

VIRGINIA COLLEGE BUILDING AUTHORITY
Guidelines in Connection with

**BOND FINANCINGS FOR THE BENEFIT OF PRIVATE NON-PROFIT INSTITUTIONS OF
HIGHER EDUCATION**
(Revised January 2, 2019)

The purpose of this document is to articulate the Virginia College Building Authority's (the "Authority" or the "VCBA") guidelines in connection with the issuance of bonds for the benefit of certain private, non-profit institutions of higher education within the Commonwealth of Virginia (the "Commonwealth"). This document's scope is limited to the Authority's Private College Financing Program pursuant to Chapter 12 of Title 23.1 of the *Code of Virginia* of 1950, as amended (the "Act"). These guidelines supersede the Virginia College Building Authority Guidelines in Connection with Bond Financings for the Benefit of Private Non-Profit Institutions of Higher Education revised April 20, 2004.

Authority's Private College Financing Program

The Authority was created by and derives its powers from Chapter 12 of Title 23.1 of the *Code of Virginia* of 1950, as amended. Under the Act, the Authority is authorized to assist as a conduit issuer for private, non-profit institutions of higher education within the Commonwealth in the financing and refinancing of a broad range of capital projects. Such institutions include any private, non-profit educational institution of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. The Authority is specifically prohibited from financing any facility to be used for sectarian instruction or as a place of religious worship or to be used primarily in connection with theological education.

Under this program, the Authority issues its obligations and lends the borrowed proceeds to an institution, taking back the institution's promissory note as evidence of its debt to the Authority and assigning the promissory note and the Authority's rights under a loan agreement to a trustee as security for the Authority's obligations. The Authority's obligations are limited obligations of the Authority payable solely from and secured by an assignment of the payments received by the Authority to pay the principal of and interest on the obligations as they become due.

The Authority expects to finance new facilities, additions and major renovations of existing facilities. Also eligible for financing are costs of land, site development and equipment, professional fees, interest during construction, financing expenses and other costs normally associated with the development, construction and placing of capital projects into operation. The Authority does not expect to finance facilities for which construction has been completed prior to submission of an application. However, the Authority may refinance debt for facilities that have been previously financed either through the Private College Financing Program or through other methods of financing.

Purpose

These guidelines are intended to assist private, non-profit institutions within the Commonwealth in structuring their financing arrangements in a manner consistent with the best interests of the institution and the purposes of the Act. These are guidelines only and consideration of a structure outside of these guidelines may be warranted under certain circumstances.

Applicability

These guidelines apply to all private, non-profit institutions of higher education in the Commonwealth, which meet the statutory requirements of § 23.1-1220 of the *Code of Virginia* of 1950, as amended.

VCBA Board Approval

Approval of an application for financing will be made by the VCBA at a scheduled meeting. VCBA meetings are scheduled when needed and, therefore, the institution will need to work closely with the Authority's staff to select a date far enough in advance to meet the needs of all parties in the transaction. **A meeting of the VCBA will not be scheduled until an institution's complete application is received in the Debt Management Division of the Department of the Treasury and the institution's governing body has approved the financing. Draft financing documents must be received a minimum of two (2) weeks prior to the scheduled meeting date and the financing documents needed for presentation to the VCBA must be received one (1) week prior to the scheduled meeting date.** The applicant must provide documents in substantially final form and in a quantity sufficient to satisfy the Authority's mailing list. If required, a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing may be held either during the VCBA meeting or at such time as the institution may desire prior to the VCBA meeting.

Upon receipt of the institution's completed application, the Authority's staff will begin its review of the terms and structure of the financing and other statistical information required in the application in preparation for its recommendation to the Authority's Board. Staff will also refer the application to the State Council of Higher Education for Virginia (SCHEV) for its evaluation of institutional characteristics. The Authority will consider the comments of SCHEV, but will not require a formal statement of approval as a prerequisite to the proposed financing. The Authority may consult with its counsel or a financial advisor for advice concerning the application from the institution and, by making application to the Authority, the institution agrees that any costs incurred by the Authority on behalf of the institution will be the responsibility of the institution, regardless of whether the Authority ultimately issues bonds or notes for the institution

The acceptance and approval of the proposed financing will be made by the Authority with due consideration to the financing terms and structure that are judged to be in the best interest of the Authority and the institution. Following the Authority's determination to finance a project, it will be the responsibility of the institution to carry out the financing, have financing documents finalized, apply for bond ratings (in the discretion of the institution), and complete all other documents and actions necessary for the marketing and closing of the financing transaction.

Obligations issued by the Authority for the benefit of the institution will be payable solely from the specific sources provided by the institution and the Authority will have no direct responsibility therefore. **All costs incurred in connection with the issuance of the Authority's obligations must be paid out of the proceeds of the obligations or by the institution directly at the closing of the financing transaction.** Obligations issued by the Authority are in no way to be construed as obligations of the Commonwealth, legal, moral or otherwise.

