

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2011 SEP 13 PM 4:42

OFFICE OF THE  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Legislative CITE AUTHORITY: §18B-1-6 and §18B-10-1(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

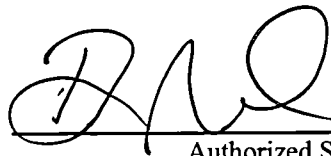
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 32

TITLE OF RULE BEING PROPOSED: Tuition and Fee Policy

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 13, 2011 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Dr. Brian Noland, Chancellor  
West Virginia Higher Education Policy Commission  
1018 Kanawha Boulevard, East, Suite 700  
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 133  
LEGISLATIVE RULE  
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

2011 SEP 13 PM 4:42

SERIES 32  
TUITION AND FEE POLICY

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§133-32-1. General.**

- 1.1. Scope. This rule establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education.
- 1.2. Authority. West Virginia Code §18B-1-6 and §18B-10-1(d)
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**§133-32-2. Definitions.**

- 2.1. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue charges other than sales from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers. Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public.
- 2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal. Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowship programs. Auxiliary Capital Fees support entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.
- 2.3. Tuition and Required Educational and General Fees. Charges levied on all students of that class or category to support educational and general program services or optional charges levied for education and general services collected only from students using the service or from students

for whom the services are made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.

- 2.4. Full Cost of Instruction. Full cost of instruction includes the direct functional expenditures from each institution's audit for both instruction and student services expenditures.
- 2.5. Higher Education Price Index. Inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.
- 2.6. Median Family Income. Median household income is household income which the U.S. Census Bureau gathers and reports annually from data gathered by various surveys. Median is the statistical center of all reported households income and is presumed to be a better gauge of income as opposed to average family income.
- 2.7. Peer. A higher education institution located in another state that is similar to a West Virginia college or university.
- ~~2.8. Required Fees. Charges levied to all students of a particular class or category e.g., undergraduate, graduate.~~
- 2.89. Special Fee. Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, course, lab, parking, late payments, drug testing, instrument fees, and other services provided to students. Charging students these fees, allows financial aid to be used as a form of payment for qualifying students. These fees do not include sales of merchandise and tickets, short-term rental of space or equipment and sales of services to the general public.

### **§135-32-3. Goals.**

- 3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:
  - 3.1.a. To establish equity in the establishment of tuition charged to students.

- 3.1.b. To foster goals related to program completion for West Virginia students.
- 3.1.c. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.
- 3.1.d. ~~To recognize that differences in mission, in geographic location, and in local median family income result in differences in tuition.~~ To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.

**§133-32-4. Tuition and Fee Adjustments.**

- 4.1. Objectives. The Commission, in partnership with the institutional governing boards, shall enhance education opportunities for the widest range of state citizens:
  - 4.1.a. by establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt; W. Va. Code §18B-1D-3(a)(2)(B); and
  - 4.1.b. by establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Commission. W. Va. Code §18B-1D-3(a)(2)(B).
- 4.2. Approval of Tuition and Required Fee Adjustments.
  - 4.2.a. Approval Guidelines. A governing board may approve Auxiliary, tuition and required education and general, and capital fee increases for resident students each fiscal year of up to five percent collectively. Auxiliary, tuition and required education and general and capital Tuition—and fee increases above five percent collectively must be approved by the Commission. Governing boards are not required to approve sales prices. Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations; and

A fee used solely for the purpose of complying with the athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on

fee increases set forth in this subsection for three years from the effective date [*See Section §18B-10-1.(k).2.*]

- 4.2.a.1. For the purposes of this rule, calculation of five percent shall be based on all required tuition and fee rates charged to all West Virginia resident students.
  - 4.2.a.2. Tuition increases related to fee simplification proposals that result in an revenue expense neutral change for the institution an in-state student shall not be counted toward the five percent allowance exempt from Commission approval.
- 4.2.b. In establishing guidelines, the Commission shall communicate to institutions benchmarks and guidelines for consideration of any increase above five percent. The benchmarks and guidelines may include, but are not limited to such items as:
- 4.2.b.1. The HEPI, or other appropriate inflationary benchmark, which new ~~allocations~~ appropriations to the institution's base budget for the next corresponding fiscal year did not offset;
  - 4.2.b.2. Continued achievement of benchmarks in the institutional compact;
  - 4.2.b.3. Institution pursuit of the statewide compact for postsecondary education;
  - 4.2.b.4. The per capita income of West Virginia families and their ability to pay for college, statewide and specifically as to the county(ies) in which 75% of the institution's in-state students reside;
  - 4.2.b.5. Institutional distance of the sum of appropriations and tuition and fee revenues from peer equity levels as defined by the peer equity model;
  - 4.2.b.6. Institutional and state funding per full-time equivalent student;
  - 4.2.b.7. Most recent three year history of tuition rates and increases;
  - 4.2.b.8. Total sources of student generated revenue, including special fee and program fee rates; and,

