



Worcester Polytechnic Institute

Tax-Exempt Debt Post-Issuance Compliance Policies and Procedures

Adopted June 27, 2012

Table of Contents

Part I.	Purpose
Part II.	Responsibility of Worcester Polytechnic Institute Officials
Part III.	Closing of Debt Issuances
Part IV.	Use of Debt Proceeds – Tax-Exempt Bonds
Part V.	Arbitrage Limitations Imposed on Debt Issuances
Part VI.	Accounting for Debt Proceeds
Part VII.	Recordkeeping
Part VIII.	Voluntary Closing Agreement Program
Part IX.	Continuing Education

Part I. Purpose.

It is the policy of Worcester Polytechnic Institute (the “University”) to comply with all applicable federal tax rules related to its debt¹ issuances. Given the increasing complexity of the federal tax law applicable to the University’s debt issuances, the University hereby adopts the following policies and procedures (the “Policies and Procedures”).

These Policies and Procedures are intended to serve as a guide for the University to facilitate compliance with the federal tax law applicable to the University’s outstanding debt issuances. In the event these Policies and Procedures conflict, in whole or in part, with the Arbitrage and Tax Regulatory Certificate (or other similar certificate) (the “Tax Certificate”) prepared on behalf of the University in connection with a debt issuance, the terms of the Tax Certificate shall control.

Part II. Responsibility of University Officials.

Except as otherwise described herein, the University’s Controller’s Office (the “Controller’s Office”) has primary responsibility for ensuring that the University’s outstanding debt issuances are, and will remain, in compliance with federal tax law. The Controller’s Office will consult with other departments within the University, as well as third-party professionals (e.g., the University’s bond counsel, Digital Assurance Certification, L.L.C. (DAC), and arbitrage rebate provider), as needed, to ensure compliance with such rules, including these Policies and Procedures. The Controller’s Office will ensure that these Policies and Procedures are reviewed annually.

Part III. Closing of Debt Issuances.

A. Tax Certificates. The University’s bond counsel, with assistance from the University and other professionals associated with the financing, shall prepare a Tax Certificate in connection with each debt issuance issued by the University, to be executed by the University’s Executive Vice President and Treasurer (the “EVP and Treasurer”) at closing. The Tax Certificate shall serve as the operative document for purposes of establishing the University’s reasonable expectations as of the date of issue of a debt issuance, as well as provide a summary of the federal tax rules applicable to such issuance. The EVP and Treasurer, in consultation with the University’s bond counsel, will review the Tax Certificate prepared for each of the University’s debt issues prior to the closing of the issue.

B. Internal Revenue Service Form 8038 – Tax-Exempt Bonds. The University’s bond counsel, with assistance from the University and other professionals associated with the financing, shall prepare an Internal Revenue Service (“IRS”) Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, in connection with each debt issuance issued to benefit the University, which the EVP and Treasurer will review prior to closing. Each IRS Form 8038 prepared for a debt issuance will be filed with the IRS no later than the 15th day after the 2nd calendar month after the close of the calendar quarter in which the tax-exempt obligation to which such Form 8038 relates is issued. All Form 8038s shall be filed by the University’s bond counsel with the IRS.

¹ Unless otherwise noted, “debt” shall mean tax-exempt debt.

Part IV. Use of Debt Proceeds.

A. Private Use Generally. The University will not knowingly take or permit to be taken any action which would cause any of its outstanding debt structured as Qualified 501(c)(3) Bonds to become “private activity bonds,” as described below. Generally, an issue of debt will be considered “private activity bonds” if more than 5% of the net proceeds of the debt are used directly or indirectly in (1) any unrelated trade or business, (2) or in any trade or business carried on by a private business user, and (3) more than 5% of the debt service on the debt is directly or indirectly (a) secured by any interest in property used or to be used in any trade or business carried on by a private business user or payments in respect of property used or to be used in any trade or business carried on by a private business user, or (b) derived from payments made in respect of property used or to be used in any trade or business carried on by a private business user. When calculating the percentage of private business use, the University will also include the cost of issuance, which will not exceed 2%.

B. Overview. The University routinely reviews, and will continue to review, third-party uses of its debt financed property for “private business use.” The Controller’s Office shall be responsible for such routine reviews. In addition, the University will continue to consult regularly with its bond counsel regarding the applicable federal tax limitations imposed on the University’s outstanding issuances and whether arrangements with third parties give rise to private business use of the debt financed property.