As part of the approval process, the Authority will consider the institution's selection of bond counsel, trustee and other advisors, but the consent of the Authority to this selection will be required prior to the issuance of the Authority's obligations. Historically, the Authority has consented to institutions' selection of bond counsel, trustee and other advisors. The institution will be responsible for paying the fees and charges of such counsel, trustee and other advisors. The institution may select the providers of such other services needed for the public or private sale of the Authority's obligations including:

bond rating agencies, investment bankers, accountants and financial printers. The institution will also be responsible for paying for such providers.

Form of Application and Financing Documents

The Authority has a formal application entitled Virginia College Building Authority Application for Financing for Private Institutions of Higher Education. This application may be obtained at <https://trs.virginia.gov/Boards-Authorities/Virginia-College-Building-Authority>. Generally, the application and financing documents for Authority consideration must include the following items (as applicable):

- **Description of the Proposed Financing, including:**
 - Objectives of the financing,
 - Description of project(s),
 - Financing calendar,
 - Security features,
 - Source of debt service payments,
 - Explanation of any special features (i.e. capitalized interest, reserve funds, credit enhancements, etc.),
 - Description of the method of sale,
 - Brief explanation of how and when the proceeds are to be spent,
 - Copy of any financial analysis (i.e. debt service schedule, savings analysis, cost of issuance, etc.),
 - Supplemental financial and statistical information about the institution,
 - Working group list of staff and professionals involved.
- **Financing Summary** detailing (among other things) the terms and structure, the estimated cost of issuance, and the firms (bond counsel, trustee, financial advisor, underwriter, underwriter's counsel, etc.) involved in the transaction. The form of the financing summary is provided in Part II, Schedule G of the VCBA Application for Financing for Private Institutions of Higher Education.
- **Governing body of the institution Resolution Authorizing the Issuance of Obligations through the Authority and Resolution of Intent to Reimburse.** If the resolution(s) has not yet been adopted, a draft will suffice for application purposes. Any revisions between the draft and the final resolution(s) should be provided to the Authority prior to the Authority's Board meeting. In the case of refunding bonds, a minimum savings threshold should be specified. **The governing body of the institution must have adopted the authorizing resolution prior to action by the Authority's Board.**
- **Draft Preliminary Official Statement/Placement Memorandum.** In the case of a public offering, the institution will provide a draft offering document meeting acceptable industry standards for the type of offering of securities proposed.
- **VCBA Board Resolution** that the Authority's Board will be asked to approve.

Presentation to the Authority's Board

The Authority's Board will consider the financing proposal and may propose any changes to the terms and structure of the financing and the proposed resolution it deems advisable. Representatives of the

institution, the financial advisor and/or bond counsel should be at the Authority Board meeting to present the proposed financing and answer questions from the Authority's Board. The Authority may choose to give final approval upon the pricing of the securities, or the Authority may choose to delegate final approval to a committee of the Authority's Board or to the State Treasurer. **Under no circumstances shall the preliminary offering documents or any notice of sale be released without having first obtained approval from the Authority's Board.**

Authority's Review

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

- **Method of Sale** – Generally, private institutions desiring financing through the Authority use a negotiated method of sale or private placement.
 - **Selection of Financing Team** -- The use of an independent financial advisor is strongly encouraged. The institution may engage a financial advisor of its own choice or may use the Authority's financial advisor (at the institution's sole expense). The institution must advise the Authority of the scope of the engagement of the financial advisor.
 - **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.
 - Institutions must comply with Internal Revenue Service regulations concerning the reimbursement of the institution for expenses occurring prior to issuance. If costs related to the facility 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 governing body approve an intent to reimburse resolution. The institution should work with its bond counsel to assess the need for or to obtain such a resolution.
 - Institutions should consider how bond proceeds will be invested and monitored to facilitate compliance with arbitrage rules and arbitrage rebate requirements.
 - Institutions should consider the long-term use of the project being financed. Limits on private (non-governmental) use apply for the life of the bonds. A change in project use, the existence of certain private management contracts or arrangements, or the use of the project by the federal government during the life of the bonds could drastically affect the tax-exempt status of the bonds.
 - **Disclosure** – Accurate and complete disclosure is imperative.
 - Primary disclosure refers to the information distributed to potential investors at the time of the initial issuance of the securities (i.e. an official statement or placement memorandum). The Government Finance Officers Association's website includes a *Primary Market Disclosure* page (www.gfoa.org/primary-market-disclosure) which provides guidelines for the preparation of primary disclosure documents.
 - Secondary market disclosure refers to the requirement for the institution to provide ongoing information on its financial condition for the benefit of individuals purchasing or holding the securities subsequent to their initial issuance. The institution must commit in the bond documents to provide secondary market disclosure.
1. **Refunding Bonds** should be issued only when the issuance is of benefit to the institution. Bonds can not be advance-refunded on a tax-exempt basis. As a general

guideline refunding bond should provide a minimum 3% present value savings for bonds refunded more than five years after their issuance date.

- **Under no circumstance shall any notice to call the refunded bonds be released to bondholders prior to the bond closing.**
- **“Alternative Financing” Methods, Ancillary Contracts and/or Synthetic Features** such as, privatization arrangements, public-private partnerships, lease-purchases, long-term capital leases, contracts on interest rates, currency, cash flows, interest rate swaps, interest rate caps and floors and guaranteed investment contracts (GICs), etc. should be evaluated against more traditional financing options and with due consideration to the creditworthiness of the counterparty or other obligated entity. The Authority recommends the use of an independent financial advisor for any transaction involving an alternative financing method.