- 4.2.b.9. Other factors as requested or deemed relevant by the Commission or in response to any new statutory language.
- 4.2.c. In responding to the guidelines and benchmarks provided by the Commission, each governing board shall provide the Commission with an annual report that details:
  - 4.2.c.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;
  - 4.2.c.2. The proposed total increase in any tuition and fees for the next fiscal year;
  - 4.2.c.3. The estimated number of students who will be charged the increased tuition and fees; and
  - 4.2.c.4. The estimated increase in revenue to be generated from the increased tuition and fees.
- 4.2.d. A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction. Governing boards may submit for approval institutional policies that support a clearly delineated public policy goal established by the Legislature or the Commission, including but not limited to, proposals to increase the total number of graduates from the institution, aid in economic development or to maximize available capacity on campus.
  - 4.2.d.1. Average full cost of instruction is based on the most recent financial statements. The average shall be determined by calculating the cost of instruction and student services per FTE. This calculation shall be provided to the institutions annually.
  - 4.2.d.2. Institutional governing boards may choose to set non-resident tuition based on the average institutional full cost of instruction or the average full cost of instruction for the system as a whole.

**§133-32-5. Expenditure.**

- 5.1. All tuition and fees collected may only be expended for the statutory purpose under which they were collected ~~under~~.

§133-32-6. Refunds.

6.1. Except for students receiving Title IV financial assistance, students who officially withdraw during a semester in the academic year shall receive a refund of regular fees in accordance with the following schedules.

6.1.a. Academic Year (Semester). Refunds for semesters shall be calculated using the following schedule:

6.1.a.1. During the first and second weeks, 90% refund.

6.1.a.2. During the third and fourth weeks, 70% refund.

6.1.a.3. During the fifth and sixth weeks, 50% refund.

6.1.a.4. Beginning with the seventh week, no refund.

6.1.b. Summer Terms and Nontraditional Periods. Refunds for summer sessions and nontraditional periods shall be established based upon the refund rate for the academic year and calculated using the following schedule:

6.1.b.1. During the first 13% of the term, 90% refund.

6.1.b.2. From 14% to 25% of the term, 70% refund.

6.1.b.3. From 26% to 38% of the term, 50% refund.

6.1.b.4. After 38% of term is completed, no refund.

6.1.c. Should the percentage calculation identify a partial day, the entire day should be included in the higher refund period.

6.4.2. Refunds of tuition and fees shall be effectuated in the same manner as the refunds dictated by federal financial aid rules or regulations.

**West Virginia Higher Education Policy Commission  
Meeting of September 13, 2011**

**ITEM:** Approval of Series 32, Tuition and Fee Policy

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia Higher Education Policy Commission approves the proposed revisions to Series 32, as a legislative rule, for filing with the Secretary of State for an additional thirty-day public comment period.

*Further Resolved*, That staff is instructed to forward the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action at the conclusion of the comment period if no substantive comments are received.

**STAFF MEMBER:** Ed Magee

**BACKGROUND:**

Series 32, Tuition and Fee Policy, is the legislative rule that establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education. At the August 5, 2011 meeting, the Commission approved a revision of Series 32 to be submitted to the Secretary of State for a thirty-day public comment period.

The proposed revisions to Series 32, summarized below, strengthen the rule and clarify the procedures for West Virginia undergraduate public institutions of higher education to assess tuition and fees. A summary of significant revisions is as follows:

**Revisions based on suggestions from public comment period:**

1. The proposed rule did not provide a sufficiently narrow definition for Auxiliary Fees. The rule should exclude sales prices for merchandise and services. After "Auxiliary fee include" "charges other than sales" was inserted and "sales and service revenues" was deleted. The sentence "Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public" was added. (Section 2.1.)

