

SECOND NOTICE OF PROPOSED RULEMAKING

This Second 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 Rule:

- West Virginia University Board of Governors Governance Rule 1.4 – Ethics, Conflicts of Interest, and Outside Consulting Arrangements

The proposed changes are to amend the current BOG Rule to clarify certain provisions and update the Rule to reflect changes that have occurred since its adoption. A Notice of Proposed Rulemaking was initially issued for this Rule at the Board's June 24, 2022 meeting. The amendments were posted for a public comment period from June 27, 2022 through July 28, 2022. Given that several changes have been made as a result of the comments received and in response to the Faculty Senate Executive Committee's resolution indicating that they would prefer that the Board take more time to discuss and consider the amendments to this Rule, the Board is issuing this Second Notice of Proposed Rulemaking and publishing the Rule amendments for an additional 30-day public comment period.

Substantively, the proposed changes will result in additions and amendments as set forth in the chart below and in the attached redline. Please note that the initial changes are shown in **blue** text and the changes in response to the public comments are shown in **red** text.

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"> ▪ 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. ▪ This Rule has been amended to clarify some ambiguities in the current Rule including clarification regarding outside Consulting Arrangements and adding a definition of Institutional Duties. ▪ 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.” ▪ Section 7.2.3 is being added to provide that employees may not count, as part of their Institutional Duties, the engagement in activities that result in the employee being adverse to the University or the State of West Virginia in any Formal Legal Proceeding. Those engagements are considered outside Consulting Arrangements, and like all outside Consulting Arrangements, must be approved through that process. <ul style="list-style-type: none"> ○ Following the initial comment period, several changes were made to Section 7.2.3 including clarification regarding what constitutes being adverse to the University or State of West Virginia in a Formal Legal Proceeding and a paragraph clarifying that a University Employee’s work in, engagement with, support of, or advancement of the University’s Clinical Law Program is considered part of their Institutional Duties and is not subject to Section 7.2.3. ▪ Following the initial comment period, Section 7.2.4 “Approval of Engagements Adverse to the University or State” was added and clarifies that the University may not prohibit employees from engaging in outside Consulting Arrangements on the basis of the specific viewpoint or position being advocated or advanced. Further, the section adds a requirement that decisions or requests for additional information must be communicated to employees

BOG Rule	Recommended Action	Comments
		<p>within 5 business days of the employee's submission of the consulting arrangement approval form.</p> <ul style="list-style-type: none"> ▪ Section 7.2.6.1 is being added to clarify that an employee may count some volunteering as Institutional Duties if it is pre-approved by their unit leader and <i>pro bono</i> in nature. A definition of <i>pro bono</i> has also been added. <ul style="list-style-type: none"> ○ Following the initial comment period, a sentence was added to this provision clarifying that volunteering that is considered an appropriate part of an Employee's Institutional Duties may be done during the Employee's normal University working hours and with University resources. ▪ Section 7.2.7 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.

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

There will be a 30-day public comment period from September 12, 2022 until October 12, 2022 for the submission of written comments. Comments should be submitted using the online submission form, 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 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 Rule may be changed, subject to comments received.



Board of Governors Rule

Governance
Ethics, Conflicts of Interest, and Outside
Consulting Arrangements
Responsible Unit: President’s Office,
Research, and General Counsel’s Office
Adopted: February 8, 2019
Effective: February 25, 2019
Revision History: Prior BOG Policy 17
(originally effective September 5, 2003)
Review Date: April 2023

BOG GOVERNANCE RULE 1.4 ETHICS, CONFLICTS OF INTEREST, AND OUTSIDE CONSULTING ARRANGEMENTS

SECTION 1: PURPOSE & SCOPE.

- 1.1 West Virginia University seeks to ensure that all University Employees and Officials, including Faculty and Staff, are responsible for sustaining the highest ethical standards through values of integrity, honesty, and fairness in their teaching, research, service, and business practices.
- 1.2 This Rule provides the University’s guidelines regarding real and ~~perceived~~ apparent Conflicts of Interest both generally and in the context of research activities. It also provides guidelines that identify when University Faculty and Staff can appropriately enter into Consulting Arrangements with third parties outside of the scope of their employment with the University.
- 1.3 This Rule applies to West Virginia University, West Virginia University Institute of Technology, and West Virginia University Potomac State College (collectively the “University”).

SECTION 2: WEST VIRGINIA ETHICS ACT COMPLIANCE.

- 2.1 All University Faculty, Staff, Officials, Unpaid Volunteers, and Employees, including students with an employment relationship with the University are required, by West Virginia state law, to comply with the West Virginia Ethics Act (“Ethics Act”), W. Va. Code §§ 6B-1-1 to -3-11 (2018), which is interpreted and administered by the West Virginia Ethics Commission. The state code, accompanying regulations, and other helpful information can be found at: <https://ethics.wv.gov/Pages/default.aspx>.
- 2.2 The Ethics Act prohibits certain behaviors deemed unethical by the Act. While not exhaustive, Section 2 of this Rule provides a brief overview of the most common Ethics Act requirements. Nonetheless, all University Faculty, Staff, Officials, and Unpaid Volunteers

are expected to comply with all requirements of the Ethics Act. Additionally, University Faculty on less than twelve-month appointments must continue to comply with the Ethics Act during the months between their appointment terms (e.g., during the summer months).

