

TREASURY BOARD DEBT STRUCTURING AND ISSUANCE GUIDELINES

1. Authority

These Guidelines are promulgated under the authority of § 2.2-2416 (8) of the *Code of Virginia* which empowers the Treasury Board to “establish debt structuring guidelines for bonds or other financing arrangements executed by or for the benefit of all state agencies, institutions, boards, and authorities where the debt service payments on such bonds or other financing arrangements are expected to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth...”

These Guidelines replace the *Guidelines for the Structuring & Issuance of Appropriation-Supported Debt* effective since July 1, 1992.

2. Purpose

These guidelines are intended to aid agencies, institutions, boards and authorities in structuring their financing arrangements in a manner consistent with the best interests of the Commonwealth. These are guidelines only, and consideration of a structure outside of these guidelines may be warranted under certain circumstances.

3. Applicability

These guidelines apply to all state agencies, institutions, boards and authorities where the debt service payments are expected to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth. Pursuant to §2.2-2416(8), the Treasury Board may, in its sole discretion, exempt from its review and approval (i) specific financing arrangements, (ii) certain types or classes of bond issues and other financing arrangements, and (iii) financing arrangements that are below a stated dollar amount.

3.1. **Exemptions** - The following types or classes of bond issues and other financing arrangements are exempt from the provisions of §2.2-2416(7) of the *Code of Virginia*:

- 1) “Moral Obligation Debt” (as defined herein),
- 2) Obligations issued by the Virginia Public School Authority which are secured by obligations of counties, cities and towns, and by a “sum sufficient appropriation” from available monies first from the Literary Fund and second from the Commonwealth’s General Fund,
- 3) Obligations issued by the Virginia Port Authority payable from revenues of the port facilities and not payable from the Commonwealth Port Fund or other state appropriations,
- 4) Obligations issued by the Medical College of Virginia Hospital Authority payable solely from revenues of the Authority, and
- 5) Bonds, notes or other financing arrangements secured by local tax revenues and issued by tax-exempt corporations formed to finance projects pursuant to the

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provisions of the Public-Private Transportation Act of 1995, the Public-Private Educational Facilities and Infrastructure Act of 2002 and the Multicounty Transportation Improvement Districts Act, that are not payable, directly or indirectly, from appropriations of the Commonwealth.

4. Definitions

The following terms, as used herein, have the following respective meanings:

- 4.1. **Bond Counsel** – An attorney (or firm of attorneys) retained by the issuer to give a legal opinion that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal and/or state income taxation. Typically, bond counsel advises the issuer on statutory requirements, prepares authorizing resolutions or ordinances, trust indentures, official statements, closing documents and other documents required for the issuance of securities, conducts validation proceedings and supports the issuer in the event of litigation.
- 4.2. **Capitalized Interest** – A portion of the proceeds of an issue set aside to pay interest on the securities for a specified period of time. Interest is commonly capitalized for the construction period of a revenue-producing project.
- 4.3. **Capital Lease** – Shall have the same meaning as the term is defined in the Commonwealth Accounting Policy and Procedures (CAPP) Manual.
- 4.4. **Call/Redemption** – A transaction in which the issuer returns the principal amount represented by an outstanding security (plus, in some cases, an additional amount or “premium”). Redemption can be made at maturity of the security, as a result of the issuer’s call of the securities prior to their stated maturity date, or in the case of variable rate debt, as a result of the securityholder’s election to exercise a put or tender option privilege.
- 4.5. **Call Provisions** – The terms of the bond contract giving the issuer the right, or requiring the issuer to redeem or “call” all or a portion of an outstanding issue of bonds prior to their stated dates of maturity at a specified price, usually at or above par and stated as a percentage of the principal amount called.
- 4.6. **Debt Service Reserve Fund** – The fund in which moneys are placed which may be used to pay debt service if pledged revenues are insufficient to satisfy the debt service requirements. May be funded with bond proceeds, or it may only be partly funded at issuance and reach its full funding requirement over time. If allowed in the bond documents, a surety policy from a bond insurance company or other qualified provider may be used to satisfy the Debt Service Reserve requirement.

