

**SPECIAL MEETING OF THE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**9th Floor Conference Room*
Boulevard Tower
1018 Kanawha Boulevard East
Charleston, West Virginia**

**October 5, 2010
3:00 P.M.**

AGENDA

- I. Call to Order
- II. Report on Master Planning and Development of the West Virginia Education, Research and Technology Park
- III. Approval of Funding for the West Virginia Education, Research and Technology Park
- IV. Approval of Revision to Series 20, Authorization of Degree Granting Institutions
- V. Approval of Refunding of the West Virginia Higher Education Interim Governing Board University Facilities Revenue Bonds Series 2001A for Marshall University
- VI. Approval of Option for Construction of Allied Health and Technology Building at the Erma Byrd Public Higher Education Center
- VII. Adjournment

**To join the meeting by conference call, dial the following numbers: 1-866-453-5550, participant code: 5245480#.*

**West Virginia Higher Education Policy Commission
Meeting of October 5, 2010**

ITEM: Report on Master Planning and Development of the West Virginia Education, Research and Technology Park

RECOMMENDED RESOLUTION: Information Item

STAFF MEMBER: Dr. Paul Hill

BACKGROUND:

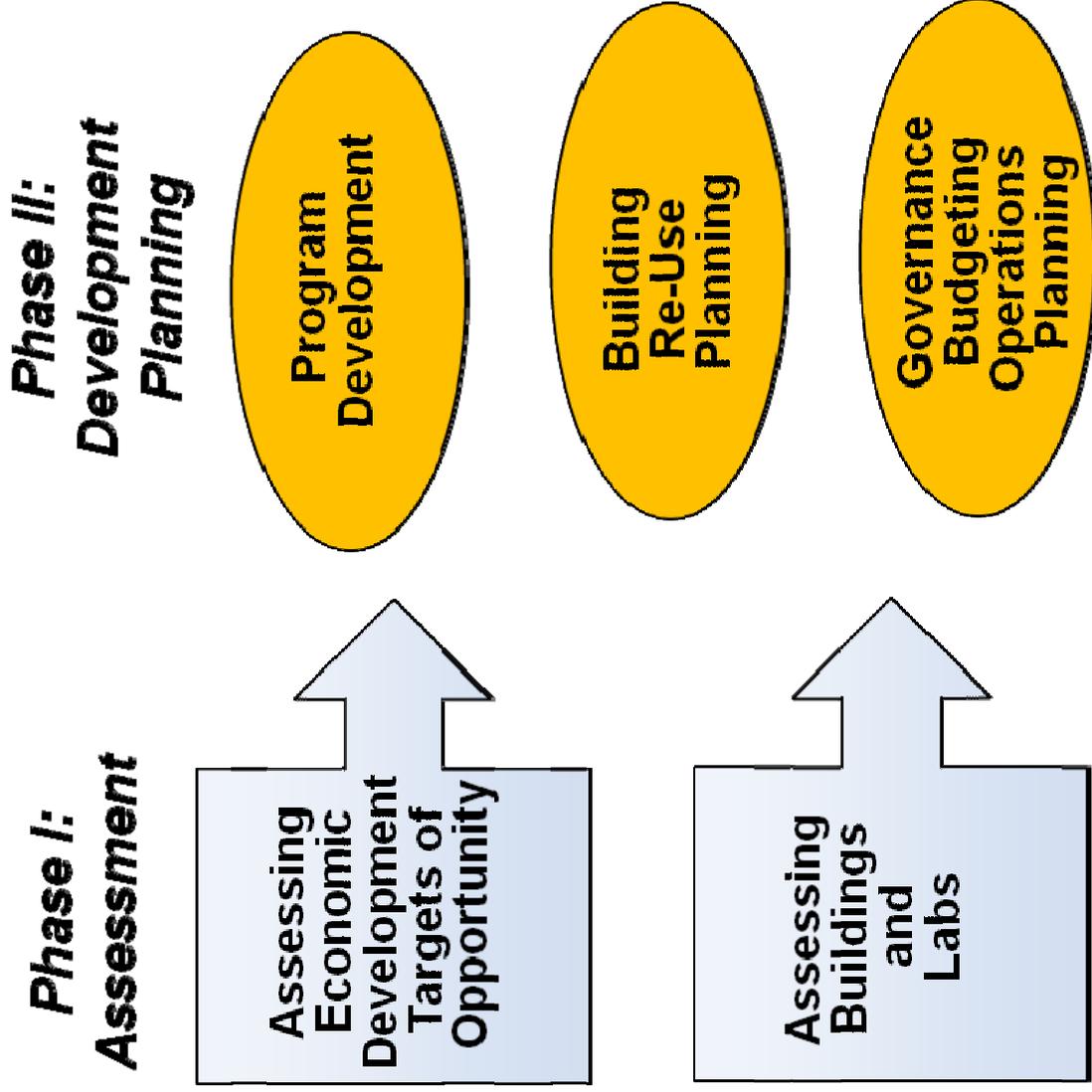
Dr. Paul Hill, Vice Chancellor for Science and Research, will introduce Mr. Mitch Horowitz, Vice President and Managing Director of Battelle Technology Partnership Practice, who will provide a report on progress related to master planning and development of the West Virginia Education, Research and Technology Park (WVERTP), formerly the South Charleston Technology Park owned by The Dow Chemical Company. Battelle is the firm that was selected through a competitive process to provide master planning and development assistance to the Commission regarding the future direction of the WVERTP. The details of Mr. Horowitz's report appear on the following pages.

*Development Planning for the Eastern
Energy Commercialization Center
(EECC)/West Virginia Education,
Research & Technology Park (WVERT)*

*WV Higher Education Policy
Commission Update*



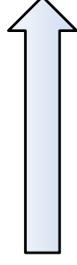
Project Activities



Assessment of Technology-related Demand and Specific Drivers for WVERT

- **Define Likely Targets of Opportunity:**

- Identification of specific industry segments likely to create demands for space in near-term time horizon through regional company interviews as well as broader pilot plant needs – statewide and beyond
- R&D. Core capabilities. Potential linkages between private sector, academic and federal lab research programs
- Inform specification of facility and infrastructure requirements for target sectors



Deliverable:
Market-driven feasibility assessment and conceptual plan for cluster-based economic development at the site.

Position of Charleston Metro's Technology Sector

- **Charleston Metro had 11,737 jobs in high tech in 2008**
 - High tech industries defined by U.S. Bureau of Labor Statistics as those with high percentage of scientists and engineers
 - Slightly below the overall U.S. level of concentration of high tech industry presence
- **Several high tech groupings stand out in level of specialization in Charleston Metro Region**
 - **Chemicals & Materials** – 2x more specialized than U.S. with 1,094 jobs in 2008
 - **Organic & Agricultural Chemicals** – 11x more specialized with 1,319 jobs in 2008
 - **Energy** – 4x more specialized than U.S. with 2,459 jobs in 2008
- **Three other larger high tech groupings present in Charleston Metro Region**
 - **Digital Services** with employment base of 2,073 in 2008, but specialization 34% lower than nation
 - **Business Management & Services** with employment base of 1,972 in 2008, but specialization 31% lower than nation
 - **Engineering, Scientific R&D, & Testing**, with employment base of 1,929, and just 7% less specialized than nation.

Implications of Analysis of Technology Industry Drivers for WVERT

- Broad base of Chemical Industry still critical for Charleston Metro → need to identify growth areas
- Focus on spurring growth of Digital Services + Business Services → key role of next generation of Internet services
- Opportunities around Energy + Engineering, R&D & Testing

Other Potential Drivers

- National Lab and Academic Research
- Workforce Development

National Energy Technology Lab Represents Major Research Driver

- Only Department of Energy national lab dedicated to fossil energy, including coal research, clean coal/FutureGen, and oil and gas research.
- Major focus areas include -- Computational Basic Sciences; Energy System Dynamics; Geological and Environmental Systems; Materials Science; Coals to Liquids; Carbon Sequestration
- Focus of research spans from fundamental science through technology demonstration
- Unfortunately, fossil energy R&D is not a growth area of DoE research – outside of the one time stimulus funding.
 - Declining in normal federal budget from \$863m in FY 09 to \$672m in FY 10 to \$587m in FY 11 (congressional request)
 - One time stimulus in FY 09 of \$3.4 billion
- Key opportunity for WVERT is to find new R&D programs for NETL to advance

Limited Base in Academic Research Drivers

- University research base through 2008 across West Virginia in key fields associated with chemicals, energy and material sciences is small and declining, while U.S. rose.

West Virginia and US Academic R&D Expenditures, FY 2004-08 (\$ Thousands)									
	Chemical Engineering			Chemistry			Metallurgical & Materials Engineering		
	WV	US	WV Share of US	WV	US	WV Share of US	WV	US	WV Share of US
2004	\$4,977	\$493,353	1.01%	\$2,366	\$1,316,897	0.18%	\$5,379	\$564,968	0.95%
2005	\$4,381	\$503,191	0.87%	\$3,541	\$1,363,691	0.26%	\$8,072	\$611,108	1.32%
2006	\$4,109	\$547,426	0.75%	\$3,367	\$1,424,307	0.24%	\$5,082	\$643,662	0.79%
2007	\$4,112	\$601,926	0.68%	\$3,087	\$1,447,351	0.21%	\$5,235	\$638,270	0.82%
2008	\$3,961	\$657,886	0.60%	\$1,690	\$1,485,567	0.11%	\$6,400	\$642,511	1.00%

NETL/Universities/Battelle Group Meeting

- *“WVU, NETL, and Marshall all have an individual and collective interest in making the Park successful and agree to continue to look for opportunities and programs that might fit in the scheme for the Park.”*
- **HOWEVER...** The group agreed that these three entities had no viable projects on the drawing boards at present that might be candidates for moving into the Park. Especially, projects that were of a large enough scale (scope of project versus physical size) to make a difference on the Park economics.
- Discussion about any viable projects under consideration by Marshall, WVU, or NETL pointed out that at least two years of planning and preparation would likely be needed before any funding could be procured or facilities constructed.
- Consideration should be given to determine if a longer term view on projects could be established in the research portfolios of the three participants whereby the projects would be suitable for location in the Park.

Workforce Drivers

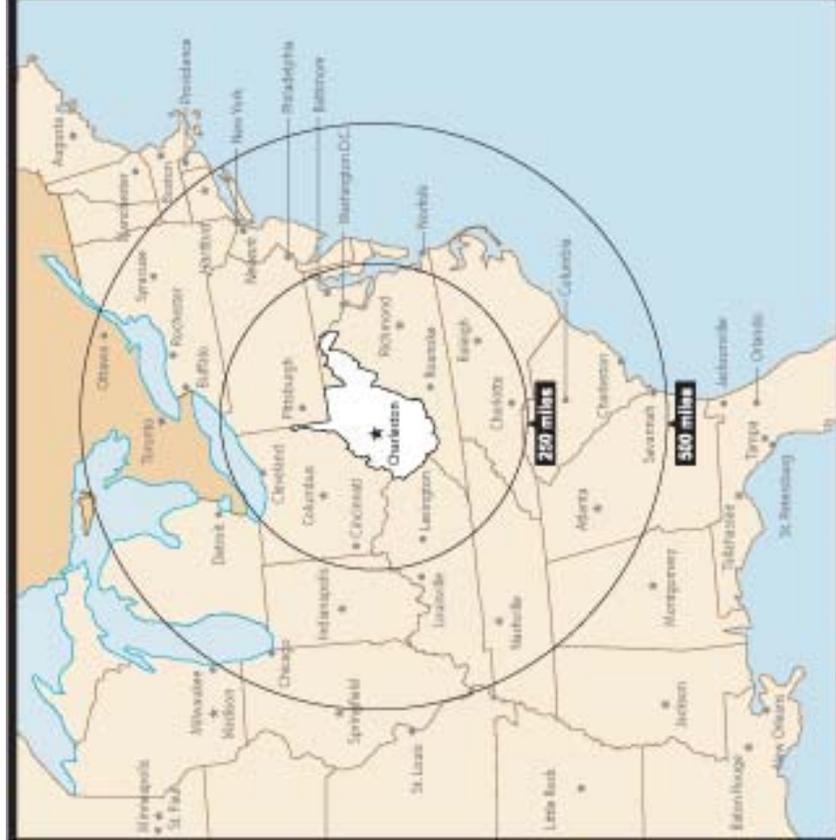
• Potential key role of WVERT for maintaining talent pool → critical to attract new chemical businesses to Charleston Metro

- Major chemical companies in Charleston Metro expressing strong need for chemical and process technician replacement
 - Approximately 90 new chemical and process technicians needed per year for next 4-5 years to replace retirees for just Dow, DuPont and Bayer (MaterialScience and Cropscience)
- More detailed look at LMI forecasts suggests little in job growth, but lots in replacement workers.