2. The Capital Fee definition did not align with the West Virginia Code categories. The following sentences were added: "Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of the physical plant, and scholarships and fellowship programs. Auxiliary Capital Fees support entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers." (Section 2.2.)
3. The term Education and General Fees did not align with the West Virginia Code. The words "Tuition and required" were inserted before "Education and General Fees" to provide consistency. Tuition is not defined in the West Virginia Code, although a policy is required for its assessment. The proposed rule also did not define tuition. Not all institutions have created or may need to create a tuition category. The sentence "An institution may create a category within Education and General Fees labeled Tuition to classify a fee or group of fees charged for instructional services." was added to provide a definition for this optional term that is used in the West Virginia Code and the proposed rule. (Section 2.3.)
4. Section 2.8. was deleted because it is redundant after the above changes are made.
5. The proposed rule did not provide a sufficiently narrow definition for Special Fees. The rule should include additional categories and specifically exclude sales prices for merchandise and services. After "These fees include, but are not limited to", "course, lab" was inserted. The sentence "Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public" was added. (Section 2.9.)
6. The recognition that differences in mission, in geographic location, and in local median family incomes result in differences in tuition is an important goal. The sentence "To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics." was added. (Section 3.1.d.)
7. To provide additional clarity, "Auxiliary" was inserted before "tuition and required"; "education and general, and capital" was inserted before "fee increases"; and "collectively" was inserted after "percent". "Auxiliary tuition, and required education and general, and capital" were inserted before "Tuition and" which was deleted. "Collectively" was inserted again after "percent". The sentence "Governing Boards are not required to approve sales prices" was added. (Section 4.2.a.)

8. To precisely express the intent of the section, "...expense neutral change for an in-state student" was inserted and "...revenue neutral for the institution" was deleted. A fee simplification resulting in an expense neutral outcome for an in-state student could add revenue for an institution if enrollment would increase. (Section 4.2.a.2.)
9. The word "appropriations" was exchanged for "allocations" to provide additional clarity. To align the HEPI benchmark analysis with the appropriate fiscal year the word "corresponding" was added and the word "next" was deleted before "fiscal year". (Section 4.2.b.1.)
10. Because the per capita income varies widely across the state, institutions may not meet the needs of their students without a guideline that focuses on service areas. The phrase "statewide and specifically as to the county (ies) in which 75% of the institution's in-state students reside" was inserted to allow institutions to target tuition and fee rates to their specific student populations. (Section 4.2.b.4.)
11. To more accurately express the intent of the language, the phrases "of the sum of appropriations and tuition and fees" and "as defined by the peer equity model" were added. (Section 4.2.b.5.)
12. A concern was raised that adherence to the federal refund regulations for all payments may result in a loss of revenues for the institutions. To address this concern, Section 6.1. was moved to Section 6.2. and a new Section 6.1. was written to reflect current institutional practice.

**Additional suggestions from public comment period (no revisions made):**

1. A suggestion was made to include language addressing the collection of tuition and fees and additional language regarding their expenditure. The collection and expenditure of tuition and fees are addressed by the West Virginia Code.
2. More detail was requested to define "Full Cost of Instruction" as to whether or not the intent of the rule was to include marginal and athletic costs. It is not the intent of the rule to include a formal marginal cost analysis. The rule only includes instruction and student services costs from the annual audits. Athletic costs are not included in these categories from the institutional audits.
3. A concern was raised that excessive debt mentioned in Section 4.1.a. is not defined and would be open to subjective and inconsistent interpretation and application. A definition for this term will vary given economic circumstances, projected salaries for various occupations, and other factors. It may not be possible to avoid an inconsistent application of the provision, although objective measures may be identified and found to be useful.

