

**VIRGINIA COLLEGE BUILDING AUTHORITY BOARD MEETING**

**October 7, 2009 10:30 a.m.**

Treasury Board Conference Room

James Monroe Building

101 North 14<sup>th</sup> Street, 3<sup>rd</sup> Floor

Richmond, Virginia

Members Present: William L. Nusbaum, Chairman  
John "Jack" F. Carter, Vice-Chairman  
Vinod B. Agarwal  
Jefferson "Jeff" S. Cooper  
Manju Ganeriwala  
Daniel J. LaVista  
Edward Villanueva  
David A. Von Moll

Members Absent: Joseph S. Testa  
Daniel S. Timberlake  
Elaine R. Wilde

Others Present: Stephanie Hamlett, Esq. Attorney General's Office  
Charles P. Shimer, Esq. Troutman Sanders LLP  
Robert Gordon, Esq. Troutman Sanders LLP  
Evelyn R. Whitley Secretary, VCBA, Department of the Treasury  
Janet A. Aylor Assistant Secretary, VCBA, Department of the Treasury  
Jeanine Black Department of the Treasury

**Call to Order and Approval of Minutes**

Mr. Nusbaum called the meeting to order at 10:33 a.m. After welcoming any visitors, he asked if there were any members of the public present that wished to comment on Board activities. There were no public comments.

Mr. Nusbaum then asked if there were any comments on or corrections to the minutes of the August 17, 2009 Virginia College Building Authority meeting. Hearing none, he requested a motion for approval of the minutes. Dr. Agarwal made the motion; Ms. Ganeriwala seconded, and the motion carried unanimously by all members present.

**Consideration of Issuance of Virginia College Building Authority Educational Facilities Revenue Bonds (Public Higher Education Financing Program), Series 2009B (new money) and Series 2009C (refunding)**

Ms. Black reviewed the Preliminary Financing Summary for the proposed issuance in the

amount of \$260,160,000 (new money) and \$320,110,000 (refunding) of Virginia College Building Authority Educational Facilities Revenue Bonds (Public Higher Education Financing Program), Series 2009B and Series 2009C. A discussion ensued. Mr. Shimer reviewed the Resolution before the Board, which was then discussed.

Mr. Nusbaum asked for a motion to adopt the resolution. Mr. Carter moved the approval of the Resolution (Attachment A) of the Virginia College Building Authority authorizing the issuance and sale of its Educational Facilities Revenue Bonds (Public Higher Education Financing Program), Series 2009B and Series 2009C; Dr. Agarwal seconded, and the motion carried unanimously by all members present.

Mr. Villanueva asked why the Financial Advisor was not present at the meeting. Mr. Nusbaum responded that the Financial Advisor is not usually involved in every meeting but was involved in the last meeting because the Financial Advisor was new to the Public Higher Education Financing Program. Staff assured Mr. Villanueva that the Financial Advisor is greatly involved in the entire bond issuance process. Staff did not believe that the Financial Advisor would be required for this board meeting. Mr. Villanueva said he would feel more comfortable if the Financial Advisor was available in person or by phone. Staff will request that the Financial Advisor be available for subsequent board meetings.

#### **Consideration of Issuance of VCBA Educational Facilities Revenue Bonds (21st Century College and Equipment Programs), Series 2009F**

Ms. Aylor directed the board to the handouts related to the VCBA Educational Facilities Revenue Bonds (21<sup>st</sup> Century College and Equipment Programs), Series 2009F. She then discussed the reason that the board was asked to approve another 21<sup>st</sup> Century College and Equipment Programs issue for this year. She stated that the institutions have increased their spending within the last few months beyond the projected draws upon which the sizing of the last issue was based. She indicated that the increase in draws is probably due to the economic environment creating lower construction and other related costs. The VCBA 21<sup>st</sup> Century's funds are depleted and a Treasury Loan is being sought to bridge the cash flow needed until bonds can be issued. Ms. Aylor then reviewed the Preliminary Financing Summary for the proposed issuance of up to \$500,000,000 of Virginia College Building Authority Educational Facilities Revenue Bonds (21<sup>st</sup> Century College and Equipment Programs), Series 2009F. Ms. Aylor also indicated that this issue will allow for Build America Bonds should market conditions provide an economic incentive for their use. A discussion ensued.

Mr. Charles Shimer from Troutman Sanders, LLP, bond counsel to the Authority, reviewed the Resolution before the board, which was then discussed.

Mr. Villanueva asked why wasn't staff able to forecast the institutions' spending more accurately. Ms. Aylor indicated that we rely on draw schedules provided by the institutions. In the past institutions have spent slower than the scheduled draws indicated, but in the last six months they have been spending faster. The 21<sup>st</sup> Century projects are funded on a cash flow basis. When issues are sized, the amount of the bonds issued is intended to provide for ten to twelve months of draws to minimize any issues with arbitrage.

Mr. Von Moll, the State Comptroller stated that obtaining Treasury Loans can be a concern. Ms. Aylor also indicated that Treasury trust accounting staff processes the institutions' requisitions and keeps the VCBA staff aware of the balance in the 21<sup>st</sup> Century construction account and informs debt staff when it is becoming low. She also stated that Charter Institutions are not on the Commonwealth Accounting and Reporting System (the "CARS") so the accounting staff are unable to view their cash status. Mr. Nusbaum stated that the College of William and Mary, University of Virginia, Virginia Tech, and Virginia Commonwealth University are the Charter Universities so there is greater capacity for a surprise coming from a Chartered Institution. Ms. Aylor agreed. A discussion ensued.

Dr. Agarwal stated that the board is requested to approve the issue because the General Assembly has already authorized the funding of the specific projects. Ms. Aylor stated that the VCBA still has over a billion dollars to issue that has already been authorized for the 21<sup>st</sup> Century construction program. Mr. Carter asked if the VCBA will be required to pay the interest on the Treasury Loan. Mr. Von Moll stated that the loan will be interest free but the use of a Treasury Loan carries an opportunity cost because the funds loaned could be otherwise earning interest. A discussion ensued.

