



# FLORIDA GULF COAST UNIVERSITY

## NOTICE OF REGULATORY ACTION

March 18, 2011

**REGULATION TITLE:**

Debt Management Guidelines

**REGULATION NO.:**

FGCU-PR7.007

**SUMMARY:**

This Regulation is to revise the University's Debt Management Policy to be consistent with the Board of Governors' guidelines, revised in September 2010.

**FULL TEXT:**

The full text of the regulation being proposed is attached and can also be found at <http://www.fgcu.edu/generalcounsel/promulgation.asp>

**LAW IMPLEMENTED:**

Section 7D(d), Art. IX, Fla. Const., BOG Debt Management Guidelines

**UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:**

Linda Bacheler, Assistant Vice President for Administrative Services and Finance/Controller

**UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:**

Joseph Shepard, Vice President for Administrative Services and Finance

**PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:**

Diane St. John, Administrative Assistant, [gco@fgcu.edu](mailto:gco@fgcu.edu); 239.590.7466 (Phone), 239.590.7470 (Facsimile); 10501 FGCU Blvd. S, Fort Myers, FL 33965-6565.

**ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE APRIL 5, 2011 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.**

**THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON: MARCH 18, 2011**



## REGULATION: FGCU-PR7.007

Effective Date  
of Regulation: \_\_\_\_\_

# DEBT MANAGEMENT GUIDELINES

## A. PURPOSE OF DEBT MANAGEMENT GUIDELINES

Florida Gulf Coast University (“FGCU”) and its direct support organizations (“DSOs”) have funded significant investments in infrastructure, such as buildings, equipment, land, and technology, to meet the needs of a growing student population and to upgrade and maintain existing capital assets. A significant amount of the funding for this investment in infrastructure has been provided through the issuance of debt for the benefit of FGCU and by its DSOs.

The purpose of these guidelines is to confirm that FGCU and its DSOs must engage in sound debt management practices and, to that end, Florida Gulf Coast University Board of Trustees (“UBOT”) has formalized guiding principles for the issuance of debt by FGCU and its DSOs.

The following guidelines set forth guiding principles regarding FGCU and DSO debt-related decisions relating to:

1. The amount of debt which may prudently be issued.
2. The purposes for which debt may be issued.
3. Structural features of debt being issued.
4. The types of debt permissible.
5. Compliance with securities laws and disclosure requirements.
6. Compliance with federal tax laws and arbitrage compliance.

These principles facilitate the management, control and oversight of debt issuances, for the purpose of facilitating ongoing access to the capital markets which is critical to the financing of needed infrastructure.

In furtherance of this objective, the provisions of these guidelines shall be followed in connection with the authorization, issuance and sale of FGCU and DSO debt. However, exceptions to the general principles set forth herein may be appropriate under certain circumstances. Also, additional guidelines and policies may be necessary as new financial products and debt structures evolve over time.

For purposes of these guidelines:

- a) “debt” means bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanism or financial arrangement, whether or not a debt for legal purposes, for financing or refinancing, for or on behalf of FGCU or its DSOs, the acquisition, construction, improvement or purchase of capital outlay projects;
- b) “capital outlay project” means (i) any project to acquire, construct, improve or change the functional use of land, buildings, and other facilities, including furniture and equipment necessary to operate a new or improved building or facility, and (ii) any other acquisition of equipment or software; and
- c) “financing documents” means those documents and other agreements entered into by FGCU or its DSOs establishing the terms, conditions and requirements of the debt issuance.
- d) "auxiliary enterprise" means any activity defined in section 1011.47(1), Florida Statutes, and performed by FGCU or DSOs.

## **B. DEBT AFFORDABILITY AND CAPITAL PLANNING**

### **1. Concept of Affordability**

One of the most important components of an effective debt management policy is an analysis of what level of debt is affordable given a particular set of circumstances and assumptions. More comprehensive than simply an analysis of the amount of debt that may be legally issued or supported by a security pledge, the level of debt should be analyzed in relation to the financial resources available to the University and its DSOs on a consolidated basis, to meet debt service obligations and provide for operating the University.

An analysis of debt affordability should address the impact of existing and proposed debt levels on an issuer’s operating budget and offer guidelines or ranges to policymakers for their use in allocating limited resources within the guidelines.