4. A responder asked if the governing board of a regional institution could presume that, so long as it kept its tuition at or just below the tuition charged by Marshall University and West Virginia University, that it would not run afoul of this provision. Given the variance mentioned above, an arbitrary benchmark is not likely to satisfy the requirements of this provision.
5. A concern was raised that some institutions may raise fees under the Title IX provision in Section 4.2.a. over the next three years and circumvent the Legislature's goal in reigning in student costs. Although this may occur, this provision cannot be changed because it is established in the West Virginia Code.
6. The provision in Section 4.2.b. regarding the consideration of families' ability to pay for college was identified as an issue because it may be difficult to measure. Although it may be difficult to measure these criteria, this provision is also required by West Virginia Code.
7. A statement was made that program completion or students' competency should be considered to measure an institution's performance. These measures are included in an institution's compact performance.
8. A statement was made that since federal financial aid rules and regulations are subject to change that this rule will need to be updated annually. This issue was not addressed.
9. A suggestion was made that metro fees be addressed in this rule. At this time, insufficient input has been acquired by Commission staff to propose a policy for these fees.
10. A concern was raised that the rule does not discuss program or major fees that are being assessed by some institutions. Institutions may continue this practice because the rule permits the assessment of fees by categories unspecified by the rule.
11. A question was asked as to whether or not there has been consideration for giving flexibility against the cap for long-term planning for auxiliary enterprises tied to repair and renovation projects the same way that the Title IX Athletic Fee is addressed in the draft rule. No such consideration has been made.

Staff recommends approval of the proposed revisions to Series 32, as a legislative rule, for filing with the Secretary of State for an additional thirty-day public comment period due to the volume and substantive nature of changes made to the rule based on the initial comment period. If no substantive comments are received during the additional comment period, staff recommends forwarding the legislative rule to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Tuition and Fee Policy

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301  
Contact: Dr. Brian Noland, Chancellor

Phone Number: 304-558-0699 Email: noland@hepc.wvnet.edu

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Tuition and Fee Policy

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

There will be no effect on cost or revenue.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: September 13, 2011

Signature of Agency Head or Authorized Representative



## Kelsey Clough

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**From:** Cindy Anderson  
**Sent:** Friday, July 29, 2011 3:44 PM  
**To:** Brian Noland; Ashley Schumaker; Bruce Walker  
**Cc:** Kevin Walthers; Pat Hunt; Edward Magee  
**Subject:** FW: Tuition and Fee policy

All:  
See comments / questions below from Concord University regarding the proposed tuition and fee policy for the Commission.

Please let me know how these questions should be addressed. As you know, the draft policy is on the Commission agenda for next Friday.

Cindy Anderson

-----Original Message-----

**From:** Charles Becker [<mailto:beckerc@concord.edu>]  
**Sent:** Friday, July 29, 2011 3:25 PM  
**To:** Cindy Anderson  
**Subject:** Re: Tuition and Fee policy

Hi Cindy,

I asked several people to review this policy and we would like to submit the following questions. You will see that these questions do not address specific verbiage in the policy, but rather seek clarification in light of the new policy.

1. Will institutions be able to charge a rate differential for different programs?
2. If so, are there specific criteria that must apply to these programs?
3. Are changes to tuition rates for these programs subject to HEPC approval?:
4. Are institutions allowed to increase the special equity fee or has it been totally eliminated except for the original fees established several years ago?
5. Do user or special fees require HEPC approval?
6. Can user or special fees be added or changed during the year without HEPC approval?
7. Do tuition & fees beyond 5% for out-of-state students require HEPC approval?
8. In determining the cost of instruction per institution, does the HEPC intend to remove federal, state, and private grant programs from the total cost prior to determining the cost per FTE for the institution?
9. 4.2.d seems to conflict with 4.2.d.2. First it says average full cost in 4.2.d then it offers the option of institution full cost. Perhaps 4.2.d.2 should include average institutional full cost.
10. How is average cost determined. eg how many periods are included?
11. Are there any guidelines forthcoming for room and board?

Regards,

Chuck Becker

## Kelsey Clough

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**From:** Rose, Maria [Maria.Rose@fairmontstate.edu]  
**Sent:** Thursday, September 08, 2011 7:20 AM  
**To:** Brian Noland  
**Subject:** FW: Comments on Series 32

Chancellor,

Here are a few questions/comments on Series 32 from those of us at Fairmont State University:

- The tuition and fee rule seems to have limited details about refunds. Is the Refund Rule established in 1994 by the old Board of Regents and required/mandated by the legislature in that same year being eliminated in this rule?
- Should metro fees be addressed in this Series 32?
- This rule does not discuss the program/major fees that are being assessed by some institutions. Does this mean that these program/major fees will no longer be allowed or are these being replaced by differential tuition?
- Has there been consideration for giving flexibility against the cap for long term planning for auxiliary enterprises tied to repair and renovation projects the same way that the Title IX Athletic Fee is addressed in this draft rule?