Prior to entering into an arrangement that may give rise to private business use, the EVP and Treasurer and the Controller’s Office shall review such arrangement. The Controller’s Office may use the DAC private business use monitoring system to measure the impact such arrangement may have on the University’s percentage of private business use. In the event the University enters into any arrangement which gives rise to private business use and the EVP and Treasurer deems it necessary, the University may consult its bond counsel regarding the arrangement and whether such arrangement impacts the tax-exempt status of the University’s outstanding debt. The private business use arrangements to be monitored by the University include, but are not limited to, the following:

1. Management or Other Service Contracts. In the event the University enters into a management contract, service agreement, operating agreement or license with a third-party, the University will evaluate whether such arrangement results in private business use. The Controller’s Office shall be responsible for such evaluation and will review every service contract entered into involving the use of debt financed property. For these purposes, a management contract, service agreement, operating agreement and license include any contract under which a service provider provides services involving any portion of debt financed property (a “Service Contract”). It is the University’s intent to structure all Service Contracts impacting debt financed property so as to satisfy one of the private business use safeharbors set forth in Revenue Procedure 97-13. If the University enters into a Service Contract that does not satisfy the safeharbors set forth in Revenue Procedure 97-13, the University may consult with its bond counsel to assess the impact, if any, that the noncompliant Service Contract has on the tax status of the University’s outstanding debt, if any.

2. Leases and Subleases. The Controller's Office will monitor all leases and subleases that involve the use of debt financed property, including the name of the lessee (or sublessee), the term of the lease (or sublease), the amount of the rent paid by the lessee (or sublessee) and the square footage of space used by the lessee (or sublessee) relative to the square footage of the debt financed property.
3. Naming Rights Agreements. The Controller's Office will monitor all naming rights agreements that involve debt financed property, including the term of the arrangement and the amount paid by the naming party.
4. Sponsored Research. The Controller's Office will monitor all Sponsored Research Agreements that involve debt financed property. The University will apply Revenue Procedure 2007-47, 2007-29 I.R.B. 108, to any research sponsorship agreement existing now or in the future with respect to debt financed property.
5. Clinical Trials. The Controller's Office will monitor all clinical trial agreements that involve debt financed property, including the term of the arrangement, the sponsoring entity, the trial to be conducted and the amount paid by the sponsoring party.
6. Joint Ventures and Partnership Arrangements. The Controller's Office will monitor all joint ventures, partnerships, or other cooperative agreements that involve the use of debt financed property.

C. Sales of Debt-Financed Property. It is the University's policy to use debt proceeds to finance property that the University intends to own for the entire term of the debt issue financing the projects. Prior to selling or otherwise disposing of any debt financed project for which debt remains outstanding, the University will consult with its bond counsel to determine the impact, if any, such sale or disposition would have on the tax status of the University's outstanding tax-exempt debt.

D. Remedial Actions. The University is aware of the remedial action rules contained in Treasury Regulations Section 1.141-12, providing the University with the ability, in certain circumstances, to voluntarily remediate violations of the private business tests or private loan financing test. Although the University intends that none of its debt issuances will require the application of the remedial action rules, prior to taking any action that would cause one or more of its outstanding debt issuances to, absent a remedial action, violate the private business tests or private loan financing test, the University may consult with its bond counsel regarding the applicability of the remedial action rules to such action and the ability to remediate the impacted debt issuance.

E. Private Loans. The University will not take or permit to be taken any action which would cause any of its debt issuances to be considered "private loan bonds." The University debt will be considered "private loan bonds" if more than 5% of the proceeds of the issue are used directly or indirectly to make or finance loans to private persons. The University will not loan the proceeds of any University debt issuance to a third party.

Part V. Arbitrage Limitations Imposed on Debt Issuances.

A. Arbitrage Rebate Monitor. The University will continue to retain an arbitrage rebate monitor to review its outstanding debt issuances, unless, in the judgment of the Controller's Office, and in compliance with these Policies and Procedures and the Tax Certificate entered into in connection with a debt issuance, there is no reasonable prospect of an arbitrage rebate or yield

reduction payment liability. If an arbitrage rebate monitor is retained, the arbitrage rebate monitor will perform calculations to ascertain whether the University owes an arbitrage rebate payment or yield reduction payment to the IRS, including whether the debt issuance in question qualifies for an exception to the arbitrage rebate rules.

B. Yield Restriction Limitations. Each Tax Certificate prepared for the University's debt issuances shall contain the applicable yield restriction investment limitations, including the applicable investment limitations imposed on proceeds of the debt issuance and any temporary periods during which the University may invest proceeds of the debt issuance at an unrestricted yield.

C. Monitoring Yield Restriction Limitations. The University's Controller's Office will ensure that the University complies with the yield restriction limitations outlined in the Tax Certificate entered into by the University in connection with a debt issuance, including any exceptions to yield restriction described therein.