23 *Gifts.*

23.1 ***Solicitation of Gifts.*** University Employees, Officials, and Unpaid Volunteers may not solicit a gift unless the solicitation is for a charitable purpose. The charitable purpose must also be one from which the University Faculty, Staff, Official, or Unpaid Volunteer and their Family Members derive no direct personal benefit. University Faculty, Staff, Officials, and Unpaid Volunteers may not directly solicit a subordinate for a gift even if the gift is for a charitable purpose.

23.2 ***Acceptance of Gifts.*** University Employees, Officials, and Unpaid Volunteers may not accept gifts from lobbyists, or from any person whom the individual knows or has reason to know is doing or seeking to do business with the University of any kind; or has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of their official duties.

23.3 ***Exceptions.*** Notwithstanding these general prohibitions on the acceptance of gifts and the exemption outlined below in Section 2.4.1.2, the following types of gifts may be accepted by University Employees, Officials, and Unpaid Volunteers: meals and beverages if the payer is present, or any meal totaling \$25.00 or less; ceremonial gifts of an insignificant monetary value; unsolicited gifts of nominal value; gifts or free admission to charitable, cultural, or political events if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office and the tickets are given by the sponsor of the event; gifts that are purely private and personal in nature; and gifts from relatives.

23.3.1 The Ethics Act permits and the University understands that Faculty and Non-Classified Staff will participate in speaking engagements, conferences, and similar pursuits as part of their ~~Institutional~~ Institutional duties. Faculty and Non-Classified Staff may accept compensation of reasonable expenses, including travel, related to attending such an engagement when done on behalf of the University. Reasonable honorariums awarded to the Faculty, Non-Classified Staff, and Classified Staff for such pursuits are permitted to be accepted so long as the Faculty, Non-Classified Staff, and Classified Staff has been granted approval by their Dean or Vice President to participate in the pursuit as part of their ~~Institutional~~ Institutional duties. Speaking engagements and other such pursuits entered into for personal gain may only be done so in compliance with Section 7 of this Rule.

24 ***Use of Public Office for Private Gain.*** Generally, University Employees, Officials, and

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Unpaid Volunteers are prohibited from using their positions for their own private gain or the private gain of another.

24.1 *Exception for Higher Education Employees.*

24.1.1 The Ethics Act prohibits full-time state employees from engaging in outside employment or receiving external compensation for any service they are required to provide through the course of their public employment, even if the work is being done outside of their normal working hours.

24.1.2 However, the Ethics Act provides an exception for higher education employees, recognizing that the teaching, research, and service elements of higher education call for treatment that is different from the typical public employee or official.

24.1.3 Specifically, the Act provides that any person who is employed as a member of the Faculty or Staff of a public institution of higher education in the State of West Virginia and is engaged in teaching, research, consulting, or publication in their field of expertise and derives benefits from those activities is exempt from certain prohibitions set out in the Act (use of office for private gain, gifts, and interest in public contracts); *provided that* the activity is approved as part of the individual's employment contract, or has been approved by the individual's Dean or Vice President, or the University's President. *See* Section 7 for approval of outside Consulting Arrangements.

24.1.4 All ~~employees~~ Employees must comply with the Ethics Act and Section 7 of this Rule in carrying out all outside Consulting ~~and Section 7 of this Rule~~.

24.1.5 Faculty may receive royalties or other compensation for sales of a specific textbook or supplemental course materials provided that the textbook or materials constitute the individual's own writing or work. Any such arrangement must be approved by the individual's Dean. Notwithstanding the foregoing, Faculty shall comply with current BOG Policy 48 – Textbook Affordability, as well as any replacement rule or subsequently adopted University policy regarding such matters.

24.2 ***Use of University Resources.*** University Employees may not use University-owned supplies, equipment, or other resources for personal projects or outside Consulting Arrangements. However, University Employees may use such resources for personal projects or outside Consulting Arrangements pursuant to an arrangement with the University to pay a fair market rate for those resources. University Employees may not use their subordinates to work on personal projects or outside Consulting Arrangements during work hours or compel them to do so on their own time. Any misuse of University resources is prohibited unless that use is *de minimis*, that is, involving only an insignificant amount of time, funds, supplies, personnel, or

equipment.

- 2.5 ***Interests in Public Contracts.*** The Ethics Act prohibits University Employees from having a financial interest in any contract, purchase, or sale over which their position at the University gives them control, unless the total value of such contracts, purchases, or sales does not exceed One Thousand Dollars (\$1,000.00) in a calendar year. This prohibition extends to contracts in which the University Employee's Family Members have a financial interest, as well as to any business with which the University Employee or their Family Members are associated. This prohibition may be subject to the exemption outlined above in Section 2.4.1.2.
- 2.6 ***Endorsements.*** A University Employee may not endorse a particular product or business. This includes any product or business and includes case studies completed by a vendor. A commercial endorsement of a product or business is only permissible when it results in an overriding public benefit. Sponsorship agreements entered into on behalf of the University are deemed to have an overriding public benefit within the meaning of the Ethics Act.
- 2.7 ***Dual Compensation.*** No University Employee may receive compensation from two sources of state, county, or municipal government for working the same hours, except under certain limited circumstances. However, Faculty and Non-Classified Staff can engage in an outside Consulting Arrangement with a state, county, or municipal government as long as the individuals comply with all of the requirements within Section 7 of this Rule in doing so.
- 2.8 Should any University Employee or Official have questions regarding compliance with the Ethics Act, please contact the Office of General Counsel.