### **2. Debts That May Be Issued Without Board of Governors’ Approval**

The following types of financings may be engaged in by FGCU and its DSOs, as

applicable, without UBOT or Board of Governors (“BOG”) approval:

- a) FGCU and its DSOs may finance the acquisition of equipment and software provided such financings are accomplished in accordance with the deferred-purchase provisions in Chapter 287, Florida Statutes.
- b) FGCU and its DSOs may finance the acquisition of equipment and software financings provided the overall term of the financing, including any extension, renewal or refinancings, hereof, does not exceed five years or the estimated useful life of the equipment or software, whichever is shorter.
- c) FGCU and its DSOs may issue promissory notes and grant conventional mortgages for the acquisition of real property. However, no mortgage or note shall exceed 30 years.
- d) FGCU and its DSOs debt secured solely with gifts and donations and pledges of gifts so long as the maturity of the debt, including extensions, renewals and refundings, does not exceed five years and so long as the facilities being financed have been included in FGCU’s five-year capital improvement plan that has been approved by the BOG.
- e) Refundings for debt service savings where final maturities are not extended.
- f) Fully collateralized lines of credit intended to be used for temporary cash flow needs.
- g) Energy Performance-Based Contracts, in accordance with the provisions of section 1013.23, Florida Statutes, not to exceed \$10,000,000.
- h) The University may borrow up to \$20,000,000 from a DSO on a non-recourse basis to finance a capital project. The term of the borrowing may not exceed thirty (30) years, and the interest rate, if any, may not exceed current market interest rates. The University retains legal title to any capital project financed in whole or in part by such loan irrespective of whether the loan is repaid. The DSO is prohibited from transferring the note or any other instrument associated with the borrowing to any other entity.

### **C. GENERAL DEBT ISSUANCE GUIDELINES**

1. **Process for Submitting Debt for Approval for the BOG Upon Approval by the University Board Of Trustees**
  - a) Timing. The submission of proposed debt for approval by the BOG shall be governed by the following process<sup>1</sup>:
    - 1) The University shall formally transmit to the BOG a request for debt approval no later than sixty (60) days prior to the next regularly scheduled meeting of the BOG. The University shall also provide a copy to the State Division of Bond Finance (“DBF”). The formal transmittal to the BOG shall be in duplicate, hard copy, and bound in a three-ring binder, and include all the information required by these guidelines. Electronic copies of supporting documentation should be

<sup>1</sup> Although not required, the University should consult with the BOG Office and the DBF thirty (30) days prior to formal approval of debt by the UBOT or the DSO, particularly for any debt with unusual features.

provided to the BOG and the DBF, to the extent available. The formal letter of transmission must be signed by the official University contact for such matters, and any exceptions to these Debt Guidelines shall be noted and explained. If the UBOT has not yet formally approved the debt being requested, the proposed UBOT meeting date shall be provided.

- 2) During the review period, the BOG shall review the information submitted for compliance with these Guidelines and State law, analyze general credit issues associated with the proposed indebtedness, and review any analysis provided by DBF staff.
- 3) The BOG and DBF staff will jointly discuss with FGCU or its DSOs any issues, concerns or suggestions resulting from the review during the four-week review period. As a result of these discussions, FGCU may amend the information submitted or give reasons why the suggestions were not incorporated. The BOG will advise the University if it believes that any amended information is so significant that re-authorization by the UBOT and/or DSO is required. During this period, if the debt being requested for approval is to be issued by the DBF on behalf of FGCU, DBF shall submit to the BOG a form of a resolution for adoption by the BOG requesting that DBF issue the debt.
- 4) After the review period, the BOG will submit the agenda item with supporting documentation and all appropriate and required analyses to the BOG for consideration at its next meeting. Supporting documentation for the agenda item shall also include the resolution to be adopted by the BOG requesting issuance of the debt by DBF or a resolution approving issuance of the debt by the DSO.
  - b) *Information Required for Submission.* Additionally, FGCU or its DSO shall complete the "*Checklist of Information Required for Submission to the BOG Pursuant to Debt Management Guidelines,*" and provide any additional information requested by the BOG or DBF staff in connection with review of any proposed debt issuance. Additionally, the following information will be submitted to the BOG staff in support of a request for approval of the issuance of debt.
    - 1) A resolution of the DSO Board of Directors approving the debt issuances, if applicable, and a resolution of the UBOT approving the debt issuance and authorizing the University to request BOG approval of the debt issuance. For debt to be issued by DBF, at the request of the University, DBF staff will work with FGCU to determine a not-to-exceed amount of debt to be included in the BOT requesting resolution to the BOG and in preparing required debt service and source-and-use schedules.
    - 2) The project program, feasibility studies or consultant reports (if available), and an explanation of how the project being proposed is consistent with the mission of the University.
    - 3) Estimated project cost, with schedules drawn by month and including start and completion dates, estimated useful life, and the date bond proceeds are required.
    - 4) The sources-and-uses of funds, clearly depicting all costs, funding sources expected to be used to complete the project and the estimated amount of the debt to be issued.
    - 5) An estimated debt service schedule with the assumed interest rate on the debt