Mr. Nusbaum asked for a motion to adopt the resolution. Mr. Von Moll moved the approval of the Resolution (Attachment B) of the Virginia College Building Authority authorizing the issuance and sale of its Educational Facilities Revenue Bonds (21<sup>st</sup> Century College and Equipment Programs), Series 2009F; Mr. LaVista seconded, and the motion carried unanimously by all members present.

### **Post-Issuance Compliance Policy for Tax-Exempt Obligations**

Ms. Aylor briefed the board on the Post-Issuance Compliance Policy for Tax-Exempt Obligations of the Authority (Attachment C). Mr. Nusbaum indicated that he received comments from Mr. Villanueva and Mr. LaVista and have addressed those comments. Mr. Shimer also briefed the board on the policy. A discussion ensued.

Mr. Shimer indicated that he and Mr. Gordon just noticed that the policy needed to be amended to include provisions for Build America Bonds. Mr. Shimer indicated that he will make that change and distribute a blackline to the board.

Mr. Carter stated that the Post-Issuance Compliance Policy should be shared with the Private Colleges and it should be recommended that they create and adopt a Post-Issuance Compliance Policy if they have not already done so. Mr. Shimer mentioned that the VCBA application for financing for private institutions of higher education should mention the Post-Issuance Compliance Policy. Mr. Nusbaum stated that staff should forward the Post-Issuance Compliance Policy for Tax-Exempt Obligations of the Authority to the Private Colleges. A discussion ensued.

Mr. Nusbaum asked for a motion to adopt the Post-Issuance Compliance Policy for Tax-Exempt and BABs Obligations of the Authority, including the post-adoption modification to address BABs. Mr. Carter moved the approval of the Policy; Mr. Cooper seconded, and the motion

carried unanimously by all members present.

### **Other Business**

#### **Final Financing Summary**

Ms. Black reviewed the Final Financing Summary for the Virginia College Building Authority Educational Facilities Revenue Bonds (21<sup>st</sup> Century College and Equipment Programs), Series 2009DE.

Mr. Carter requested that staff pass along congratulations to First Southwest Company and Barclays Capital for the sale of the VCBA 21<sup>st</sup> Century College and Equipment Programs, Series 2009 DE Bonds.

#### **Analysis of the 21<sup>st</sup> Century Variable Rate Bonds**

Ms. Aylor reviewed the report analyzing the performance of the Virginia College Building Authority Variable Rate Educational Facilities Revenue Bonds, Series 2006B and Series 2006C, as provided by Public Resources Advisory Group (Exhibit A).

### **Adjournment**

Having no other business to be brought before the Board, the meeting was adjourned at 12:44 p.m.

Respectfully submitted,  
Janet A. Aylor  
Assistant Secretary

/s/ Janet A. Aylor

Exhibits may be obtained by contacting the Department of the Treasury at (804) 225-2142.

**VIRGINIA COLLEGE BUILDING AUTHORITY RESOLUTION  
AUTHORIZING THE ISSUANCE OF ITS EDUCATIONAL FACILITIES  
REVENUE BONDS (PUBLIC HIGHER EDUCATION FINANCING  
PROGRAM)**

**WHEREAS**, the Virginia College Building Authority (the “Authority”) is a body corporate and politic, constituting a public corporation and governmental instrumentality of the Commonwealth of Virginia (the “Commonwealth”) created by the Virginia College Building Authority Act of 1966 (the “Act”), Chapter 3.2, Title 23, Code of Virginia of 1950, as amended (the “Virginia Code”);

**WHEREAS**, the Authority is empowered, among other things, to finance the construction of projects of capital improvement (the “Projects”) at public higher educational institutions in the Commonwealth (the “Institutions”) by issuing its revenue bonds and revenue refunding bonds and using the proceeds of such revenue bonds to purchase or refinance debt obligations issued by such Institutions, pursuant to Chapter 3 of Title 23 of the Virginia Code, to finance or refinance such Projects;

**WHEREAS**, the issuance of revenue bonds and revenue refunding bonds for such purpose is referred to as the “Public Higher Education Financing Program” (the “Program”), and multiple series of bonds previously have been issued under the Program (the “Prior Bonds”);

**WHEREAS**, in furtherance of the purposes of the Act and the Program, the Authority has determined to issue under the Master Indenture of Trust dated as of September 1, 1997 (as previously supplemented, the “Master Indenture”), between the Authority and The Bank of New York Mellon Trust Company, National Association, as successor trustee (the “Trustee”), as further supplemented by the Fifteenth Supplemental Indenture of Trust to be dated as of the first day of the month in which such obligations are issued (the “Fifteenth Supplemental Indenture”), between the Authority and the Trustee, and sell its Educational Facilities Revenue Bonds (Public Higher Education Financing Program), with appropriate year and letter series designation (the “New Money Bonds”);

**WHEREAS**, proceeds of the New Money Bonds will be used to purchase debt obligations issued by certain participating Institutions pursuant to the Loan Agreements described below to finance or refinance the construction of certain Projects (the “New Money Projects”) described in the list attached as Exhibit A hereto provided that one or more of such Institutions may determine before the New Money Bonds are issued to finance one or more of such Projects in another way or at another time and, accordingly, the final list of participating Institutions and New Money Projects may include fewer Institutions and Projects than are listed in Exhibit A hereto, as shall be determined by the State Treasurer as provided herein;