**SECTION 3: CONFLICT OF INTEREST AND CONFLICT OF COMMITMENT
DEFINED; CONFLICT OF INTEREST COMMITTEE; CORRECTIVE
ACTIONS FOR VIOLATIONS OF THIS RULE.**

- 3.1 All full-time University Employees owe their primary professional allegiance to the University. All University Employees should be aware of the two types of conflicts: Conflicts of Interest and Conflicts of Commitment.
- 3.2 ***Conflicts of Interest.***
- 3.2.1 A Conflict of Interest occurs when there is a divergence between a University Employee's private, personal relationships or interests and their professional obligations to the University such that a reasonable observer might question whether the individual's professional actions or decisions are determined by or substantially altered by considerations of personal benefit, gain, or advantage.
- 3.2.2 Whether a Conflict of Interest or the appearance of a Conflict of Interest exists depends on the situation, not on the character or actions of the individual. The determination of the existence of a Conflict of Interest or the appearance of a Conflict of Interest is done objectively on a case-by-case basis. Because the

appearance of a Conflict of Interest can be as damaging or detrimental as an actual Conflict of Interest, for the purposes of this Rule, apparent Conflicts of Interest are treated the same as actual Conflicts of Interest. As a result, any appearance of a Conflict of Interest must also be disclosed and reviewed in accordance with this Rule by the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office or the University Conflict of Interest Committee.

3.3 *Conflicts of Commitment.*

- 3.3.1 A full-time University Employee's primary commitment of time and intellectual effort must be to the teaching, research, scholarship, and service missions of the University.
- 3.3.2 A full-time University Employee's attempts to balance their primary commitment to the University with external, non-University activities, such as an outside Consulting Arrangement, can result in a real or apparent conflict regarding commitment of time and effort. When external activities, such as an outside Consulting Arrangement, exceed reasonable time limits or become primary professional responsibilities, then a Conflict of Commitment exists.

3.4 *Conflict of Interest Committee.*

- 3.4.1 The President shall establish and appoint a Conflict of Interest Committee to ensure the appropriate implementation and execution of this Rule. The members of the Committee should include, but are not limited to, representatives from the Provost's Office, Strategic Initiatives Office, Research Office, and Health Sciences Center; two Faculty representatives appointed by the Provost in consultation with the Faculty Senate Executive Committee; and with advice from the Office of General Counsel.
- 3.4.2 Members of the Conflict of Interest Committee are prohibited from participating in a review of their own Conflict of Interest disclosure form.
- 3.4.3 The Conflict of Interest Committee shall act as a board of review for issues related to an Employee's Conflicts of Interest and Commitment or the Appearance of Conflicts of Interest and Commitment. Decisions of the Committee are final and must be made within a reasonable amount of time after an issue has been presented to the Committee.

3.5 *Corrective Actions for Violations of this Rule.*

- 3.5.1 Any University Employee who fails to abide by the requirements within this Rule shall be subject to appropriate disciplinary action, including warning, suspension, termination, or other disciplinary action as may be appropriate.
- 3.5.2 Furthermore, although conduct may not violate this Rule, it may still be prohibited by the University under a different rule, policy, or standard of behavior. Accordingly,

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in such cases, the University reserves the ability to take any necessary action.

SECTION 4: INSTITUTIONAL CONFLICT OF INTEREST.

- 4.1 An Institutional Conflict of Interest may exist when the personal financial holdings of a University Official which, by virtue of their institutional authority, may affect or reasonably appear to affect institutional processes, research, business transactions, or other activities at the University.
- 4.2 ***Disclosure Requirements.*** University Officials must annually disclose Significant Financial Interests for Institutional Conflicts of Interest to the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office by July 31 each year.
- 4.21 Each University Official must submit an Institutional Conflict of Interest Disclosure regardless of whether or not the individual has a Significant Financial Interest for Institutional Conflicts of Interest to report.
- 4.22 Each University Official must sign and certify the annual disclosure as accurate and complete.
- 4.23 Each University Official must update their annual disclosure within thirty (30) days of the development of a new Significant Financial Interest.
- 4.24 Each University Official must complete an initial disclosure form within sixty (60) days upon commencing employment.
- 4.3 ***Review of Disclosure Forms.*** Institutional Conflict of Interest Disclosures submitted by University Officials shall be reviewed annually, and on an ad hoc basis as necessary, by the Conflict of Interest Committee to determine if an individual has an Institutional Conflict of Interest or the appearance of an Institutional Conflict of Interest. If a Conflict is identified, the Committee may determine that the Conflict can be managed through an appropriate Management Plan. If the Committee determines that the Conflict cannot be managed, then it shall recommend steps to resolve the Conflict.