- clearly disclosed. If the proposed debt service is not structured on a level debt service basis, an explanation shall be provided which gives the reason why it is desirable to deviate from a level debt structure.
- 6) One consolidated debt service schedule separately showing all outstanding debt related to or impacting the debt being proposed, the proposed debt and the new estimated total debt service..
  - 7) A description of the security supporting the repayment of the proposed debt and the lien position the debt will have on that security. If the lien is junior to any other debt, the senior debt must be described. Furthermore, a description of why the debt is proposed to be issued on a junior lien basis must be provided. A statement citing the legal authority for the source of revenues securing repayment must also be provided.
  - 8) If debt is to be incurred on a parity basis with outstanding debt, a schedule showing estimated compliance with any additional bonds requirement set forth in the documents governing the outstanding debt. The applicable provisions of the documents for bonds of DSOs should be provided.
  - 9) Financial statements for five (5) years, if available, for the auxiliary, if auxiliary revenues are pledged.
  - 10) A five-year history, if available and five-year projection of the revenues securing payment and debt service coverage. To the extent applicable, the projections must be shown on the individual project as well as the entire system. All revenue items securing repayment must be clearly set forth as separate line items. An explanation must be provided with regard to growth assumptions, and to the amount and status of approval of any rate increases. The effect of the rate increases on the projections and expected revenues and expenses for the new facility should be clearly set forth as a separate line item. If rate increases are necessary, a commitment must be made to increase rates to the needed levels. Major categories of any operating expenses should be set forth as separate line items with an explanation of assumptions regarding increases or decreases.
  - 11) Evidence that the project is consistent with the University's master plan, or a statement that the project is not required to be in the master plan.
  - 12) For variable rate debt proposals:
    - (a) the expected reduction in total borrowing costs based on a comparison of fixed versus variable interest rates;
    - (b) a variable rate debt management plan that addresses liquidity and interest rate risks and provides, at a minimum: a description of budgetary controls, a description of liquidity arrangements, a discussion of why the amount of variable rate debt being proposed is appropriate, and a plan for hedging interest rate exposure. If interest rate risks are to be mitigated by the use of derivatives, then evidence that the counterparty has a long term rating of at least an A/A2 and a swap management plan as set forth in the BOG 's Debt Management Guidelines must be submitted;
    - (c) a pro forma showing the fiscal feasibility of the project using current market interest rates plus 200 basis points;

- (d) the total amount of variable rate debt including the proposed debt as a percentage of the total amount of the University and DSO debt outstanding; and
- (e) the individual or position that will be responsible for the reporting requirements for variable rate debt as set forth in these guidelines.
- 13) If all or any portion of the financing is contemplated to be done on a taxable basis, then evidence demonstrating that the issuance of taxable debt is in the best interest of the University must be submitted.
- 14) A statement explaining whether legislative approval is required, and if required, an explanation as to when legislative approval will be sought or evidence that legislative approval has already been obtained.
- 15) A statement that the debt issuance is in accordance with the University debt management policy or, if not, an explanation of the specific variances as well as the reasons supporting the variances.
- 16) If a request is made to employ a negotiated method of sale, an analysis must be provided supporting the selection of this method that includes a discussion of the factors set forth in Section D of these Guidelines.
- 17) A description of the process used to select each professional engaged in the transaction, showing compliance with the competitive selection process required by these Guidelines. Specific contact information for each selected professional, must be included, and at a minimum, should disclose the professional's name, firm name, address, email address, phone number and facsimile number.
- 18) The most recent annual variable rate debt report.
- c) Approval. The BOG will consider the following factors in connection with its review and approval of FGCU or DSO debt issuance.
  - 1) The debt is to provide funding for needed infrastructure of FGCU for purposes consistent with the mission of FGCU.
  - 2) The debt is being issued in compliance with the principles and guidelines set forth herein.
  - 3) The project information submitted is reasonable and supportable.
  - 4) The five-year projection of pledged revenues available to pay debt service should provide debt service coverage of at least 1.20x for both outstanding parity debt and for the proposed new debt for all years within the five-year projection period after giving credit for any capitalized interest and other revenues available for payment.
  - 5) Any requirements for the issuance of additional parity debt can be reasonably expected to be met.

## 2. Purposes for Which Debt May Be Issued

Debt may be issued only to finance or refinance capital outlay projects as defined in these guidelines, including equipment and software; debt may not be approved to finance or refinance operating expenses of the University or its DSOs.

Refunding bonds may be issued to achieve debt service savings. Refunding bonds may also be issued to restructure outstanding debt service or to revise

provisions of Financing Documents if it can be demonstrated that the refunding is in the best interest of the University.

### **3. Committing University Resources for Debt Issued by Direct Support Organizations**

There may be occasions where the University considers committing its financial resources on a long-term basis in support of debt issued by one of its DSOs or other component unit. While the nature of the commitment may not constitute a legal debt obligation of the University, it may affect the FGCU's debt position and its available financial resources. Therefore, the University should evaluate the long-term fiscal impact upon the university's debt position and available resources before authorizing any such financial commitment. Additionally, the debt of any DSO may not be secured by an agreement or contract with the University unless the source of payments under such agreement or contract is limited to revenues that the University is authorized to use for the payment of debt service. Any such contract or agreement shall also be subject to the requirements set forth under "Security Features – Pledged Revenues" herein.

