

---

**WVU POLICY**  
**DIVISION OF FINANCE**  
**Post-Issuance Compliance Policy for Tax-Exempt Obligations**

---

**Statement of Purpose**

This Post-Issuance Compliance Policy (this “Policy”) sets forth specific policies of West Virginia University (the “University”) designed to monitor post-issuance compliance:

- A. with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) for obligations issued by the University on a tax-exempt basis (“Obligations”); and
- B. with applicable requirements set forth in certificates and agreement(s) (“Continuing Disclosure Agreements”) providing for ongoing disclosure in connection with the offering of obligations to investors (“Offerings”), for obligations (whether or not tax-exempt) subject to the continuing disclosure requirements of Rule 15c2-12(b)(5) (the “Rule”) promulgated by the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934.

This Policy documents 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 continue to be eligible to be excluded from gross income for federal income tax purposes. The federal tax law requirements applicable to each particular issue of Obligations will be detailed in the arbitrage or tax certificate prepared by bond counsel and signed by officials of the University with respect to that issue. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements for individual borrowings.

This Policy similarly documents practices and describes various procedures and systems designed to ensure compliance with Continuing Disclosure Agreements, by preparing and disseminating related reports and information and reporting “material events” for the benefit of the holders of the University’s obligations and to assist the Participating Underwriters (within the meaning of the Rule) in complying with the Rule.

The University recognizes that compliance with pertinent law is an on-going process, necessary during the entire term of the obligations, and is an integral component of the University's debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with bond counsel and the University's accountants and advisors.

### **General Policies and Procedures**

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

- A. The Assistant Vice President for Finance (the "Compliance Officer") shall be responsible for monitoring post-issuance compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations issued by the University shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service ("IRS") requirements, such as those contained in Revenue Procedure 97-22.
- D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

### **Issuance of Obligations - Documents and Records**

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the "Transcript").

- B. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038-G) for such issue with the IRS on a timely basis.
- C. 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 staff members of the University.

### **Arbitrage**

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the University's financial advisor or an outside arbitrage rebate specialist is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the University has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.
- F. Monitor compliance 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 the investment of such proceeds if such exceptions are not satisfied.

- G. 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.
- H. 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.
- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.
- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
- M. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

#### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

- A. Maintain records determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
- B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.

- D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
1. Sale of the facilities, including sale of capacity rights;
  2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
  3. Management contracts (in which the University authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
  4. Preference arrangements (in which the University permits a third party preference, such as parking in a public parking lot);
  5. Joint-ventures, limited liability companies or partnership arrangements;
  6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
  7. Development agreements which provide for guaranteed payments or property values from a developer;
  8. Grants or loans made to private entities; and
  9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement 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.

If the Compliance Officer identifies private use of facilities financed with tax-exempt debt, the Compliance Officer will consult with the University's bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

### **Qualified Tax-Exempt Obligations**

If the University issues "qualified tax-exempt obligations" pursuant to Section 256 of the Code in any year, the Compliance Officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements) to assure that the \$10,000,000 "small issuer" limit is not exceeded.

### **Reissuance**

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance of Obligations for federal law purposes.

### **Record Retention**

With respect to retention of records relating to the Obligations issued, the Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the University to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
  1. The Transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);
  2. Documentation evidencing expenditure of proceeds of the issue;
  3. 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.

4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, user agreements, developer agreements and research agreements);
  5. Documentation evidencing all sources of payment or security for the issue; and 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).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
  - E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

#### **Continuing Disclosure**

Under the provisions of SEC Rule 15c2-12 (the “Rule”), Participating Underwriters (as defined in the Rule) are required to determine that borrowers (such as the University) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the University is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the Transcript for each issue of related obligations will include a Continuing Disclosure Agreement executed by the University.

In order to monitor compliance by the University with its Continuing Disclosure Agreements, the Compliance Officer will take the actions listed below, if and as required by such Continuing Disclosure Agreements. The Compliance Officer may coordinate with staff, and may engage a dissemination agent, counsel, and/or other professionals to assist in discharging the Compliance Officer’s duties hereunder as the Compliance Officer deems necessary.