SECTION 5: CONFLICT OF INTEREST IN RESEARCH.

- 5.1 A Conflict of Interest in Research may exist where a Significant Financial Interest for Research could directly affect or reasonably appear to affect the design, conduct, or reporting of research or other activity sponsored by an outside entity.
- 5.2 ***Disclosure Requirements.*** All Investigators of any University research project must disclose any Significant Financial Interests for Research to the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office or its successor in accordance with the relevant rolling deadlines set by the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office. All Investigators must submit a Conflict of Interest in Research Disclosure at least

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annually.

- 5.2.1 All Investigators must submit a Conflict of Interest in Research Disclosure regardless of whether or not he or she has a Significant Financial Interest for Research to report.
- 5.2.2 All Investigators must submit and certify the disclosure as accurate and complete.
- 5.2.3 All Investigators must update their disclosure within thirty (30) days of the development of a new Significant Financial Interest for Research.
- 5.2.4 If an Investigator has not previously submitted an annual Conflict of Interest in Research Disclosure, the Investigator must submit a Conflict of Interest in Research Disclosure prior to submitting a research proposal seeking external funds or otherwise participating in any research activity regardless of the source of funding.

53 *Review of Conflict of Interest in Research.*

- 5.3.1 Conflict of Interest in Research Disclosures submitted by Investigators shall be reviewed by the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office. This Office shall determine if an Investigator has a Conflict of Interest in Research or the appearance of a Conflict of Interest in Research. If a Conflict is identified, the Office may determine that the Conflict can be managed through an appropriate Management Plan. If the Office determines that the Conflict cannot be managed, then it shall recommend steps to resolve the Conflict.
- 5.3.2 At the discretion of the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office, an Investigator's Conflict of Interest in Research Disclosure may be immediately referred to the University Conflict of Interest Committee for review and determination, if the information contained within the Disclosure appears to contain a complex or significant Conflict.
- 5.3.3 An Investigator may request a review by the University Conflict of Interest Committee of the decision of the ~~Office of Conflict of Interest Compliance~~Conflict of Interest Office. The Committee may then review the Investigator's Conflict of Interest Disclosure and make a final determination on whether a Conflict exists, whether such a Conflict can be managed, or whether the proposed Management Plan is appropriate. If the Committee determines that the Conflict cannot be managed, then it shall recommend steps to resolve the Conflict. The decision of the Committee is final.

SECTION 6: OTHER CONFLICTS OF INTEREST.

- 6.1 To the extent a University Employee develops a real or ~~perceived~~apparent Conflict of

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- Interest that is not expressly covered by this Rule, the University Employee must disclose this Conflict to their immediate supervisor within thirty (30) days of the development of the Conflict.
- 6.2 The University Employee’s supervisor shall report the disclosed Conflict of Interest to Talent & Culture (for Staff) or the Provost’s Office (for Faculty) to develop with the supervisor an appropriate Management Plan. At the discretion of Talent & Culture or the Provost’s Office, an Employee’s Conflict may be referred to the University Conflict of Interest Committee for review and determination.
- 6.3 The Employee may request that the University Conflict of Interest Committee review the initial decision of the Conflict by Talent & Culture or the Provost’s Office. The Committee shall then review Employee’s Conflict and make a final determination on whether a Conflict exists, whether such a Conflict can be managed, or whether the proposed Management Plan is appropriate. If the Committee determines that the Conflict cannot be managed, then it shall recommend steps to resolve the Conflict.
- 6.4 University Employees are required to fully comply with all disclosure requirements of third parties for any activity that requires a disclosure of a Conflict of Interest. Such disclosures may be required when engaging in various activities, including but not limited to seeking research grants, participating in speaking engagements, or contributing to a publication.
- 6.5 ***Guidelines for Participation in SBIR and STTR Programs and Other University Endorsed Entrepreneurial Programs.***
- 65.1 The University is committed to technology transfer and the commercialization of technologies developed at the University. As a result, the University understands that Conflict of Interest Management Plans may necessarily be developed as part of the development of small business concerns (“SBC”) that are supported by federal agencies, such as Small Business Innovation Research (“SBIR”) and Small Business Technology Transfer Research (“STTR”), and other non-federal entrepreneurial activities, (collectively “University Endorsed Entrepreneurial Programs”). University Endorsed Entrepreneurial Programs often encourage small businesses to develop and create innovative technology, encourage commercialization of technology, and promote the economic and social benefit of the public and the University.
- 65.2 It is with this understanding that the University encourages participation in University Endorsed Entrepreneurial Programs. As a result, the University may approve any conflict created by the University Employee’s ownership or involvement in an SBC that is participating or intends to participate in University Endorsed Entrepreneurial Programs.
- 65.3 However, the University Employee still must comply with all Conflict of Interest disclosure requirements in this Rule and must disclose the interest in the SBC that is participating or intends to participate in University Endorsed Entrepreneurial

Programs. Where appropriate, the Employee may be required to follow a Conflict of Interest Management Plan.

