

## **NOTICE OF PROPOSED RULEMAKING**

This Notice of Proposed Rulemaking is issued pursuant to West Virginia University Board of Governors Governance Rule 1.1. The proposed changes are to the following current Board of Governors Rules:

- West Virginia University Board of Governors Governance Rule 1.4 – Ethics, Conflicts of Interest, and Outside Consulting Arrangements
- West Virginia University Board of Governors Talent & Culture Rule 3.1 – Administration & Employment Practices
- West Virginia University Board of Governors Talent & Culture Rule 3.2 – Affirmative Action and Equal Employment Opportunity
- West Virginia University Board of Governors Talent & Culture Rule 3.3 – Classification & Compensation
- West Virginia University Board of Governors Talent & Culture Rule 3.4 – Drug and Alcohol Testing for FTA & FMCSA Covered Positions
- West Virginia University Board of Governors Talent & Culture Rule 3.5 – Employee Leave
- West Virginia University Board of Governors Talent & Culture Rule 3.6 – Holidays
- West Virginia University Board of Governors Talent & Culture Rule 3.7 – Annual Increment
- West Virginia University Board of Governors Talent & Culture Rule 3.8 – Performance Management
- West Virginia University Board of Governors Talent & Culture Rule 3.9 – Reduction in Force
- West Virginia University Board of Governors Finance & Administration Rule 5.8 – Travel

The proposed changes are to amend current BOG Rules to clarify certain provisions and update the Rules to reflect changes that have occurred since their adoption.

Substantively, the proposed changes to the BOG Rules above will result in additions and amendments as set forth below:

BOG Rule	Recommended Action	Comments
BOG Governance Rule 1.4 – Ethics, Conflicts of Interest, and Outside Consulting Arrangements	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on February 8, 2019, to provide an overview of key aspects of the West Virginia Ethics Act most relevant to higher education employees and to address and provide rules related to institutional conflicts of interest and outside consulting arrangements.</li> <li>▪ This Rule has been amended to clarify some ambiguities in the current Rule including clarification regarding Consulting Arrangements and adding a definition of Institutional Duties.</li> <li>▪ The proposed amendments seek to amend the definition of “Consulting Arrangement” to provide additional clarity and broaden the scope with the addition of the phrase “provision of services” and removal of the requirement that the work be done as an “independent contractor.”</li> <li>▪ Section 7.2.3 is being added to provide that employees may not count, as part of their Institutional Duties, any engagement that may result in them being adverse to the University or the State of West Virginia in any legal proceeding. Those engagements are now considered outside Consulting Arrangements and must be approved through that process. This section was added to resolve some confusion as to what types of activities may be considered as part of an employee’s Institutional Duties.</li> <li>▪ Section 7.2.5.1 is being added to clarify that an employee may count some volunteering as Institutional Duties if it is pre-approved by their supervisor and <i>pro bono</i> in nature. A definition of <i>pro bono</i> has also been added.</li> <li>▪ Section 7.2.6 is being amended to require that employees who are unsure as to whether part-time employment or volunteering constitutes a Conflict address the question with their supervisor. Previously, this section only encouraged employees to reach out to their supervisor if they were unsure whether the endeavor constituted a Conflict.</li> <li>▪ Section 7.3.4 is being amended to clarify that University employees engaging in Consulting Arrangements may not use University resources to carry out activities that are not within the scope of their Institutional Duties, regardless of any exceptions found in the Ethics Act.</li> </ul>