Occupations	WV Total Annual Openings ('06-'16)	WV Annual Replacement Openings ('06-'16)
Engineers	155	112
Physical Scientists	56	42
Chemical Plant and System Operators	31	31
Metal Workers & Plastic Workers	253	226
Mfg-related Installation, Maintenance & Repair	393	284

Validating the Market Drivers -- Company Interview Input



Key Segments:

- A.10 Current Residents at WVERT**
- B.14 Regional Technology Companies (non-Chemical)**
- C.8 Regional & Statewide Chemical & Energy Companies**
- D.10 National SBIR Companies Needing Pilot Production Facilities**

Pilot Plants- What is the Value Proposition? for Whom?

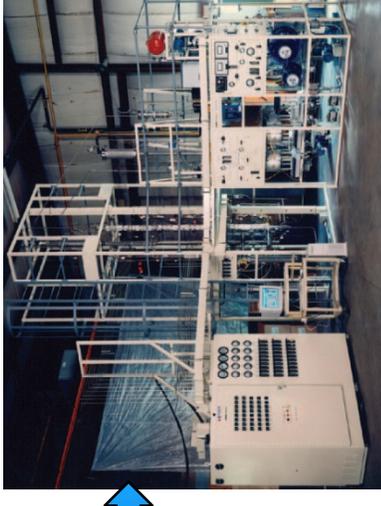
Current Capabilities:

- Old, designed more for chemical separations (see Technology Segmentation Table)
- Essentially a structural shell with various infrastructure, piped industrial gases
- Proximate lab/office space may be beneficial in certain cases – “From bench top to pilot plant” quickly



“Repurposing” presents opportunity to quickly respond to needs as they arise

- ❖ National/International Customers – SBIR Phase 2+; Venture Backed
 - ❖ looking to scale up new solutions
- ❖ Chemical Firms with a presence in WV
 - ❖ New Product development;
 - ❖ Potential for limited value added tolling



Issues to be addressed:

- Physical and operational segregation for protection of IP
- Access to talent & a base of chemical firms, albeit with a limited appetite for using the facility
- Most users will need to provide/fund their own equipment
- Effective use linked to the operator’s base business and technical qualifications
- Possible need to provide risk financing to distinguish this offering—it’s not (just) the facilities

Commercial Real Estate Dynamics

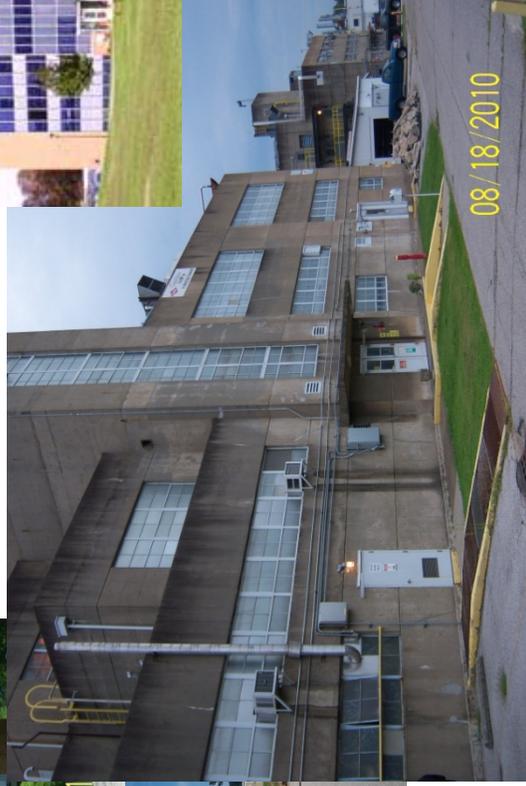
- WVERT viewed by real estate experts in Charleston MSA as a unique development
 - No comparable development providing an “integrated research and development environment” found in region → NorthGate Business Park may be closest
- Overall commercial real estate market in Charleston MSA is small, but with low vacancy rates suggests that available space is limited – the issue is demand.

Classification	Total Space in MSA (RBA sf)	Vacancy Rate (Q2 2010)	Annual Absorption (Q4 2007-Q2 2010)	Leasing Rate - Quoted	Comments
Class A Office	742 ksf	3.2%	+3,082 sf	\$19.09/sf	8 bldgs; no deliveries
Class B Office	8,981 ksf	6.3%	+50,381 sf	\$14.93/sf	551 bldgs; 28,766 sf new
Industrial Flex	428 ksf	6.4%	- 4,755 sf	\$6.32/sf	55 bldgs; no deliveries
Industrial	12,968 ksf	3.9%	- 39,068 sf	\$4.95/sf	421 bldgs; no deliveries

Source: CoStar

Tech Park Facilities Assessment

- Buildings 706, 707, 740, 770 & 771



Assessment Scope

- Pre-Assessment
 - Received electronic scans for buildings 706, 707, 740, 770 & 771 from Dow
 - 4,827 files on the 5 buildings
- Site Visit:
 - Observation of various building systems
 - Visual assessments of the field conditions without destructive investigation
 - Areas to be addressed include building common spaces and engineering spaces as well as representative office/laboratory spaces

Next Steps:

- Findings Report
 - Prepare findings from the document evaluation and site visit
 - Log of documents received
 - Brief summaries of the systems and general conditions
 - Observations and opinions, photographic documentation, and supporting documentation

Program Development

- Key Task Activities:
 - Build upon intelligence gathered in Task 1 and Task 2, including market needs and stakeholder insights
 - Tie into recent advanced energy strategies and ongoing advanced chemicals and materials strategies
 - Address how best to advance industry-university collaborations at WVERT
 - Ensure needed outreach and forums
 - Determine how best to partner with private sector sources of financing and technical service provision
 - Prepare detailed action plan
 - Specific program designs
 - Resource requirements
 - Staffing and facility needs
 - Implementation steps

Deliverable:
*Detailed Strategies
and Action Plan.*

*What to do and how
to do it*

Governance, Budgeting & Operational Guidance

- **Key Task Activities:**

- Prepare a detailed, integrated operating plan:
 - Mission
 - Governance plan for WVERT and EEOC involving how best to engage State, WV universities, NETL and industry
 - Detailed program activity plan (including Task 3 program development + other key functions such as liaison, pro-active outreach marketing, etc)
 - Model agreements for handling and protecting intellectual property (IP)
 - Budgets and financial pro-formas
 - Broader performance measures
- Build on Battelle experience in advancing governance approaches and developing detailed budgets and financial pro formas
 - Additional Research Park Examples: Richmond; Defense Base Reuse cases
 - Commercialization Examples: Carilion, St. Louis Bio-Generator, Pittsburgh Life Sciences Greenhouse
 - Steve Spalding on team to provide additional expertise – former President & CEO of Louisville Medical Center Development Corporation.
 - Dr. Randy Powell advising on pilot plant and market segmentation opportunities.

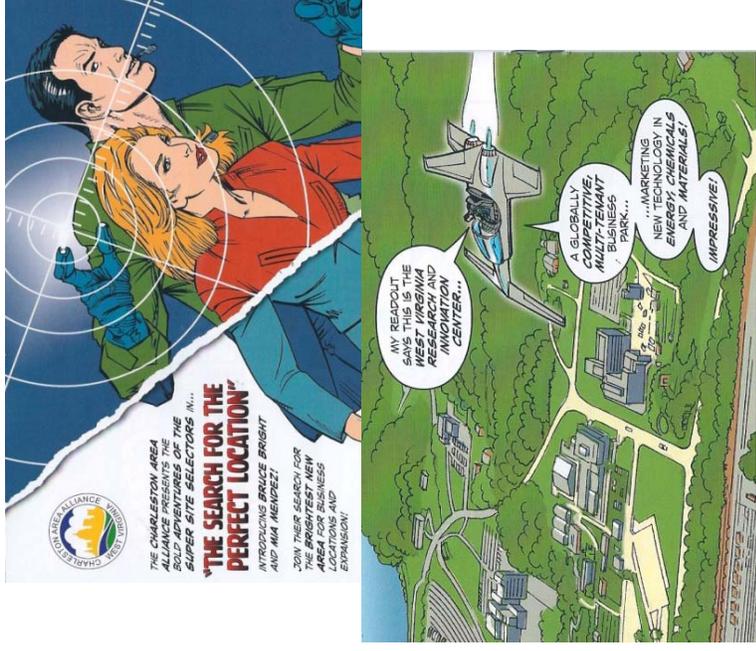
Deliverable:
Specific operations plan

Interim Guidance on Management & Governance

- Sounding board for the development of options consistent w/ mission
- Review solicitation and responses for the procurement of a general management organization which will be overseen by HEPC, based on the plan developed by Battelle.
 - Functional Buckets:
 - Property Management (Immediate)
 - Marketing & Development (Interim)
 - Commercialization Services (For the long run)
 - Short term Issues:
 - management solutions to provide path efficient operations, while preserving pathway for longer term development

Interim Guidance on Marketing and Customer Development

- Sounding board for the development and coordination of marketing and outreach plans
- Coordinating and leveraging efforts of collaborating organizations, both domestic and internal, and the private sector, including:
 - Leads management and referrals
 - Promotional and collateral materials development and linkages-including electronic and social media, alumni and expatriate recruitment
 - Tenant development and review
 - Identification and referrals to innovation, financing and other commercialization services
 - Trade shows, target marketing and other activities.



Current Project Schedule

- Assessment Phase virtually complete
- Planning Phase has begun with initial discussions and look at other park practices – esp. those with strong state linkages
- Draft Report by end of October, w/ input from Governance and Marketing working Groups
- Transition Steering Committee Meeting – early November
- Report release – November 17th

Contacts



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**West Virginia Higher Education Policy Commission
Meeting of October 5, 2010**

ITEM: Approval of Funding for the West Virginia Education, Research and Technology Park

RECOMMENDED RESOLUTION: *Resolved,* That the West Virginia Higher Education Policy Commission shall hereby be legally authorized to enter into an agreement with the Governor's Office for grants authorized by the American Recovery and Reinvestment Act State Fiscal Stabilization Fund.

STAFF MEMBER: Richard Donovan

BACKGROUND:

The West Virginia Higher Education Policy Commission was awarded a \$12 million American Recovery and Reinvestment Act State Fiscal Stabilization Fund Grant by the Governor's Office for modernization and transitional operation of the West Virginia Education, Research and Technology Park. The Grant Contract was signed by representatives of the Governor's Office and the Commission on September 21, 2010; however, before the Commission can draw down the grant funds, the specific resolution above must be adopted by the Commission and forwarded to the Governor's Office to be incorporated into the Grant Contract.

**West Virginia Higher Education Policy Commission
Meeting of October 5, 2010**

ITEM: Approval of Revision to Series 20,
Authorization of Degree Granting Institutions

INSTITUTIONS: All

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves revisions to Series 20, Authorization of Degree Granting Institutions, for filing with the Secretary of State for a 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 comments are received.

STAFF MEMBER: Bruce Flack

BACKGROUND:

Series 20, Authorization of Degree Granting Institutions, is the legislative rule that outlines the procedures for the West Virginia Higher Education Policy Commission to approve any institution, association, agency, or organization external to or within the state that requests approval to offer programs or credit-bearing academic courses of postsecondary education in the State of West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term “academy,” “college,” “institution,” or “university” or similar title.

The proposed revisions to Series 20 strengthen the rule by clarifying the authority of the Commission and assign greater responsibility to the Commission for monitoring the quality of postsecondary education within the state.

