage established by the State Board of Education (SBOE) under §33.6(e)(2) of this title 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 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 §33.6 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 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 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, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of met standard or met alternative standard as its most recent state academic accountability rating. 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.
- (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 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 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)(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 §33.6 of this title, the commissioner determines that the available capacity of the PSF as described in §33.6 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.

(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 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 TEC, §53.40;
  - (iv) whether 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 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 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.
- (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 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 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) 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 TEA in accordance with subparagraph (A) of this paragraph must provide written notice to 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 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 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) 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) 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.
- (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 (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 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 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 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 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) Charter District Bond Guarantee Reserve Fund. The Charter District Bond Guarantee Reserve Fund is a special fund in the state treasury outside the general revenue fund and is managed by the SBOE in the same manner that the PSF is managed by the SBOE.
  - (m) 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 Texas PSF Corporation of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under 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.
  - (n) 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.
  - (o) 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 TEC, §45.061.
  - (p) 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 TEC, §45.062.
  - (q) 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 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.

- (r) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of 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.

*Statutory Authority: The provisions of this §33.7 issued under the Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.*

*Source: The provisions of this §33.7 adopted to be effective March 1, 2023, 48 TexReg 1043.*

**§33.8. Compliance with Securities and Exchange Commission (SEC) Rule 15c2-12 Pertaining to Disclosure of Information Relating to the Bond Guarantee Program.**

- (a) Definitions. As used in this section, the following terms have the meanings ascribed to such terms below.
- (1) Agency means the Texas Education Agency and any successors or assigns thereto with respect to the management and administration of the Program or the investment of the Permanent School Fund.
  - (2) Financial Obligation means, with respect to the Program, a:
    - (A) debt obligation;
    - (B) derivative instrument entered into in connection with, or pledged as security or a source of a payment for, an existing or planned debt obligation; or
    - (C) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.
  - (3) Guaranteed Bonds means obligations for which application is made and granted for a guarantee under the Program.
  - (4) Issuing District means a school district or charter district which issues Guaranteed Bonds.
  - (5) MSRB means the Municipal Securities Rulemaking Board or any successor to its functions under the Rule.
  - (6) Official Statement means each offering document of an Issuing District used in the offering and/or sale of Guaranteed Bonds.
  - (7) Order means the resolution, order, ordinance or other instrument or instruments of an Issuing District pursuant to which Guaranteed Bonds are issued and the rights of the holders and beneficial owners thereof are established.
  - (8) Permanent School Fund means the perpetual school fund established by Article VII, Section 2 of the Texas Constitution.
  - (9) Program means the program of bond guarantee by the Permanent School Fund, which program has been established by Article VII, Sections 2 and 5 of the Texas Constitution, and is administered in accordance with Subchapter C, Chapter 45, Texas Education Code, as amended, and the rules and regulations of the Agency. The term Program shall also include the rules, regulations and policies of the Agency with respect to the administration of such program of guarantee of school district bonds, as well as the rules, regulations, policies of the Agency with respect to the administration, and the operational and financial results, of the Permanent School Fund.
  - (10) Program Regulation means this rule of the Agency which is promulgated for the purpose of establishing and undertaking with respect to the Program which satisfies the requirements of the Rule.



- (11) PSF Corporation means the Permanent School Fund Corporation created by the State Board of Education pursuant to, and having the powers set forth in, Subchapter B of Chapter 43, Texas Education Code, as amended.
  - (12) Rule means SEC Rule 15c2-12, as amended from time to time.
  - (13) SEC means the United States Securities and Exchange Commission.
- (b) Annual Reports.
- (1) The Agency shall provide annually to the MSRB, within six months after the end of each fiscal year, financial information and operating data with respect to Program of the general type which describes the Program and which is included in an Official Statement for Guaranteed Bonds, which is prepared by the PSF Corporation. Any financial statements to be provided need not be audited. Such information shall be transmitted electronically to the MSRB, in such format and accompanied by such identifying information as prescribed by the MSRB.
  - (2) If the Agency changes its fiscal year from the year ending August 31, it will file notice with the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Agency otherwise would be required to provide financial information and data pursuant to this section.
  - (3) The financial information and operating data to be provided pursuant to this section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to either the MSRB or filed with the SEC.
- (c) Event Notices.
- (1) The Agency shall notify the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event), of any of the following events with respect to the Program:
    - (A) Principal and interest payment delinquencies;
    - (B) Non-payment related defaults if such event is material within the meaning of the federal securities laws;
    - (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
    - (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
    - (E) Substitution of credit or liquidity providers, or their failure to perform;
    - (F) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Program, or other material events affecting the tax status of the Program;
    - (G) Modifications to rights of holders of the Bonds, if such event is material within the meaning of the federal securities laws;
    - (H) Bond calls, if such event is material within the meaning of the federal securities laws, and tender offers;
    - (I) Defeasances;
    - (J) Release, substitution, or sale of property securing repayment of Guaranteed Bonds, if such event is material within the meaning of the federal securities laws;
    - (K) Rating changes of the Program;
    - (L) Bankruptcy, insolvency, receivership, or similar event of the Program, which shall occur as described below;
    - (M) The consummation of a merger, consolidation, or acquisition involving the Program or the sale of all or substantially all of its assets, other than in the ordinary course of