SECTION 7: CONFLICT OF COMMITMENT; OUTSIDE CONSULTING ARRANGEMENTS.

7.1 **Applicability.** Full-time Faculty and Non-Classified Staff may engage in Consulting Arrangements outside of their ~~employment responsibilities~~ Institutional Duties, as defined in the Definition Section of this Rule, to the University on subjects that are within their area of professional expertise. The provisions of this Section do not apply to part-time Employees, such as Adjunct Faculty, who are not required to seek approval for Consulting Arrangements or other employment that they conduct outside of their part-time employment with the University.

7.2 **Definition of Consulting Arrangements.** For the purposes of this Rule, “Consulting Arrangement” means any ~~outsidenon-University~~ employment, arrangement, provision of services, or contract where a full-time Faculty or Non-Classified Staff provides their expertise to a non-University third party ~~as an independent contractor~~ and in which the expertise is, directly or indirectly, related to ~~the Employee’s employment or job duties with the University~~ their Institutional Duties.

7.2.1 ~~However, for~~ For full-time ~~E~~employees during their yearly appointment term, ~~such an~~ outside Consulting Arrangements must, at minimum, meet the following requirements:

7.2.1.1 it must further develop the individual professionally or serve the community, state, or nation in an area related to the individual’s assignment or professional expertise;

7.2.1.2 it must not constitute a Conflict of Commitment with the individual’s University responsibilities, nor interfere with the individual’s teaching, research and service to the University; and

7.2.1.3 it must not be in conflict with the mission and objectives of the University.

7.2.2 Professional services provided by the full-time Faculty or Non-Classified Staff that are appropriately considered as part of the individual’s ~~institutional duties~~ Institutional Duties do not constitute outside Consulting Arrangements and thus are ~~not only~~ subject to ~~the certain~~ provisions of this Section as noted below.

7.2.2.1 As an example, participation in a federal agency grant review committee, if considered part of ~~your institutional duties~~ one’s Institutional Duties, does not constitute an outside Consulting Arrangement.

7.2.2.2 As another example, participation in a conference, workshop, review board, seminar, or other similar pursuit that is considered as part of ~~the Faculty or~~

~~Non-Classified Staff's institutional duties~~ one's Institutional Duties does not constitute a Consulting Arrangement. Furthermore, reasonable honorariums awarded for such pursuits are permitted to be accepted so long as the Faculty or Non-Classified Staff member has been granted approval by their supervisor to participate in the pursuit as part of their institutional duties. Institutional Duties.

7.2.3 ~~Engagements that may be Adverse to the University or the State.~~ No Employee, including Faculty Members, may count as Institutional Duties the engagement in activities that may result in the Faculty Member Employee being adverse to West Virginia University and the State of West Virginia, including any of its Agencies, Units, or Departments in a Formal Legal Proceeding. Such engagements are considered outside Consulting Arrangements and, like all Outside Consulting Arrangements, must be approved in accordance with those procedures outlined in Section 7.4. by the faculty member's Dean or designee or by a non-classified staff member's Vice President or designee. Moreover, no state University or State resources may be used in the engagement of such activities.

723.1 For the purposes of this Rule, being adverse to the University or State of West Virginia in a Formal Legal Proceeding includes serving as counsel (*Pro Bono* or paid), being an expert witness (paid only), or filing as counsel (*Pro Bono* or paid) an amicus brief for a party adverse to the University or the State.

723.2 Provided however, a University Employee's or Student's work in, engagement with, support of, or advancement of the University's Clinical Law Program, or its successor, is considered a part of their Institutional Duties and is not subject to this Section 7.2.3 regardless of whether such activities may result in the Employee or Student being adverse to the University or State in a Formal Legal Proceeding.

7.2.4 ~~Approval of Engagements Adverse to the University or State~~ In considering outside Consulting Arrangements that involve engagements that may result in the Employee being adverse to the University or the State in a Formal Legal Proceeding, these requere Such a Consulting Arrangement may not be approved if the engagement would constitute a Conflict of Commitment as defined in Section 3.3 or would create an incurable or unmanageable Conflict of Interest under Section 3.2. these requests should normally be approved unless the engagement would: (a) constitute a conflict of commitment, (b) involve the use of state resources, or (c) create an incurable or unmanageable conflict of interest.

724.1 In determining whether a Conflict of Commitment exists, the University may consider only the time to be expended on outside consulting work during the Employee's term of appointment in accordance with the guidance in Section 7.3.1 and consistent with practices employed across the University.

724.2 In determining whether an incurable and unmanageable Conflict of Interest

exists, the fact that an Employee anticipates advocating or advancing, through the Consulting Arrangement, a legal or policy position in a Formal Legal Proceeding that is adverse to an executive, legislative, or judicial action of the State or an action by the University does not create an incurable or unmanageable Conflict of Interest. Consistent with the First Amendment of the United States Constitution, the University cannot prohibit Employees from engaging in Consulting Arrangements on the basis of the specific viewpoint or position being advocated or advanced by the Employee through the Consulting Arrangement.