**A. Compilation of Currently Effective Continuing Disclosure Agreements**

The Compliance Officer shall compile and maintain a set of all currently effective Continuing Disclosure Agreements of the University. Such agreements are included in the transcript of proceedings for the University's respective bond or note issue. Continuing Disclosure Agreements are "Currently Effective" for purposes of this document (and hence shall be included in the set of Currently Effective Continuing Disclosure Agreements) for so long as the bonds or notes to which they relate are outstanding. As bonds or notes are completely repaid or redeemed, the Compliance Officer shall remove the related continuing disclosure agreements from the set of Currently Effective Continuing Disclosure Agreements.

**B. Annual Review and Annual Reporting Requirements**

The Compliance Officer shall ensure that all necessary financial statements, financial information and operating data is filed in the manner and by the filing dates set forth in the Currently Effective Continuing Disclosure Agreements. The Compliance Officer shall review the set of Currently Effective Continuing Disclosure Agreements annually, prior to each annual filing, keeping in mind:

1. The financial information and operating data required to be reported under a particular Continuing Disclosure Agreement may differ from the financial information and operating data required to be reported under another Continuing Disclosure Agreement; and
2. The timing requirements for reporting under a particular Continuing Disclosure Agreement may differ from the timing requirements for filing under another Continuing Disclosure Agreement.

**C. Calendar; EMMA Notification System**

The Compliance Officer shall keep a calendar of all pertinent filing dates required under the University's Currently Effective Continuing Disclosure Agreements. The Compliance Officer shall also subscribe to notification services made available through the EMMA system.

**D. Annual Review of Prior Filings**

As part of the annual review process, the Compliance Officer shall also review prior filings made within the past five years subsequent to the last such review of prior filings. If the Compliance Officer discovers any late or missing filings, the Compliance Officer (after discussing the circumstances with the University's counsel, dissemination agent (if any), or other agents as necessary) shall "remedy" such prior failures by ensuring that the missing information is filed.

**E. Monitoring of Material Events**



The Compliance Officer shall monitor the occurrence of any of the following events and/or other events set forth in the Currently Effective Continuing Disclosure Agreements and shall provide notice of the same in the required manner and by the relevant reporting deadline (likely within 10 days of the occurrence):

1. Principal and interest payment delinquencies;
2. Non-payment 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 University's bonds or notes, or other material events affecting the tax status of the University's bonds or notes;
7. Modification to rights of holders of the University's bonds or notes, if material;
8. Calls of the University's bonds or notes, if material, and tender offers;
9. Defeasances of the University's bonds or notes;
10. Release, substitution or sale of property securing repayment of the University's bonds or notes, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the University;<sup>1</sup>

---

<sup>1</sup> Which event is considered to occur when any of the following occur: a) the appointment of a receiver, fiscal agent, or similar officer for the University in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the University, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (b) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business 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<sup>2</sup> 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.
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation of the University, any of which reflect financial difficulties.

#### **F. Review of Official Statements**

The Compliance Officer shall review drafts of any Official Statement for a new offering of bonds or notes, with assistance from its counsel, dissemination agent (if any) or other agents of the University as necessary, and shall determine that the Official Statement accurately and completely describes the University's continuing disclosure compliance history within the five years prior to the date of the respective Official Statement. This compliance review is not meant to limit the University's other reviews of or diligence procedures relating to its Official Statements.

#### **G. Record Retention**

The Compliance Officer shall retain documentation evidencing the University's annual reviews and its reviews of Official Statements in connection with new offerings as set forth above.

---

<sup>2</sup> "Financial Obligation" means (i) a 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.

This University shall retain this documentation, for each Continuing Disclosure Agreement, for the period that the related bonds or notes are outstanding.

**H. Annual Review Checklist**

The Compliance Officer may (or may not) choose to use and retain the Annual Review Checklist attached as Exhibit A hereto to assist in implementing this document.