The rule, as revised:

1. Adds a statement on consumer protection as a major focus of the rule. (Section 2.3)

2. Explicitly includes proprietary institutions as entities covered under Series 20. (Section 2.1 et. al.)
3. Expands the definition section. (Section 3)
4. Expands Commission monitoring of institutions that are granted exemption from Series 20 and extends exempt categories to include non-degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and as described in clock (contact) hours. (Sections 4.1 and 4.1.d)
5. Provides that institutions offering associate level degrees and three or more degree programs above the associate level fall under the purview of the Commission's Series 20. (Section 6.5)
6. Raises the amount needed for a surety bond from \$50,000 to \$100,000. (Section 6.13)
7. Explicitly states that no private or proprietary institution shall be authorized to operate in West Virginia until it meets the essential conditions defined in Series 20. (Section 7.1)
8. Establishes categories for institutions requesting authorization: Newly founded institutions and those seeking accreditation (Section 7.2); Accredited, out-of-state institutions (Section 7.3); and Religious, theological or faith-based institutions (Section 7.4). Subsections that deal with these categories outline all steps an institution must follow to secure authorization.
9. The necessary steps for institutions seeking authorization are clearly designated: Preliminary authorization, probationary authorization, and final authorization. (Subsections of Sections 7.2, 7.3 and 7.4)
10. Adds expanded and more prescriptive criteria to the following essential conditions: degrees and academic programs, financial resources, tuition policies, institutional and student records, and catalog and official publications. (Section 8.1 and subsections)
11. Adds more explicit conditions under which the Commission may terminate authorization. (Section 9.1 and subsections)
12. Extends Commission authority to include an on-going monitoring process. A section, "On-going Monitoring" was added to emphasize that the Commission not only initially approves the institution to deliver programs in West Virginia but has the responsibility and authority to monitor the institutions once they have been approved. Likewise, a section on student complaints was added outlining the Commission's authority to respond when quality issues are questionable. (Sections 13 and 14)

Prior to presentation for the Commission's consideration, staff provided an informal comment period for institutional representatives and statewide constituent groups of faculty, staff, and students. No comments were received during the informal comment period.

Commission staff recommends that the revised rule be filed with the Secretary of State for a thirty-day public comment period and that if no substantive comments are received that the Commission extends final approval. Once the Commission extends final approval of Series 20, the rule will be presented to the Legislative Oversight Commission on Education Accountability (LOCEA) for approval and further legislative action.

**TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

**SERIES 20
AUTHORIZATION OF DEGREE GRANTING INSTITUTIONS**

§133-20-1. General.

- 1.1. Scope: This rule establishes the policy regarding accreditation and approval of degree-granting institutions which offer degrees above the associate level.
- 1.2. Authority: W. Va. Code §18B-4-7
- 1.3. Filing Date: ~~March 31, 2006~~
- 1.4. Effective Date: ~~March 31, 2006~~
- 1.5. ~~Repeal of Former Rule: Repeals and replaces Title 133, Series 20 which had an effective date of August 10, 2002.~~

§133-20-2. Purpose.

- 2.1. The West Virginia Higher Education Policy Commission is responsible for the approval of any institution, association or organization external to or within the state which desires to offer programs or credit-bearing academic courses of higher learning in the State of West Virginia. Authorization is required for all postsecondary providers including: non-profit private institutions, proprietary institutions, out-of-state public institutions, degree-granting entities that offer degrees at the baccalaureate level or above, and entities that use the term “academy,” “college,” “institution,” “university” or similar title.
- 2.2. Prior to offering any course or degree program above the associate level in the State as specified in section 6 of this rule, the entity shall apply to the Commission for authorization to operate in the State. The Commission shall consult with the West Virginia Council for Community and Technical College Education when an entity desires to offer associate level programs in addition to courses and programs above the associate level. The provisions of this rule shall also apply to any course or programs delivered in the State by an out-of-state institution via distance education-based instruction if the institution will have a physical presence in the State.

2.3. This rule is designed to protect consumers and to ensure consumers are offered quality education by postsecondary education providers within the state of West Virginia.

§133-20-3. Definitions.

3.1. "Academic credit" means the certification of a student's successful completion of a unit of a course of study leading to a formal award granted by an institution approved to offer a collegiate degree such as an associate, baccalaureate, masters or doctorate degree.

3.2. "Accreditation" means a status attained by the institution through voluntarily meeting standards set by a nongovernmental entity recognized by the U.S. Secretary of Education.

3.3. "Authorization" means the status attained by the institution that allows the institution to offer programs and courses within the state of West Virginia for a specified time in a specified place. This status is granted by the Higher Education Policy Commission when the institution demonstrates compliance with the requirements for such status.

3.14. "Commission" means the West Virginia Higher Education Policy Commission.

3.25. "Council" means the West Virginia Council for Community and Technical College Education.

3.6. "Course" means a formally organized, structured series of ~~meetings~~ instructional activities open to the general public for which a fee is charged, and for which credit toward a degree either is awarded or may reasonably be understood to be applicable to a degree with the intent of imparting information or understanding at a level appropriate to a postsecondary audience. Instruction may be in face-to-face meetings or delivered electronically or by other means.

3.47. "Degree" means any earned award conferred by a higher educational institution which represents satisfactory completion of the requirements of a program, or course of study, or any instruction beyond or apart from the secondary level of greater duration than eleven months of full-time study.

3.58. "Degree program" means a curriculum or course of study of greater duration than eleven months of full-time study in a discipline or field that leads to a degree.

3.79. "Distance education" means the delivery of any course or degree programs by synchronous or asynchronous technology ~~which the primary mode of~~

~~delivery to a site is television, videocassette, film, computer or other telecommunications devices. Asynchronous or synchronous technology via distance delivery includes all forms of internet, electronic, digital, online, video, and any other technology driven delivery system.~~

3.310. "Institution of higher education" means any person, firm, corporation, association, agency, institute, trust or other entity of any nature whatsoever offering education beyond the secondary level which:

- offers courses or programs of study or instruction which lead to or which may reasonably be understood to be applicable toward an associate, baccalaureate, masters, doctorate, or other specialized certification/degree designation above the baccalaureate level degree; or
- operates a facility as a college or university or other entity ~~of whatever kind~~ which offers degrees or other indicia of a level of educational attainment beyond the secondary school level; or
- uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business.

3.811. "Physical Presence" means an institution, wherever domiciled or having its principal place of business, employs in West Virginia any person or persons for the purpose of administering, coordinating, teaching, training, tutoring, counseling, advising, recruiting, or any other activity on behalf of the sponsoring organization. Such activity would include advertising, promotional material, or public solicitation in any form that targets West Virginia residents through distribution or advertising in the State. In addition, the institution has physical presence in West Virginia if it delivers, or plans to deliver, instruction in West Virginia, and receives assistance from any other organization within the state in delivering the instruction, such as, but not limited to, a cable television company or a television broadcast station that carries instruction sponsored by the institution, or by other technologically driven delivery system.

3.12. "Preliminary status" means six-month period of time that an institution is granted by the Commission to satisfactorily complete preliminary information as required by the regional or other appropriate, acceptable, accrediting association, and shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted further authorization by the Commission.

3.913. "Private college or university" means an institution which is "doing business or maintaining a place of business in the State of West Virginia" which offers courses of instruction or study wherein credits may be earned toward a degree in a field of endeavor. A publicly-supported college or

university in another state will be treated as a "private college or university" and will be authorized to offer courses of instruction toward a degree, degree credits, or degrees if it qualifies under the criteria for such institutions. An institution that employs an agent or representative in West Virginia and delivers instruction by any means within the State shall be regarded as a private college or university and shall be authorized on the same basis as any other such institution.

3.14. “Probationary status” means that an institution has been authorized by the Commission to enroll students, offer instruction, graduate students and award degrees under the condition that the institution is continuously seeking and making satisfactory progress toward acquiring full accreditation and full state authorization.

3.15. “Proprietary institution” means a postsecondary institution that is operated for profit; a private, limited liability company or other entity that conducts business within the State and is investor-owned and/or organized for profit.

3.16. “Religious, Theological, or Faith-Based Institution” means a postsecondary institution that offers no degree programs other than those specifically related to the institution’s doctrine. Institutions that offer general degree programs cannot be exempted by this rule as religious, theological, or faith-based.

3.17. “Unearned tuition” means the anticipated amount of tuition revenue that will be generated within a one-year time frame of the institution’s authorized operation in West Virginia.

§133-20-4. Exemptions.

4.1. Institutions that clearly qualify as exemptions under this rule and after Commission staff review shall be considered exempt from authorization. Institutional exemption is subject to annual review and/or revocation any time the activity deviates from the original determination factors for exemption. The following institutions shall be exempt from the provisions of this rule: ~~The provisions of the rule shall not be applicable to the following institutions:~~

4.1.a. Any existing institutions of higher education approved to operate in West Virginia prior to July 1, 2006. Should any such institution, as the result of a change of ownership, or operational status from a non-profit to a for-profit institution, be required to modify its accreditation status from the Higher Learning Commission of the North Central Association, such institution must secure approval for the change(s) from the Higher Education Policy Commission.

- 4.1.b. Correspondence, business, occupational and trade schools which
 - 4.1.b.1. offer nothing higher than a specialized associate degree,
 - 4.1.b.2. typically do not pursue regional accreditation, and
 - 4.1.b.3. are regulated under West Virginia Code provisions (18B-2B-9) on correspondence, business, occupational and trade schools.

- 4.1.c. Out-of-state institutions:
 - 4.1.c.1. offering courses through brokering or other collaborative arrangements with a West Virginia public institution of higher education and which support programmatic offerings of the state institution;
 - 4.1.c.2. offering a short course or seminar in which the instruction for the segment takes no more than twenty classroom hours, or
 - 4.1.c.3. offering courses or programs on a military installation solely for military personnel or civilians employed on such installation.

- 4.1.d. Non-Degree granting institutions whose programs are designed primarily for job entry or upgrading of skills and are described in clock (contact) hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.

- 4.2. Each institution of higher education which claims to be exempt under the provisions of this section must file with the Commission such information as may be required by the Commission to determine whether the institution is exempt. The written request for an exemption must be received by the Commission at least thirty (30) days prior to the proposed initiation date of a course of instruction. If the Commission determines that any institution is not exempt from the provisions of this rule, it shall notify the institution in writing with the reasons for the determination.

§133-20-5. ~~PROHIBITIONS~~ Institutional Titles.

- 5.1. An institution shall use within the State a title appropriate to the program and degree it offers in the State.

- 5.12. No person, firm, association, institution, trust corporation or other entity shall use in any manner within West Virginia the term "college" or "university" or any abbreviation thereof, or any words or terms tending to designate it as, or create the impression that it is an institution of higher

education, unless it shall have obtained the appropriate approval as provided in this rule.

5.23. This section shall not apply to any entity which used the term "college" or "university" prior to July 1, 2006.

5.34. This section shall not apply to individual proprietorships, associations, co-partnerships or corporations which use the words "college" or "university" in their training programs solely for their employees or customers, which do not offer degree granting programs, and whose name includes the word "college" or "university" in a context from which it clearly appears that such entity is not an educational institution.

§133-20-6. Authorization to Operate.

6.1. No entity may advertise, solicit, recruit, enroll, or operate a postsecondary education institution until it is authorized for operation in the state of West Virginia by the Higher Education Policy Commission.

6.12. An institution locating in West Virginia must register with the Secretary of State's office prior to making any application to the Commission for authorization.

6.23. All private colleges and universities, private proprietary schools and ~~seminaries or Bible~~ religious, theological, or faith-based colleges offering any degree above the associate level, as specified in section 7.4 of this rule, shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.

6.34. All private colleges and private proprietary schools, with the exception of correspondence, business, occupational, and trade schools as defined in Series 35, *Correspondence, Business, Occupational and Trade Schools*, of the Council for Community and Technical College Education, offering degrees not above the associate level shall register with the Council, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or degree; opening a place of business; soliciting students or enrollees; or offering educational support services.

6.45. Private colleges and universities and private proprietary schools offering associate level degrees and ~~degrees above the associate level~~ three or more degree programs above the associate level shall register with the Commission, shall meet the authorization criteria, and shall be granted authorization prior to offering any program of instruction, credit, or

degree; opening a place of business; soliciting students or enrollees; or offering educational support services. Granting of authorization of such institution is the responsibility of the Higher Education Policy Commission in consultation with the Council for Community and Technical College Education.

