

VIRGINIA COLLEGE BUILDING AUTHORITY

Post-Issuance Compliance Policy for Tax-Exempt Qualified Obligations

Statement of Purpose

This Post-Issuance Compliance Policy (the “Policy”) sets forth specific policies of the Virginia College Building Authority (“VCBA”) designed to monitor post-issuance compliance of VCBA tax-exempt qualified obligations¹ (the “Obligations”) with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (the “Treasury Regulations”).

The Policy documents existing practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes. The VCBA recognizes that compliance with applicable provisions of the Code and Treasury Regulations is an on-going process, necessary during the entire term of the Obligations, and an integral component of VCBA’s debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and, likely, consultation with bond counsel beyond the scope of its initial engagement with respect to the issuance of particular Obligations.

VCBA Programs

The VCBA administers three programs involving the issuance of Obligations: (1) the 21st Century College and Equipment Program (the “21st Century College and Equipment Program”); (2) the Public Higher Education Financing Program (the “Pooled Bond Program,” and together with the 21st Century College and Equipment Program, the “Public College Programs”); and (3) private college financings (the “Private College Program”). Each of these programs is distinct in terms of authorization, the sources and security for the repayment of the obligations and on-going administration. Each program involves issuing Obligations on behalf of colleges and universities. In the case of a public institution in the Commonwealth of Virginia (the “Commonwealth”) participating in the 21st Century College and Equipment Program or the Pooled Bond Program (each, a “Participating Institution”), such Participating Institution may participate in one or both of such programs.

21st Century College and Equipment Program. The General Assembly of the Commonwealth (the “General Assembly”) created the 21st Century College Program in 1996 and has authorized designated capital projects for Participating Institutions to be financed with bonds issued by the VCBA. Additionally, the VCBA has operated a program since 1986 to provide financing for the purchase of instructional and research equipment to public institutions of higher education. The VCBA has been authorized annually to finance the Participating Institutions’ purchase of such equipment (the “Equipment Program”) and has issued bonds since 1999 on a composite basis for the 21st Century College Program and the Equipment Program. Payments of principal and

¹ For purposes of the Policy, tax-exempt qualified obligations shall include (a) obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the “Code”) (“tax-exempt obligations”), and (b) obligations the interest on which is not excludable from gross income for federal income tax purposes, but federal law otherwise requires such obligations to satisfy requirements of the Code applicable to tax-exempt obligations. For example, Section 54AA of the Code, added by the American Recovery and Reinvestment Act of 2009, authorizes the issuance of “Build America Bonds,” the interest on which is includible in gross income for federal income tax purposes, provided that (a) the interest on the bonds would, but for such Section 54AA, be excludable from gross income for federal tax purposes under Section 103 of the Code, (b) such bonds are issued before a specified date (currently January 1, 2011), and (c) the issuer makes an irrevocable election to have Section 54AA apply. Accordingly, the Policy will apply to any Build America Bonds issued by the Authority.

interest on bonds issued under the 21st Century College and Equipment Program are payable from appropriations made by the General Assembly.

Pooled Bond Program. The Pooled Bond Program began in 1996 and authorizes the VCBA to issue bonds to finance the purchase of obligations of Participating Institutions (the “Notes”). Participating Institutions use proceeds of the Notes to finance or refinance capital projects approved by the General Assembly. A Participating Institution pledges its general revenues as security for its Notes. As additional security in the event a Participating Institution fails to pay the VCBA in accordance with its Notes, the VCBA can intercept General Assembly appropriations to the Participating Institution.

Private College Program. Under the Educational Facilities Authority Act (Chapter 3.3, Title 23, Code of Virginia of 1950, as amended), the VCBA issues bonds and notes to finance educational facilities projects on a conduit basis through loans to private, nonprofit institutions of higher education within the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. These obligations are payable primarily from loan repayments made by the respective private, nonprofit institution of higher education.