### **4. Credit Ratings**

In order to access the credit markets at the lowest possible borrowing cost, it is recognized that credit ratings are critical. Therefore, for all publicly offered debt:

- a) For existing bond programs, the University and its DSOs shall strive to maintain or improve current credit ratings without adversely impacting the amount of debt which may be issued for any particular program.
- b) For all new financings; the University or its DSOs shall seek to structure the transaction to achieve a minimum rating of "A" from at least two nationally recognized rating agencies. Credit enhancement may be used to achieve this goal.

### **5. Tax Status**

FGCU has traditionally issued tax exempt debt which results in significant interest cost savings compared with the interest cost on taxable debt. Accordingly, all FGCU and its DSOs debt should be issued to take advantage of the exemption from federal income taxes unless the University demonstrates that the issuance of taxable debt is in the University's best interest. With respect to debt which has a management contract with a private entity as part of the security feature, the management contract should comply, to the greatest extent practical, with tax law requirements to obtain tax exemption for the debt.

## 6. Security Features

- a) Pledged Revenues. The debt issued by the University and its DSOs may only be secured by revenues (including fund balances and budget surpluses) authorized for such purpose. The revenues which may secure debt include the following:
- 1) Activity and Service Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived there from.
  - 2) Athletic Fee, subject to the limitation that annual debt service payable from these fees does not exceed five percent of the revenues derived therefrom.
  - 3) Health Fee.
  - 4) Transportation Access Fee.
  - 5) Licenses and Royalties for facilities that are functionally related to FGCU operation or its DSOs reporting such royalties and licensing fees.
  - 6) Gifts and Donations for debt not longer than five (5) years.
  - 7) Overhead and indirect costs and other monies not required for the payment of direct costs of grants.
  - 8) Assets of the FGCU Foundation, the FGCU Financing Corporation and earnings thereon.
  - 9) Auxiliary Enterprise Revenues (e.g., housing, parking, food service, athletic, retail sales, research activities).

Revenues which are not enumerated above may not be pledged to secure debt unless authorized by law for such purpose. In the case of university-issued debt, the pledge of revenues which secures debt should specifically identify the sources pledged and not use general or vague terms such as "lawfully available revenues." Specifically identifying revenues used to secure debt will provide certainty and transparency as to the revenues that are encumbered and avoid ambiguity or uncertainty as to the issuer's legal liability. The University and its DSOs should take this into consideration when determining the nature of the security it will provide in connection with a debt issuance. The guidelines for pledging revenues and securing debt shall also apply to debt structures which involve an agreement, contract or lease with the University or its DSOs, i.e., the revenues being pledged to secure debt must be specifically identified and lawfully available for such purpose. It is preferable, whenever possible, to secure debt with system pledges comprised of multiple facilities within a system, e.g., housing and parking, rather than stand-alone project finances.

- b) Functional Relationships. Revenues from one auxiliary enterprise (a "Supporting Auxiliary Enterprise") may not be used to secure debt of another auxiliary enterprise unless the BOG, after review and analysis, determines that the facility being financed (the "Facility") is functionally related to the Supporting Auxiliary Enterprise's revenues being used to secure such debt. The BOG must determine whether a functional relationship exists whenever revenues from a Supporting Auxiliary Enterprise will be used to pay or secure the debt of a Facility or when proceeds of bonds issued by a Supporting Auxiliary Enterprise will be used, directly or indirectly, to pay costs relating to a Facility. When a functional

relationship is established between a Facility and a Supporting Auxiliary Enterprise, only that portion of the Supporting Auxiliary Enterprise's revenues that exceed its operating requirements and debt service, if any, may be pledged to secure such debt, provided that such pledge may be on parity with outstanding debt if permitted by the covenants and conditions of the outstanding debt.

A functional relationship exists when a nexus is established between the Facility and the Supporting Auxiliary Enterprise's revenues. Whether a Facility is functionally related to the Supporting Auxiliary Enterprise's revenues must be determined on a case by case basis, taking into consideration the unique facts and circumstances surrounding each individual situation.

Examples of functional relationships include, but are not limited to, a parking facility intended to provide parking to residents of a student housing facility and located within reasonably close proximity to a student housing facility; a food services facility intended to serve residents of a student housing facility and located within reasonably close proximity to a student housing facility; or shared infrastructure (e.g. water lines, sewer lines, utilities, plaza areas) located within reasonably close proximity to both the Facility and the Supporting Auxiliary Enterprise. While representations that a Facility will provide general benefits to or enhance the experience of the student body are desirable, this factor alone is not determinative in and of itself to establish a functional relationship between the Facility and the Supporting Auxiliary Enterprise's revenues.