Thanks for your consideration/clarification of these questions,  
Maria Rose

## Kelsey Clough

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**From:** Heuton, Mary Ellen [heuton@marshall.edu]  
**Sent:** Thursday, September 08, 2011 5:18 PM  
**To:** Brian Noland  
**Cc:** Ashley Schumaker; Stephen Kopp; Gayle Ormiston  
**Subject:** Series 32, Tuition and Fee Policy  
**Attachments:** proposed legislate rule series 32 response-2.docx

Chancellor Noland,

I apologize for not getting this in before 5, I have been in meetings.

We have two pieces of feedback related to section 6 of the document – one from Financial Aid and one from the Bursar. The attached document outlines the Bursar's concerns and the comments below are from Financial Aid.

Please take note of the very last section (133-32-6) of the attached document related to Refunds. I'm not sure if this really means that schools would have to follow the Title IV Refund calculations to refund students' tuition. If so, this is a huge deviation from what is currently done. This could result in loss of tuition revenue.

Also, I'm not sure if this means that schools must use the "last date of enrollment" date that defined by Title IV regulations. This also can differ from what we currently do. For example, if a student earns all "Fs" and we can't document that the student attended past the 60 percent point of the semester/term, we must use 50% as the time in attendance to calculate Title IV Aid refunds. Currently, students who earn all "Fs" may lose a portion of their aid, but they currently are not refunded any tuition due to dropping out without withdrawing officially.

Thank you,  
Mary Ellen

Mary Ellen Heuton, CPA  
Interim Chief Financial Officer  
Marshall University  
One John Marshall Drive  
Huntington, WV 25755  
304-696-6603  
[heuton@marshall.edu](mailto:heuton@marshall.edu)

MEMORANDUM

TO: Mary Ellen Heuton  
Interim Chief Financial Officer

FROM: Barry A. Beckett  
Director of Student Financial  
Systems/Bursar

DATE: September 7, 2011

This correspondence is being prepared in response to §133-32-6 of Series 32 – Tuition and Fee Policy – put forth by the WV Higher Education Policy Commission, as a proposed Legislative Rule Title 133.

Marshall University's current refund policy on tuition and fees, as approved by the Board of Governors FA-10, is as follows:

**5. Refund Policy of Student Tuition and Fees**

5.1 Except for students receiving Title IV financial assistance, students who officially withdraw during a semester in the academic year shall receive a refund of regular fees in accordance with the following schedule.

5.1.1 Academic Year (Semester)

- During the first and second weeks 90% refund
- During the third and fourth weeks 70% refund
- During the fifth and sixth weeks 50% refund
- Beginning with the seventh week No refund

5.1.2 Summer Terms and Nontraditional Periods

Refunds for summer sessions and nontraditional periods shall be established based upon the refund rate for the academic year and calculated using the following schedule

- During the first 13% of the term 90% refund
- From 14% to 25% of the term 70% refund
- From 26% to 38% of the term 50% refund
- After 38% of term is completed No refund
- 

Should the percentage calculation identify a partial day, the entire day should be included in the higher refund period.

**Proposed §133-32-6 Refunds**

6.1 Refunds of tuition and fees shall be effectuated in the same manner as refunds dictated by federal financial aid rules or regulations.

Federal financial aid rules or regulations require the institution to calculate the refund at the time of total withdrawal. The refund is calculated on a pro rata basis through 60% of the payment period for the session/term in which the student is enrolled.

Extending the refund period to 60% of the term, as proposed, would result in the loss of revenue for Marshall University as well significantly increasing the amount of administrative time spent establishing the refund parameters in the student information system.

## MEMORANDUM

TO: Chancellor Brian Noland  
Higher Education Policy Commission

FROM: Robin C. Capehart, President  
West Liberty University

RE: Proposed Title 133, Legislative Rule, Series 32  
Tuition and Fee Policy  
Comments from West Liberty University

DATE: September 8, 2011

Our institution has reviewed the proposed Tuition and Fee Policy and in that regard would offer the following comments.

In general, legislative regulations fulfill two primary purposes: (1) clarify or interpret the language within the statute, and (2) establish administrative processes that assist in the implementation of the statute. In both cases, deference should be given to the language of the statute and any effort to clarify or interpret language or establish process need to be pursuing in accordance with the clear language of the statute.