Security Guidelines

If, from the information in the application from the institution, it appears that the institution may have the financial capability and outlook for the future to enable it to repay the loan and pay the interest thereon, the Authority will determine if acceptable security for the loan can be developed from the following guidelines:

The institution’s note shall be secured by its general credit together with certain covenants as to, among other things: (1) maintaining its corporate existence; (2) maintaining its status as a tax-exempt organization; (3) continuing to operate as an accredited institution of higher education; and (4) not dissolving or otherwise disposing of all, or substantially all, of its assets.

The Authority may request that the institution make certain additional covenants or agreements as may be deemed appropriate. The acceptance and approval of any particular covenants or arrangements by the Authority will be granted at the discretion of the Authority and the institution with due consideration of the provisions made for the repayment of the related Authority bonds, the security therefore and compliance with the spirit of and letter of the Act. The Authority may consult with its financial advisor for advice concerning the application of and financing terms proposed by the institution. This advice may include, but are not limited to, advice on any of the following:

- **Debt Coverage Ratio.** The institution may maintain an agreed upon ratio of available assets to debt obligations to be determined for the transactions by the Authority. If required, the institution, via its independent auditor, shall report annually to the trustee as to the status of this ratio.
- **Negative Pledge.** The institution may make a negative pledge covenant agreeing not to dispose of or encumber all, or a portion of, its endowment and endowment-type funds and/or that it will not mortgage its other (or certain other) properties.
- **Segregated Endowment.** The institution may set aside and earmark an amount of endowment or other assets, designating them for use for purposes such as payment of debt obligations and financing of capital expenditures.
- **Mortgage/Security Interest.** The institution may mortgage in favor of the Authority (to be assigned to the trustee for the benefit of the bondholders) the land and buildings comprising the project and may include therein other land and buildings and may grant a security interest in equipment and other tangible personal property.

- **Letter of Credit.** The institution may enhance the credit (and credit rating, if applied for) of the proposed bond issue by providing a letter of credit from a financial institution acceptable to the Authority.
- **Bond Insurance.** The institution may enhance the credit (and credit rating, if applied for) of the proposed bond issue by providing bond insurance acceptable to the Authority.
- **Debt Service Reserve Fund.** The Authority may require establishment of a debt service reserve fund funded with bond proceeds and containing up to one year's maximum annual debt service.
- **Collateral.** The institution may collateralize the loan by depositing with the trustee securities in an amount equal to a certain percentage of the principal amount of the loan (and maintaining such level over the life of the loan) subject to compliance with applicable tax regulations in the case of tax-exempt bonds.

Post-Pricing

As soon as possible after completion of the pricing of the bonds, the institution should ensure that the Authority is provided with the following:

- Final financing summary detailing the sale results.
- Final debt service schedule including cost of issuance.

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.

- Closing documents requiring the approval of and/or execution by the Chairman, Vice-Chairman and/or 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.
- **Issues requiring the execution of any document by the Governor (i.e. Consent of the Governor, Governor's Certificate, such as for TEFRA approval, etc.) will require additional time to allow for review and execution by the Governor.**
- As soon as possible after closing, provide the Authority with a copy of transcript of the final documents prepared by bond counsel.

Role of Treasury Staff

The Department of the Treasury acts as staff to the Authority for the sole purpose of processing applications, issuing meeting notices to members of the Authority, providing a place to hold such meetings, reporting the issuance of debt to any state or federal agency desirous of monitoring the issuance of such obligations, and providing general direction to institutions seeking financing from the Authority. The Department is not responsible for the procurement of any services needed in the sale of bonds, for the maintenance of any lists of bondholders, for the payment of any expenses associated with servicing outstanding bonds, or for providing credit information or continuing disclosure to the investment community or the rating agencies concerning the institutions that have participated in the Authority's Private College Financing Program.

Costs of the Authority's Private College Financing Program

All costs incurred in connection with the issuance of the Authority's obligations will be paid out of the proceeds of the obligations or directly by the institution (including cases where for any reason obligations are not issued by the Authority).

The State Treasurer is authorized to charge institutions of higher education participating in the Authority's Private College Financing Program an administrative fee of up to 10 basis points of the amount financed for each project in addition to the direct costs of issuance incurred by the Authority and the Department of the Treasury. **In calculating the cost of issuance for the bond issue, institutions should include a 10 basis point fee payable at closing unless otherwise notified by the State Treasurer.**

The Authority may consult with its counsel or financial advisor for advice concerning the proposal of the institution and such costs incurred will be the responsibility of the institution, regardless of whether the Authority issues the proposed obligations.

Not Debt of the Commonwealth

The obligations issued by the Authority are in no way to be construed as obligations of the Commonwealth, legal, moral or otherwise. The Authority has been created by an Act of the General Assembly of Virginia for the sole purpose of providing a mechanism for higher educational institutions located in the Commonwealth to obtain tax-exempt financing as permitted by federal law.