**WHEREAS**, in furtherance of the purposes of the Act and the Program, and in order to effect debt service savings, upon recommendation by Public Resources Advisory Group, in its capacity as financial advisor to the Authority (the “Financial Advisor”), the Authority has determined to issue under the Master Indenture, as further supplemented by the Sixteenth Supplemental Indenture of Trust to be dated as of the first day of the month in which such obligations are issued (the “Sixteenth Supplemental Indenture,” and together with the Fifteenth Supplemental Indenture, the “Supplemental Indentures”), between the Authority and the Trustee, and sell its Educational Facilities Revenue Refunding Bonds (Public Higher Education Financing Program), in one or more series with appropriate year and letter series designations (the “Refunding Bonds,” and together with the New Money Bonds, the “Bonds”);

**WHEREAS**, proceeds of the Refunding Bonds will be used to refund certain maturities of the Prior Bonds previously issued by the Authority under the Master Indenture (the “Refunded Bonds”), the proceeds of which were used to purchase Notes (the “Existing Notes”) issued by certain participating Institutions pursuant to prior Loan Agreements (the “Existing Loan Agreements”) to finance or refinance certain Projects, thereby refinancing such Projects in exchange for amendments to the Existing Notes (the “Amendments to Existing Notes”) and the Existing Loan Agreements (the “Amendments to Existing Loan Agreements”);

**WHEREAS**, as a result of current capital market conditions, the Financial Advisor has recommended that a determination be made closer to the time the Authority enters the bond market whether to offer and sell the Bonds pursuant to a competitive bidding process or a negotiated underwriting;

**WHEREAS**, the Bonds will be offered for sale pursuant to a Preliminary Official Statement, to be dated the date of its release (the “Preliminary Official Statement”) and, depending on market and other economic and financial conditions, will be (a) awarded by the Authority through a competitive electronic bidding process using a Notice of Sale, to be dated the date of the Preliminary Official Statement (the “Notice of Sale”), which states the structure and terms of the sale of the proposed Bonds, or (b) sold pursuant to one or more Bond Purchase Agreements, to be dated as of the date of sale of the Bonds (collectively, the “Bond Purchase Agreement”), between the Authority and one or more underwriters to be selected as described below (collectively, the “Underwriters”);

**WHEREAS**, the Authority will enter into a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) for the purpose of providing certain information for the benefit of holders of the Bonds; and

**WHEREAS**, the foregoing arrangements will be reflected in the following documents, drafts of which have been presented to the Authority and filed with the Authority’s records:

- (a) the forms of the Supplemental Indentures, together with the forms of the Bonds attached as Exhibit A thereto;

- (b) a form of the Loan Agreement to be dated as of the first day of the month in which the New Money Bonds are issued between the Authority and each participating Institution (the “Loan Agreements”), providing for certain matters regarding the issuance and purchase of the Notes (as described below) and the development and operation of the New Money Projects;
- (c) a form of the Note to be issued by each participating Institution to the Authority, in the form attached to the form of the related Loan Agreement as Exhibit B (the “Notes”), and the form of the Assignments appended thereto (the “Assignments”) pursuant to which the Authority assigns the Notes to the Trustee, without recourse, as security for the New Money Bonds and other obligations that have been and may be issued under the Master Indenture;
- (d) the Preliminary Official Statement with respect to the Bonds;
- (e) the Notice of Sale with respect to the Bonds, if sold through a competitive bidding process;
- (f) the form of the Amendments to Existing Loan Agreements, including the related Amendments to Existing Notes, to be executed by the Institutions whose Projects were financed by the Refunded Bonds; and
- (g) the Continuing Disclosure Agreement of the Authority, in the form attached as an appendix to the Preliminary Official Statement; and

**WHEREAS**, in addition to the use of proceeds of the New Money Bonds to finance New Money Projects, certain Institutions (the “Transferring Institutions”) whose Projects were financed or refinanced with proceeds of Prior Bonds may desire, in accordance with certain provisions of the Master Indenture, to use a portion of the proceeds of the Prior Bonds previously allocated to Projects which have been completed at a cost under the anticipated amount (the “Excess Proceeds” of the “Prior Projects”) on New Money Projects (each, a “Project Transfer,” and collectively, the “Project Transfers”);

**WHEREAS**, the Master Indenture provides that a Transferring Institution submit a completion certificate for each Prior Project, and upon such submission, the Authority may maintain the Excess Proceeds in the Construction Account created under the supplemental indenture for the Prior Projects to the extent needed to pay the Costs of any other Projects, such as a New Money Project; *provided* that (a) there is reserved in such Construction Account an amount for remaining Costs of the Prior Projects and any Rebate Amount owing by the Transferring Institution in connection with the Prior Bonds and (b) the Transferring Institution has caused to be delivered to the Trustee an Opinion of Counsel to the Authority to the effect that the Project Transfer is authorized or permitted; and (c) the applicable supplemental indenture permits the exhibit thereto listing certain amounts relating to the Prior Projects to be amended or supplemented, by the Authority and the Trustee from time to time without the consent of the Holders, to provide for such Excess Proceeds to be expended on such other Projects; and

**WHEREAS**, a form of the Amendment to Supplemental Indenture, to be entered into by the Authority and the Trustee, and to be agreed to by the Transferring Institutions, authorizing the transfer of Excess Proceeds from Prior Projects which have been completed to pay costs of New Money Projects, has been presented to the Authority and filed with the Authority's records.

**NOW, THEREFORE, BE IT RESOLVED BY THE VIRGINIA COLLEGE BUILDING AUTHORITY:**

**1. Preliminary Official Statement; Notice of Sale.** The Preliminary Official Statement, in substantially the form presented at this meeting with such completions, omissions, additions and changes as shall be approved by the State Treasurer (the Treasurer of the Authority) or such other officer of the Authority as the State Treasurer may designate in connection with the offering and sale of the Bonds, is approved and the distribution thereof is authorized. The Authority authorizes the State Treasurer or such other officer of the Authority as the State Treasurer may designate to deem the Preliminary Official Statement final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12 (the "Rule"), and distribution of the Preliminary Official Statement shall constitute conclusive evidence that it has been deemed final as of its date, except for the omission of such pricing and other information permitted to be omitted by the Rule. The Notice of Sale, in substantially the form presented at this meeting, with such completions, omissions, additions and changes as shall be approved by the State Treasurer or such other officer of the Authority as the State Treasurer may designate in connection with the offering and sale of the Bonds, is approved and the distribution and advertisement thereof, in the event the Bonds are being sold through a competitive bidding process, as determined by the State Treasurer, is authorized.