### Clarifying or interpreting language

In clarifying or interpreting the language within the statute, regulations can define certain terms that may be subject to differing meanings. Moreover, language can be clarified through the use of examples or illustrations.

In the proposed regulations, there are a number of opportunities to provide clarification or interpretation. In several instances, the proposed regulation not only fails to provide such a clarification, but also instead creates additional confusion.

W.Va. Code §18B-10-1 sets forth four categories of tuition and fees each of which are defined in W.Va. Code §18B-10-1c:

- (1) Tuition and required educational and general fees;
- (2) Auxiliary
- (3) Auxiliary capital fees; and
- (4) Required educational and general capital fees.

There are several questions regarding each of these categories, which these regulations provide the opportunity to clarify.

- What is the difference between “tuition” and “required educational and general fees”?
- If there is no difference, why are both terms used?
- The statute makes numerous references to “tuition and fees.” Is this the same as “tuition and required educational and general fees”?

Instead, the proposed regulation creates greater ambiguity by bifurcating these terms or duplicating the language of the statute without providing appropriate guidance.

- Section 2.2 creates a definition for “capital fees” that extracts language from the statutory definition of “required educational and general capital fees.” This provision seems unnecessary in light of the more precise definitions of “auxiliary capital fees” and “required educational and general capital fees” provided in the statute.
- Section 2.3 defines “educational and general fees” and then the term fails to appear anywhere throughout the regulation. In fact, the term tuition, which is used in the statute, does appear but is without definition. This creates confusion when only the term “tuition” is used throughout the statute and the regulation.
- Section 2.8 creates a classification called “required fees.” The statute more specifically defines “required educational and general capital fees” and “tuition and required educational and general fees.” The utility of this definition is unclear.
- Section 4.1.a repeats the statute but fails to provide guidelines as to the point when debt becomes “excessive debt.”
- Section 4.2. parrots the statute with such terms as “ability to pay” but provides no guidance as to the standard to be utilized in making such a determination.

The proposed regulation creates additional concerns in regard to its inability to provide clarification or interpretations.

- The proposal fails to provide a specific method to determine the “full cost of instruction.” Again, it merely copies the statute providing one factor that it includes, but does not provide a more specific formula.
- In three different instances, the proposed regulation outsources the standards to be used in making important determinations. Each of

these is subject to change each year, which would require a statutory update to comply with changes in their respective standards. For example, each year, the Legislature passes “update bills” that coordinates provisions of the State Tax Code with the provision of the Internal Revenue Code. The Legislature undertakes this exercise in order to comply with a ruling by the West Virginia Supreme Court of Appeals. By placing these three extra-legislative standards into law, you are granting a degree of legislative authority to external entities while possibly freezing these standards to the time of adoption unless an annual accommodation can be made.

- The Commonfund Institute, an investment organization, will decide the HEPI. (While this measure is a better standard than the CPI, it fails to take into account the distinctive characteristics or circumstances of each individual institution and caution should be used in making such a measurement a presumptive test.)
  - Title IX
  - “Federal financial aid rules and regulations” is a fairly broad term. Citing a particular statute, regulation or administrative procedure could provide greater guidance.
- While noting the lack of limitation, Paragraph 4.2.b could be strengthened by referencing “program completion, “competency” or some other more contemporary standard of achievement.
  - The proposed rule misses the opportunity to define “a fee used solely for the purpose of complying with the athletic provisions . . . [of] . . . Title IX” opening the door for creative ways to place fees outside the 5% cap.

#### Establishing administrative processes

The rule making authority for this regulation includes W. Va. Code §18B-10-1(d) which instructs the HEPC to adopt a rule “to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.”

It is my understanding that this proposed regulations attempts to provide each institutional board of governors greater flexibility. That is commendable. However, in doing so, the regulation should address the three areas specifically addressed in the authorizing code provision.

Guidelines that basically repeat the statute are provided for the “fixing” of tuition and other fees. There is no direction regarding the “collection” of tuition and

fees and there is a one-sentence reference to expenditure that provides no guidance whatsoever. If these areas are going to be subject to the direction of each institutional board, the regulation should provide as such.

### Summary

For the most part, this regulation merely repeats the language of the statute instead of providing greater clarity and interpretation. As such, a great opportunity will be missed to provide greater direction.

