

# Post Issuance Compliance for Securities

University Operations – Financial Activities

**EWU Policy 202-06**  
**Effective: February 24, 2022**

**Authority: EWU Board of Trustees**  
**Proponent: President's Office**

**Purpose:** This policy is intended to guide the Eastern Washington University (the "University") in meeting its obligations under applicable statutes, regulations and documentation associated with publicly offered and privately placed securities of the University.

**History:** This policy was originally approved by the EWU Board of Trustees on March 23, 2012. Revisions were approved on an emergency, interim basis on November 22, 2021. Permanent revisions were approved by the Board of Trustees on February 24, 2022.

**Applicability:** This policy pertains to all EWU securities issued after January 2012.

## INTRODUCTION

This policy addresses obligations of the University that arise and will continue following the issuance of securities. The University maintains a separate Debt Policy with respect to matters related to the issuance of security obligations, including compliance with the University's disclosure obligations related to securities issuance. These obligations may arise as a result of federal tax law (with respect to tax-exempt securities) and securities laws (with respect to ongoing disclosure) or as a result of contractual commitments made by the University.

This policy outlines obligations that may be applicable to each issue of securities and identifies the party to be responsible for monitoring compliance. In the University, the Vice President for Business and Finance will be responsible for ensuring that the policy is followed and checklists and records maintained. The Vice President for Business and Finance may delegate responsibility to employees and outside agents for developing records, maintaining records and checklists. The University will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the parties identified in this policy with responsibilities for post-issuance compliance in order to facilitate their performance of these obligations.

## I. TRANSCRIPTS

a. The University's bond counsel shall provide the University with three copies of a full transcript related to the issuance of securities (for each issue). The transcript shall be delivered in the following form: one soft bound and two USB drives transcripts shall be delivered to the University within six months following the date of issuance of securities. It is expected that the transcript will include a full record of the proceedings related to the issuance of securities, including proof of filing an 8038-G or 8038-GC, if applicable.

b. Bond transcripts will be retained by the following parties and in the following locations within the University: Division of Business and Finance.

## II. FEDERAL TAX LAW REQUIREMENTS (Applicable only if the securities are issued as "tax-exempt" securities).

### a. Use of Proceeds

(1) If the project(s) to be financed with the proceeds of the securities will be funded with multiple sources of funds, the University will adopt one of the following accounting methodologies:

- maintain each source of funding separately and monitor the actual expenditure of proceeds of the securities;
- commingle the proceeds and monitor the expenditures on a first in, first out basis; or
- provide for the expenditure of funds received from multiple sources on a proportionate basis.

(2) Records of expenditures (timing of expenditure and object code) of the proceeds of securities will be maintained by Office of Controller.

(3) Records of investments and interest earnings on the proceeds of securities will be maintained by Office of Controller. Such records should include the amount of each investment, the date each investment is made, the date each investment matures and if sold prior to maturity, its sale date, and its interest rate and/or yield. Interest earnings on proceeds will be deposited in the fund in which the proceeds of the securities were deposited (if not, then the plan for use of interest earnings will be discussed with the University's bond counsel).

(4) Records of interest earnings on reserve funds maintained for the securities.

**b. Arbitrage Rebate.**

The Chief Financial Officer of the University ("Rebate Monitor") will monitor compliance with the arbitrage rebate obligations of the University for each issue ("issue") of securities which are described in further detail in the tax certificate if any, executed by the University for each issue and included in the transcript for the issue. If the University did not execute a tax certificate in connection with an issue, the Rebate Monitor should consult with the University's bond counsel regarding arbitrage rebate requirements. The University will provide educational opportunities (opportunities to attend educational programs/seminars on the topic) for the Chief Financial Officer in order to facilitate his/her performance of these obligations.

(1) If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the University issued by or on behalf of the University and subordinate entities during the calendar year, including the issue, will not be greater than \$5,000,000, plus such additional amount not in excess of \$10,000,000 as is to be spent for the construction of public school facilities, the Rebate Monitor will not be required to monitor arbitrage rebate compliance for the issue, except to monitor expenditures and the use of proceeds after completion of the project (see #3 below). For purposes of this paragraph, tax-exempt governmental obligations issued to currently refund a prior tax-exempt governmental obligation will only be taken into account to the extent they exceed the outstanding amount of the refunded bonds.

(2) If the Rebate Monitor determines that the total principal amount of tax-exempt governmental obligations (including all tax-exempt leases, etc.) of the University issued or incurred any calendar year is greater than \$5,000,000, plus such additional amount not in excess of \$10,000,000 as is to be spent for the construction of public facilities, the Rebate Monitor will monitor rebate compliance for each issue of tax-exempt governmental obligations issued during that calendar year.