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- 4.7. **Financial Advisor** – A consultant who advises the issuer on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms and bond ratings.
- 4.8. **General Revenue Pledge** – Bonds or other obligations secured by the general operating revenues (rather than specific project revenues) of an institution of higher education. General operating revenues may include total gross university sponsored overhead, unrestricted endowment income, tuition and fees, indirect cost recoveries, auxiliary enterprise revenues, general fund appropriations and other revenues not required by law to be utilized for another purpose.
- 4.9. **Gross Funding** – Issuing the entire amount of the bond authorization with the intent to use any earnings on proceeds to pay additional project costs. Contrast with Net Funding.
- 4.10. **Moral Obligation Debt** – Refers to the structure under which the state pledges to consider replenishing a deficiency in the debt service reserve fund arising from the need to draw money from the fund when the underlying project revenues prove to be insufficient to service the debt. The state is not legally required to replenish the fund. Commonwealth agencies that have used the moral obligation structure in the past include the Virginia Housing Development Authority (VHDA) and the Virginia Resources Authority (VRA). Only the VRA actively uses this structure.
- 4.11. **Net Funding** – A method of sizing the bond issue in which projected earnings on the bond proceeds are taken into account as a source of funds for project costs using anticipated spending schedules and an assumed rate of investment earnings. This results in a smaller overall issue size.
- 4.12. **Present Value** – The value at the current time of a cash payment or stream of payments which is expected to be received in the future, allowing for the fact that an amount received today could be invested to earn interest until the future date(s).
- 4.13. **Present Value Savings** – A method of calculating the aggregate amount of savings on a refunding transaction. In each semi-annual period, the present value of the debt service on the Refunding Bonds is subtracted from the present value of the debt service on the Refunded Bonds using the arbitrage yield on the refunding bonds as the discount rate. The present value savings in each year are added together to result in the aggregate Present Value Savings.
- 4.14. **Present Value Savings Percentage** – The Present Value Savings divided by the principal amount of the Refunded Bonds.
- 4.15. **Refunding** – A procedure whereby an issuer refinances outstanding bonds by issuing new bonds. Bonds are usually refunded to either reduce the issuer's interest costs or to remove a burdensome or restrictive covenant imposed by the legal terms of the

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bonds being refinanced. The new bonds are called the “**refunding bonds,**” while the bonds being refinanced are called the “**refunded bonds.**” An **Advance Refunding** is a type of refunding where outstanding securities are refinanced by the proceeds of a new issue of securities more than 90 days prior to the date on which the outstanding securities become due or are callable. The proceeds of the new securities are deposited in escrow and invested in U.S. Government or federal agency securities, with principal and interest on the escrowed securities used to pay principal and interest on the refunded bonds up to and including the Redemption or Call. The Internal Revenue Code restricts the yield on such escrowed securities. A **Current Refunding** is a type of refunding where the proceeds of the new bonds are used within 90 days of closing to retire the refunded obligations. If the proceeds are not used immediately (i.e., on the day of closing) to retire the refunded obligations, it may still be necessary to establish a portfolio of escrow securities. However, the Internal Revenue Code does not impose the same yield restrictions on Current Refundings that they do on Advance Refundings.

- 4.16. **Terms and Structure** – As it relates to §2.2-2416 of the *Code of Virginia*, “terms and structure” is deemed to include the following: type of debt instrument/obligation, security, size, method and timing of sale, interest rate structure, principal amortization method, call provisions, number and level of credit ratings, investment of proceeds, credit enhancements, synthetic features, (e.g., caps, floors, forwards, swaps), disclosure, refunding parameters, method of selection of financing team, etc.
- 4.17. **True Interest Cost (“TIC”)** – Also known as “Canadian Interest Cost.” A method of computing the issuer’s cost defined as that rate, compounded semi-annually, that is necessary to discount the amounts payable (on the respective principal and interest payment dates) to the purchase price received for the new securities, excluding accrued interest.
- 4.18. **Trustee** – A financial institution with trust powers that acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.
- 4.19. **Underwriter** – A firm that purchases a new issue of municipal securities for resale. The underwriter may acquire the securities either by negotiation with the issuer (e.g., RFP) or by award on the basis of competitive bidding.
- 4.20. **Underwriter’s Counsel** – An attorney or law firm retained to represent the interest of the underwriters in connection with the purchase of a new issue of municipal securities. The duties of the underwriter’s counsel may include review of the issuer’s bond resolution or ordinance and documentation on behalf of the underwriter, review of the official statement to determine the adequacy of disclosure, negotiation of the agreement among underwriters and preparation of the due diligence opinion.