- c) *Lien Status.* All bonds of a particular program should be secured by a first lien on specified revenues. Additionally, bonds should generally be equally and ratably secured by the revenues pledged to the payment of any outstanding bonds of a particular bond program. However, the creation of a subordinate lien is permissible if a first lien is not available or circumstances require.
- d) *Reserve Fund.* Debt service reserve requirements may be satisfied by a deposit of bond proceeds, purchase of a reserve fund credit facility, or funding from available resources over a specified period of time. In the submission of a request for debt issuance, it is preferred, though not required, that the bond size for the proposed debt include a provision for funding a reserve from bond proceeds. This will ensure that in the event that FGCU is unable to obtain a reserve fund credit facility, it will still have an authorized bond amount sufficient to fund its needs. Debt service reserve requirements may also be satisfied with cash balances.
- e) *Credit Enhancement.* Credit enhancement is used primarily to achieve interest cost savings. Accordingly, the University and its DSOs should consider the cost effectiveness of bond insurance or other credit enhancements when evaluating a debt issuance and the overall cost thereof. Any bond insurance or credit enhancement should be chosen through a competitive selection process analyzing the cost of the insurance or credit enhancement and the expected interest cost savings to result from their use. The primary determinant in selecting insurance or other credit enhancement should be price and expected interest cost savings; however, consideration may also be given to the terms of any arrangement with the provider of insurance or other credit enhancement.
- f) *Capitalized Interest.* Capitalized interest from bond proceeds is used to pay debt

service until a revenue producing project is completed or to manage cash flows for debt service in special circumstances. Because the use of capitalized interest increases the cost of the financing, it should only be used when necessary for the financial feasibility of the project.

## **7. Structural Features**

a) *Length of Maturity.* In addition to any restriction on the final maturity imposed by the constitution or laws of the State, as a general guideline, the final maturity on bonds should not exceed thirty years.

Debt secured by gifts and donations shall not be considered long-term financing but may be used as a temporary or construction loan to accelerate construction of facilities. Accordingly, the maturity of debt secured by gifts and donations shall not exceed five years, including roll-overs or refinancings, except refinancings to implement permanent financing. Debt issued to finance equipment and software may not be longer than five years or the useful life of the asset being financed, whichever is shorter. Lastly, the final maturity of the debt should not exceed the estimated useful life of the assets being financed.

b) *Debt Service Structure.* Generally, debt should be structured on a level debt basis, i.e., so that the annual debt service repayments will, as nearly as practicable, be the same in each year. A deviation from these preferences is permissible if it can be demonstrated to be in the University's best interest, such as restructuring debt to avoid a default and not to demonstrate feasibility of a particular project.

c) *Redemption Prior to Maturity.* A significant tool in structuring governmental bonds is the ability to make the bonds callable after a certain period of time has elapsed after issuance. This provides the advantage of enabling the issuer to achieve savings through the issuance of refunding bonds in the event interest rates decline. Although the ability to refund bonds for a savings is advantageous, there may be situations where a greater benefit of lower interest rates may be realized by issuing the bonds as non-callable. Accordingly, there is a strong preference that bonds issued by the University or its DSOs be structured with the least onerous call features as may be practical under then prevailing market conditions. Bonds of a particular issue may be sold as non-callable if it is shown to be in the best interest of the University or its DSOs.

d) *Debt Issued With a Forward Delivery Date.* Debt issued by FGCU or its DSOs may be issued with a delivery date significantly later than that which is usual and customary. This debt typically carries an interest rate penalty associated with the delay in delivery. There are also additional risks that delivery will not occur. Debt with a forward delivery date may be issued if the advantages outweigh the interest rate penalty which will be incurred and the University and its DSOs are protected from adverse consequences of a failure to deliver the debt.

## **8. Interest Accrual Features**

a) *Fixed Rate, Current Interest Debt.* Fixed rate debt will continue to be the primary means of financing infrastructure and other capital needs. However, there may

be circumstances where variable rate debt is more appropriate, in which case, the University or its DSOs shall provide documentation as noted in these guidelines for such debt.

