

VIRGINIA COLLEGE BUILDING AUTHORITY
Guidelines in Connection with

**POOLED BOND FINANCINGS FOR THE BENEFIT OF PUBLIC INSTITUTIONS
OF HIGHER EDUCATION**

I. Background

The 1996 Session of the Virginia General Assembly authorized the creation of a pooled bond financing mechanism for capital projects authorized for financing under Section 9(d) of the Constitution of Virginia. As a result of this legislation, the Virginia College Building Authority (the “Authority”) developed the Public Higher Education Financing Program (the “Pooled Bond Program”) to assist public institutions of higher education to finance or refinance Section 9(d) capital projects at the lowest possible cost. The Pooled Bond Program allows public institutions of higher education to finance Section 9(d) capital projects through the program rather than financing such projects individually. Under the Pooled Bond Program, the Authority uses the proceeds of its sales of bonds (“Pooled Bonds”) to purchase debt obligations of the participating public institutions (“Notes”). The proceeds of these individual Notes are used to finance or refinance capital projects at such public institutions.

II. Purpose of Guidelines

The purpose of this document is to articulate the Authority guidelines in connection with the issuance of Pooled Bonds for the benefit of public institutions of higher education within the Commonwealth of Virginia. This document’s scope is limited to the Authority’s Public Higher Education Financing Program pursuant to the Virginia College Building Authority Act of 1966, Chapter 3.2 of Title 23 of the *Code of Virginia of 1950*, as amended. These guidelines are also intended to aid the institutions in structuring financing arrangements in a manner consistent with the best interests of the institution and the Authority. These are guidelines only and consideration of a structure outside of these guidelines may be warranted under certain circumstances.

III. Applicability

These guidelines apply to all public institutions of higher education of the Commonwealth which meet the statutory requirements of § 23-14 of the *Code of Virginia of 1950*, as amended, and wish to participate in the Pooled Bond Program. For institutions choosing to issue bonds on their own, Treasury Board guidelines will apply and are available on the Treasury website at <http://www.trs.virginia.gov/debt/tboard.asp>.

IV. Authority’s Public Higher Education Financing Program

The Authority was created by and derives its powers from the Virginia College Building Authority Act, Chapter 3.2 of Title 23 of the *Code of Virginia of 1950*, as amended, pursuant to which it is authorized to assist in financing the construction of capital improvement projects at public institutions of higher education within the Commonwealth by purchasing bonds or other debt obligations of such educational institutions.

The Authority is authorized to finance a broad range of projects as defined in § 23-15.

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As the issuer of the Pooled Bonds, the Authority reviews and approves applications for the Pooled Bond Program, coordinates the financing process and approves the legal documentation, culminating in the issuance of the Pooled Bonds by the Authority on behalf of the institutions.

The pooled structure provides three distinct benefits to the institution: (i) it allows the costs of issuance to be shared among all participating institutions, (ii) it provides access to the capital markets often at lower interest rates than an institution could achieve accessing the capital markets on its own, and (iii) it relieves the institution from the staff work and effort associated with an individual bond issue.

VCBA Pooled Bond ratings are expected to be at least AA+, Aa1, and AA by Fitch Ratings, Moody's and S&P, respectively.

V. Security

1. **Loan Agreement and Note** – Each participating institution will enter into a separate Loan Agreement with the Authority, under which it borrows a portion of the proceeds of the sale of the Pooled Bonds from the Authority, promises to repay its loan from the institution's revenues and evidences such repayment obligation by a Note issued by the institution to the Authority. Debt service on the Pooled Bonds will be funded with payments received by the Authority under each Loan Agreement.
2. **General Revenue Pledge** – Each participating institution is required to give a general revenue pledge for the payments due under the Note pursuant to its Loan Agreement with the Authority. Pledged General Revenues include all revenues of the institution not required by law or binding contract to be devoted to some other purpose on a basis that is senior in priority to payments under the Note.
3. **Intercept Mechanism** – Section 23-30.29:3 of the *Code of Virginia of 1950*, as amended, provides for an intercept mechanism in the event that an institution has defaulted in payments under the Note in accordance with the Loan Agreement. Immediately upon the Governor's knowledge that an institution is in default, the State Comptroller is required to make an intercept payment to the Authority for the amount due. **Any appropriation, whether of the Commonwealth's general fund revenues or special fund revenues, available to the institution may be intercepted.** In addition, if an institution defaults, the State Comptroller is directed to charge against appropriations available to such institutions all future payments under the Note as to ensure no future default will occur on the related Pooled Bonds.