- 6.56. Authorization of private colleges and universities and private proprietary schools offering primarily associate level degrees and fewer than three degree programs above the associate level is the responsibility of the West Virginia Council for Community and Technical College Education in consultation with the Higher Education Policy Commission.
- 6.57. Private colleges or universities and ~~seminaries or Bible~~ religious, theological, or faith-based colleges shall be authorized under the provision of this rule. Private proprietary schools exempted under the provisions of section 4 of this rule shall be governed by the provisions of Title 135, Series 35, *Correspondence, Business, Occupational and Trade Schools*, administered by the Council.
- 6.78. Institutions which are formed, chartered, or established outside West Virginia and have been fully accredited by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education and which seek to offer courses and/or academic degree programs within West Virginia shall be authorized by the Commission to offer programs and courses within West Virginia under provisions of section 7.3 of this rule.
- 6.9. Newly founded institutions and those seeking accreditation by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education, may not offer courses or degree programs without Commission authorization to locate, relocate or establish a branch campus in West Virginia. The institution must seek Commission authorization to offer courses and/or academic programs within West Virginia per the provisions of section 7.2 of this rule.
- 6.10. Institutions accredited by a regional accrediting association or another accrediting body recognized by the U.S. Department of Education, as approved by the Commission, but not on the basis of a compliance review of the West Virginia location shall have a period of one year from the date its activities begin in West Virginia to obtain such a review. The time limit may be extended upon presentation of documentation of good cause. Once the institution has received accreditation on the basis of a compliance review of the West Virginia location, it shall be authorized by the Commission to operate in West Virginia.

- 6.11. Institutions wishing to exceed or change their approved programmatic mission must receive approval from the Commission to offer each program that exceeds the level of academic degrees that the institution is authorized to grant. Documentation must be submitted that specifies the scope of the proposed change, including long-range plans for new degree programs and programs that exceed the level of academic degrees currently authorized for the institution. Requests to exceed an institution's programmatic mission shall be evaluated based on the following criteria: objectives of proposed program; relationship of program to statewide mission and plan; demonstration of need; effect of new program on existing programs at other institutions; resource availability; qualified faculty and administrators; library holdings and support; facilities and equipment; and, evidence of strength of offer the proposed program.
- 6.12. Authorization is limited to those institutions that deliver instruction in West Virginia and have a physical presence in West Virginia.
- 6.13. Before an institution of higher education can be authorized by the Commission to operate within the State of West Virginia, a surety bond must be provided by the institution. The obligation of the bond will be that the institution, its officers, agents and employees will faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the state. The bond shall be to the Commission in such form as approved by the Commission and is to be used only for payment of a refund of tuition and other instructional fees due a student or potential student. The amount of the bond shall be \$100,000 and shall be renewed annually. The Commission, if it deems appropriate, may reduce the amount of the bond if an institution has less unearned tuition than \$100,000, but in no event shall be less than \$20,000.
- 6.14. If instruction is to be delivered at a physical location within the state of West Virginia, the applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable. Additionally, instructional delivery sites must be compliant with Americans with Disabilities Act guidelines.
- 6.15. Institutions seeking West Virginia authorization may withdraw from the authorization process at any time upon written notification to the Director of Academic Affairs of the Higher Education Policy Commission.

§133-20-7. **Procedures for Granting of Authorization and Bond Requirements.**

- 7.1. ~~Authorization shall be granted upon presentation of adequate information by the postsecondary institution seeking authorization to the Commission. As the first step toward authorization, representatives of a seminary or Bible college or a private college or university shall consult with the Director of Academic Affairs or designee prior to submission of required documentation. No private college or university shall operate until it meets the essential conditions established by the Commission and defined in this rule.~~ **Process for securing authorization.**

An institution which is interested in gaining authorization to operate within the State of West Virginia must follow the prescribed procedures outlined in this rule to be considered for the requested authorization. No private college or university or proprietary shall operate until it meets the essential conditions established by the Commission and defined in this rule. Institutional accreditation must be documented or its potential for accreditation established and accepted by the Commission. Institutions authorized to operate pending full accreditation shall pursue full accreditation continuously and shall make reasonable and timely progress toward accreditation in order to retain authorization.

When a change in ownership occurs with a private or proprietary institution, the Commission shall reassess the institution's authorization status within 6 months of the notification of the change in ownership.

7.2. **Newly founded institutions and those seeking accreditation.**

Newly founded institutions and those seeking accreditation by a regional accrediting association or by another accrediting body must seek Commission authorization to offer courses and/or academic programs within West Virginia.

Following is a description of the steps in the authorization process:

7.2.a. It is the responsibility of the applying institution to contact the Secretary of State's office to determine if registration is required within the State.

7.2.b. A preliminary conference shall be held between the Chief Executive Officer or designee of the institution seeking authorization to operate a degree-granting institution in the State of West Virginia and the Director of Academic Affairs of the Higher Education Policy Commission or designee. The agenda shall include a discussion of criteria to be met by the institution and procedures used in applying for requested authorization.

7.2.c. Following the preliminary conference, the institution shall submit a self-study report including all requested documents and materials related to authorization, including those which address the essential conditions in section 8 of this rule as may be requested. An initial application fee of \$2,000 must accompany the submission of documentation for those institutions seeking authorization. The Commission may adjust all fees charged as deemed necessary.

7.2.d. Upon receipt of the completed self-study report and all documentation, the Commission staff shall organize a compliance review committee to visit the site(s) of the institution seeking state authorization. At the discretion of the Commission staff the compliance visit may take place at the Commission office or other appropriate locations. The principal task of the committee will be to verify that the institution complies with the Commission's standards for preliminary authorization and to report its findings to the Commission.

The compliance review committee shall be composed of:

7.2.d.1. Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for approval.

7.2.d.2. Members of the Commission staff. The Director of Academic Affairs or designee shall serve as chair of the committee.

The visit will be scheduled at a time which is mutually convenient to the institution and the Commission. The institution shall pay the reasonable expenses associated with the compliance review visit.

7.2.e. Following the site visit and review of submitted documentation, the compliance review committee will prepare an analysis of the findings and develop a recommendation for the Commission regarding the institutional application. Only those institutions whose proposed offerings meet state standards of quality will be recommended for authorization. The report will contain:

7.2.e.1. a report by the compliance review committee; and

7.2.e.2. a recommendation by the compliance review committee for action by the Commission regarding granting preliminary authorization as provided for in section 7.2.g of this rule.

- 7.2.f. A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institution may provide the Commission a response to the report within ten (10) working days of receipt of the report. The institutional comments will be included with the compliance review committee report presented to the Commission.
- 7.2.g. Upon receipt and review of the compliance review committee recommendation, the Commission will consider the institution for Preliminary State Authorization effective for a period of time up to six (6) months. Within that period of time the institution shall satisfactorily complete preliminary information as required by the regional or other appropriate, acceptable, accrediting association, and shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted further authorization by the Commission.
- 7.2.h. If the institution does not hold accreditation, the Commission staff shall request submission of information verifying its accreditation status and/or evidence of "reasonable and timely progress" toward accreditation. Reasonable and timely progress toward accreditation is understood to be a status with the regional accrediting association or an acceptable alternative accrediting association recognized by the U.S. Department of Education (recognition shall be documented) that indicates that the institution has been determined to hold the potential for accreditation and is actively pursuing accreditation within the timetable established by the regional accrediting association (unless an alternative timetable has been presented to and accepted by the Commission).
- 7.2.i. Once the institution has been accepted for consideration for candidacy by the regional accrediting organization and has submitted evidence to this fact to the Commission, the institution shall be placed on Probationary Authorization status. The institution shall remain on Probationary status no longer than six (6) years.
- 7.2.j. If satisfactory evidence is not received within 6 months of the granting date of Preliminary Authorization status, that authorization is revoked.
- 7.2.k. An institution holding Probationary Status shall undertake the accreditation process immediately and shall comply with the accreditation requirements and procedures to achieve full institutional accreditation.

7.2.1. Failure to pursue accreditation continuously, as provided in this rule, shall result in loss of state authorization.

7.2.m. Each institution with Preliminary State Authorization Status shall submit an annual report in a format determined by Commission staff. The annual report should include the following:

7.2.m.1. any changes or additions to information previously submitted as part of the basis for Preliminary State Authorization;

7.2.m.2. copy of current catalog with major changes cited;

7.2.m.3. the latest financial statement from the most recent institutional fiscal year;

7.2.m.4. an enrollment report from the most recent academic year;

7.2.m.5. a list of all institutional personnel including staff, instructors and agents;

7.2.m.6. summary data on student state and federal financial aid;

7.2.m.7. data on student retention;

7.2.m.8. program completion data, as applicable;

7.2.m.9. status of progress toward receiving full accreditation status from accrediting agency; and

7.2.m.10. such other information or clarification deemed necessary by Commission staff for determination of authorization recommendation.

A nonrefundable fee of \$500 shall accompany the submission of the annual report while the institution is maintaining Probationary State Authorization status. The Commission may adjust all fees charged as deemed necessary.

7.2.n. Following the on-site accreditation visit and action by the Higher Learning Commission of the North Central Association of Colleges and Schools and/or other appropriate accrediting association, the institution shall immediately notify the Commission which will then assign the institution an authorization status from among the following:

7.2.n.1. Fully authorized, as a result of the decision by the accrediting association to accredit the institution, and having demonstrated compliance with the Essential Conditions.

7.2.n.2. Continuation of Probationary State Authorization. An institution that holds candidacy for accreditation shall submit annual reports to the Commission documenting its progress toward the achievement of accreditation consistent with policy of appropriate accreditation

associations. Continuation of this status shall not extend beyond 6 years.

7.2.n.3. Not authorized as a result of denial of accreditation by the accrediting association.

7.2.n.4. Continuation of Probationary State Authorization status pending on appeal of denial of accreditation by the Higher Learning Commission of the North Central Association. Continuation on these grounds shall only be granted upon showing good cause to the Commission. An institution's final authorization status will be based upon the action taken by the accrediting association.

~~7.2. No private college or university shall operate until its accreditation is documented or its potential for accreditation is established and accepted by the Commission. Institutions authorized to operate pending full accreditation shall pursue full accreditation continuously and shall make reasonable and timely progress toward accreditation in order to retain authorization.~~

~~7.3. No seminary or Bible college shall operate until the religious nature of the institution is documented and verified by the Commission.~~

~~7.4.3. Before an institution of higher education is authorized under the provisions of section 10 of this rule, a surety bond must be provided by the institution. The obligation of the bond will be that the institution, its officers, agents and employees will faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the state. The bond shall be to the Commission in such form as approved by the Commission and is to be used only for payment of a refund of tuition and other instructional fees due a student or potential student. The amount of the bond shall be \$50,000 and shall be renewed annually. The Commission, if it deems appropriate, may reduce the amount of the bond if an institution has less unearned tuition than \$50,000, but in no event shall be less than \$10,000.~~ **Accredited, Out-of-State Institutions.**

Any higher education institution having its principal place of operation outside West Virginia which holds regional or other appropriate accreditation and which desires to offer courses and/or degree programs within West Virginia must be authorized by the Commission.

Following is a description of the steps in the authorization process:

7.3.a. It is the responsibility of the applying institution to contact the Secretary of State's office to determine if registration is required

within the State.

7.3.b. The institution must submit an application for approval to the Commission for each course or degree program to be offered at the site. The application should include written unconditional assurance that:

7.3.b.1. Each course or program of study proposed to be offered in West Virginia has been approved by the governing board of the institution, and if applicable, by the appropriate state agency in the state where the main campus of the institution is located.

7.3.b.2. The institution has been approved as necessary by the appropriate agency, if any, in the state where the main campus of the institution is located.

7.3.b.3. The institution offers degree programs at the level for which credit is proposed to be awarded in those programs in West Virginia.

7.3.b.4. The accredited out-of-state institution offers degree programs outside the state where the main campus is located.

7.3.b.5. Any credit earned in West Virginia can be transferred to the institution's principal location outside West Virginia as part of an existing degree program offered by the institution.

7.3.b.6. The institution offers the same program at the same level at its principal location outside West Virginia that it seeks to offer in West Virginia.

7.3.b.7. The institution presents data that projects market demand and availability of openings in the job market to be served by the new program for which the institution is seeking authorization to offer in West Virginia.

7.3.c. In making its determination, the Commission will consider whether the proposed degree programs or courses duplicate existing offerings of other institutions of higher education at the locations for which approval is requested.

7.3.d. Authorization for degree programs may be for a period of up to four years at a specified location with an application for renewal of

the authorization required to be filed with the Commission at least ninety days prior to the expiration of the authorization.

Authorization for courses may be granted for a period of one year at a specified location with an application for renewal of the authorization required to be filed annually with the Commission at least ninety days prior to the expiration of the authorization.

7.3.e. The Commission may waive any or all of the reporting requirements for institutions that are delineated in section 8.2 of this rule.

7.3.f. Any out-of-state or private accredited institution that is granted authorization shall receive written notification of acceptable status.