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5. Treasury Board Approval

The powers and duties of the Treasury Board are enumerated under §2.2-2416 of the *Code of Virginia*. In summary, those provisions require the Board to approve the terms and structure of bonds or other financing arrangements executed by or for the benefit of (i) educational institutions and state agencies other than independent state authorities (§2.2-2416(5)), and (ii) state agencies, boards and authorities where debt service payments on such bonds or other financing arrangements are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth (§2.2-2416(7)). Both provisions include bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and other types of agreements relating to the sale of bonds.

Applications for Treasury Board approval will be considered only at regular monthly meetings of the Board. Board meetings are usually held on the third Wednesday of the month at 9:00 a.m., however the meeting dates are subject to change and should be confirmed. Requests for consideration of Treasury Board approval of terms and structure must be received in the Debt Management Division of the Department of the Treasury a minimum of three (3) weeks prior to the scheduled meeting date.

5.1. Form of Application

Requests for Treasury Board consideration must include the following items (as applicable):

- 5.1.1. **Financing Summary** in the form of Exhibit A, detailing (among other things) the specific legislative authority under which the securities are being issued, the terms and structure, and the firms (bond counsel, financial advisor, underwriter, etc.) involved in the transaction. The Financing Summary should also include:
 - Objectives of the financing,
 - Security or source(s) of debt service payments,
 - Explanation of any special features (e.g., capitalized interest, reserve funds, credit enhancements, use of any ancillary contracts, special bond covenants, etc.),
 - Description of the method of sale and how determined,
 - Brief explanation of how and when the proceeds are to be spent, and
 - Copy of any financial analysis (i.e., debt service, savings analysis, etc.)
- 5.1.2. **Copy of the Project or Issuance Authorization** which may be in the form of an Act of the Virginia General Assembly, budget language, etc., evidencing approval by the legislative body for the financing.
- 5.1.3. **Copy of the Resolution(s) of Authorizing and/or Issuing Board or Authority** of the appropriate body approving the transaction (e.g., resolution of the Board of Visitors for an institution of higher education). If the resolution has not yet been adopted, a draft will suffice for application purposes. Any revisions between the draft and the final resolution should be provided to the Treasury Board. In the case of Refunding Bonds, minimal savings thresholds should be specified. **The**

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authorizing/issuing board must have adopted the resolution prior to action by the Treasury Board.

5.1.4. **Draft Preliminary Official Statement/Placement Memorandum.**

5.1.5. **Treasury Board Resolution** - the form of the resolution that the Treasury Board will be asked to approve.

5.2. **Presentation to the Treasury Board**

The Treasury Board will consider the financing proposal and may propose any changes to the terms and structure of the financing and the proposed resolution, as it deems advisable. The issuer and/or representatives of the issuer, including the financial advisor and bond counsel, may make the presentation. The Board may choose to give final approval upon the pricing of the securities, or the Board may choose to delegate final approval to a committee of the Board or to the State Treasurer. **Under no circumstances shall the preliminary offering documents or notice of sale be released without having first obtained approval from the Treasury Board.**

5.3. **Treasury Board Review**

Treasury Board's review of the terms and structure of the transaction will include many of the following components. The suggested terms or parameters are meant to provide general guidance to the issuer. The issuer should be prepared to explain and/or justify major deviations from these guidelines.

5.3.1. **Method of Sale** – While the use of competitive sales are encouraged, negotiated sales are often justified in cases of a new credit, inexperienced issuer, a complex refunding, volatile markets or other circumstances.

5.3.2. **Financing Structure**

- **Tax-exempt debt** (rather than taxable debt) should be used whenever appropriate.
- **Interest Rate Structure** – Use of variable versus fixed rate debt. Generally no more than 20% of an issuer's aggregate outstanding debt should be in a variable rate mode.
- **Amortization**
 - The term of the obligations for "New Money" issues (as opposed to refundings) must not exceed the useful life of the facility or project being financed.
 - A term of twenty-years (20) years should be used whenever possible and the weighted average life of the issue should be as close to ten years as possible (on a twenty-year issue).
 - Principal repayment should begin within eighteen months of the issuance unless debt repayment is solely dependent on revenues derived from the project being financed.
 - Structures utilizing term bonds or other "balloon" payments should require annual sinking fund payments.
 - Issues with a debt service reserve fund should use the fund to make the final payment.