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VI. General Assembly Approval

All projects to be financed by the Pooled Bond Program must have been specifically included in a bill (which may include the Budget Bill) passed by a majority of both houses of the General Assembly authorizing such project as eligible for bond financing.

VII. Board of Visitors Approval

All capital projects to be financed with Pooled Bond proceeds must be approved by the institution's Board of Visitors as projects to be financed through the Pooled Bond Program. The Authority's bond counsel will provide a form of this Board of Visitors resolution for the institution and prepare the related Loan Agreement and Note. The Board of Visitors resolution is requested to be adopted prior to approval of the related Pooled Bonds by the Authority and must be obtained before such Pooled Bonds are priced for a project to be included in the financing.

VIII. VCBA and Treasury Board Approval

The Virginia College Building Authority Board (the "VCBA Board") approves financings under the Pooled Bond Program. The VCBA Board's meetings are scheduled when needed. The Authority's staff, as well as its financial advisor and bond counsel, will make the presentation to the VCBA Board. The VCBA Board may choose to give its final approval upon the pricing of the Pooled Bonds, or the VCBA Board may choose to delegate final approval regarding pricing, terms, structure or other matters to the State Treasurer.

In addition to VCBA Board approval, the Treasury Board is required to approve the terms and structure of the Pooled Bonds. Treasury Board approval will be considered at one of its regular monthly meetings after the financing has been approved by the VCBA Board.

VCBA Board and Treasury Board approvals are obtained before any offering document or preliminary official statement for the related Pooled Bonds is electronically posted or printed, which occurs before such Pooled Bonds are priced.

IX. Application and Loan Structure

Each participating institution must complete an application package that gives the Authority the information needed to structure the Pooled Bond issue. Under the Pooled Bond Program, each participating institution has the flexibility to specify certain terms of its Loan Agreement with the Authority. The institution will make payments on its Note in the same amounts as will be required for debt service payments on the portion of Pooled Bonds used by the Authority to purchase the Note.

Authority staff will distribute Pooled Bond Program information to all eligible public institutions approximately four weeks prior to the date the applications are due.

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Applications and instructions will be available on the Treasury website at <http://www.trsvirgini.gov/debt/vcba.asp>, which will allow applicants to complete the application in its electronic format and return them to the Department of the Treasury via e-mail. Paper copies of the application will also be available and may be obtained by contacting the Department of the Treasury at (804) 786-3669 (phone), (804) 225-3187 (fax) or P.O. Box 1879, Richmond, VA 23219.

If the institution's Board of Visitors resolution has not yet been adopted when the application is submitted, a draft will suffice for application purposes. Any revisions between the draft and the final resolution should be provided to the Authority prior to the VCBA Board meeting. As noted above **the institution's Board of Visitors is requested to have adopted the resolution prior to approval by the VCBA Board of the related Pooled Bond issue and must be obtained before the related Pooled Bonds are priced.**

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

1. **Amortization** -- The Pooled Bond Program provides flexibility to allow institutions to specify certain individual financing terms, such as the preferred amortization schedule for the bonds issued to finance its respective project(s), subject to the following conditions.
 - The term of the obligations must not exceed the useful life of the facility or project being financed.
 - It is preferable that the maximum term of the obligations not exceed 20 years and the weighted average life of the bonds should be as close to 10 years as possible (on a 20 year issue).
 - The institution should begin repaying principal on its bonds within 18 months of their issuance unless debt repayment is solely dependent on revenues derived from the project being financed.
 - Debt service will be computed based on level annual payments of principal and interest or level payments of principal.

2. **Draw Schedules and Bond Issue Sizing**
 - The Authority will use the project draw (spending) schedule provided on the institution's application as the basis for sizing the Pooled Bond issue.
 - Each institution must provide the anticipated draw (spending) schedule for each of its projects on a monthly basis.
 - It is the Authority's intention to provide financing from any bond issue for anticipated project draws for approximately 12 to 18 months.
 - If the project will take longer to complete, the institution may request the Authority to issue additional bonds the next year to cover the remaining draws.

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- The institution should elect to **Net Fund** its project costs whenever possible. Gross Funding may result in more funds being borrowed than are needed for the projects to be financed.

- 3. **Capitalized Interest**
 - Capitalized interest generally is used only for revenue-producing projects and should be limited to six months beyond the completion date of the project.
 - Deferral of principal, if desired, may or may not coincide with the capitalized interest period.