~~§133-20-8. Criteria For Authorization – Seminary Or Bible College.~~

~~8.1.7.4.~~**Religious, Theological or Faith-based Institutions.**

To qualify as a ~~seminary or Bible~~ religious, theological, or faith-based college, an institution must qualify both as an institution of higher education as defined in section 3 of this rule and as a religious institution based on meeting each of the following criteria:

~~8.1.7.4.a.~~Be a non-profit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a non-profit religious corporation.

~~8.1.7.4.b.~~Limit the educational program to the principles of that church or denomination, and the diploma or degree is limited to evidence of completion of that education.

~~8.1.7.4.c.~~Only grant degrees or diplomas in areas of study that contain on their face, in the written description of the title of the degree or diploma being conferred, a reference to the theological or religious aspect of the degree's subject area.

~~8.1.7.4.d.~~Not market, offer, or grant degrees or diplomas which are represented as being linked to a church or denomination, but which, in reality, are degrees in secular areas of study.

~~8.1.7.4.e.~~Have obtained exemption from property taxation under state law and shall have submitted a copy of the certificate of this exemption to the Commission.

- 8.2. 7.4.f. Additional evidence may be provided by an institution seeking to substantiate that the institution is a religious institution including:
 - ~~8.2.a.~~ 7.4.f.1. Evidence that the institution holds at least pre-accreditation status with ~~one of the following~~ a nationally recognized accrediting associations.
 - ~~8.2.a.1.~~ ~~The Accrediting Association of Bible Colleges; or~~
 - ~~8.2.a.2.~~ ~~The Association of Advanced Rabbinical and Talmudic Schools; or~~
 - ~~8.2.a.3.~~ ~~The Association of Theological Schools in the United States and Canada; or~~
 - ~~8.2.a.4.~~ ~~Other appropriate accrediting association recognized by the U.S. Department of Education and determined as appropriate by the Commission.~~
 - 8.2.b. 7.4.f.2. A statement of institutional mission clearly establishing the mission of the institution as solely religious, and curricula and degree, diploma, or certification programs that clearly support that mission singularly.
 - ~~8.2.c.~~ 7.4.f.3. Other appropriate, substantial, evidence of qualification for state authorization as a ~~seminary or Bible college~~ religious, theological, or faith-based college.
- 8.3 7.4.g. An institution shall not be eligible for authorization as a ~~seminary or Bible~~ religious, theological, or faith-based college if it offers degrees appropriate only for academic institutions, such as, but not limited to, Bachelor of Arts or Bachelor of Science, Master of Arts or Master of Science, Doctor of Philosophy, or other degrees typically offered by academic institutions, regardless of curriculum of course content, unless the degree title includes the religious field of study (e.g., "Bachelor of Arts in Religious Studies"). Institutions authorized as ~~seminaries and Bible~~ religious, theological, or faith-based colleges also shall not offer degrees associated with specific professional fields or endeavors not clearly and directly related to religious studies or occupations. Examples of such degree titles are Bachelor of Business Administration or Master of Business Administration; Bachelor of Education, Master of Education or Doctor of Education; and Doctor of Psychology.
- 8.4. 7.4.h. An authorized ~~seminary or Bible~~ religious, theological, or faith-based college, its educational programs, its degrees and diplomas, and its honorary degrees, have no state approval or recognition status whatsoever. An institution operating under this authorization shall not state or imply by any means whatsoever that

there exists any ~~recognition~~ endorsement by the state or by any agency or agent of the state of the education, documents awarded by the institution, or the institution itself, other than the institution's authorization to operate.

§133-20-98. Criteria For Authorization – ~~Private College or University~~ Essential Conditions.

~~9.1. A private college or university, under the provisions of this rule, is an institution which is "doing business or maintaining a place of business in the state of West Virginia" which offers courses of instruction or study wherein credits may be earned toward a degree in a field of endeavor. A publicly supported college or university in another state will be treated as a "private college or university" and will be authorized to offer courses of instruction toward a degree, degree credits, or degrees if it qualifies under the criteria for such institutions. An institution that employs an agent or representative in West Virginia and delivers instruction by any means within the state shall be regarded as a private college or university and shall be authorized on the same basis as any other such institution.~~

98.21. Essential Conditions. An institution seeking authorization to operate in West Virginia must meet the following essential conditions ~~and accreditation standards~~ established by the Commission. To apply for Preliminary State Authorization the institution must provide to the Commission full documentation that demonstrates fulfillment of the essential conditions ~~and the accreditation standards~~ including evidence of a critical and compelling regional or statewide need or demand for the specific academic degree programs(s) in the state.

~~9.3~~ **Essential Conditions**

9.38.1.a.Familiarity with accreditation and state authorization policies and procedures

The institution shall provide evidence that it is familiar with and understands accreditation procedures of the Higher Learning Commission of the North Central Association or other appropriate body and state authorization policies and procedures. The statement should indicate perceived strengths and weaknesses with respect to accreditation criteria and assess the capabilities of the institution in achieving accreditation status. It shall state the name of the accrediting association from which accreditation will be sought. If the institution has secured full accreditation status, a copy of the final accreditation report shall be submitted to the Commission.

9.38.1.b.Statement of mission

A statement of mission shall have been developed, formally adopted by the institution's governing body and made public, which defines the basic character of the institution, including a brief description of the educational programs to be offered and their purposes, the students for which the programs are intended, the geographical area served by the institution (or the particular constituency it serves), and a description of how the institution will fit within the broader higher education community. The mission shall be appropriate to an institution of higher education and the institution must plan to award degrees. ~~The mission statement shall be provided to the Commission.~~

9.38.1.c.Institutional organization, administration, and delivery sites

9.38.1.c.1. A governing board that possesses and exercises necessary legal power to establish and review basic policies that govern the institution shall have been formally established. The board shall include among its members some who represent the public interest and are sufficiently autonomous from the administration and ownership to assure the integrity of the institution. The Commission shall be provided a list of the members of the board with a brief resume of each.

9.38.1.c.2. An executive officer shall be designated by the governing board to provide administrative leadership for the institution. This officer's name, ~~and~~ title, current vita and the address of the administrative office, shall be provided to the Commission.

9.38.1.c.3. If faculty members are employed at the time the application is filed with the Commission, the faculty members' names ~~themselves~~, their academic credentials (degrees, previous experience, etc.), and teaching fields shall be identified. If no faculty members have been employed, the institution shall describe the qualifications of the faculty that is to be recruited and the procedures that will be used to find and contract with faculty members.

9.38.1.c.4. The method of program delivery and/or physical location of course delivery shall be defined. If a program is designed for on-line delivery, it shall meet best practice guidelines for distance education delivery as outlined by the regional accrediting agency. If the program is designed for traditional classroom delivery, the proposed physical location shall be identified.

8.1.c.5. To assure that instructional delivery sites meet applicable state standards for health and safety, institutions must secure a certificate of occupancy and recent fire inspection report from the State Fire Marshal's office for each instructional delivery site. These requirements are not applicable if delivery is in a public building that already has regular health, safety, and fire inspections upon receipt of last approved inspection. If the nature of the building is changed, additional inspections will be required.

8.1.c.6. Instructional delivery sites must be compliant with Americans with Disabilities Act guidelines.

9.38.1.d. Degrees and academic programs

9.38.1.d.1. A degree shall be awarded upon successful completion of an educational program. The institution shall provide a list of the degrees it proposes to award.

9.38.1.d.2. The planned educational programs shall be compatible with the proposed institutional mission. The relationship shall be described in documents provided to the Commission.

9.38.1.d.3. The academic program proposed for offering shall be appropriately named and be based on fields of study recognized as appropriate for a postsecondary institution. Evidence shall be provided to the Commission that the fields of study upon which the academic programs are to be based are, in fact, so recognized. Such recognition, for example, could be demonstrated by the existence of professional literature in the field; the offering of similar programs in already-accredited institutions, generally; and by the existence of professional organizations related to the field.

9.38.1.d.4. The content and length of the proposed academic program shall follow practices common to institutions of higher education. The commonly accepted minimum program length is: 60 semester credits for associate's degrees, 120 semester credits for bachelor's degrees, 30 semester credits beyond the bachelor's degree for master's degrees, 30 semester credits beyond the master's degree for doctorates.

Academic credit shall be awarded upon completion of each unit of the course of study, leading to a formal award granted by the institution.

Documentation shall be provided to the Commission that lists requirements for each degree program including representative course syllabi specifying goals and requirements, course content, methods of evaluation, and bibliography.

The student-teacher ratio shall be reasonable at all times in keeping with generally accepted teaching modes for the subject matter. The institution must employ at least one full-time faculty for each major.

9.38.1.d.5. Any proposed undergraduate degree program shall include a coherent general education component that is consistent with the institution's mission and appropriate to its educational programs. The undergraduate general education component shall be documented.

General education is defined as follows:

General Education is "general" in several clearly identifiable ways: it is not directly related to a student's formal technical, vocational or professional preparation; it is a part of every student's course of study, regardless of his or her area of emphasis; and it is intended to impart common knowledge, intellectual concepts, and attitudes that every educated person should possess.

The minimum requirement for general education for all undergraduate programs delivered through the traditional distributed curricula is 15 semester credits for technical associate's degrees, 24 for transfer associate's degrees, and 30 for bachelor's degrees. If the general education component is delivered through integrated, embedded, interdisciplinary, or other accepted models, institutions must demonstrate that the program meets minimum requirements equivalent to the distributed model.

9.38.1.d.6. Student access to all necessary learning resources and support services shall be provided. Necessary resources and support services vary by type of program, but all require some use of library resources. Laboratories may be required for some programs. Support services such as academic advising, financial aid counseling, and support for special, targeted, constituencies may be needed. The institution shall describe the learning resources and support services that it will provide and state how they will be provided to students on a regular, dependable basis.

9.38.1.d.7. Distance learning instruction, when offered, should be considered part of the total program and be judged by criteria as used for sessions and courses offered by the institution in the regular academic year. Documentation shall be provided to the Commission that shows that academic standards for all programs or courses offered electronically are the same as those for other courses delivered at the institution. Additionally, any programs that are offered primarily through asynchronous or synchronous technology shall meet the standards of good practice for distance education delivery as outlined by the regional accrediting agency.

9.38.1.e. Admission policies

Admission policies shall be consistent with the institution's mission and appropriate to the educational program. The Commission shall be provided with a copy of the institution's admission policies, policies regarding tuition and fees assessment, and refund policies. The policies shall define the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs. These policies and related publications shall provide a true and accurate representation of the institution and its programs when recruiting students.

8.1.e.1. Degree program admission policies must be at least the following:

8.1.e.1.A. baccalaureate degrees must require a high school diploma or equivalency, and

8.1.e.1.B. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.

8.1.e.2. These policies and related publications shall provide a true and accurate representation of the institution and its programs when recruiting students.

9.38.1.f. Financial resources

The institution shall have financial resources adequate to support start-up activities and sources of funds sufficient to ensure that the institution can sustain itself once students have been admitted. An institution shall continuously ascertain its financial requirements,

determine its sources of revenue, plan for current and future needs, and budget its resources accordingly. The Commission shall be provided with:

9.38.1.f.1. A current financial statement compiled or audited by an independent certified public accountant. If the financial statement is unaudited or internally generated, a copy of the most recent income tax return must also be submitted;

9.38.1.f.2. A budget listing all sources of income and all Educational and General (E&G) expenditures and specifying the dollar amounts and percentages for each component of the budget for the preceding three fiscal years (including the current year). A projection of expenditures and revenues for the upcoming year should be included.

8.1.f.3. The institution shall demonstrate that it has the financial resources and planning to sufficient to realize its mission over an extended period of time. It shall demonstrate that it has adequate financial resources to meet the following: facility maintenance and overhead; staff and faculty payroll; books, supplies, and/or equipment utilized by students; and general operating costs including printing and advertising.

9.38.1.g. Faculty credentials

9.38.1.g.1. The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds appropriate academic credentials in the program area or discipline in which the faculty member teaches. Each instructional faculty member shall either: (1) possess one or more degrees in an appropriate discipline; or (2) as an alternative to formal academic credentials, demonstrate competence by virtue of prior experience or academic training, or both, which are related to the field in which the instruction will be offered.

9.38.1.g.2. The institution shall ensure that each full-time, part-time or adjunct instructional faculty member holds academic credentials appropriate to the degree level of the programs or programs in which the faculty member teaches.