(a) Rebate Exceptions. The Rebate Monitor will review the tax certificate, if any, in the transcript in order to determine whether the University is expected to comply with a spending exception that would permit the University to avoid having to pay arbitrage rebate. If the tax certificate identifies this spending exception (referred to as the six month exception, the 18 month exception or the 2-year exception), then the Rebate Monitor will monitor the records of expenditures (see B.1 above) to determine whether the University met the spending exception (and thereby avoid having to pay any arbitrage rebate to the federal government). If the University did not execute a tax certificate in connection with an issue, the Rebate Monitor

should consult with bond counsel regarding the potential applicability of spending exceptions.

(b) Rebate Compliance. If the University does not meet or does not expect to meet any of the spending exceptions described in (i) above, the University will:

(i) review the investment earnings records retained as described in B.1 above. If the investment earnings records clearly and definitively demonstrate that the rate of return on investments of all proceeds of the issue were lower than the yield on the issue (see the tax certificate in the transcript), then the University may opt no to follow the steps described in the following paragraph.

(ii) retain the services of an arbitrage rebate consultant in order to calculate any potential arbitrage rebate liability. The rebate consultant shall be selected no later than the completion of the project to be financed with the proceeds of the issue. A rebate consultant may be selected on an issue by issue basis or for all securities issues of the University. The Rebate Monitor will obtain the names of at least three qualified consultants and request that the consultants submit proposals for consideration prior to being selected as the University's rebate consultant. The selected rebate consultant shall provide a written report to the University with respect to the issue and with respect to any arbitrage rebate owed if any.

(iii) based on the report of the rebate consultant, file reports with and make any required payments to the Internal Revenue Service, no later than the fifth anniversary of the date of each issue (plus 60 days), and every five years thereafter, with the final installment due no later than 60 days following the retirement of the last obligation of the issue.

(3) Yield Reduction Payments. If the University fails to expend all amounts required to be spent as of the close of any temporary period specified in the Tax Certificate (generally 3 years for proceeds of a new money issue and 13 months for amounts held in a debt service fund), the University will follow the procedures described in B.2.b.ii above to determine and pay any required yield reduction payment.

**c. Unused Proceeds Following Project Completion**

Following completion of the project(s) financed with the issue proceeds, the Chief Financial Officer will:

(1) review the expenditure records to determine whether the proceeds have been allocated to the project(s) intended (and if any questions arise, consult

with bond counsel in order to determine the method of re-allocation of proceeds); and

(2) direct the use of remaining unspent proceeds (in accordance with the limitations set forth in the authorizing proceedings (i.e., bond resolution) and if no provision is otherwise made for the use of unspent proceeds, to the redemption or defeasance of outstanding securities of the issue.

#### **d. Use of the Facilities Financed with Proceeds**

In order to maintain tax-exemption of securities issued on a tax-exempt basis, the financed facilities (projects) are required to be used for governmental purposes during the life of the issue. The Chief Financial Officer of the University will monitor and maintain records regarding any private use of the projects financed with tax-exempt proceeds. The IRS Treasury Regulations prohibit private business use (use by private parties (including nonprofit organizations and the federal government)) of tax-exempt financed facilities beyond permitted de minimus amounts unless cured by a prescribed remedial action. Private use may arise as a result of:

- (1) Sale of the facilities;
- (2) Lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers);
- (3) Management contracts (in which the University authorizes a third party to operate a facility (e.g., cafeteria);
- (4) Preference arrangements (in which the University grants a third party preference of the facilities, e.g., preference parking in a public parking lot).

If the Chief Financial Officer identifies private use of tax-exempt debt financed facilities, the Chief Financial Officer will consult with the University's bond counsel to determine whether private use will adversely affect the tax-exempt status of the issue and if so, what remedial action is appropriate.

#### **e. Records Retention**

- (1) Records with respect to matters described in section II of this policy will be retained by the University for the life of the securities issue (and any issue that refunds the securities issue) and for a period of three years thereafter.
- (2) Records to be retained:
  - (a) The transcript;
  - (b) Arbitrage rebate reports prepared by outside consultants;
  - (c) Work papers that were provided to the rebate consultants;
  - (d) Records of expenditures and investment receipts (showing timing of expenditure and the

object code of the expenditure and in the case of investment, timing of receipt of interest earnings). (Maintenance of underlying invoices should not be required provided the records include the date of the expenditure, payee name, payment amount and object code; however, if those documents are maintained as a matter of policy in electronic form, then the University should continue to maintain those records in accordance with this policy);

(e) Copies of all certificates and returns filed with the IRS (e.g., for payment of arbitrage rebate); and

(f) Copies of all leases, user agreements for use of the financed property (agreements that provide for use of the property for periods longer than 30 days), whether or not the use was within the four walls (e.g., use of the roof of the facility for a cell phone tower).