**2. Negotiated Sale or Competitive Bidding; Credit Ratings.** The Authority authorizes and directs its staff, the Financial Advisor and its bond counsel, Troutman Sanders LLP: (a) to prepare all documentation and take all action necessary or desirable to bring the Bonds to market through either a negotiated sale or a competitive bidding process, which may include the execution and delivery of the Bond Purchase Agreement or the use of electronic bidding, as soon as practicable, (b) to advertise the Bonds for sale in the event the Bonds are being sold through a competitive bidding process, and (c) to take such actions as shall be necessary or appropriate to obtain a rating or ratings for the Bonds from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Fitch Ratings and/or Moody's Investors Service, Inc.

**3. Issuance and Sale of Bonds.** Pursuant to the Act, the Authority authorizes the issuance of the Bonds in accordance with the Supplemental Indentures and the sale thereof in accordance with the Notice of Sale in the event the Bonds are to be sold through a competitive bidding process or the Bond Purchase Agreement in the event the Bonds are to be sold in a negotiated sale, including the receipt of bids electronically or the selection of the Underwriters, as applicable; *provided, however*, that (a)(i) the aggregate principal amount of the New Money Bonds shall not exceed \$300,000,000; (ii) the true interest cost of the New Money Bonds, determined in accordance with the terms of the Bond Purchase Agreement or the Notice of Sale, as applicable, shall not exceed 5.25%, taking into account original issue discount or

premium, if any; (iii) the final maturity of the New Money Bonds does not exceed September 1, 2040; and (iv) the New Money Bonds shall have regularly scheduled payments of principal and interest that do not exceed the sum of the Basic Payments due under, and as described in, the Notes; and (b)(i) the aggregate principal amount of the Refunding Bonds shall not exceed \$375,000,000; (ii) the true interest cost of the Refunding Bonds, determined in accordance with the terms of the Notice of Sale or the Bond Purchase Agreements, as applicable, shall not exceed 5.00%, taking into account original issue discount or premium, if any; (iii) the final maturity of the Refunding Bonds shall not exceed the final maturity of the Refunded Bonds; (iv) the Refunding Bonds shall have regularly scheduled payments of principal and interest that do not exceed the sum of the Basic Payments due under, and as described in, the portion of the Existing Notes, as amended by the Amendments to Existing Notes, relating to the Refunding Bonds; and (v) the issuance of the Refunding Bonds shall result in present value savings equal to at least 3.00% of the aggregate principal amount of the Refunded Bonds.

**4. Bond Documents.** The Authority ratifies and confirms the Master Indenture. The forms of the Supplemental Indentures, including the forms of the Bonds, the form of the Loan Agreements, including the form of the Assignments, the form of the Amendment to Supplemental Indenture, and the forms of the Amendments to Existing Notes and the Amendments to Existing Loan Agreements, are approved by the Authority with such changes, insertions, additions and deletions as the State Treasurer or such officer of the Authority as the State Treasurer may designate shall approve. The approval of any such changes, insertions, additions and deletions shall be evidenced conclusively by the execution and delivery of the Bonds by the officers of the Authority. The Authority hereby authorizes and directs its officers to execute and deliver the Supplemental Indentures, the Bonds, the Loan Agreements, the Assignments, the Amendments to Existing Notes, the Amendments to Existing Loan Agreements and any Amendment to Supplemental Indenture.

**5. Delegation to State Treasurer; Sale or Award of Bonds.** The Authority hereby delegates to the State Treasurer or such officer of the Authority as the State Treasurer may designate the power with respect to the Bonds, subject to the limitations set forth in paragraph 3: (a) to determine the final list of the participating Institutions, the New Money Projects, and the Transferring Institutions; (b) to determine which, if any, of the Prior Bonds are to be refunded and the related redemption dates; (c) to determine the details of the Bonds and the Notes, including, without limitation, the maturity schedules, the interest rates and the redemption provisions; (d) to approve the form of all documents that are appropriate to carry out the contemplated financing; (e) to deem the Preliminary Official Statement final as of its date as contemplated in paragraph 1 and to complete the Preliminary Official Statement in final form as contemplated in paragraph 6; (f) to postpone or cancel the sale of the Bonds, if in the State Treasurer's sole discretion conditions so warrant; (g) upon the recommendation of the Financial Advisor, to determine the manner of sale of the Bonds either through a competitive bidding process or a negotiated sale; and (h) to take all such further action as may be necessary or desirable for the issuance, sale and delivery of the Bonds and to effect the refunding of the Refunded Bonds and any Project Transfers.

If in the State Treasurer's sole determination the then-current market or other conditions warrant a sale of one or more series of the Bonds through a competitive bidding process,

the State Treasurer shall award such series of Bonds to the responsive bidder whose bid offers to purchase such Bonds at the lowest true interest cost to the Authority as determined by the Financial Advisor (the “Winning Bidder” and the “Winning Bid”), all in accordance with the terms of the Notice of Sale.

If in the State Treasurer’s sole determination the then-current market or other conditions warrant a negotiated sale of one or more series of the Bonds, the State Treasurer is hereby authorized, subject to the limitations set forth in paragraph 3, to negotiate the provisions of the Bond Purchase Agreement, determine the Underwriters for such series of Bonds, including any syndicate members and members of the selling group for such Bonds, and determine the prices at which such Bonds will be offered by the Underwriters to the public, and the Chairman, the Vice Chairman and the State Treasurer are each authorized, without the joinder of the others, to execute and deliver such Bond Purchase Agreement.