7243 Decisions or requests for additional information must be communicated to the Employee within five (5) business days of the Employee's submission of the Consulting Arrangement Approval Form required by Section 7.4.1 of this Rule. Where a request for additional information is made, a decision must be communicated to the Employee within five (5) business days after the Employee's submission of the requested information.

7244 As indicated in Section 7.4.4, should a Dean, Vice President, or President deny a request for an outside Consulting Arrangement that is adverse to the University or State, the Employee may request that decision be reviewed by the University's Conflict of Interest Committee for a final determination. The final determination of the Conflict of Interest Committee cannot be appealed.

7.2.5 Part-Time Employment. All full-time Faculty and Non-Classified Staff, during their yearly appointment term, are permitted to engage in part-time employment unrelated to their ~~Institutional~~ ~~D~~uties outside of their normal University working hours, e.g. weeknights, weekends, holidays, so long as the Employee continues to dedicate their primary responsibilities to the University and the part-time employment does not create a Conflict of Interest or Commitment or the Appearance of a Conflict of Interest or Commitment that cannot be managed.

7.2.6 Volunteering. All full-time Faculty and Non-Classified Staff, during their yearly appointment term, are permitted to engage in volunteering outside of their normal University working hours, e.g. weeknights, weekends, holidays, so long as the Employee continues to dedicate their primary responsibilities to the University and the volunteering does not create a Conflict of Interest or Commitment or the Appearance of a Conflict of Interest or Commitment that cannot be managed. _

726.1 Provided however, if an Employee wishes to count any volunteering activity as part of their Institutional Duties (i.e., such as Service), that volunteering activity must be ~~pre-approved by the Employee's~~ ~~unit leader~~ ~~by their supervisor~~ as an appropriate part of their Institutional Duties and must be *Pro Bono* in nature.— Volunteering that is considered an appropriate part of an Employee's Institutional Duties may be done during the Employee's normal University working hours and with the use of University resources.

- 7.2.7 If the Employee is unsure whether such part-time employment or volunteering constitutes a Conflict, Employees ~~are encouraged to~~must raise this issue with their supervisor before engaging in the activity.

7.3 *Guidelines for Outside Consulting Arrangements.*

- 7.3.1 For full-time Faculty and Non-Classified Staff that are not leave eligible, outside Consulting Arrangements may occupy no more than, on average, one working day per week of an individual's total University work time during the term of their yearly appointment. For full-time Faculty and Non-Classified Staff that are leave eligible, the Employee must take annual leave when completing any outside Consulting Arrangements during the individual's normal working hours.
- 7.3.2 The following types of outside activities are prohibited for full-time Faculty and Non-Classified Staff:
- 7.3.2.1 During their yearly appointment period, Faculty cannot provide regular instructional service to other educational institutions without obtaining approval in accordance with Section 7 of this Rule.
- 7.3.2.2 An individual cannot, as part of an outside Consulting Arrangement, endorse a commercial product or service.
- 7.3.2.3 If an individual's compensation is fully funded by a federal grant requiring the individual to commit 100% of their reported effort to the grant, that individual cannot participate in outside Consulting Arrangements, unless the individual uses annual leave or the work is performed outside the individual's normal University working hours.
- 7.3.3. University Faculty and Non-Classified Staff engaging in outside Consulting Arrangements are not permitted to use the University name, logo, or marks. However, the University Faculty and Non-Classified Staff may use the University name to convey biographical information.
- 7.3.4. Regardless of the prohibitions and exceptions found in the Ethics Act, University Faculty and Non-Classified Staff are prohibited from using University resources, including but not limited to University email and electronic devices, the individual's office, and other University Employees' time, in carrying out ~~their activities not associated with their Institutional Duties, such as responsibilities under their~~ outside Consulting Arrangements, Volunteering activities, or personal activities, unless the use is *de minimis* ~~in accordance with,~~ as determined on a case-by-case basis by the provisions of University, or the Ethics Acts or the employee's Employee's use is pursuant to an arrangement with the University to pay a fair market rate for those resources.
- 7.3.5. An individual cannot use University resources to advertise or endorse their personal

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Consulting Arrangements.

7.4. Approval of New Outside Consulting Arrangements.

7.4.1 Prior to agreeing to any outside Consulting Arrangement, an individual must submit a Consulting Arrangement Approval Form to the Dean of their College or School or the Vice President of their Unit. If an individual reports directly to the President, the President must approve the Form. A request to enter into a Consulting Arrangement should normally be approved unless the engagement would violate the provisions of this Rule.

7.4.2 The individual must fully complete the required Form and provide other reasonable information to the Dean or Vice President upon request. At minimum, the Form must include a description of the Consulting Arrangement, ~~entity with whom the arrangement is with~~ the person or entity which the Consulting Arrangement is with, and the anticipated time commitment for the arrangement. The individual must certify that the information contained within the Form is complete and accurate.

7.4.3 Upon review, the Dean, Vice President, or President shall determine if the request is appropriate, does not constitute a Conflict of Commitment or create a Conflict of Interest, and abides by the guidelines provided within this Rule.