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- Debt service should be computed based on level annual payments or level principal.
- The issuer should amortize at least 50% of the outstanding debt within ten years (on a traditional 20-year issue).
- For refunding issues, the final maturity on the Refunding Bonds should be no longer than the final maturity on the Refunded Bonds.
- Refunding issues should be amortized to achieve level annual debt service savings. “Up-front” or “deferred” debt service savings structures should be employed only as necessary to meet specific objectives.
- **Sizing the Issue**
 - Use the project draw (spending) schedule as the basis for sizing the issue.
 - **Net funding** of accounts is encouraged.
 - Capitalized interest should only be used when necessary (typically for revenue-producing projects) and should be limited to six months beyond the projected completion date.
- **Call Provisions**
 - Should be as aggressive (i.e., favorable to the issuer) as the market will allow.
 - Various call option scenarios should be evaluated so that the most beneficial can be utilized.
- **Sale Date/Closing Date**
 - Sale date should be driven by the need for proceeds.
 - Debt should not be issued before project construction bids are received.
 - Consider the use of interim financing to initiate the project, issuing the long-term debt later.
 - Avoid attempts to time the market.
 - Avoid market competition with other state issues and/or comparable credits.
- **Credit Ratings/Rating Agencies**
 - Use rating agencies approved by the State Treasurer.
 - Obtaining a minimum of two ratings is encouraged.
- **Selection of Financing Team**
 - The use of an independent Financial Advisor is encouraged.
 - Bond Counsel and Underwriters’ Counsel should not be the same firm.
 - To provide the broadest distribution of bonds, the use of co-managers and selling groups are encouraged in negotiated transactions. The size of the transaction, anticipated retail/institutional demand, experience, etc., will determine the number of participants.
 - The services of a Trustee bank are likely to be required.
- **Compliance with Federal tax laws** (i.e., the Internal Revenue Code) - Tax-exempt borrowings must include provisions to ensure compliance with all applicable federal tax laws.
 - Issuers must comply with Internal Revenue Service regulations concerning any reimbursement for expenses incurred prior to issuance.

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- Consider how bond proceeds will be invested and monitored to facilitate compliance with Arbitrage Rules and Arbitrage Rebate requirements and assign responsibility for arbitrage compliance.
- Consider the long-term use of the facility being financed. Limits on private (non-governmental) use apply for the life of the bonds. A change in the use of the facility, the existence of certain management or service contracts or privatized arrangements, or the use of the facility by the federal government could affect the tax-exempt status of the bonds.
- **Disclosure** – Accurate and complete disclosure is imperative to maintaining the high quality of Commonwealth debt.
 - Primary Disclosure refers to the information distributed to potential investors at the time of the initial issuance of the securities (e.g., the Official Statement). *Disclosure Guidelines for State and Local Governments* published by the Government Finance Officers Association (GFOA) provides guidelines for the preparation of primary disclosure documents the form of which is approved by the State Treasurer.
 - Secondary Market Disclosure refers to the requirement for the issuer to provide ongoing information on its financial condition for the benefit of individuals purchasing and/or holding the securities subsequent to their initial issuance. Issuers must commit in the bond documents to provide secondary market disclosure.
- **Investment of Proceeds**
 - Bond proceeds should be invested in accordance with the Investment of Public Funds Act (§2.2-4500 et seq., Code of Virginia). Bond proceeds should be invested with the following priorities (in this order) in mind: Safety, Liquidity, and Return.
 - If invested in a portfolio of securities, the portfolio should be structured to meet expected spending requirements. Accordingly, draw schedules should be reviewed and updated periodically and provided to the investment manager.
 - Issuers may wish to consider use of the State Non-Arbitrage Pool (SNAP) or other similar money market account designed to meet investment priorities while providing certain arbitrage rebate calculation services.
 - Consider arbitrage requirements when considering investment options (i.e., if not SNAP, address method of tracking earnings for arbitrage calculations).
 - An Escrow portfolio should be bid competitively. The underwriter should not furnish the escrow securities. Details of the process for bidding escrow securities (including the number and names of bids solicited (minimum of three) and bids received) should be retained by the issuer for the life of the bonds.
- **Credit Enhancements** to enhance or improve the ratings on the securities may be considered on issues where the improved bond rating and corresponding reduction in borrowing cost to the issuer more than offsets the cost of the enhancement.
 - A cost-benefit analysis should be performed to determine if insurance or another type of enhancement is warranted.