**TITLE 133  
LEGISLATIVE RULE  
WV HEPC**

**SERIES 32  
TUITION AND FEE POLICY**

**Comments from West Liberty University**

The proposed rule is unclear. It doesn't do what the statute requires of it, i.e. it doesn't provide specific instruction. It doesn't address collection of tuition and other fees. It only nominally addresses (in Paragraph 5.1) expenditure of tuition, etc. Generally, it just repeats what's in the statute. This rule, and all rules for that matter, should provide detail that doesn't appear in the authorizing statute. The Code of Federal Regulations, for example, defines terms by using examples.

The rule should explain the difference between "tuition" and "educational fees", i.e. if there is a distinction.

The term "Educational and General Fees" is defined in Paragraph 2.3, but it doesn't appear anywhere in the rule. Terms like "required educational and general capital fees" are used in the statute but aren't defined in the rule.

Paragraph 2.4's definition of "Full Cost of Instruction" needs more detail. Is *marginal* cost intended? Is Athletics part of the calculation?

The Commonfund Institute ought not have a role in decision-making entrusted to HEPC. Likewise, SREB ought not drive Commission or institutional decision-making.

The term "excessive debt" used in Paragraph 4.1.a. is not defined and thus is open to subjective and inconsistent interpretation and application. Can the governing board of a regional institution presume that, so long as it keeps its tuition at or just below the tuition charged by WVU and Marshall, it won't run afoul of Paragraph 4.1.a.?

The first part of Paragraph 4.2.a. caps governing boards' authority to increase tuition, etc. at 5%. However, the second part of the paragraph exempts – from that 5% cap - fee increases relating to Title IX over the next 3 years. As a practical matter, some institutions may exploit this exemption, hike Title IX fees markedly, and thus circumvent the Legislature's goal of reining in student costs.

Among the dozen items listed in Paragraph 4.2.b. is families' "ability to pay for college". The rule offers no guidance on how a governing board might measure such a subjective criterion.

Missing from Paragraph 4.2.b. is any mention of "program completion" or "students' competency". Both would be excellent measures of an institution's performance.

Since federal financial aid rules and regulations are subject to change, this rule will need to be updated annually, i.e. in the same manner in which the Legislature starts its sessions with "update" bills.

TO: Dr. Brian Noland, Chancellor

FROM: Lisa Lively, Director, Financial Services

DATE: September 8, 2011

RE: Title 133 Series 32 Tuition and Fee Policy

In response to your September 2, 2011 e-mail asking for comments on the proposed Title 133 Series 32 Tuition and Fee Policy WVU offers the following comments regarding paragraph 133-32-6 Refunds

*6.1 Refunds of tuition and fees shall be effectuated in the same manner as the refunds dictated by federal financial aid rules or regulations.*

WVU agrees that financial aid should be reduced in accordance with federal financial aid rules or regulations. However, WVU would like to continue to manage the refund/reduction of federal financial aid separate from the refund/reduction of tuition and fee charges. Institutions should have the authority to develop a refund/reduction of tuition and fee charges that meets their institutional objectives. If a student withdraws WVU cannot replace the student in that classroom seat. The opportunity is lost and we have a seat with a defined cost that needs recovered and it may not be fair to simply shift that cost to those who are paying and staying.

The justification for this request is that where Financial Aid is concerned the student "earns" **approved (verified)** federal financial aid awards in proportion to the number of days in the term prior to the student's complete withdrawal. If a student completely withdraws from school during a term, the school must calculate, according to a specific formula, the portion of the total scheduled financial assistance that the student has earned and is therefore entitled to retain, until the time that the student withdrew. If a student receives (or the University receives on the student's behalf) more assistance than he/she earns, the unearned funds must be returned to the Department of Education or to the Federal Stafford or parent's Federal PLUS loan lenders. If a student's charges are less than the amount earned, and a refund is due, the student may be able to receive those additional funds.

The portion of the federal grants and loans that the student is entitled to receive is calculated on a percentage basis by comparing the total number of days in the semester to the number of days that the student completed before he/she withdrew. The federal policy governs the earned and unearned portions of the student's Federal Title IV Financial Aid only. It determines how much, if any, the student and/or the school may need to return. **The financial aid regulations do not affect the student's charges. The University's refund/withdrawal policy will be used to determine the reduction, if any, in the student's tuition and fee or room and board charges.**

Thank you for the opportunity to share our comments. Should you have questions or want to discuss further, please feel free to contact me or Dan Durbin.