<b>BOG Rule</b>	<b>Recommended Action</b>	<b>Comments</b>
BOG Talent & Culture Rule 3.1 – Administration & Employment Practices	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to design and administer a fair and flexible human resources practice for all University employees and to outline the guiding principles for establishing human resources practices for all University employee types.</li> <li>▪ The proposed amendments seek to add Section 6.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.2 – Affirmative Action and Equal Employment Opportunity	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to set forth the University’s Affirmative Action and Equal Employment Opportunity Policy.</li> <li>▪ The proposed amendments seek to add Section 4.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> <li>▪ Additionally, a change to Section 2.2.1 is being proposed to replace a reference to a former BOG Policy with the current BOG Rule 1.6.</li> </ul>
BOG Talent & Culture Rule 3.3 – Classification & Compensation	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to design, administer, and outline the guiding principles for establishing a classification and compensation program for Classified and Non-Classified Employees.</li> <li>▪ The proposed amendments seek to add Section 11.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.4 – Drug and Alcohol Testing for FTA & FMCSA Covered Positions	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, and amended on February 10, 2021, and outlines the rules to be followed in the administration of the drug and alcohol testing program for FTA and FMCSA covered positions.</li> <li>▪ The proposed amendments seek to modify Section 4.2 to clarify that Talent &amp; Culture, with the advice of the Office of General Counsel, has discretion to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.5 – Employee Leave	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to outline the guiding principles for annual leave, sick leave, medical leave, funeral leave, catastrophic leave, parental leave, FMLA, personal leave of absence without pay, military leave, special emergency leave without pay, witness and jury</li> </ul>

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		<p>leave and leave usage during facility disruption, utility service interruption and inclement weather for University employees.</p> <ul style="list-style-type: none"> <li>▪ The proposed amendments seek to add Section 12.2, which grants authority to the President to approve special emergency leave with pay during emergency situations impacting the operations of the University.</li> <li>▪ Section 15 is being modified to grant flexibility to respond to all emergency situations, including, but not limited to, weather. The recommended changes also confirm the supervisor’s discretion to assign remote work assignments in response to weather conditions not related to an emergency situation.</li> <li>▪ The proposed amendments seek to add Section 17.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.6 – Holidays	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to establish the guiding principles for setting the holiday schedule for the University.</li> <li>▪ The proposed amendments seek to modify Section 3.2.1 to reflect that floating holiday time must be used by the deadline established by the University rather than by the end of the fiscal year in which it was granted.</li> <li>▪ Section 7.2 is being added to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.7 – Annual Increment	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to outline the guiding principles for determining annual increment payments for eligible employees of the University.</li> <li>▪ The proposed amendments seek to add Section 5.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>
BOG Talent & Culture Rule 3.8 – Performance Management	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to outline the guiding principles for performance management.</li> <li>▪ The proposed amendments seek to add Section 5.2 to grant discretion to Talent &amp; Culture, with the advice of the Office of General Counsel, to comply with legal obligations.</li> </ul>

BOG Rule	Recommended Action	Comments
BOG Talent & Culture Rule 3.9 – Reduction in Force	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on September 8, 2017, to outline the guiding principles for Reductions in Force for all Classified Employees of the University who are employed in full-time regular positions.</li> <li>▪ The proposed amendments seek to modify Section 2.9 to replace a reference to a former BOG Policy with the current BOG Rule 1.6.</li> </ul>
BOG Finance & Administration Rule 5.8 – Travel	Amend and Approve	<ul style="list-style-type: none"> <li>▪ The Board adopted this Rule on June 21, 2019, to design and administer a travel program that promotes safe and economical University travel while ensuring accountability and appropriate use of funds.</li> <li>▪ The proposed amendments seek to require employees to make advance bookings through the University’s contracted Travel Management Company, unless the arrangements fall within the exceptions permitted in the University Travel Manual. The University entered a contractual relationship with AMEX Global Business Travel in February 2022 and requiring use of the AMEX system will result in increased traveler safety, expert travel care, and reduced costs as WVU now benefits from AMEX’s negotiated rates and rewards programs.</li> </ul>

A copy of the current Rules can be found at <http://bog.wvu.edu/policies> and a copy of the proposed Amended Rules and this Notice of Proposed Rulemaking can be found at <http://policies.wvu.edu/>.

There will be a 30-day public comment period from June 27, 2022 until July 27, 2022 for the submission of written comments. Comments should be submitted using the online submission form for each Rule, which can be found by clicking on the link to the Rule located at: <http://policies.wvu.edu/>. If there are any questions about the submission process, they can be directed to Valerie Lopez, Special Assistant to the Board of Governors, at [Valerie.Lopez@mail.wvu.edu](mailto:Valerie.Lopez@mail.wvu.edu) or Valerie Lopez, Office of the President, West Virginia University, PO Box 6201, Morgantown, West Virginia 26506-6201.

Once the comment period has ended, all public comments received or a summary thereof will be posted on the University's policy website. The Rules may be changed, subject to comments received.