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### **III. ONGOING DISCLOSURE**

Under the provisions of Securities and Exchange Commission Rule 15c2-12 (the "Rule"), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities. Unless the University is exempt from compliance with the Rule as a result of certain permitted exemptions, the transcript for each issue will include an undertaking by the University to comply with the Rule. The Chief Financial Officer of the University will monitor compliance by the University with its undertakings. These undertakings may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of listed "material events." For some types of material events (early bond calls), the State's fiscal agent has undertaken the responsibility of filing notice of the applicable material event.

#### **a. Publicly Offered Securities.**

For each publicly offered security (bonds), the Rule requires that the University is obligated to enter into a continuing disclosure undertaking ("CDA"). The CDAs each require that the University post certain financial and operating information on the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Marketplace Access system ("EMMA").

*Annual Filings.* Each CDA requires that the University file audited financial statements. The financial statements are required to be filed within nine months of the end of the University's fiscal year (June 30). If audited financial statements are not available in time, then unaudited statements should be filed and the audited statements filed when they become available. In addition, the University is required to file certain operating data as set forth in the final official statement for each issue (unless it is included in the audited financial statements or unless the University has a final official

statement within the filing period that includes the information).

*Additional Filings.* In addition to the annual filings and operating data referred to in (a) above, the University is required to make certain additional filings upon the occurrence of the following events (“Listed Events”). The University is required to provide notice of the following Listed Events **no later than ten business days after the occurrence of the event:**

- (1) Principal and interest payment delinquencies;
- (2) Nonpayment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds;
- (7) Modifications to the rights of bond holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution or sale of property securing repayment of the bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the University;
- (13) The consummation of a merger, consolidation, or acquisition involving the University or the sale of all or substantially all of the assets of the University, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Incurrence of a financial obligation of the University, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the University, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the

terms of a financial obligation of the University, any of which reflect financial difficulties.

Items numbered (15) and (16) are required only for publicly offered bonds that are issued after February 27, 2019. The Rule provides that the term “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

For purposes of compliance with Item number (15), the following obligations shall be deemed “financial obligations” of the University:

- (i) Bank loans (whether evidenced by lease/lease back documentation or a loan agreement) to the extent that they are financed through bank loans that do not involve a final official statement. At a minimum, filings will be made on EMMA that are linked to the outstanding issues payable from the same source of revenues (e.g., housing and dining revenue; services and activities fee revenue), but may also be linked, whether for convenience or otherwise, to other University CUSIPs;
- (ii) Loans issued through the State or federal government. At a minimum, filings will be made on EMMA that are linked to the CUSIPs of debt payable from the same source (e.g., housing and dining revenue; services and activities fee revenue), but also may be linked, whether for convenience or otherwise, to other University CUSIPs;
- (iii) Long term leases or installment purchases, however designated, that provide for the acquisition of property (real property or personal property) over a term. For these obligations, the University will establish a materiality threshold. The thresholds are: (a) for obligations that are payable from general funds of the University, disclosure will be made for contracts with a dollar amount in excess of \$6,000,000 which is less than 5% of the University’s annual general fund budget; and (b) for obligations that are payable from an identified source of revenues, e.g., University revenue or enterprise fund, disclosure will be made for contracts with a dollar amount in excess of 5% of the annual revenues of the enterprise fund. The Chief Financial Officer will periodically make affirmative inquiries as to whether obligations of this nature have been incurred.

The Chief Financial Officer will maintain records of these contracts in order to confirm future compliance with this policy.

For purposes of compliance with Item number (16), the Chief Financial Officer will monitor amendments identified in (i) through (iii) above in order to confirm that the amendment was made for commercial purposes (in the ordinary course of business) or whether the amendment reflected financial difficulties. In addition, the Chief Financial Officer, in course of his/her role in the financial affairs of the University will be aware of circumstances that reflect financial difficulties and make determinations as necessary whether disclosure is required under CDAs.

**b. Bank Loans.**

The borrowing resolution or loan documents may include its own set of annual disclosure requirements for each Bank loan. As a result, a chart should be maintained that identifies the annual disclosure responsibilities for each transaction. In some instances the filings on EMMA may satisfy those annual disclosure requirements. The Chief Financial Officer will monitor compliance with those filing requirements by filing the required information with the respective bank.

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**IV. OTHER NOTICE REQUIREMENTS**

In some instances, the proceedings authorizing the issuance of securities will require the University to file information periodically with other parties, e.g., bond insurers, banks, rating agencies. The types of information required to be filed may include (1) budgets, (2) annual financial reports, (3) issuance of additional debt obligations, and (4) amendments to financing documents. The Chief Financial Officer of the University will maintain a listing of those requirements and monitor compliance by the University.