9.38.1.g.2.A. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science degree shall:

-If teaching general education courses, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline taught.

-If teaching occupational/technical courses, hold either an associate degree or qualify for a faculty appointment by virtue of scholarly or professional achievements.

9.38.1.g.2.B. All instructional faculty teaching in a college transfer program at the associate level shall:

-If teaching general education courses or in a program in the liberal arts and sciences, hold a baccalaureate degree plus at least 18 graduate credit hours in the discipline being taught.

-If teaching occupational/technical courses, either hold a baccalaureate degree or qualify for a faculty appointment by virtue of scholarly or professional achievements.

9.38.1.g.2.C. An institution that offers one or more degree programs at the baccalaureate level shall ensure that at least one-third of the instructional faculty, including at least one instructional faculty member teaching in each program, shall hold a doctoral or other terminal degree. All other instructional faculty members who teach in programs at the baccalaureate level shall either:

-Hold a master's degree; or

-Qualify for a faculty appointment by virtue of scholarly or professional achievements.

9.38.1.g.2.D. All instructional faculty teaching in a program at the master's, first professional or doctoral level shall either:

-Hold a doctoral or other terminal degree; or

-Qualify for a faculty appointment by virtue of scholarly or professional achievements.

9.38.1.g.3. An institution must employ faculty members whose highest earned degree presented as the credential qualifying the faculty member to teach at the institution is from an institution accredited by an accrediting body recognized by the U.S. Department of Education. Exceptions may be made only with the prior consent of the Commission.

9.38.1.h. Evaluation and assessment

The institution must have a clearly defined process by which the curriculum is established, reviewed, and evaluated. The institution must provide for appropriate and regular evaluation of the institution and its program and course effectiveness including assessment of student learning, retention, graduation rates and student, graduate, faculty and employer satisfaction. The results must be used to ensure and improve quality of instruction.

9.38.1.i. Tuition policies

9.38.1.i.1. A tuition policy shall be developed that provides:

9.38.1.i.1.A. The total tuition for any specific program shall be the same for all persons enrolled at the same time;

9.38.1.i.1.B. Tuition charges for programs shall be justifiable, effective on specific dates and applicable to all who enroll thereafter;

9.38.1.i.1.C. All extra charges and costs shall be revealed to the prospective student before he or she is enrolled;

8.1.i.1.D. The true and accurate costs of courses and program completion must be published and made readily available to all prospective and current students.

9.38.1.i.2. Institutions that the U.S. Department of Education has approved for eligibility for federal student financial aid must comply with the federal regulations governing institutional refunds. An institution must develop criteria for refunds of tuition and fees and make them available to all students.

9.38.1.j. Financial Aid

A policy shall have been developed that provides prospective students and applicants with basic opportunities for student financial aid. This information shall include but not be limited to: (1) types of federal, state, local, private and institutional aid offered to students at the institution; (2) description of the financial aid application process and the method for determining student eligibility for aid; (3) methods and schedules used to determine and disburse financial aid to students; and (4) statement of the rights and responsibilities of financial aid recipients. A copy of the policy must be attached to Commission submission materials.

Information related to student responsibility for repayment of loans and other financial aid must be readily available to students. Consequences relevant to non-payment and delinquent or default repayment of loans must be published and readily available to students.

9.38.1.k. Library resources

The institution shall maintain or ensure via current and formal written agreements with other libraries or from other resources that students have adequate access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Institutions offering graduate work shall provide library resources that include basic reference and bibliographic works in each field where work is offered and the major journal and serial sets for maintaining currency in each discipline. Utilization of electronic data collections should also be addressed. The institution shall provide clear and concise methods for on-campus and remote access of library electronic media resources and there shall be communication to students in a matter to minimize barriers to usage.

9.38.1.l. Institutional and sStudent records

9.38.1.1.1. The institution shall maintain accurate records on all enrolled students. These records minimally shall include:

9.38.1.1.1.A. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted which are relevant to the institution's admission standards. Each student record must reflect the requirements and justification for admission of the student to the institution. Admission records must be maintained for five years.

9.38.1.1.1.B. Transcript of the student's academic work at the institution shall be retained permanently in either hard copy forms or in a database with backup.

9.38.1.1.1.C. A record of student academic progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades and indication of the

student's status (graduated probation, etc.).

8.1.1.2 Financial records of the institution must be maintained and open for inspection by properly authorized officials of the Commission pursuant to compliance with confidentiality laws.

8.1.1.3 Institutions administering financial aid programs must maintain a ledger and a record of financial aid administered which includes a chronological record of debits and credits which is understandable to the enrollee.

~~9.38.1.1.24~~. The institution must have policies concerning retention and disposal of records and information-release policies which respect the rights of individual privacy, the confidentiality of records and the best interests of the student and institution.

~~9.38.1.1.35~~. The institution shall have a written plan for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of institutional closure.

8.1.m. Catalog and Official Publications

8.1.m.1. Official publications of the institution shall reflect the institution's integrity, commitment, and reputation and convey its sense of mission, character, goals and objectives to the public. All information released by the institution must be true and accurate.

8.1.m.2. Official catalogs must describe the institutional mission, requirements for satisfactory completion of degree programs, student policies, information on enrollment, tuition and fees, faculty credentials, academic calendar, student grievance procedure, transferability of credit, and other information specifically applicable to students.

9.38.1.n. Student grievances

An institution shall publish and make available to all students the institution's grievance policies and procedures regarding the receipt, investigation and resolution of student complaints. These policies must include:

~~9.38.1.n.1~~. An appropriate time frame for investigating and resolving the complaint;

~~9.38.1.n.2~~. Safeguards that those persons charged with resolving the

complaint are capable of making a fair and impartial judgment;

~~9.38.1.n.3.~~ Procedures to ensure that a student will not be subject to unfair actions as a result of an initiation of a complaint proceeding; and

~~9.38.1.n.4.~~ The maintenance of records, disposition and other pertinent information concerning institutional complaints for at least five years.

~~9.38.1.o.~~ Other criteria deemed to be pertinent.

~~9.4. Accreditation Standards.~~

~~9.4.1. Accredited on the basis of an on-site review in West Virginia by one of the six regional accrediting associations; or~~

~~9.4.2. Accredited by an acceptable alternative accrediting agency determined by the Commission to be appropriate to its educational purposes and programs; or~~

~~9.4.3. Provide evidence that the institution is making reasonable and timely progress toward such accreditation, as determined by or in accordance with standards determined by the Commission.~~

~~9.58.2.~~ The Commission, at its discretion, may waive all or part of the reporting requirements in section 13 of this rule for nationally or regionally accredited institutions seeking authorization to offer credit courses or academic degree programs.

~~§133-20-109. Procedures For Review Of Essential Conditions And Accreditation Status, Private College Or University Termination of State Authorization.~~

~~10.1. As the first step toward state authorization, the executive leaders of an institution seeking state authorization to operate in West Virginia as a private college or university shall consult with the Director of Academic Affairs or designee and shall submit any appropriate documents or materials related to authorization, including those which address the essential conditions and accreditation standards in sections 9.3 and 9.4, as may be requested. The Commission staff may organize a site visit of any institutional facilities if deemed necessary.~~

~~109.21. Termination of Authorization. The Commission staff shall review the documentation submitted by the institution and determine whether the institution meets the essential conditions in section 9.3.~~

- 9.1.a. An institution shall provide the Commission with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) days of receipt of such notice.
- 9.1.b. The Commission may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, or forfeit the institution's surety bonds, or take any other appropriate action. Good cause shall consist of:
- 9.1.b.1. The institution is no longer making reasonable and timely progress toward accreditation while assigned Preliminary or Probationary State Authorization;
 - 9.1.b.2. Loss of accreditation by a nationally or regionally recognized accrediting agency;
 - 9.1.b.3. Cancellation of the institution's bond by the bonding company and failure to secure a replacement in accordance with this rule;
 - 9.1.b.4. Providing false, misleading, or incomplete information to the Commission;
 - 9.1.b.5. Presenting information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect to students or prospective students;
 - 9.1.b.6. Refusal to allow reasonable inspection or to supply reasonable information after a written request by the Commission has been received;
 - 9.1.b.7. A final determination that the institution has engaged in conduct prohibited by this rule, and any specified corrective action has not been taken within the required time;
 - 9.1.b.8. Closure of the institution without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the institution's contractual obligations to the students;
 - 9.1.b.9. Conviction of the owner of an institution for a felony or crime involving administration of the institution or involving Federal Student Assistance programs.
 - 9.1.b.10. Repeated and/or consistent violations of the guidelines found in this rule, particularly in areas such as advertising, fair consumer practices, or operational standards.
 - 9.1.b.11. Exclusion from eligibility to participate in the West Virginia Higher Education Grant Program due to one of the following reasons:

9.1.b.11.A. The institution does not have a signed participation agreement in place; or

9.1.b.11.B. The institution has been deemed ineligible to participate in federal student financial aid programs by the United States Department of Education; or

9.1.b.11.C. The Commission has determined, based upon audits and/or administrative site visits by Commission staff, that the institution has seriously mismanaged higher education grant or other state financial aid funds or lacks adequate institutional controls to manage such funds properly.

9.1.b.12. Failure to submit an acceptable annual report, an incomplete or unsatisfactory annual report, as determined by Commission staff and as referenced in section 13 of this rule.

9.1.c. An institution authorized as a religious, theological or faith-based college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase-out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed within ten (10) working days. In the absence of a timely appeal the termination shall be final.

9.2. Notification to Cease Offering Degrees or Degree Credits

Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.

~~10.3 The Commission staff shall determine whether the institution is accredited either by:~~

~~(a) one of the six nationally recognized accrediting associations, or~~

~~(b) an accrediting association recognized by the United States Department of Education and determined as appropriate to the institution's educational purposes and programs by the Commission.~~

~~10.4 If the institution does not hold accreditation, the Commission staff shall request submission of information verifying its accreditation status and/or evidence of "reasonable and timely progress" toward accreditation. Reasonable and timely progress toward accreditation is understood to be a status with the regional~~

~~accrediting association or an acceptable alternative accrediting association recognized by the U.S. Department of Education (recognition shall be documented) that indicates that the institution has been determined to hold the potential for accreditation and is actively pursuing accreditation within the timetable established by the regional accrediting association (unless an alternative timetable has been presented to and accepted by the Commission).~~

~~10.5 Consultation, Review of Documents, and Assignment of Institutional Status~~

~~10.5.1 After the consultation and review of all documents submitted, the Commission shall assign the institution to one of the following categories:~~

~~10.5.1.1 Category I, Accredited Out of State Institutions~~

~~Institutions in this category are formed, chartered or established outside West Virginia and have been fully accredited by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education as approved by the Commission. An institution in Category I has its location outside West Virginia. Such institution is seeking to offer courses and/or an academic degree programs in West Virginia.~~

~~10.5.1.2 Category II, Accredited In State with On Site West Virginia Review~~

~~Institutions in this category are accredited on the basis of on-site review in West Virginia by a regional accrediting association or by another accrediting body recognized by the U.S. Department of Education as approved by the Commission. An institution in Category II is one which is seeking authorization to relocate or to establish a branch campus in West Virginia.~~

~~10.5.1.3 Category III, Accredited In State Without On Site West Virginia Review~~

~~Institutions accredited by a regional accrediting association or another accrediting body recognized by the U.S. Department of Education, as approved by the Commission, but not on the basis of an on-site review in West Virginia shall have a period of one year from the date its activities begin in West Virginia to obtain such a review. The time limit may be extended upon presentation of documentation of good cause. Once the institution has received accreditation on the basis of on-site review in West Virginia, it shall be assigned Category II status.~~

~~10.5.1.4 Category IV, Maintaining Reasonable and Timely Progress
Toward Accreditation~~

~~Institutions in this category are making reasonable and timely progress toward accreditation in accordance with the statute and continue to make such progress in accordance with the policies and timetable outlined in section 10.7, below. An institution in Category IV is one which is seeking authorization to locate a campus in West Virginia.~~

~~10.6 Authorization Out of State Institutions Category I~~

~~10.6.1 Any higher education institutions having its principal place of operation outside West Virginia which desires to offer degrees or courses within West Virginia must be authorized by the Commission.~~

~~10.6.2 The institution must submit an application for approval to the Commission for each course or degree program to be offered at a site. The application should include written unconditional assurance that:~~