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- **Ancillary Contracts/Synthetic Features.** Legislation approved by the 2002 Session of the General Assembly (Chapter 407, 2002 Acts) permits the use of contracts on interest rates, currency, cash flow or other basis.
 - Contracts on interest rates, currency, cash flows, etc., including (but not limited to) interest rate swaps, interest rate caps and floors and guaranteed investment contracts (GICs) should be carefully evaluated with due consideration to the creditworthiness of the counterparty or other obligated entity.
 - If such contracts, including synthetic refundings, occur subsequent to original Treasury Board approval of the transaction, it will be necessary to obtain Treasury Board approval on the ancillary contract.
 - The Treasury Board has adopted Guidelines for Ancillary Contracts as Appendix B to these Guidelines.
 - **Refunding Bonds** should be issued only when the issuance is of benefit to the issuer and/or the Commonwealth. Bonds issued after 1986 can only be advance refunded one time. It is therefore of particular importance that the one opportunity be reserved for situations where the refunding is prudent and warranted.
 - Purpose – Refundings are generally undertaken for two reasons: to provide present value debt service savings to the issuer or to escape burdensome or restrictive covenants imposed by the terms of the bonds being refinanced.
 - Present Value Savings Parameters – For refundings for savings, the following parameters are suggested to ensure that the single refunding opportunity is warranted:
 - 5% present value savings for bonds refunded within five years of their issuance date or 4% and present value savings of at least \$1 million.
 - 3% present value savings for bonds refunded more than five years from their issuance date.
 - 4% aggregate present value savings when refunding bonds of several different series.
 - Forward Refunding – A refunding in which bonds are sold with the intent to close or deliver at some future point in time, generally more than 30 days after pricing, and often to coincide with a date 90 days prior to the call date on the refunded bonds, thereby qualifying as a current refunding.
 - Synthetic Refunding – There are certain techniques that can create present value savings by synthetically refunding bonds that may not be otherwise refunded. These techniques include the use of interest rate swaps and potentially other municipal derivative structures. In general, the present value savings should equal or exceed those available from a more standard refunding transaction, while minimizing other risks associated with these techniques.
- 5.3.3. **Higher Education General Revenue Pledge Bonds** – In addition to the guidelines described above, issuers of General Revenue Pledge Bonds should demonstrate the affordability of the bonds being issued.

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- The ratio of maximum annual debt service to unrestricted current fund expenditures plus transfers should not exceed 7%.
- Current net unrestricted revenues should exceed projected maximum annual debt service by 110%.
- Revenues should not be dependent upon unauthorized tuition increases.

5.3.4. **“Alternative Financing” Methods** such as privatized arrangements, public-private partnerships, lease-purchases, long-term capital leases, and the like should be evaluated against more traditional financing options. The State Treasurer is authorized to assess a charge of up to ten basis points of the par amount of the issue for costs associated with alternative financing proposals.

- 5.4. **Closing** – Sufficient time should be allowed between the sale (or pricing) date and the closing date to permit adequate review and execution of all closing documents.
- Issues requiring the execution of any document by the Governor (e.g., Consent of the Governor, Governor’s Certificate, etc.) may require additional time to allow for review and execution by the Governor.
 - Closing documents requiring the approval of and/or execution by the State Treasurer must be provided as soon as possible after pricing in order to allow adequate time for review and approval. Where appropriate, draft documents may be provided prior to pricing in order to speed the process.
- 5.5. **Post-Sale** – Upon completion of the pricing of the bonds, the issuer should provide the Treasury Board with the following:
- Final Financing Summary detailing the sale results.
 - Copy of transcript of the final documents.
 - Other sale information that may be requested by the State Treasurer.

FINANCING SUMMARY

(dated as of)

\$ _____

(Issue Title)

(Series Title)

Title	
Issuer	
Borrower	
Legislative Reference	
Purpose	
Security	
Method of Sale	
Pricing/Sale Date	
Closing Date	
Dated Date	
Term	
Structure	
Interest Payments	
Denominations	
Registration Provisions	
All-Inclusive Cost	
Expected Rating	
Type of Sale	
Optional Redemption	
Private Placement Agent	
Bond Counsel	
Trustee	
Cost of Issuance	

Verification Agent	
Escrow Agent	
Net Present Value Savings	