**Exhibit A**

**CONTINUING DISCLOSURE ANNUAL REVIEW CHECKLIST**

1. **Fiscal Year Ending June 30, 20** \_\_\_\_\_
2. **Compliance Officer:** \_\_\_\_\_
3. **Checklist Completion Date:** \_\_\_\_\_
4. **Bonds/Notes for which there are Currently Effective Continuing Disclosure Agreements (Attach Agreements):**

Principal Amount	Title/Series	Date of Issue

**5. Have any new Bonds or Notes subject to Continuing Disclosure Been Issued this Year?**

- \_\_\_\_\_ **No**
- \_\_\_\_\_ **Yes (Add Agreement to Set of Currently Effective Continuing Disclosure Agreements).**

If Yes, did the Compliance Officer review the Official Statement's Description of the University's Continuing Disclosure Compliance History within the Prior 5 Years?

**Circle:** Yes/ No (If No, review and discuss any issues with counsel.)

**6. Have any Bonds or Notes subject to Continuing Disclosure Been Completely Paid or Redeemed this Year?**

- No**  
 **Yes (Remove Agreement from Set of Currently Effective Continuing Disclosure Agreements)**

**7. (a) Has the Compliance Officer Reviewed the Annual Continuing Disclosure Filing to Ensure that all Necessary Financial Statements, Financial Information and Operating Data is Included?**

- Yes**  
 **No (Compliance Officer must review the Annual Continuing Disclosure Filing)**

**(b) For purposes of this review, please keep in mind:**

	<b>Checked?</b>
Different Continuing Disclosure Agreements may require different information to be filed (check each one)	<b>Yes / No</b>
Different Continuing Disclosure Agreements may have different filing timing requirements (check each one).	<b>Yes / No</b>

**8. Have any of the Following Events Occurred this Year?**

<b>Event</b>	<b>Circle</b>
(1) Principal and interest payment delinquencies.	Yes/No
(2) Non-payment related defaults, if material.	Yes/No
(3) Unscheduled draws on debt service reserves reflecting financial difficulties.	Yes/No
(4) Unscheduled draws on credit enhancements reflecting financial difficulties.	Yes/No
(5) Substitution of credit or liquidity providers, or their failure to perform.	Yes/No
(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 University's bonds or notes, or other material events affecting the tax status of the University's bonds or notes.	Yes/No
(7) Modifications to rights of Bondholders, if material.	Yes/No
(8) Bond calls, if material, and tender offers.	Yes/No
(9) Defeasance of any University's bonds or notes.	Yes/No
(10) Release, substitution or sale of property securing repayment of any University's bonds or notes, if material.	Yes/No
(11) Rating changes.	Yes/No
(12) Bankruptcy, insolvency, receivership or similar event of the University. <sup>3</sup>	Yes/No

<sup>3</sup> Which event is considered to occur when any of the following occur: a) the appointment of a receiver, fiscal agent, or similar officer for the University in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the University, or if such jurisdiction has

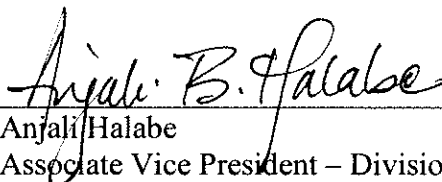
(13) The consummation of a merger, consolidation or acquisition involving the University or the sale of all or substantially all of the assets of the University, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.	<b>Yes/No</b>
(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.	<b>Yes/No</b>
(15) Incurrence of a Financial Obligation <sup>4</sup> 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.	<b>Yes/No</b>
(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation of the University, any of which reflect financial difficulties.	<b>Yes/No</b>

**If any such Event Occurred, was Proper Notice Provided?**

**Yes**  
 **No** (Call your counsel or dissemination agent (if any) immediately to discuss)

**Has the University Retained a Dissemination Agent?**

**Yes** **Name/Contact:** \_\_\_\_\_  
 **No**

Signature:  Date: 02/12/2020  
 Anjali Halabe  
 Associate Vice President – Division of Finance

\_\_\_\_\_ been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (b) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the University.

<sup>4</sup> “Financial Obligation” means (i) a 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.