~~10.6.2.1 Each course, program of study, or degree, diploma, or certificate program proposed to be offered in West Virginia has been approved by the governing board of the institution, and if applicable, by the appropriate state agency in the state where the main campus of the institution is located.~~

~~10.6.2.2 The institution has been approved as necessary by the appropriate agency, if any, in the state where the main campus of the institution is located to:~~

~~(a) Offer degree, diploma, or certificate programs at the level for which credit is proposed to be awarded in those programs in West Virginia; and~~

~~(b) Offer degree programs outside the state where the main campus is located.~~

~~10.6.2.3 Any credit earned in West Virginia can be transferred to the institution's principal location outside West Virginia as part of an existing degree, diploma, or certificate program offered by the institution.~~

~~10.6.2.4 The institution offers the same program at the same level at its principal location outside West Virginia that it seeks to offer in West Virginia.~~

~~10.6.3 In making its determination, the Commission will consider whether the proposed degree programs or courses duplicate existing offerings of other institutions of higher education at the locations for which approval is requested.~~

~~10.6.4 Authorization for degree programs may be for a period of up to four years.~~

~~Authorization for courses may be granted for a period of one year at a specified location with an application for renewal of the authorization required to be filed annually with the Commission at least ninety days prior to the expiration of the authorization.~~

~~10.6.5 The Commission may waive any or all of the reporting requirements for Category I institutions that are delineated in section 9.3 of this rule.~~

~~10.7 Authorization Policies and Timetables for Newly Established Institutions and Currently Operating Institutions Seeking Accreditation; Fees~~

~~10.7.1 Procedures for Institutions Applying for Initial State Authorization: Preliminary State Authorization~~

~~10.7.1.1 Prior to the acceptance of students, the offering of instruction, the award of credits toward a degree, or the award of a degree, an organization that seeks to be authorized as a "private college or university" shall provide to the Commission evidence that clearly and fully documents that it is an institution that meets the Essential Conditions and that can meet the accreditation criterion for state authorization. An institution seeking Preliminary State Authorization shall demonstrate that it is such an institution by providing information as described in section 9.3.~~

~~10.7.1.2 An initial application fee of \$2,000 shall accompany the submission of documentation required in section 9.3.~~

~~10.7.1.3 The Commission staff shall review documentation required in section 9.3 and shall determine whether or not the institution is in substantial compliance with the essential conditions. If the documentation indicates substantial compliance, the Commission staff will prepare a report with recommendation for Commission action.~~

~~10.7.1.3.1 Before preparing a report, the Commission staff may organize a committee to visit the site(s) of the institution seeking state authorization. The principal task of the site visit committee will be to verify that the institution complies with the~~

~~Commission's standards for preliminary authorization and to report its findings to the Commission.~~

~~The site visit committee shall be composed of:~~

- ~~a) Persons who are qualified by academic training or professional experience to verify the institution's compliance with Commission standards for approval.~~
- ~~b) Members of the Commission staff. The Director of Academic Affairs or designee shall serve as chair of the committee.~~

~~The site visit will be scheduled at a time which is mutually convenient to the institution and the Commission. The institution shall pay the reasonable expenses associated with the site visit.~~

~~10.7.1.3.2 Following the site visit, the Commission staff will prepare a report that contains:~~

- ~~a) a signed report by the site visit committee; and~~
- ~~b) a recommendation by the Commission staff for action by the Commission regarding granting preliminary authorization as provided for in section 10.7.1.4.~~

~~10.7.1.3.3 A draft of a staff report prepared in accordance with this section will be provided to the institution for correction of factual errors and comment. The institutional comments will be included with the staff report presented to the Commission.~~

~~10.7.1.4 An institution that provides satisfactory information will be granted Preliminary State Authorization by the Commission for a period of time up to six (6) months. Within that period of time the institution shall satisfactorily complete preliminary information as required by the regional or other appropriate, acceptable, accrediting association, and shall not accept students, offer instruction, award credits toward a degree, or award a degree until granted Category IV authorization status.~~

~~10.7.1.5 Upon presentation of documentation that the preliminary information submitted to the accrediting association is complete~~

~~and satisfactory, the Commission will grant the institution Category IV state authorization, "Making Reasonable and Timely Progress Toward Accreditation." The institution shall continue the accreditation process immediately.~~

~~Upon receipt of Category IV authorization the institution shall:~~

- ~~(a) Immediately establish an evaluation schedule with the Higher Learning Commission of the North Central Association of Colleges and Schools or other appropriate accrediting association~~
- ~~(b) Initiate the institutional self study;~~
- ~~(c) Host an on-site accreditation visit within 24 months of receipt of Category IV authorization status unless that time limit has been expressly modified by the Commission because of extenuating circumstances.~~

~~Failure to pursue accreditation continuously shall result in loss of state authorization.~~

~~10.7.1.6 An institution with Category IV state authorization shall submit an annual report in a format determined by Commission staff. The annual report should include the following:~~

- ~~(a) any changes or additions to information previously submitted as part of the basis for category IV authorization;~~
- ~~(b) copy of current catalog with major changes cited;~~
- ~~(c) the latest financial statement from the most recent institutional fiscal year;~~
- ~~(d) an enrollment report from the most recent academic year;~~
- ~~(e) a list of all institutional personnel including staff, instructors and agents;~~
- ~~(f) such other information or clarification deemed necessary by Commission staff for determination of authorization recommendation.~~

~~10.7.1.7 A fee of \$500 shall accompany the submission of the annual report.~~

~~10.7.1.8 Following the on-site accreditation visit, the institution shall be continued in Category IV status pending action by the Higher Learning Commission of the North Central Association of Colleges and Schools or other appropriate accrediting association. When that action has been taken, the institution shall immediately notify the Commission which will then assign the institution an authorization status from among the following:~~

- ~~(a) Category II, Accredited, as a result of the decision by the accrediting association to accredit the institution. This status shall change only if the accrediting association changes the institution's accreditation status. An accredited private college or university shall notify the Commission following each formal action of the accrediting association with respect to its accreditation.~~
- ~~(b) Continuation of Category IV, Maintaining Reasonable and Timely Progress Toward Accreditation, based upon the accrediting association decision to grant the status of Candidate for Accreditation to the institution. An institution that holds candidacy for accreditation shall submit semi-annual reports to the Commission documenting its progress toward the achievement of accreditation consistent with policy of appropriate accreditation associations. Continuation of Category IV status shall not extend beyond 6 years.~~
- ~~(c) Not authorized as a result of denial of accreditation by the accrediting association.~~
- ~~(d) Continuation of Category IV status pending on appeal of denial of accreditation by the Higher Learning Commission of the North Central Association. Continuation on these grounds shall only be granted upon showing good cause to the Commission. An institution's final authorization status will be based upon the action taken by the accrediting association.~~

~~10.7.1.9 An institution that does not attain either accreditation or candidacy for accreditation status after its initial on-site accreditation review, but can fully demonstrate continuing progress toward accreditation and the likelihood of achieving a satisfactory status upon a second on-site review, may be continued in Category IV. The institution shall have no longer than 24 months to schedule a second on-site review in order to attempt to achieve accreditation or candidacy for accreditation status. Failure to achieve either result in the second attempt shall result in loss of state authorization.~~

~~10.7.1.10 An institution that is denied preliminary state authorization by the Commission may appeal the decision in accordance with the provisions of section 12 of this rule.~~

~~§133-20-11. AUTHORIZATION AND TERMINATION OF STATE AUTHORIZATION~~

~~11.1—Notification of Authorization Status~~

~~11.1.1 Any institution that is granted authorization may receive written notification of acceptable status upon request. Private colleges or universities authorized in Category III shall receive written notification of the time limits for a satisfactory on-site West Virginia accreditation review.~~

~~11.2—Termination of Authorization; Notification; Appeal~~

~~11.2.1 An institution shall provide the Commission with a copy of any notice of warning, suspension, revocation or other adverse action received from any national or regional accrediting agency within five (5) days of receipt of such notice~~

~~11.2.2 The Commission may for good cause, suspend, withdraw or revoke the authorization of an institution to generate or solicit students within the state, place an institution on probation, order refunds to students, or forfeit the institution's surety bonds, or take any other appropriate action. Good cause shall consist of:~~

~~11.2.2.1 The institution is no longer making reasonable and timely progress toward accreditation while assigned a category IV designation as defined in section 10.5.1.4.~~

~~11.2.2.2 Loss of accreditation by a nationally or regionally recognized accrediting agency;~~

~~11.2.2.3 Cancellation of the institution's bond by the bonding company and failure to secure a replacement in accordance with this rule;~~

~~11.2.2.4 A final determination that the institution has engaged in conduct prohibited by this rule, and any specified corrective action has not been taken within the required time;~~

~~11.2.2.5 Closure of the institution without adequately providing for the completion of students' classes or course work, without refunding students' unearned tuition or otherwise discharged the institution's contractual obligations to the~~

students;

~~11.2.2.6 Conviction of the owner of an institution for a felony or crime involving administration of the institution or involving Federal Student Assistance programs.~~

~~11.2.3 An institution authorized as a seminary or Bible college that fails to continue to meet the criteria for a religious institution shall have its authorization terminated. The institution shall be so notified in writing. A phase out period of not more than one additional academic term shall be permitted. An appeal to the Commission may be filed. In the absence of a timely appeal the termination shall be final.~~

~~11.2.4 Notification to Cease Offering Degrees or Degree Credits~~

~~Institutions that are not authorized but offer degrees and/or degree credits in West Virginia shall be notified by certified mail that they shall cease immediately to offer degrees and/or degree credits. The Commission shall initiate appropriate legal action if institutions fail to comply.~~

§133-20-120. Notification: Appeals.

~~120.1. Upon receipt by the Commission~~ Once the Commission has received and verified the accuracy of information constituting any of the grounds identified in section ~~11.2.2~~ 9 or denial of preliminary authorization, the Commission shall notify the institution and its owner in writing of its intent to recommend denial, suspension, withdrawal, revocation, or other adverse action and the grounds for such recommendation.

~~120.1.a.~~ The owner of the institution may, within ten (10) work days of receipt of such notice, request a hearing upon the recommended action. Such hearing, if requested, shall be commenced within twenty (20) work days of such request at the Chancellor's office or at such other location convenient to the parties and witnesses as may be designated by the Chancellor.

~~120.1.b.~~ The hearing shall be conducted by the Chancellor of the Commission or his/her designee, pursuant to the procedures set forth in Chapter 29A, Article 5 of the Code of West Virginia.

~~120.1.c.~~ The Chancellor or his/her designee may continue the hearing at the request of the institution for good cause shown. Continuance shall not be granted as a matter of right.

- 120.1.d. If the owner or a representative of the institution does not request a hearing within the requisite time period, the recommendation of the Chancellor or his/her designee shall be deemed unchallenged by the institution and reported to the Commission for final action.
- 120.2. At the hearing, the grounds for denial, suspension, withdrawal, or revocation of authorization to operate the institution or other adverse action must be established by clear and convincing evidence.
- 120.3. Irrelevant, immaterial, or unduly repetitious evidence may be excluded from the hearing. Formal rules of evidence as applied in civil cases in the circuit courts of this state shall not be applied. When necessary to ascertain facts not reasonably susceptible of proof under those formal rules of evidence not admissible there under may be admitted, except where precluded by statute, if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- 120.4. The rules of privilege recognized by the law of this state shall be followed.
- 120.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.
- 120.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Chancellor or his/her designee; and, may cross-examine witnesses called by the Commission in support of the charges.
- 120.7. The hearing shall be open to the general public.
- 120.8. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Commission's files. All reported materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.
- 120.9. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

- ~~120.10.~~The Commission may call witnesses to testify in support of charges and may present such other evidence to support its position; and, may cross-examine witnesses called by the charged party in support of its position.
- ~~120.11.~~All parties shall have the right to offer opening and closing arguments.
- ~~120.12.~~Hearings may be continued or adjourned to a later date or different place by the Chancellor or his/her designee by appropriate notice to all parties.
- ~~120.13.~~All motions related to a case set for hearing, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Chancellor at least ten (10) days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony.
- ~~12.14~~ ~~All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.~~
- ~~12.15~~ ~~All reported materials shall be transcribed. The Commission shall have the responsibility to make arrangements for the transcription and provision of the reported testimony and evidence to the parties.~~
- ~~120.16~~~~4.~~Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Chancellor or his/her designee.
- ~~120.17~~~~5.~~At any time prior to the hearing or thereafter, the Chancellor or his/her designee may hold conferences for the following purposes:
- ~~10.15.a.~~ To dispose of procedural requests, pre-hearing motions or similar matters;
 - ~~10.15.b.~~ To simplify or settle issues by consent of the parties; or,
 - ~~10.15.c.~~ To provide for the informal disposition of cases by stipulation or agreement.
- ~~120.18~~ ~~6.~~The Chancellor or his/her designee may cause such conferences to be held on its own motion or by the request of a party.
- ~~120.19~~~~7.~~Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.
- ~~120.20~~~~18.~~Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Chancellor pursuant to West Virginia Code section 29A-5-1(b).