Policy Components

The monitoring of certain post-issuance compliance issues arising under the Public College Programs necessarily will involve the Participating Institutions. The monitoring of post-issuance compliance under the Private College Program largely will be delegated to the respective private, nonprofit institutions of higher education obtaining financing through the Private College Program. Due to differences in the three programs, including the reliance upon the Participating Institutions in the Public College Programs and the private, nonprofit institutions in the Private College Program to provide information critical to post-issuance compliance, specific variations of the procedures outlined below will be implemented in consultation with bond counsel, the Participating Institutions, the participating private, nonprofit institutions and representatives of the Attorney General’s office.

Specific post-issuance compliance procedures address the relevant areas described below. The following list is not intended to be exhaustive and further areas may be identified from time to time by VCBA staff in consultation with bond counsel and appropriate representatives of the Attorney General’s office.

- I. *Policies and Procedures Generally – the following policies relate to procedures and systems for monitoring post-issuance compliance generally.*
 - A. The Director of Debt Management (the “Director”) shall identify an appropriate Treasury staff member (currently the Assistant Director of Debt Management responsible for VCBA) to be responsible for monitoring VCBA post-issuance compliance issues (the “Staff Designee”). The Director shall be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.
 - B. The Staff Designee will coordinate procedures for record retention and review of such records.
 - C. The Staff Designee will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.
 - D. Electronic media will be the preferred method for storage of all documents and other records maintained by Treasury and the VCBA. In maintaining such electronic storage, the Staff Designee will comply with applicable Internal Revenue Service (the “IRS”) requirements, such as those contained in Revenue Procedure 97-22.

II. Policies and Procedures under the Public College Programs – the following policies relate to procedures and systems for monitoring post-issuance compliance under the Public College Programs.

A. Issuance of Obligations – the following policies relate to the issuance of a specific issue of Obligations under the Public College Programs.

The Staff Designee will:

1. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents.
2. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
3. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable Treasury staff.

B. Arbitrage – the following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Staff Designee will:

1. Coordinate the tracking of expenditures and any investment earnings with other applicable Treasury Staff.
2. Obtain a computation of the yield on such issue from the VCBA's financial advisor for such issuance or other relevant third party (e.g., the underwriter for such issuance, the State Non Arbitrage Program ("SNAP"), or other outside arbitrage rebate specialist) and maintain a system for tracking investment earnings, whether internal to Treasury or external via SNAP.
3. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
4. Coordinate with SNAP and/or other applicable Treasury Staff to monitor compliance by the Participating Institutions with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on investments if such exceptions are not satisfied.
5. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
6. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.

7. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions (e.g., bond insurance, letter of credit) or hedging transactions (e.g., interest rate swaps, caps).
8. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
9. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to monitor compliance by the Participating Institutions with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
10. Coordinate with SNAP and/or other applicable Treasury Staff and the bond trustee to arrange, as applicable for timely computation of rebate liability and, if rebate is due, for timely filing of Form 8038-T and with the applicable Participating Institution, to arrange payment of such rebate liability.
11. Coordinate with SNAP and/or other applicable Treasury Staff to arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.
12. In the case of any issue of refunding Obligations, coordinate with VCBA’s financial advisor, the bond trustee and any escrow agent to arrange for the purchase of the refunding escrow securities, should obtain a computation of the yield on such escrow securities from the Treasury’s outside arbitrage rebate specialist and should monitor compliance with applicable yield restrictions.

C. Private Activity Concerns – the following polices relate to the monitoring and tracking of private uses and payments with respect to facilities financed under the Public College Programs.