D. Payment of Arbitrage Rebate and Yield Reduction Liability. In the event the University owes arbitrage rebate or has accrued a yield reduction payment liability to the IRS, the University will timely² submit IRS Form 8038-T, Arbitrage Rebate Yield Reduction and Penalty in Lieu of Arbitrage Rebate, to be prepared by the arbitrage rebate monitor, together with payment in the amount equal to the arbitrage rebate or yield reduction payment liability calculated by the arbitrage rebate monitor in accordance with the Tax Certificate related to such debt issue.

E. Expenditure of Debt Proceeds. It is the policy of the University to expend debt proceeds as promptly and diligently as possible within the confines of these Policies and Procedures and the Tax Certificate entered into by the University in connection with a particular debt issuance. For these purposes, it is the University's policy not to finance projects using the proceeds of debt for which the University expects that the debt proceeds will not be fully spent within 3 years of the date of issue of the debt.

F. Arbitrage Rebate Exceptions. Each Tax Certificate prepared for the University's debt issuances shall contain the arbitrage rebate exception(s) applicable to the debt issuance, which arbitrage rebate exceptions will be applied by the rebate monitor in assessing whether the University owes arbitrage rebate.

G. Verification Agent. The University will continue to retain a third-party verification agent for each of its advance refunding bond issues. The verification agent will verify the arbitrage yield on the debt issuance, the arbitrage yield on the investments acquired as part of the refunding escrow established using gross proceeds of the debt issuance, and the sufficiency of the refunding escrow.

H. Establishment of Advance Refunding Escrows and Trustee Responsibilities. The University will deposit debt proceeds (and any other amounts) to be used to advance refund prior University debt into one or more separate escrow trust accounts established with the trustee selected for the transaction. Working with the University's bond counsel, and in accordance with the

² For these purposes, timely shall mean within 60 days after each installment computation date, the University will cause to be paid to the IRS at least 90% of the amount of arbitrage rebate and yield reduction payment liability owed and within 60 days after the final installment computation date, the University will cause to be paid to the IRS 100% of the amount of arbitrage rebate and yield reduction payment liability owed.

documentation prepared for the refunding transaction, the University will impose primary responsibility for initiating actions required to be taken with respect to the refunding escrow (including the reinvestment of amounts within the escrow and disbursing funds from the escrow) on the trustee. In the event of an omission on the part of the trustee, an error in the documentation or procedures establishing the escrow, or an investment to be acquired as part of the refunding escrow is not available for purchase, the University will timely consult with the University's bond counsel, as applicable, to determine the impact, if any, on the tax-exempt status of the bond issue and actions to be undertaken by the University to ensure the continuing tax-exempt status of the obligations.

I. Acquiring Investments for Advance Refunding Escrows. It is the policy of the University to maximize the investment return on all investments acquired with tax-exempt bond proceeds and to acquire such investments at fair market value. When funding deposits to advance refunding escrows using debt proceeds, it is the University's policy to acquire United States Treasury Securities – State and Local Government Series (SLGS) or securities purchased on the open market in accordance with the terms of the University's bond documents.

In the event the University chooses to fund an advance refunding escrow using securities purchased on the open market, the University will solicit bids from providers of qualifying securities in accordance with the limitations described in the "3-bid" safeharbors set forth in Treasury Regulations Section 1.148-5(d)(6).

J. Interest Rate Hedges. The University will engage a third party financial advisor for all interest rate hedges entered into by the University, irrespective of whether any such hedge is acquired through a direct negotiation with the provider or procured through a bidding process. In all cases, the University will obtain appropriate certifications from its financial advisor and/or the provider to establish the fair market value of the product. The University will consult with its bond counsel with respect to all interest rate hedging transactions related to an outstanding or prospective debt issuance prior to the date on which the interest rate hedging transaction is entered into.

Part VI. Accounting for Debt Proceeds.

A. General. Except as otherwise described below and in the Tax Certificate entered into by the University in connection with a debt issuance, it is the policy of the University to consistently apply a generally accepted method of accounting for and allocating its debt proceeds.

B. Investment of Proceeds. Proceeds of the University's capital borrowings shall be accounted for in a separate fund or account. All proceeds shall be invested at the direction of the EVP and Treasurer.

C. Expenditure of Debt Proceeds on Capital Projects. The Controller's Office reviews and approves invoices related to tax-exempt debt financed expenditures and causes payments to be made. All invoices and records of payment (either in the form of paper checks or electronic funds transfer confirmations) are retained by the Controller's Office in accordance with Part VIII "Recordkeeping," below.

The University shall maintain an active ledger, updated with each payment of an expenditure from debt Proceeds, that for each outstanding debt issuance shows:

- (1) The name and date of issue of the debt issue to which the proceeds relate;
- (2) The projects financed with the proceeds of the issue;
- (3) The authorized amount of proceeds to be used to finance each project;
- (4) The amount of proceeds of the debt issuance used to date to finance each project;
- (5) The amount of unspent proceeds of the debt issuance to be used to finance each project; and
- (6) The date on which the debt proceeds related to each project were fully expended.