The State Treasurer shall execute a certificate evidencing determinations or other actions taken pursuant to the authority delegated in this Resolution, and any such certificate shall be conclusive evidence of the action or determination of the State Treasurer as stated therein.

**6. Official Statement.** The Authority authorizes and directs the State Treasurer and the State Treasurer’s staff to complete the Preliminary Official Statement as an official statement in final form (the “Official Statement”). The Chairman or Vice-Chairman of the Authority, either of whom may act, is authorized and directed to execute the Official Statement, which execution shall constitute conclusive evidence of approval of the Official Statement and that the Authority has deemed it final within the meaning of the Rule. The Authority authorizes and directs its staff to arrange for the delivery to the Underwriters or the Winning Bidder, as applicable, of a reasonable number of copies of the Official Statement, within seven business days after the sale date of the related Bonds, for distribution by the Underwriters or the Winning Bidder, as applicable, to each potential investor requesting a copy thereof and to each person to whom the Underwriters or the Winning Bidder, as applicable, initially sells Bonds. The Authority authorizes and approves the distribution of the Official Statement by the Underwriters or the Winning Bidder, as applicable.

**7. Continuing Disclosure.** The Authority covenants to undertake ongoing disclosure and to provide “annual financial information” and “material event notices” in accordance with the Continuing Disclosure Agreement for the benefit of holders of the Bonds to assist the Underwriters or the Winning Bidder, as applicable, in complying with the Rule. The Authority authorizes and directs its Chairman, Vice Chairman, Treasurer or any of its officers to execute the Continuing Disclosure Agreement in substantially the form attached as an appendix to the Preliminary Official Statement presented at this meeting, which is approved with such completions, omissions, insertions and changes as the Chairman, Vice Chairman, Treasurer or any of the Authority’s officers may approve. The execution by the Chairman, Vice Chairman, Treasurer or any of the Authority’s officers of the Continuing Disclosure Agreement shall constitute conclusive evidence of approval of any such completions, omissions, insertions and changes.

**8. Redemption of Refunded Bonds; Escrow Deposit Provisions.** If in accordance with paragraphs 3 and 5 the determination is made to refund any Prior Bonds, the

Authority authorizes and directs (a) the redemption and payment of the Refunded Bonds on the applicable redemption dates, all as determined in accordance with paragraph 5, and (b) the giving of notice of such redemptions in accordance with the provisions of the Master Indenture and any applicable supplemental indenture of trust entered into in connection with the Refunded Bonds. The Authority also authorizes the preparation, execution and delivery by any officer of the Authority of any escrow deposit provisions, either as part of the related Supplemental Indenture or in such separate escrow deposit agreement, as shall be appropriate to effect the refunding and redemption as determined in accordance with paragraph 5 and as shall be approved by the State Treasurer, with the execution and delivery thereof to constitute conclusive evidence of such approval.

**9. Other Documents.** The Authority authorizes and directs its officers and staff to execute and deliver all certificates, instruments and documents and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bonds, the Project Transfers and the refunding of the Refunded Bonds. Such certificates may include a certificate (a) setting forth the expected use and investment of proceeds of the Bonds to show that such expected use and investment will not violate the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder, (b) making any elections that such officers deem desirable regarding any provisions requiring rebate to the United States of arbitrage profits earned on investments of proceeds of the Bonds, and (c) providing for payment of any such rebate amount.

**10. Other Actions.** The Authority approves and confirms all other actions of its officers and staff which are in conformity with the purpose or intent of this Resolution and in furtherance of (a) issuance and sale of the Bonds, use of the proceeds thereof, refunding of any Prior Bonds, and effecting any Project Transfer, and (b) implementation of the Program.

**11. Administrative Fee.** The General Assembly of Virginia has authorized the Authority to charge, and the Authority hereby determines to charge, each participating Institution an administrative fee of 10 basis points of the amount financed for such Institution's New Money Projects. Such fee shall be determined as of and due upon the issuance of the New Money Bonds.

**12. Effective Date.** This Resolution shall take effect immediately upon its adoption.

Adopted: October 7, 2009

The undersigned Assistant Secretary of the Virginia College Building Authority certifies that the foregoing is a true and correct copy of a Resolution adopted by the Authority, upon the vote as noted below, at a duly called meeting of the Authority held on October 7, 2009.

<u>Member</u>	<u>Present/Absent</u>	<u>Vote</u>
Manju S. Ganeriwala	Present	Aye
David A. Von Moll	Present	Aye
Daniel S. Timberlake	Absent	
Daniel J. LaVista	Present	Aye
William L. Nusbaum	Present	Aye
John F. "Jack" Carter II	Present	Aye
Jefferson S. Cooper	Present	Aye
Vinod B. Agarwal	Present	Aye
Joseph S. Testa	Absent	
Elaine R. Wilde	Absent	
Edward Villanueva	Present	Aye

/s/ Janet A. Aylor  
 Assistant Secretary, Virginia College Building  
 Authority