7.4.4 Should a Dean, Vice President, or President deny a request for an outside Consulting Arrangement, the ~~individual-Employee~~ may request that decision be reviewed by the University's Conflict of Interest Committee for a final determination. The final determination of the Conflict of Interest Committee cannot be appealed.

7.5. Annual Disclosure of Outside Consulting Arrangements. All Faculty and Non-Classified Staff who have engaged in outside Consulting Arrangements within the past fiscal year (i.e., July 1 to June 30) must submit a Consulting Arrangement Annual Disclosure Form to the individual's Dean or Vice President by August 31 each year. The individual must sign and certify the Form as accurate and complete. This Form must, at minimum, summarize all Consulting Arrangements that the individual has participated in within the last calendar year providing for each arrangement individually, a brief description of the arrangement, the entity whom the arrangement is with, and the total time committed within the term of their yearly appointment.

7.5.1 Compliance with this Rule does not relieve any University Employee of their obligation to comply with all other professional disclosure requirements.

SECTION 8: UNIVERSITY SPONSORED CONSULTING ARRANGEMENTS.

8.1. From time to time, the University may engage with an outside entity to sell Faculty or Non-Classified Staff services to a third party to advance the University's mission. These arrangements, where the University is the contracting party and receives the financial

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benefit, are called University Sponsored Consulting Arrangements.

82. University Sponsored Consulting Arrangements may only be entered into with the approval and permission of a Dean or Vice President. The agreements must be reduced to writing and signed by the appropriate University Official.
83. University Employees are permitted to commit their time to the third party under these arrangements. Providing services under these arrangements are considered part of the Employee's ~~employment responsibilities to the University~~ Institutional Duties. However, the Employee should ensure that their time commitment is consistent with the terms of the written agreement.

SECTION 9: DEFINITIONS.

- 9.1. "Adjunct Faculty" is defined in BOG Faculty Rule 4.6 – Adjunct Faculty.
- 9.2. "Classified Employee" is defined in BOG Talent & Culture Rule 3.1 -- Administration and Employment Practices.
- 9.3. "Conflict of Interest in Research Disclosure" means a form developed to disclose the potential Conflicts of Interest in Research held by WVU Investigators developed by the ~~Office of Conflict of Interest Compliance~~ Conflict of Interest Office or its successor. The electronic disclosure system for Investigators is located within the WVU+kc research administration tool and can be accessed using the following link: <https://wvu.kuali.co/coi/>.
- 9.4. "Consulting Arrangement Approval Form" means a form developed for Faculty and Staff to obtain approval for their outside Consulting Arrangements. This Form can be located at: <https://policies.wvu.edu/files/d/83a00384-489e-44e0-becd-df14d5f0fdf7/outside-consulting-agreement-approval-form-v2-02-25-19.pdf>.
- 9.5. "Consulting Arrangement Annual Disclosure Form" means a form developed for Faculty and Staff to disclose annually their Consulting Arrangements. This Form can be located at: <https://policies.wvu.edu/files/d/6da0bdcf-fe3e-4566-b24a-be638a2ca6fc/outside-consulting-arrangement-annual-disclosure-form-02-25-19.pdf>.
- 9.6. "Dean" means any Dean or their designee.
- 9.7. "Employee" means any Faculty and Staff.
- 9.8. "Faculty" is defined in BOG Faculty Rule 4.2 – Appointment, Promotion, Tenure, and Dismissal for Cause.
- 9.9. "Family Member" means spouse, a person with whom the individual is living with as a partner, any dependent child, dependent grandchild, or dependent parent.

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9.10. “Formal Legal Proceeding” means any lawsuit, administrative action, arbitration, mediation, property dispute, or any other formal proceeding in which legal rights are contested. This does not, as an example, include participation in a legislative hearing.

9.10.9.11. “Institutional Conflict of Interest Disclosure” means a form developed to disclose the potential institutional conflicts of interest of University Officials developed by the Office of ~~Conflict of Interest Compliance~~ Conflict of Interest Office or its successor. The electronic disclosure system for University Officials can be accessed using the following link: <https://oric.research.wvu.edu/services/conflict-of-interest/forms>.

9.12. “Institutional Duties” means, for Non-Classified Employees, the Employee’s University responsibility or job duties as articulated in the Employee’s job description. For Faculty Members, Institutional Duties means duties properly considered part of the faculty member’s teaching, research (defined as also including scholarship and creative activity), and service. Provided however, no Employee, including Faculty Members, may count as Institutional Duties the engagement in activities that may ~~be adverse to~~ result in the Employee being adverse to West Virginia University ~~and~~ the State of West Virginia. ~~, including any of its Agencies, Units, or Departments.~~

9.11.9.13. “Investigator” means the project director or principal investigator/program director, co-investigator, collaborator, senior/key personnel, Faculty, and any other person, regardless of title or position, who is responsible for the design, conduct, reporting, or proposing of research or other activity that is sponsored by an extramural agency or enterprise. For the purposes of this Rule, graduate and undergraduate students generally are not considered Investigators. Postdoctoral scholars and fellows may be considered Investigators if designated as such by the Principal Investigator on a case-by-case basis.