- b) *Derivatives.* Alternative financing arrangements, generally referred to as derivatives, are available in the market as an alternative to traditional bonds. Under certain market conditions, the use of alternative financing arrangements may be more cost effective than the traditional fixed income markets. However, these alternative financing instruments, such as floating to fixed swap agreements, have characteristics and carry risks peculiar to the nature of the instrument which are different from those inherent in the typical fixed rate financing. Although FGCU and its DSOs should normally continue issuing conventional fixed rate bonds, alternative financing instruments may be used when the inherent risks and additional costs are identified and proper provision is made to protect the BOG, FGCU, and its DSOs from such risks. In determining when to utilize alternative financing arrangements, the availability of the requisite technical expertise to properly execute the transaction and manage the associated risks should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. Also, a comprehensive derivatives policy should be established by the University or its DSOs and approved by the BOG prior to approving transactions using derivatives products.
- c) *Capital Appreciation Bonds.* Normally capital appreciation bonds, which do not require current debt service payments, should not be used. However, when a compelling university interest is demonstrated, capital appreciation bonds may be issued.
- d) *Variable Rate Bonds.* Variable rate debt may be issued, considering the totality of the circumstances. Such bonds can reasonably be expected to reduce the total borrowing cost to the FGCU or its DSOs over the term of the financing. The availability of the requisite technical expertise to properly manage the risks and execution of the variable rate transaction should be evaluated along with any additional ongoing administrative costs of monitoring the transaction. There should be a solid understanding of the liquidity risk and interest rate risks associated with variable rate debt. Further, there should be a debt management plan that mitigates, to the extent possible, these risks over the life of the debt. The following guidelines should apply to the issuance of variable rate debt:
- 1) *Expected reduction in total borrowing cost.* In determining reasonably expected savings, a comparison should be made between a fixed rate financing at then current interest rates and a variable rate transaction, based on an appropriate floating rate index. The cost of the variable rate transaction should take into account all fees associated with the borrowing which would not typically be incurred in connection with fixed rate bonds, such as tender agent, remarketing agent, or liquidity provider fees.
  - 2) *Limitation on variable rate debt.* The amount of variable rate debt and interest derivative exposure is dependent on several factors associated with these types of debts. Included in the factors associated with these instruments are University's/DSOs operating flexibility and tightness of budget, access to short-

and long-term capital, the likelihood of a collateral call or termination payment, and University's/DSOs financial expertise. The level to which FGCU may utilize variable rate debt obligation ("VRDO") and interest derivatives (like swaps, collars, and caps) is subject to an understanding of the risks associated and a debt policy that adequately addresses the additional risks.

- 3) *Budgetary controls.* To avoid a situation in which debt service on variable rate bonds exceeds the annual amount budgeted, the following guidelines should be followed in establishing a variable rate debt service budget:
  - (a) A principal amortization schedule should be established, with provisions made for payment of amortization installments in each respective annual budget;
  - (b) Provide for payment of interest for each budget year using an assumed budgetary interest rate which allows for fluctuations in interest rates on the bonds without exceeding the amount budgeted. The budgetary interest rate may be established by: (1) using an artificially high interest rate given current market conditions; or (2) setting the rate based on the last 12 months actual rates of an appropriate index plus a 200 basis point cushion or spread to anticipate interest rate fluctuations during the budget year. The spread should be determined by considering the historical volatility of short-term interest rates, the dollar impact on the budget and current economic conditions and forecasts; or, (3) any other reasonable method determined by the University or its DSOs and approved by the BOG;
  - (c) The amount of debt service actually incurred in each budget year should be monitored monthly by the University or its DSOs to detect any significant deviations from the annual budgeted debt service. Any deviations in interest rates which might lead to a budgetary problem should be addressed immediately; and
  - (d) As part of the effort to monitor actual variable rate debt service in relation to the budgeted amounts and external benchmarks, the University or its DSOs should establish a system to monitor the performance of any service provider whose role it is to periodically reset the interest rates on the debt, i.e., the remarketing agent or auction agent.
- 4) *Establish a hedge with short-term investments.* In determining the appropriate amount of variable rate debt which may be issued by the University or its DSOs, consideration should be given to mitigating the variable interest rate risk by creating a hedge with short-term investments. This "hedge" mitigates the financial impact of debt service increases due to higher interest rates because, as debt service increases, the University or its DSOs earnings on short-term investments also increases. Appropriate personnel should monitor the hedge monthly. Short-term investment as a hedge is one of several methods of mitigating interest rate risk. The ratio of such short-term investments to variable debt needs to be examined in conjunction with other interest rate risk hedging, striking an overall balance to minimize interest rate risk.
- 5) *Variable interest rate ceiling.* The bond documents should include an interest rate ceiling of no greater than 12%.
- 6) *Mitigating interest rate risks with derivatives.* The University and its DSOs are

allowed to use various derivatives to mitigate the risk of rising interest rates on variable rate debt. However, the introduction of these derivatives also presents other risks for which the University must mitigate. These risks include rollover risk, basis risk, tax event risk, termination risk, counterparty credit risk and collateral posting risk. At a minimum, the University/DSOs engaging in this type of interest rate risk mitigation must provide:

- (a) Evidence that the counterparty has a long term rating of at least an A/A2; and
- (b) A swap management plan that details the following:
  - (i) Why the University is engaging in the swap and what the objectives of the swap are.
  - (ii) The swap counterparty's rating.
  - (iii) An understanding by the issuer of the cash flow projections that detail costs and benefits for the swap.
  - (iv) The plan of action addressing the aforementioned risks associated with swaps.
  - (v) The events that trigger an early termination (both voluntary and involuntary) under the swap documents, the cost of this event and how such would be paid.
  - (vi) The method for rehedging variable rate exposure should early termination be exercised.
  - (vii) A list of key personnel involved in monitoring the terms of the swap and counterparty credit worthiness.
- 7) *Liquidity.* One of the features typical of variable rate debt instruments is the bondholder's right to require the issuer to repurchase the debt at various times and under certain conditions. This, in theory, could force the issuer to repurchase large amounts of its variable rate debt on short notice, requiring access to large amounts of liquid assets. There are generally two methods for addressing this issue. With the first method, issuers that do not have large amounts of liquid assets may establish a liquidity facility with a financial institution which will provide the money needed to satisfy the repurchase. The liquidity provider should have a rating of A1/P1 or higher. The liquidity agreement does not typically run for the life of long-term debt. Accordingly, there is a risk that the provider will not renew the agreement or that it could be renewed only at substantially higher cost. Similar issues may arise if the liquidity provider encounters credit problems or an event occurs which results in early termination of the liquidity arrangement; in either case the issuer must arrange for a replacement liquidity facility. With the second method, issuers with significant resources may choose to provide their own liquidity. This approach eliminates the costs that would be charged by a third party liquidity provider and could mitigate the renewal/replacement risk. If the University or its DSOs chose to provide its own liquidity, the institution must maintain liquid assets or facilities equal to 100% of the outstanding VRDOs.
- 8) *Submission of periodic reports.* The University will prepare and submit to the UBOT and the BOG an annual variable rate debt report showing the position during the previous period of the University or its DSOs variable rate debt with respect to the following measures:

- (a) the total principal amount of variable rate debt to principal amount of total debt;
- (b) the amount of debt service accrued during the reporting period in relation to the pro-rata amount of annual budgeted debt service for the reporting period. If the amount of debt service which accrued during the reporting period exceeded the pro-rata amount of annual budgeted debt service for the period, the University shall explain what actions were taken to assure that there would be sufficient revenues and budget authority to make timely payments of debt service during the subsequent years; and
- (c) the amount of variable rate debt in relation to the amount of the University and/or its DSOs short-term investments, and any other strategies used to hedge interest rate risk.

## **9. Other Types of Financings**

- a) *Refunding Bonds.* Generally, refunding bonds are issued to achieve debt service savings by redeeming high interest rate debt with lower interest rate debt. Refunding bonds may also be issued to restructure debt or modify covenants contained in the bond documents. Current tax law limits to one time the issuance of tax-exempt advance refunding bonds to refinance bonds issued after 1986. There is no similar limitation for tax-exempt current refunding bonds. The following guidelines should apply to the issuance of refunding bonds, unless circumstances warrant a deviation therefrom:
  - 1) Refunding bonds should be structured to achieve level annual debt service savings.
  - 2) The life of the refunding bonds should not exceed the remaining life of the bonds being refunded.
  - 3) Advance refunding bonds issued to achieve debt service savings should have a minimum target savings level measured on a present value basis equal to 5% of the par amount of the bonds being advance refunded. The 5% minimum target savings level for advance refundings should be used as a general guide to guard against prematurely using the one advance refunding opportunity for post-1986 bond issues. However, because of the numerous considerations involved in the sale of advance refunding bonds, the 5% target should not prohibit advance refundings when the circumstances justify a deviation from the guideline.
  - 4) Refunding bonds which do not achieve debt service savings may be issued to restructure debt or provisions of bond documents if such refunding serves a compelling university interest.
- b) *Certificates of Participation and Lease-Type Financing.* The University or its DSOs may utilize these financing structures for all purposes, but it shall be considered as debt for the purposes of these guidelines and the University shall always budget and make available monies necessary to pay debt service, notwithstanding the right to cancel the lease. Additionally, for lease purchase financings of equipment, the University and its DSOs should consider using the State's consolidated equipment financing program if it will reduce costs and ensure a market interest rate on the financing.
- c) *Conversions of Existing Variable Rate Debt.* A conversion between interest rate

modes pursuant to the provisions of variable rate financing documents does not require BOG approval. However, ten (10) days prior to the conversion, the University or its DSOs' must notify the BOG of a conversion and provide a summary of the terms of (i.e. interest rate, debt service schedule, etc.) and reasons for the conversion. The University and its DSOs should answer all questions and provide any additional information that the BOG deems necessary to fully understand the conversion.

## **D. METHOD OF SALE AND USE OF PROFESSIONALS**

### **1. Analysis of Method of Sale**

It is in the best interests of the University and its DSOs to use the method of sale for their debt that is expected to achieve the best sale results. Based upon the facts and circumstances with regard to each individual financing, it may be more appropriate to sell debt through either a competitive sale or through negotiation. Accordingly, the University and its DSOs may utilize either a competitive or negotiated sale. If, however, a request is made for a DSO to sell debt using a negotiated sale, the University must provide the BOG with an analysis showing that a negotiated sale is desirable. The analysis should include, but not necessarily be limited to, a consideration of the following factors:

#### a) Debt Structure

- 1) pledged revenues – strong revenue stream vs. limited revenue base;
- 2) security structure – conventional resolution, cash flow, rate and coverage covenants vs. unusual or weak covenants;
- 3) debt instrument – traditional serial and term bonds vs. innovative, complex issues requiring special marketing; and
- 4) size – a smaller transaction of a size which can be comfortably managed by the market vs. a large size which the market cannot readily handle.