Date: October 7, 2009

1868339v4  
 215681.000063

## EXHIBIT A

### 2009 INSTITUTIONS

### 2009 PROJECTS

---

<b>Christopher Newport University:</b>	Expand Freeman Center Gymnasium Construct Ratcliffe Hall Addition Land Acquisition
<b>College of William and Mary:</b>	Improve Intercollegiate Athletic Facilities Construct Cooling Plant & Utilities
<b>George Mason University:</b>	Prince William Loop Road and Entrance Arlington Phase II Prince William Performing Arts Center Fairfax Surge Space Fit Out Data Center Prince William Regional Biomedical Laboratory Construct Hotel Conference Center Renovate and Construct Add't to Student Union I Renovate Student Union II Building
<b>James Madison University:</b>	Renovate and Expand Bridgeforth Stadium Renovate and Expand Athletics/Recreation
<b>Old Dominion University:</b>	Webb University Center Expansion
<b>Radford University:</b>	Student Fitness and Wellness Center
<b>University of Mary Washington:</b>	Construct Convocation Center
<b>Virginia Community College System:</b>	Workforce Training and Technology Center Construct Student Center, VA Beach Campus, Tidewater Construct Student Center, Portsmouth Campus, Tidewater Construct Student Center, Chesapeake Campus, Tidewater Construct Academic Bldg, Chesapeake Campus, Tidewater (Site Infrastructure)
<b>Virginia Polytechnic Institute &amp; State University:</b>	Campus Heat Plant Additional-Recreation, Counseling and Clinical Space Basketball Practice Facility Repair McComas Hall Exterior Wall Structure Institute for Critical Technology and Applied Science II

**VIRGINIA COLLEGE BUILDING AUTHORITY RESOLUTION  
AUTHORIZING THE ISSUANCE OF EDUCATIONAL FACILITIES  
REVENUE BONDS (21<sup>ST</sup> CENTURY COLLEGE AND EQUIPMENT  
PROGRAMS)**

**WHEREAS**, the Virginia College Building Authority (the “Authority”) is a body corporate and politic, constituting a public corporation and governmental instrumentality of the Commonwealth of Virginia (the “Commonwealth”) created by the Virginia College Building Authority Act of 1966, Chapter 3.2, Title 23, Code of Virginia of 1950, as amended (the “Act”), for the purpose of, among others, financing the construction of capital improvements at, and the acquisition of equipment for, public higher educational institutions in the Commonwealth;

**WHEREAS**, during the 1996 Session of the General Assembly of Virginia (the “General Assembly”), the General Assembly created the 21<sup>st</sup> Century College Program (the “21<sup>st</sup> Century College Program”), pursuant to which and the Act, the Authority is authorized, among other things, to borrow money and issue its revenue bonds to finance the cost of certain capital improvements at public higher educational institutions in amounts not in excess of amounts authorized from time to time by the General Assembly (the “21<sup>st</sup> Century College Projects”), and pursuant to the Act the Authority is authorized to issue its revenue refunding bonds for the purpose of refunding any such revenue bonds;

**WHEREAS**, in furtherance of the purposes of the Act and the 21<sup>st</sup> Century College Program, the Authority has determined to issue under the Master Indenture of Trust, dated as of December 1, 1996 (as previously amended and supplemented, the “Master Indenture”), between the Authority and The Bank of New York Mellon Trust Company, National Association, as successor trustee (the “Trustee”), as further supplemented by the Twenty-Second Supplemental Indenture of Trust to be dated as of the first day of the month it is executed (the “Supplemental Indenture”), between the Authority and the Trustee, and to sell a series of its Educational Facilities Revenue Bonds (21<sup>st</sup> Century College and Equipment Programs) (the “Bonds”), the proceeds of which will be used to finance the construction of certain 21<sup>st</sup> Century College Projects at certain public higher educational institutions (the “Participating Institutions”) and pay costs related to such issuance;

**WHEREAS**, as of the date of the adoption of this Resolution, it is anticipated that the Participating Institutions and the related 21<sup>st</sup> Century College Projects eligible to be financed with proceeds of the Bonds are as listed in Exhibit B to the form of Supplemental Indenture presented to this meeting; *provided, however*, the State Treasurer may determine on behalf of the Authority as provided herein (a) before the Bonds are issued, to finance one or more of such projects in another way, (b) before or after the Bonds are issued, to finance other projects qualifying for financing under the 21<sup>st</sup> Century College Program with proceeds of the Bonds, and/or (c) before the Bonds are issued, to elect that all or a portion of the Bonds shall constitute “Build America Bonds” pursuant to the federal American Recovery and Reinvestment Act of 2009, the interest of which will be taxable to the holders thereof for federal income tax purposes,

and either (i) such holders will receive a tax credit equal to 35% of the interest on the bonds or (ii) the Federal government will make direct payments to, or as directed by, the Authority in the amount of the such credit as and when such interest is payable;

**WHEREAS**, the Amended and Restated Payment Agreement dated as of June 1, 1999 (the “Payment Agreement”) between the Authority and the Treasury Board provides for certain payments appropriated by the General Assembly under the 21<sup>st</sup> Century College Program to be paid to the Authority to support the debt service on the bonds issued under the Master Indenture;

**WHEREAS**, certain matters regarding the use of the 21<sup>st</sup> Century College Projects are governed by a number of Facilities Agreements (the “Existing 21<sup>st</sup> Century Facilities Agreements”), each between the Authority and a Participating Institution that has a 21<sup>st</sup> Century College Project, and the Authority may desire to enter into one or more new 21<sup>st</sup> Century Facilities Agreements with Participating Institutions to govern the use of Facilities not bound by an Existing 21<sup>st</sup> Century Facilities Agreement (the “New 21<sup>st</sup> Century Facilities Agreements”);

**WHEREAS**, as a result of current conditions in the capital markets, First Southwest Company, in its capacity as financial advisor to the Authority (the “Financial Advisor”), has recommended that a determination be made closer to the time the Authority enters the market with the Bonds whether to offer and sell the Bonds pursuant to a competitive bidding process or a negotiated underwriting;

**WHEREAS**, the Bonds will be offered for sale pursuant to a Preliminary Official Statement to be dated the date of its release (the “Preliminary Official Statement”) and, depending on market and other economic and financial conditions, one or more series of the Bonds will be (a) awarded by the Authority through a competitive bidding process using a Notice of Sale to be dated the date of the Preliminary Official Statement (the “Notice of Sale”), which states the structure and terms of the sale of the proposed Bonds, or (b) sold pursuant to one or more Bond Purchase Agreements, to be dated as of the date of sale of the Bonds (each and collectively referred to herein as the “Bond Purchase Agreement”), between the Authority and one or more underwriters to be selected as described below (collectively, the “Underwriter”);

**WHEREAS**, the Authority will enter into a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) for the purpose of providing certain information for the benefit of holders of the Bonds; and

**WHEREAS**, drafts of the forms of the Supplemental Indenture, including a draft of the Bonds as Exhibit A thereto, the Preliminary Official Statement, the Notice of Sale and the Continuing Disclosure Agreement have been presented to this meeting and filed with the Authority’s records.