9.12.9.14. “Management Plan” means an agreed plan to take action to address a Conflict of Interest or Conflict of Commitment, which may include eliminating the conflict, to ensure, to the extent possible, that the Employee’s actions do not violate the West Virginia Ethics Act, this Rule, or any other relevant laws, regulations, policies, or procedures.

9.13.9.15. “Non-Classified Staff” is defined in BOG Talent & Culture Rule 3.1 -- Administration and Employment Practices.

9.14.9.16. “President” means the President or their designee.

9.17. “Pro Bono” means professional services rendered for free or with only actual expenses associated with the activity being reimbursed. If an individual is being paid, even at a substantially reduced rate or on a contingency fee basis, and the activity is not considered part of the Employee’s Institutional Duties, the activity is not considered *pro bono* or ~~volunteerism~~ and an ~~O~~outside ~~C~~onsulting Approval Form must be completed.

9.15.9.18. “Significant Financial Interest for Research” means a financial interest consisting of one or more of the following interests of an Investigator or Family Member of the Investigator that

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reasonably appears related to the Investigator's institutional responsibilities:

~~9.15.19.18.1~~ With regard to any publicly traded entity, the value of any remuneration received from the entity in the 12 months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, that when aggregated exceeds Five Thousand Dollars (\$5,000.00).

~~9.15.29.18.2~~ With regard to any non-publicly traded entity, the value of any remuneration received from the entity during the 12 months preceding the disclosure, that when aggregated exceeds Five Thousand Dollars (\$5,000.00), or when the Investigator or Family Member holds any equity interest in the entity.

~~9.15.39.18.3~~ Any intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

~~9.15.49.18.4~~ For an Investigator who applies for or receives funding through a Public Health Service grant, cooperative agreement, or contract, any reimbursed or sponsored travel (i.e., paid on behalf of the Investigator rather than being reimbursed) that reasonably appears related to their institutional responsibilities. Excluded is travel that is reimbursed or sponsored by a Federal, state, or local government agency, an institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, or a medical center or a research institute that is affiliated with an institution of higher education.

~~9.15.59.18.5~~ The term Significant Financial Interest for Research does not include the following types of financial interests: salary, royalties, or other remuneration paid by the University to the Investigator or family member if the Investigator is currently employed or otherwise appointed by the University; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency; or income from service on advisory committees or review panels for a Federal, state, or local government agency.

~~9.16.9.19.~~ "Significant Financial Interest for Institutional Conflicts of Interest" means a financial interest consisting of one or more of the following interests of a University Official or Family Member of the University Official that reasonably appears related to the University Official's institutional responsibilities:

~~9.16.19.19.1~~ Equity or ownership interests held by the University Official or a Family Member worth more than Ten Thousand Dollars (\$10,000.00) in the aggregate in any publicly traded, for-profit organization. Excluded are equity interests held in mutual funds or retirement programs.

~~9.16.29.19.2~~ Any equity or ownership interest held in any for-profit organization that is not publicly traded.

~~9.16.39.19.3~~ Service as a member of a board of directors or other governing board of a for-

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profit organization, including service as a trustee or scientific advisory board member, service as an officer of the organization (whether paid or unpaid) or service as an employee by the University Official.

9.16.49.19.4 Payments or a legal right to a payment, including royalty payments, resulting from technology transfer, licensing or any outside business activities that, for any single arrangement, exceeds Ten Thousand Dollars (\$10,000.00) in the aggregate per year. Income from clinical care and tuition income are excluded from this calculation and the requirements of this Rule.

9.17 “Staff” means all Classified Employees and Non-Classified Employees.

9.18 “State” or “State of West Virginia” means the agencies, departments, units, and government officials acting in their official capacity of the government of West Virginia.

9.179.19 “University Official” means University Board Members, President, Campus Presidents, Vice Presidents, Vice Provosts, Deans, Associate and Assistant Vice Presidents and Provosts, Assistant and Associate Deans, General Counsel, Director of Internal Audit, and all Employees within the Office of Technology Transfer.

9.189.20 “Unpaid Volunteer” means a person who, without compensation, performs services on behalf of a University Employee and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.

9.199.21 “Vice President” means any Vice President or their designee.

SECTION 10: DELEGATION.¹

10.1. The Board of Governors delegates to the President the authority to adopt additional internal policies and procedures to effectuate the implementation of this Board of Governors Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

SECTION 11: AUTHORITY.

11.1. W. Va. Code §§ 6B-1-1 *et seq.*; 42 C.F.R. Part 50; 45 C.F.R. Part 94.

SECTION 12: SUPERSEDING PROVISIONS.

12.1. This Rule supersedes and replaces former Board of Governors Policy 17, which was adopted September 5, 2003; Higher Education Policy Commission (“HEPC”) Series 31, which was

¹ The Board of Governors specifically delegates the authority to the Vice President of Research to update any website links contained within this Rule without going through the Board’s formal rulemaking procedures.
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adopted August 1, 2002; and any other Rule of HEPC which relates to the subject matter contained within this Rule. This Rule also repeals and supersedes and replaces any internal University policy or procedure which relates to the subject matter contained within this Rule.