- business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if such event is material within the meaning of the federal securities laws;
- (N) Appointment of a successor or additional trustee with respect to the Program or the change of name of a trustee, if such event is material within the meaning of the federal securities laws;
  - (O) The incurrence of a financial obligation of the Program, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Program, any of which affect security holders, if material; and
  - (P) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Program, any of which reflect financial difficulties.
- (2) For these purposes, any event described in the immediately preceding paragraph (L) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Program in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Program, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Program.
  - (3) The Agency shall notify the MSRB, in a timely manner, of any failure by the Agency to provide financial information or operating data in accordance with Section 1 of this Program Regulation by the time required by such Section.
  - (4) Nothing in this Program Regulation shall obligate the Agency to make any filings or disclosures with respect to Guaranteed Bonds, as the obligations of the Agency hereunder pertain solely to the Program.
- (d) Limitations, Disclaimers, and Amendments.
- (1) With respect to a series of Guaranteed Bonds, the Agency shall be obligated to observe and perform the covenants specified in this Program Regulation for so long as, but only for so long as, the Agency remains an "obligated person" with respect to the Guaranteed Bonds within the meaning of the Rule.
  - (2) The provisions of this Program Regulation are for the sole benefit of each Issuing District, as well as holders and beneficial owners of the Guaranteed Bonds; nothing in this Program Regulation, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Agency undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Program Regulation and does not hereby undertake to provide any other information, even if such information may be relevant or material to a complete presentation of the Program's financial results, condition, or prospects. The Agency does not undertake to update any information provided in accordance with this Program Regulation or otherwise, except as expressly provided herein. The Agency does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Guaranteed Bonds at any time.
  - (3) Under no circumstances shall the Agency or the Program be liable to the holder or beneficial owner of any Guaranteed Bond, the Issuing District or any other person or entity, in contract or tort, for damages resulting in whole or in part from any breach by the Agency, whether negligent or without fault on its part, of any covenant specified in this Program Regulation, but every right and remedy of any such person, in contract or tort, for or on account of any such breach shall be limited to an action for mandamus or specific performance.

- (4) No default by the Agency in observing or performing its obligations under this Program Regulation shall comprise a breach of or default under the Order for purposes of any other provision of the Order. Nothing in this Program Regulation is intended or shall act to disclaim, waive, or otherwise limit the duties of the Agency under federal and state securities laws.
- (5) The provisions of this Program Regulation may be amended by the Agency from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Agency, but only if:
  - (A) the provisions of this Program Regulation, as so amended, would have permitted an underwriter to purchase or sell Guaranteed Bonds in the primary offering of the Guaranteed Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances; and
  - (B) either:
    - (i) the holders of a majority in aggregate principal amount of the outstanding Guaranteed Bonds consent to such amendment, or
    - (ii) a person that is unaffiliated with the Agency (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Guaranteed Bonds.
- (6) If the Agency so amends the provisions of this Program Regulation, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this section (relating to Compliance with SEC Rule 15c2-12 Pertaining to Disclosure of Information Relating to the Bond Guarantee Program) an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Agency may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Guaranteed Bonds in the primary offering of the Guaranteed Bonds.

*Statutory Authority: The provisions of this §33.8 issued under the Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001; and Senate Bill 1232, 87th Texas Legislature, Regular Session, 2021.*

*Source: The provisions of this §33.8 adopted to be effective March 1, 2023, 48 TexReg 1043.*