**NOW, THEREFORE, BE IT RESOLVED BY THE VIRGINIA COLLEGE BUILDING AUTHORITY THAT:**

- 1. Preliminary Official Statement; Notice of Sale.** The Preliminary Official

Statement, in substantially the form presented at this meeting with such completions, omissions, additions and changes as shall be approved by the State Treasurer (the Treasurer of the Authority) or the State Treasurer's staff in connection with the offering and sale of the Bonds, is approved and the distribution thereof is authorized. The Authority authorizes the State Treasurer or such officer of the Authority as the State Treasurer may designate to deem the Preliminary Official Statement final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12 (the "Rule"), and distribution of the Preliminary Official Statement shall constitute conclusive evidence that it has been deemed final as of its date, except for the omission of such pricing and other information permitted to be omitted by such Rule. The Notice of Sale, in substantially the form presented at this meeting, with such completions, omissions, additions and changes as shall be approved by the State Treasurer or the State Treasurer's staff in connection with the offering and sale of the Bonds, is approved and the distribution and advertisement thereof, in the event the Bonds are being sold through a competitive bidding process as determined by the State Treasurer, is authorized.

**2. Competitive Bidding or Negotiated Sale; Credit Ratings.** The Authority authorizes and directs its staff, the Financial Advisor and its bond counsel, Troutman Sanders LLP: (a) to prepare all documentation and take all action necessary or desirable to bring the Bonds to market through either a competitive electronic bidding process or a negotiated sale, which may include the execution and delivery of the Bond Purchase Agreement, as soon as practicable, (b) to advertise the Bonds for sale in the event the Bonds are being sold through a competitive bidding process, and (c) to take such actions as shall be necessary or appropriate to obtain a rating or ratings for the Bonds from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Fitch Ratings, Inc., and/or Moody's Investors Service, Inc.

**3. Issuance and Sale of Bonds.** Pursuant to the Act, the Authority authorizes the issuance of the Bonds in accordance with the Supplemental Indenture and the sale thereof in accordance with the Notice of Sale, in the event the Bonds are being sold through a competitive bidding process, or the Bond Purchase Agreement, in the event the Bonds are sold in a negotiated sale, including the receipt of bids electronically or the selection of the Underwriter, as applicable; *provided, however*, that (a) the aggregate principal amount of the Bonds shall not exceed \$500,000,000; (b) the final maturity of the Bonds shall not exceed February 1, 2030; and (c) the aggregate true interest cost of the Bonds, determined in accordance with the terms of the Notice of Sale or the Bond Purchase Agreement, as applicable, shall not exceed 5.00% taking into account (i) original issue discount or premium, if any, and (ii) in the case of any Bonds issued as "Build America Bonds," any payments anticipated to be made by the Federal government to, or as directed by, the Authority.

**4. Bond Documents.** The Authority ratifies and confirms the Master Indenture, the Payment Agreement and the Existing 21<sup>st</sup> Century Facilities Agreements. The officers of the Authority are each hereby authorized to execute and deliver one or more New 21<sup>st</sup> Century Facilities Agreements in substantially the same form as the Existing 21<sup>st</sup> Century Facilities Agreements, and any amendments to such Existing 21<sup>st</sup> Century Facilities Agreements, in such form as bond counsel may provide, as shall be necessary or desirable in connection with issuance of the Bonds and the structure or amortization thereof. The form of the Supplemental Indenture, including the form of the Bonds, is approved, with such changes, insertions, additions, deletions and amendments as the State Treasurer or such officer of the Authority as the State Treasurer may designate shall approve. The approval of any such changes, insertions, additions,

deletions and amendments shall be evidenced conclusively by the execution and delivery of the Bonds by the Authority. The Authority authorizes and directs its officers to execute and deliver the Supplemental Indenture and the Bonds.

**5. Delegation to State Treasurer and Others; Sale or Award of Bonds.** The Authority hereby delegates to the State Treasurer or such officer of the Authority as the State Treasurer may designate the power with respect to the Bonds, subject to the limitations set forth in Paragraph 3: (a) to determine the list of the Participating Institutions and the related 21<sup>st</sup> Century College Projects, as of the date of issuance of the Bonds, and to expand such list from time to time to allow proceeds of the Bonds to finance other projects qualifying for financing as 21<sup>st</sup> Century College Projects; (b) to determine whether to elect that all or a portion of the Bonds shall constitute “Build America Bonds” pursuant to the American Recovery and Reinvestment Act of 2009; (c) to approve the details of the Bonds, including, without limitation, the maturity schedule, the interest rates, the redemption provisions; (d) to approve the form of all documents that are appropriate to carry out the contemplated financing; (e) to deem the Preliminary Official Statement final as of its date as contemplated in Paragraph 1 and to complete the Preliminary Official Statement as an official statement in final form as contemplated in Paragraph 6; (f) to postpone or cancel the sale of the Bonds, if in such person’s sole discretion conditions so warrant; (g) upon the recommendation of the Financial Advisor, to determine the manner of sale of one or more series of Bonds either through a competitive bidding process or a negotiated sale; and (h) to take all such further action as may be necessary or desirable for the issuance, sale and delivery of the Bonds.