- 4. **Interim Financing**
 - Interim financing (e.g., Treasury loans or bond anticipation notes (BANs)) may be used to finance the initiation of a project, with long-term take-out financing through the Pooled Bond program. **Treasury loans are approved by and issued through the Department of Planning & Budget.**
 - If interim financing is used, the proceeds of the Pooled Bonds will be used to immediately repay the short-term obligations with the exception of interest accrued between bond sizing and the bond closing date. Due to timing constraints on the Treasury loan payoff calculation, the institution, in most cases, will be responsible for paying, from other institutional funds, any interest that was not included at the time of the Pooled Bond sizing. **All calculations of interest due on Treasury loans are performed by the Department of Accounts.**

X. Compliance with Federal Tax Laws

Institutions must:

- Comply with Internal Revenue Service regulations concerning reimbursement for expenses occurring prior to issuance of the Pooled Bonds. If costs related to the project being financed are incurred before bonds are sold and the institution wishes to have these costs reimbursed with bond proceeds, the institution must have its Board of Visitors approve an intent to reimburse resolution prior to spending any funds on the facility. The Authority's bond counsel can assist with the required reimbursement resolution.
- Consider how bond proceeds will be invested and monitored to facilitate compliance with applicable federal arbitrage rules and arbitrage rebate requirements. **(See "SNAP" below.)**
- Consider the long-term use of the project being financed. A change in facility use, the existence of certain private management or research contracts or other private use arrangements, or the use of the facility by the federal government, during the life of the Pooled Bonds could adversely affect the tax-exempt status. These issues should be identified in the application process so that the Authority's bond counsel can review them.

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XI. Loan Payments

Payments are due from the institutions 15 days prior to the Authority's debt service payments are due on the Pooled Bonds. Accordingly, payments from the institutions are due on August 15 and February 15 as debt service on the Authority's bonds is paid on March 1 (interest) and September 1 (principal and interest) of each year. Each institution's payment to the Authority consists of its share of principal, interest and administrative costs of the Pooled Bond Program.

XII. State Non-Arbitrage Pool (SNAP)

- Under federal tax arbitrage rebate rules, each institution is required to make an election at the time of the related Pooled Bond issuance regarding whether the institution prefers to pay rebate or a penalty if the institution does not spend its Pooled Bond proceeds within the requisite time period.
- Each institution is also responsible for tracking compliance with its individual spend-down requirements and establishing and funding rebate accounts, if necessary.
- To assist participating institutions with these requirements, the Authority will invest Pooled Bond proceeds in the SNAP program. See the SNAP website for more information (www.vasnap.com).
- SNAP will track the institution's spending of funds and provide periodic statements that show whether the institution is complying with the minimum IRS spend-down levels; however, it is the responsibility of the institution to reconcile these statements with the Trustee's statements and the institution's own internal records.
- SNAP also will perform an arbitrage rebate calculation for the Pooled Bonds and provide reports for each institution at the time periods required by the IRS. A rebate calculation is required a minimum of every fifth year that the bonds are outstanding. **It is the responsibility of the institution to monitor and make provisions for payment of any arbitrage rebate liability or penalty.** The cost of rebate calculations for a specific Pooled Bond issue will be shared by each institution participating in such issue and will be billed to the institution by the Trustee for the Pooled Bonds, currently The Bank of New York.

XIII. Disclosure

Under Securities and Exchange Commission, Rule 15c2-12 (the "Rule"), issuers of tax-exempt bonds must make a continuing disclosure undertaking and file an annual report ("Annual Report") with certain Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) for the benefit of the bondholders and to assist the participating underwriters in complying with the Rule. This Annual Report must be filed each year by your institution as long as the bonds are outstanding. This Annual Report is due to the NRMSIRs by May 1 of each year. The Commonwealth and its authorities and institutions will make this filing through the electronic clearinghouse, DisclosureUSA.

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Institutions should register with DisclosureUSA through its website, www.disclosureusa.org.

The Loan Agreement outlines the filing requirements under the continuing disclosure undertaking, including the specific content of the Annual Report. **In the Loan Agreement, the institution acknowledges that it is undertaking primary responsibility for any continuing disclosure, reports, notices or disclosures that are required.** The institution's Annual Report is to be filed not later than 10 months after the end of each fiscal year as noted above. The audited annual financial statements of the institution are to be filed as soon as publicly available. Reports of any of 13 events identified in the Loan Agreement (referred to as Listed Events) must be filed as soon as it occurs.