Part VII. Recordkeeping.

A. General. The University is aware of its ongoing recordkeeping responsibilities associated with its debt issuances. The University's relationship with DAC is intended to assist the University in maintaining compliance with its recordkeeping responsibilities. Each Tax Certificate prepared on behalf of the University for a debt issuance shall provide for a description of the records to be maintained by or on behalf of the University and period of time such records must be maintained. In addition, the University is familiar with the IRS's Frequently Asked Questions related to the recordkeeping requirements for debt.

B. Means of Maintaining Records. The University may maintain all records required to be held as described in this Part VII in paper and/or electronic (e.g., CD, disks, tapes) form either internally or through the DAC system. It is the policy of the University to maintain as much of its records electronically as feasible.

C. Transcript and Use of Debt Proceeds. The Controller's Office shall maintain, or cause to be maintained, all records relating to the tax-exempt status of its debt issuances and the representations, certifications and covenants set forth in its respective Tax Certificates until the date 3 years after the last outstanding obligation of the issue to which such records and Tax Certificate relate has been retired. These include, but are not limited to, the following:

- (1) basic records and documents relating to the obligations (including the transcript, which shall include, among other records, the Tax Certificate, IRS Form 8038, verification report, authorizing resolution(s), trust indenture, loan agreement, record of public approval, and the opinion of bond counsel),
- (2) documentation evidencing the expenditure of debt proceeds,
- (3) documentation evidencing the use of debt financed projects by public and private sources, including copies of all arrangements described in Part VI of these Policies and Procedures,
- (4) documentation evidencing all sources of payment or security for the debt issuance; and
- (5) documentation pertaining to any investment of debt proceeds (including the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).

D. Investment Records. The Controller's Office shall maintain detailed records with respect to every investment acquired with proceeds of its debt issuances until the date three years after the last outstanding obligation of the issue to which such records and nonpurpose investments relate has been retired. These records may reflect, but are not limited to, the following:

- (1) purchase date, (2) purchase price, (3) information establishing fair market value on the date such investment became allocated to gross proceeds of the debt, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) periodicity of interest payments, (8)

disposition price, (9) any accrued interest received, (10) disposition date, and (11) broker's fees paid (if at all) or other administrative costs with respect to each such nonpurpose investment.

E. Arbitrage Rebate and Yield Reduction Payment Records. The Controller's Office shall maintain all records of arbitrage rebate payment and yield reduction payment calculations performed by the arbitrage rebate monitor (irrespective of whether the University owed any amount to the IRS), and records related to any arbitrage rebate payments or yield reduction payments made to the IRS, including the calculations performed by the arbitrage rebate monitor substantiating such payments, together with the IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, that accompanied all such payments, until the date 3 years after the last outstanding obligation of the issue to which such records and rebate payments relate has been retired.

F. Overpayment of Arbitrage Rebate Records. In the event the University has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the University shall maintain all records of such arbitrage rebate payments or yield reduction payments, including calculations performed by the arbitrage rebate monitor, together with the IRS Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, that accompanied the request for a recovery of such overpayment until the date 3 years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.

G. Other Records. In addition to the records described above, the Controller's Office will maintain the following records, to the extent applicable to a particular debt offering, until the date 3 years after the last outstanding obligation of the issue to which such relate has been retired:

- (1) minutes and resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, the financing,
- (2) appraisals, demand surveys and feasibility studies related to debt financed or refinanced property,
- (3) documentation relating to any third-party funding for a project to which debt proceeds will be applied (including government grants),
- (4) records of any IRS audit(s) or compliance check(s), or any other IRS inquiry related to the debt.

H. Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the University issues debt to retire prior University debt, the University shall maintain all of the records described in this Part VII with respect to the refunded debt until the date that is three years after the last outstanding tax-exempt obligation of the issue the proceeds of which were used to retire the refunded debt has been retired.

Part VIII. Voluntary Closing Agreement Program.

The University is aware of its ability, pursuant to IRS Notice 2008-31, to request a voluntary closing agreement with the IRS to correct failures on the part of the University to comply with the federal tax rules related to debt issuances.

Part IX. Continuing Education.

The University will continue to consult regularly with its bond counsel regarding the federal tax rules applicable to its outstanding debt and changes to the federal tax law, and the University will regularly update these Policies and Procedures to reflect any such changes.

The University shall ensure that those who are tasked with bond compliance responsibilities shall undertake a reasonable amount of continuing education on an annual basis, including but not limited to, consulting with outside professionals, participation in conferences, reading informational updates from governmental resources and professional organizations, and participation in DAC webinars.