If in the State Treasurer’s sole determination the then-current market or other conditions warrant a sale of one or more series of Bonds through a competitive bidding process, the State Treasurer shall award such series of Bonds to the responsive bidder whose bid offers to purchase such Bonds at the lowest true interest cost to the Authority as determined by the Financial Advisor (the “Winning Bidder” and the “Winning Bid”), all in accordance with the terms of the Notice of Sale.

If in the State Treasurer’s sole determination the then-current market or other conditions warrant a negotiated sale of one or more series of Bonds, the State Treasurer is hereby authorized, subject to the limitations set forth in paragraph 3, to negotiate the provisions of the Bond Purchase Agreement, determine the Underwriter for such series of Bonds, including any syndicate members and members of the selling group for such Bonds, and determine the prices at which such Bonds will be offered by the Underwriter to the public, and the Chairman, the Vice Chairman and the State Treasurer are each authorized, without the joinder of the others, to execute and deliver such Bond Purchase Agreement.

The State Treasurer shall execute a certificate evidencing determinations or other actions taken pursuant to the authority delegated in this Resolution, and any such certificate shall be conclusive evidence of the action or determination of the State Treasurer as stated therein.

**6. Official Statement.** The Authority authorizes and directs the State Treasurer and the State Treasurer’s staff to complete the Preliminary Official Statement as an official statement in final form (the “Official Statement”). The Chairman or Vice Chairman of the Authority, either of whom may act, is authorized and directed to execute the Official Statement, which execution shall constitute conclusive evidence of approval of the Official Statement and that the Authority has

deemed it final within the meaning of the Rule. The Authority authorizes and directs its staff to arrange for the delivery to the Winning Bidder or the Underwriter, as applicable, of a reasonable number of copies of the Official Statement, within seven business days after the sale date of the Bonds, for distribution by the Winning Bidder or the Underwriter, as applicable, to each potential investor requesting a copy thereof and to each person to whom Bonds are initially sold. The Authority authorizes and approves the distribution of the Official Statement by the Winning Bidder or the Underwriter, as applicable.

**7. Continuing Disclosure.** The Authority covenants to undertake ongoing disclosure and to provide “annual financial information” and “material event notices” in accordance with the Continuing Disclosure Agreement for the benefit of holders of the Bonds to assist the Winning Bidder or the Underwriter, as applicable, in complying with the Rule. The Authority authorizes and directs the Chairman, the State Treasurer or such other officer of the Authority as the State Treasurer may designate to execute the Continuing Disclosure Agreement in substantially the form presented at this meeting, which is approved with such completions, omissions, insertions and changes as the Chairman, the State Treasurer or such designee may approve. The execution by the Chairman, the State Treasurer or such designee of the Continuing Disclosure Agreement shall constitute conclusive evidence of approval of any such completions, omissions, insertions and changes.

**8. Other Documents.** The Authority authorizes and directs its officers and staff to execute and deliver all certificates, instruments and documents and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bonds. Such certificates may include a certificate (a) setting forth the expected use and investment of proceeds of the borrowing to show that such expected use and investment will not violate the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder, (b) making any elections that such officers deem desirable regarding any provisions requiring rebate to the United States of arbitrage profits earned on investments of proceeds of the borrowing, and (c) providing for payment of any such rebate amount.

**9. Other Actions.** The Authority approves and confirms all other actions of its officers and staff which are in conformity with the purpose or intent of this Resolution and in furtherance of (a) the issuance and sale of the Bonds and the use of the proceeds thereof and (b) the implementation of the 21<sup>st</sup> Century College Program.

**10. Effective Date.** This Resolution shall take effect immediately upon its adoption.

Adopted: October 7, 2009

The undersigned Assistant Secretary of the Virginia College Building Authority certifies that the foregoing is a true and correct copy of a Resolution adopted by the Authority, upon the vote as noted below, at a duly called meeting of the Authority held on October 7, 2009.

<u>Member</u>	<u>Present/Absent</u>	<u>Vote</u>
<u>Manju S. Ganeriwala</u>	<u>Present</u>	<u>Aye</u>
<u>David A. Von Moll</u>	<u>Present</u>	<u>Aye</u>
<u>Daniel S. Timberlake</u>	<u>Absent</u>	
<u>Daniel J. LaVista</u>	<u>Present</u>	<u>Aye</u>
<u>William L. Nusbaum</u>	<u>Present</u>	<u>Aye</u>
<u>John F. "Jack" Carter II</u>	<u>Present</u>	<u>Aye</u>
<u>Jefferson S. Cooper</u>	<u>Present</u>	<u>Aye</u>
<u>Vinod B. Agarwal</u>	<u>Present</u>	<u>Aye</u>
<u>Joseph S. Testa</u>	<u>Absent</u>	
<u>Elaine R. Wilde</u>	<u>Absent</u>	
<u>Edward Villanueva</u>	<u>Present</u>	<u>Aye</u>

/s/ Janet A. Aylor  
 Assistant Secretary, Virginia College Building  
 Authority

[SEAL]

Date: October 7, 2009

1871606v2  
 215681.000066

## 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 obligations<sup>1</sup> (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 21<sup>st</sup> Century College and Equipment Program (the “21<sup>st</sup> Century College and Equipment Program”); (2) the Public Higher Education Financing Program (the “Pooled Bond Program,” and together with the 21<sup>st</sup> 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 21<sup>st</sup> 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.

21<sup>st</sup> Century College and Equipment Program. The General Assembly of the Commonwealth (the “General Assembly”) created the 21<sup>st</sup> Century College Program in 1996 and has authorized

---

<sup>1</sup> 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.

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 21<sup>st</sup> Century College Program and the Equipment Program. Payments of principal and interest on bonds issued under the 21<sup>st</sup> 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,<sup>2</sup> 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;
  - 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.,

---

<sup>2</sup> 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.

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.<sup>3</sup>

1781031v6  
215681.000026

---

<sup>3</sup> 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.