The Staff Designee will:

1. Coordinate with applicable Participating Institution staff to maintain records determining and tracking which specific issues of Obligations financed which facilities in what amounts.
2. Coordinate with applicable Participating Institution staff to maintain records, which should be consistent with those used for arbitrage purposes, to allocation of proceeds of such issue to expenditures, including the reimbursement of pre-issuance expenditures.
3. Coordinate with applicable Participating Institution staff to maintain records allocating of proceeds of an issue of Obligations and funds from other sources within a financed project to demonstrate use of proceeds of such issue for qualifying costs.
4. Coordinate with SNAP and/or Treasury or other applicable staff to monitor the expenditure of proceeds of such issue for qualifying costs.
5. Coordinate with applicable Participating Institution staff to monitor private use of financed facilities to ensure compliance with applicable percentage limitations. Such monitoring should include the following:

- a. Procedures, through the use of Participating Institution questionnaires, follow-up due diligence calls or otherwise, for the review of the amount of existing private use on a periodic basis; and
 - b. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.
6. Consult with bond counsel as to any possible private use of financed facilities.
- D. Reissuance – the following policies relate to compliance with rules and regulations regarding reissuance of Obligations issued under the Public College Programs.

The Staff Designee will:

1. Identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of obligation which could potentially be treated as a reissuance for tax purposes.
 2. Confirm with bond counsel whether any “remedial action” in connection with a “change in use” (as such terms are defined in the Code and Treasury Regulations) would be treated as a reissuance for tax purposes.
- E. Record Retention – the following policies relate to retention of records relating to Obligations issued under the Public College Programs.

The Staff Designee will:

1. Coordinate with applicable Participating Institution staff to maintain sufficient records to be maintained by VCBA and each Participating Institution to ensure that the issue remains in compliance with applicable federal tax requirements for the life of such issue.
2. Coordinate with applicable Participating Institution staff to comply with provisions imposing specific recordkeeping requirements and cause the Participating Institutions to comply with such provisions, where applicable.
3. Coordinate with applicable Participating Institution staff, or cause the Participating Institutions,² to generally maintain the following:
 - a. Basic records relating to the transaction (e.g., supplemental indenture, loan agreement, any non-arbitrage certificate, participating institution certificates and the bond counsel opinion);
 - b. Documentation evidencing expenditure of proceeds of the issue;

² For example, the Participating Institutions will maintain records relating to expenditures of proceeds, including requisitions, invoices, bills, asset lists of financed facilities and equipment and other documentation.

- c. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
 - c. Documentation evidencing use of financed property by public and private sources (e.g., copies of management contracts and research agreements);
 - d. Documentation evidencing all sources of payment or security for the issue; and
 - e. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
4. Coordinate the retention of all records in a manner that ensures their complete access to the IRS. While this is typically accomplished through the maintenance of hard copies, records may be kept in electronic format so long as applicable requirements, such as Revenue Procedure 97-22, are satisfied.
 5. Keep all material records for so long as the issue is outstanding, plus three years after the final maturity or redemption of such issue.

III. *Policies and Procedures under the Private College Program – the following policies relate to procedures and systems for monitoring post-issuance compliance under the Private College Program.*

- A. Following the issuance of a specific issue of Obligations, the Staff Designee should obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents.
- B. For each issuance of Obligations under the Private College Program, the Staff Designee should confirm that bond counsel has filed the applicable information report (e.g., Form 8038) for such issue with the IRS on a timely basis.
- C. For each issuance of Obligations under the Private College Program, the Staff Designee should confirm that the private, nonprofit institution participating as the conduit borrower in such transaction has covenanted in the bond documents to comply with all applicable requirements of the Code and Treasury Regulations that must be satisfied subsequent to the issuance of the Obligations in order to maintain the tax status of such Obligations, including, but not limited to, requirements relating to arbitrage and rebate, private activity and record keeping.³

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³ As previously noted, the VCBA issues Obligations under Private College Program on a conduit basis for the benefit of private, nonprofit institutions of higher education in the Commonwealth. In accordance with such conduit structure, the responsibility for post-issuance compliance under the Private College Program largely will be delegated to the respective private, nonprofit institutions of higher education benefiting from such financing.