In the event the institution fails to file its Annual Report by the due date or fails to file its Audited Annual Financial Statement when available, it is required to send an appropriate notice to the Municipal Securities Rulemaking Board in the Format of an exhibit to the Loan Agreement. Finally, the institution is required to provide the Authority a copy of its Annual Report filing not less than 10 days prior to the due date.

XIV. Bond Counsel

The Office of the Attorney General has appointed the law firm of Troutman Sanders LLP to serve as Bond Counsel for the Pooled Bond Program. Bond Counsel is responsible for drafting the basic legal documents, for the administration of the closing of the transaction and, most importantly, for opining as to the tax-exempt nature of interest payments on the Pooled Bonds. Bond Counsel must be satisfied that each institution remains a tax-exempt entity under the tax code and that no project is to be used for a non-exempt purpose. Final executed documents are compiled by Bond Counsel and distributed to each institution following the closing.

XV. Financial Advisor

The financial advisor to the Authority assists the Authority in the structuring and pricing of the Pooled Bonds. Although the Authority's financial advisor can provide limited assistance to individual institutions regarding the terms and structure of their individual note issues, institutions requiring additional assistance in the structuring of their note obligations in conjunction with the Pooled Bond issuance should retain independent financial advisory services.

XVI. Trustee

The trustee for the Pooled Bond Program currently is The Bank of New York (the "Trustee"). The Trustee provides ongoing administrative, requisition-processing and record-keeping services to the Authority and the various institutions participating in the Pooled Bond Program.

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For each bond issuance, the Authority will pay, from the costs of issuance account for the bonds, the Trustee's one-time initial acceptance fee and the Trustee's annual fee for the first year the bonds are outstanding. **Thereafter, ongoing Trustee administrative fees and transaction costs will be charged on a per institution basis and each participating institution will be responsible for its applicable share of Trustee fees and costs.** The Trustee will bill participating institutions annually. Annual Trustee fees are currently \$500 per institution per applicable series of Pooled Bonds plus transaction costs.

Transaction costs include a Wiring Fee, currently of \$25.00 per wire, and a Requisition Processing Fee, currently \$10.00 per requisition or batch of requisitions, as the case may be. Billing periods vary depending on the date of closing for each series of Pooled Bonds.

The institutions communicate directly with the Trustee in requesting reimbursements or payments for project expenses. The Authority and its staff are not generally involved with the request. The Trustee will send monthly statements to the institution showing investment interest and expenditures which the institution should reconcile to its records and SNAP records.

XVII. Definitions

The following terms used in connection with the issuance of the Pooled Bonds, have the following respective meanings¹.

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 income taxation and, where applicable, from state and local taxation. Typically, bond counsel may prepare, or review and advise the issuer regarding authorizing resolutions or ordinances, trust indentures, official statements, validation proceedings and litigation.

Call Provisions - The terms of the [bond contract](#), sometimes referred to as "call or prepayment provisions," giving the [issuer](#) the right to [redeem or call](#) (an "optional redemption"), or requiring the issuer to redeem or call (a "mandatory redemption"), all (an "in-whole redemption") or a portion (a "partial redemption") of an [outstanding issue of bonds](#) prior to its stated [date of maturity](#). [Bonds](#) may be redeemed at a specified price, usually at [par](#) or [accrued value](#) in the case of [original issue discount bonds](#) (a "par call") or above par or accrued value (a "premium call"), plus any [accrued interest](#) to the [redemption date](#). Issuers may be limited to redeeming bonds on [interest payment dates](#) (an "any-interest-date redemption") or may be permitted to redeem bonds on any date (an "any time or continuous call").

¹ Where possible, these definitions are taken from the [Glossary of Municipal Bond Terms](#) published by the Municipal Securities Rulemaking Board or from the Pooled Bond Program documents, as applicable.

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<p>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 no longer than the construction period of a project or until a short period after completion.</p>
<p>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.</p>
<p>General Revenues – Without limitation, the Institution’s total gross university sponsored overhead, unrestricted endowment income, tuition and fees, indirect cost recoveries, auxiliary enterprise revenues, general and nongeneral fund appropriations and other revenues not required by law or restricted by a gift instrument to be used for another purpose.</p>
<p>Gross Funding – A method of sizing the bond issue in which the principal amount of bonds issued is a sufficient source of funds for project costs using anticipated spending schedules.</p>
<p>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 method results in a smaller overall issue size.</p>
<p>Terms and Structure – As it relates to § 2.2-2416 of the <i>Code of Virginia</i>, “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, the method of selection of the financing team and selling group.</p>
<p>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.</p>
<p>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.</p>
<p>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 or by award on the basis of competitive bidding.</p>