#### b) Credit Quality

- 1) ratings – “A” or better vs. below single “A”; and
- 2) outlook – stable vs. uncertain.

#### c) Issuer

- 1) type of organization – well-known, general purpose vs. special purpose, independent authority;
- 2) frequency of issuance – regular borrower vs. new or infrequent borrower; and
- 3) market awareness – active secondary market vs. little or no institutional awareness.

#### d) Market

- 1) interest rates – stable; predictable vs. volatile;
- 2) supply and demand – strong investor demand, good liquidity vs. oversold, heavy supply; and
- 3) changes in law – none vs. recent or anticipated

Bonds may also be sold through a private or limited placement, but only if it is determined that a public offering through either a competitive or negotiated sale is not in the best interests of the University or its DSOs.

## **2. Allocation of Bonds**

In the event a negotiated sale by a DSO is determined by the University to be in the university's best interest, syndicate rules shall be established which foster competition among the syndicate members and ensure that all members of the syndicate have an opportunity to receive a fair and proper allocation of bonds based upon their ability to sell the bonds.

## **3. Report on Sale of Bonds**

The University or its DSOs shall prepare a report on the sale of bonds or anytime it incurs debt. The report shall be prepared and provided to the BOG as soon as practicable but in no event later than one (1) month after closing the transaction, in the format and manner provided by the BOG, which at a minimum shall include the following:

- a) The amount of the debt.
- b) The interest rate on the debt.
- c) A final debt service schedule or estimated debt service schedule if a variable rate debt or the interest rate is subject to adjustment.
- d) Any aspect of the transaction that was different from the transaction submitted for approval.
- e) Itemized list of all fees and expenses incurred on the transaction, including legal fees.
- f) For negotiated sale of bonds:
  - 1) the underwriters' spread detailing the management fee;
  - 2) takedown by maturity and aggregate takedown;
  - 3) any risk component and an itemized list of the expense component;
  - 4) orders placed by each underwriter and final bond allocation;
  - 5) total compensation received by each underwriter; and
  - 6) any report or opinion of the financial advisor.
- g) Final official statement for publicly offered bonds.
- h) Bond insurance or any other form of credit enhancement and the terms thereof.
- i) Credit rating reports.

## **4. Selection of Financing Professionals**

The use of underwriters for negotiated financings and the use of financial advisors for negotiated and competitive offerings is necessary to assist in the proper structuring and sale of debt. To assure fairness and objectivity in the selection of

professionals and to help select the most qualified professional, the selection of underwriters and financial advisors should be accomplished through a competitive selection process. A competitive selection process allows the University and its DSOs to compare more professionals and obtain the best price and level of service.

## **E. DISCLOSURE**

### **1. Primary Disclosure**

The University and its DSOs shall use best practices in preparing disclosure documents in connection with the public offer and sale of debt so that accurate and complete financial and operating information needed by the markets to assess the credit quality and risks of each particular debt issue is provided.

The disclosure recommendations of the Government Finance Officers Association's "Disclosure for State and Local Governments Securities," and the National Federation of Municipal Analysts' "Recommended Best Practices in Disclosure for Private Colleges and Universities" should be followed to the extent practicable, specifically including the recommendation that financial statements be prepared and presented according to generally accepted accounting principles.

### **2. Continuing Disclosure**

DSOs shall fulfill all continuing disclosure requirements set forth in the transaction documents and as required under Rule 15c2-12 of the Securities and Exchange Commission.

## **F. POST-ISSUANCE CONSIDERATIONS**

### **1. Investment of Proceeds of Debt Issued by DSOs**

a) *Construction Funds.* Funds held for payment of debt service and all other funds held as required by the documents of any financing shall be invested consistent with the terms of the Financing Documents.

### **2. Arbitrage Compliance**

The University will comply with federal arbitrage regulations. Any arbitrage rebate liabilities should be calculated and funded annually.

**G. EFFECT**

The foregoing guidelines shall be effective immediately and may be modified from time to time by the UBOT as circumstances warrant. The guidelines are intended to apply prospectively to the University and DSOs' debt, and not to adversely affect any University or DSO debt currently outstanding or projects approved by the BOG or UBOT prior to, or existing, as of January 26, 2006.

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Approved by the Florida Gulf Coast University Board of Trustees

Authority:

Section 7D(d), Art. IX, Fla. Const., BOG Debt Management Guidelines

Regulation History:

New

Effective Date of Regulation:

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