~~120.21~~19. Written requests by a party for the issuance of subpoenas duces tecum as provided in section ~~42~~10.18 of this rule must be received by the Commission no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with West Virginia Code section 29A-5-1(b).

~~120.22~~20. Any final order entered by the Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of West Virginia Code section 29A-5-3. Such orders shall be entered within sixty (60) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law unless good cause exists to extend such time or by agreement of the parties.

~~120.23~~1. Findings of fact and conclusions of law shall be recommended to the Commission by the Chancellor or his/her designee and must be approved by a majority of the Commission by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Commission shall be served upon the institution and/or his or her attorney of record, if any, within ten (10) days after entry by the Commission by personal service or by registered or certified mail.

~~120.24~~2. The final order may deny preliminary authorization; may suspend, withdraw or revoke the authorization of the institution, place an institution on probation; order refunds to students; order forfeiture of the institution's surety bond and disbursement of the funds forfeited disbursed to students injured by the institution's violation of this rule or its enabling statute; or order any other action deemed appropriate by the Commission, up to and including payment of loans, interest and other charges in connection with institution loans, other out-of-pocket damages, and any nominal damages caused a student by the institution's violation of this rule.

~~120.25~~3. All proceedings pursuant to this rule shall be conducted pursuant to and comply with applicable statute, including, but not limited to, West Virginia Code section 29A-5-1, et seq.

~~120.26~~4. Any relief a student believes he or she was not rightfully awarded by the Commission pursuant to this rule may be pursued in any other appropriate forum.

§133-20-~~13~~1. Notification and Deposit of Records Upon Discontinuance of a Program or Institution.

131.1. If an authorized institution, branch campus, or extension program of an authorized institution discontinues operation in this state, its chief

executive officer shall notify the Commission of the date of discontinuance and the name and address of the agency where records will be maintained.

131.2. Records shall be permanently maintained and copies may be obtained by authorized parties. Such records shall include but not be limited to information pertaining to the admission of each student and former student and the educational record of each student and former student. Financial aid records of each student and former student shall be retained consistent with state and federal regulations.

11.3. When an institution decides to cease postsecondary education operations, it must assist students to find alternative means to complete their studies with a minimum of disruption, and inform the Commission of the following:

11.3.a. the planned date of termination of postsecondary education operations;

11.3.b. the planned date for the transfer of student records;

11.3.c. confirmation of the name and address of the organization to receive and hold the student records; and

11.3.d. the official at the organization receiving the student records who is designated to provide official copies of records or transcripts upon request.

§133-20-142. Advertisements, Announcements and Other Promotional Materials.

124.1 An institution seeking authorization shall adhere to the following principles:

124.1.a. “Advertising” includes any form of public notice however distributed. Within this definition would be virtually all publications and promotional items and efforts that could normally be expected to be seen by significant numbers of prospective students or their sponsors. Examples include catalogs, bulletins, brochures and other institution publications, signs, mailing pieces, radio, television, newspaper, electronic or social media, or any other form of public notice designed to aid in the institution’s recruiting and promotional activities.

124.1.b. An institution shall use its name as shown in its letter of approval from the Commission, together with a complete address, for all advertising and promotional purposes within the state.

- 124.1.c. All advertisements, announcements and promotional material of any kind which are distributed in West Virginia shall be free from statements that are untrue, deceptive or misleading with respect to the institution, its personnel, its services or the content, accreditation status and transferability of its courses, ~~or degree, diploma~~ or certificate programs.
- 124.1.d. Reference in advertising to accreditation shall name the agency and shall be limited to accreditation currently held by the institution through nationally recognized accrediting agencies as defined and listed by the United States Department of Education.
- 124.1.e. No advertisement, announcement or any other material produced by or on behalf of an institution of higher education shall in any way indicate that the institution is supervised, recommended, endorsed or accredited by the Commission; neither shall it include the name of the Commission except to assert that the Commission has authorized the institution to operate in the state.

§133-20-13. Ongoing Monitoring.

- 13.1. The Higher Education Policy Commission shall monitor institutional academic quality, an institution's financial viability, and compliance with the provisions of this rule and West Virginia laws with respect to consumer protection and other matters of State oversight.
- 13.2. Any postsecondary institution authorized to operate within West Virginia prior to the effective date of this rule is exempt from the monitoring requirements of this rule.
- 13.3 Each institution with full state authorization must demonstrate ongoing compliance with the essential conditions in an annual report submitted in a format determined by Commission staff. If the institution is found in compliance, the institution's approval may be continued with the timeframe for periodic monitoring determined by the Commission or its designee. The annual report should be submitted by July 1 each year and should include the following:
- 13.3.a. any changes or additions to information relative to the Essential Conditions of section 8.1 of this rule previously submitted as part of the basis for currently granted authorization;
- 13.3.b. such other information or clarification deemed necessary by Commission staff for determination of an authorization recommendation.

- 13.4. A nonrefundable fee of \$200 shall accompany the submission of the annual report.
- 13.5. The annual fee and annual report requirements shall be applicable for all years of authorization through the Commission. The Commission may adjust all fees charged as deemed necessary.

§133-20-14. Student Complaints.

- 14.1. Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure or discrepancies between verbal and written information, intimidation or coercion may require corrective public announcements or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or instructional authorization.
- 14.2. Institutions authorized under this rule must report to the Commission in writing within 30 days any unresolved written complaints about their operation of which they are knowledgeable (including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within 30 working days of the receipt of the written complaint at the Commission offices. Complaints shall be considered as a factor in the decision when authorization to operate or continue in operate is sought.

**West Virginia Higher Education Policy Commission
Meeting of October 5, 2010**

ITEM: Approval of Refunding of the West Virginia Higher Education Interim Governing Board University Facilities Revenue Bonds Series 2001A

INSTITUTION: Marshall University

RECOMMENDED RESOLUTION: *Resolved*, That the West Virginia Higher Education Policy Commission approves the resolution drafted by bond counsel authorizing the issuance by the Board of Governors of Marshall University of up to \$45,000,000 in aggregate principal amount of the Board's University Refunding Revenue Bonds Series 2010.

STAFF MEMBER: Richard Donovan

BACKGROUND:

In June 2001, the West Virginia Higher Education Interim Governing Board authorized the issuance of \$46,610,000 of Revenue Bonds for Marshall University. The Bonds are secured by and payable from the revenues of the dormitories and parking facilities and certain funds held under the Trust Indenture between the Interim Governing Board and the Trustee. The proceeds of the Bonds were used by Marshall to finance a portion of the costs of design, acquisition, construction, and equipping of a new student housing complex for up to 500 students, including a cafeteria and ancillary facilities. The proceeds also assisted with the acquisition of real estate for a portion of the housing complex site; demolition of the Doctors Memorial Building to create new parking; design acquisition, construction, and equipping of a new parking garage; and repairs and improvements to existing dormitories.

The Refunding Bonds will be issued by the Marshall University Board of Governors in an aggregate principal amount not to exceed \$45,000,000 and will be fully paid in May 2031, which is the same pay-off date as the Interim Governing Board Bonds. The proceeds will be used to advance refund the Interim Governing Board Bonds and to pay the costs of issuance. Originally, the Board of Governors was considering issuing additional bonds to finance new capital projects but has decided not to do so at this time.

The Board of Governors is considering two different financing proposals that were prepared by Citigroup Global Markets, Inc. for the refunding as follows:

- Scenario One provides a net present value savings from the refunding of \$2,367,824.56 as of September 29, 2010. This scenario provides for the maturity of the 2011 Interim Governing Board Bonds not to be refunded on May 1, 2011 and a limited principal payment requirement on May 1, 2012. Under this scenario there will be very limited savings for the remaining term of the Refunding Bonds because the savings will be taken in the first two years, 2011 and 2012, rather than spread over the term of the Refunding Bonds.
- Scenario Two provides a net present value savings from the refunding of \$2,385,870.46 as of September 29, 2010. This scenario provides for the 2011 maturity of the Interim Governing Board Bonds to be refunded on May 1, 2011 and for the University to take most of the debt service savings in the initial year of the Refunding Bonds. There will be very limited savings for the remaining term of the Refunding Bonds.

According to the most recent information from the University's bond audit for the fiscal years ending June 30, 2009 and 2010, the debt service ratio for the Interim Governing Board Bonds was 3.29 for 2009 and 3.53 for 2010. This information demonstrates more than adequate debt service coverage for Interim Governing Board Bonds and the Refunding Bonds.

The resolution to be adopted by the Commission to authorize issuance of the Refunding Bonds has been prepared by Steptoe & Johnson, PLLC, bond counsel for the Board of Governors, and is presented in the following pages. Commission staff recommend adoption of the resolution.

Policy Commission Approving Resolution

HIGHER EDUCATION POLICY COMMISSION

APPROVING RESOLUTION

**Board of Governors of Marshall University,
University Refunding Revenue Bonds, Series 2010**

Adopted: October __, 2010

APPROVING RESOLUTION OF THE
HIGHER EDUCATION POLICY COMMISSION

RESOLUTION APPROVING THE ISSUANCE BY THE BOARD OF GOVERNORS OF MARSHALL UNIVERSITY OF NOT TO EXCEED \$45,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE BOARD'S UNIVERSITY REFUNDING REVENUE BONDS, SERIES 2010 (THE "REFUNDING BONDS"); MAKING CERTAIN DETERMINATIONS WITH RESPECT TO THE REFUNDING BONDS AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO.

WHEREAS, the Higher Education Policy Commission (the "Commission") has reviewed a plan presented by Marshall University (the "University") for the advance refunding of the West Virginia Higher Education Interim Governing Board, University Facilities Revenue Bonds, Series 2010 A (Marshall University Projects) issued in the original principal amount of \$46,610,000 (the "Prior Bonds") through the issuance of revenue bonds by the Board of Governors of Marshall University (the "Marshall Board");

WHEREAS, the Prior Bonds were issued for the purpose of financing the costs of design, acquisition, construction, and equipping of a new student residence hall complex for up to 500 students, including a cafeteria and ancillary facilities, the acquisition of certain real estate, constituting a portion of the site therefore, the demolition of the Doctors Memorial Building to create new parking, the design, acquisition, construction and equipping of a new parking garage and repairs, renovations and improvements for certain existing dormitories on the University's Huntington, West Virginia campus;

WHEREAS, pursuant to the authority contained in Chapter 18B, Article 10, Section 8 of the West Virginia Code of 1931, as amended (the "Act"), no revenue bonds may be issued by a state institution of higher education without the Commission approving the proposed revenue bonds, making certain findings with respect to the proposed revenue bonds and authorizing the terms of the proposed revenue bonds;

WHEREAS, pursuant to the Act, the Commission has reviewed the plan for refunding the Prior Bonds and the proposed financing therefor through the issuance of the Marshall Board's University Refunding Revenue Bonds, Series 2010 (the "Refunding Bonds") in an aggregate principal amount not to exceed \$45,000,000;

WHEREAS, based upon such review, the Commission has determined that the plan for refunding the Prior Bonds and the proposed issuance of the Refunding Bonds are clearly in the best interests of the University, its students and the community to be served, and meets all guidelines set forth in the Act, and that the plan for refunding the Prior Bonds and issuing the Refunding Bonds should be approved;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HIGHER EDUCATION POLICY COMMISSION AS FOLLOWS:

1. That the plan for refunding the Prior Bonds and the proposed issuance of the Refunding Bonds in accordance with and as described in the Bond Authorizing Resolution of the Marshall Board, attached hereto as EXHIBIT A (the “Bond Authorizing Resolution”) and incorporated herein by reference, be approved.
2. That the Commission determines that the aggregate amount of the Refunding Bonds does not exceed the amount which can be paid as to principal and interest and reasonable margins therefor from the revenues pledged to the payment thereof.
3. That the Commission approves and authorizes the issuance of the Refunding Bonds and hereby determines that the Refunding Bonds shall be issued in accordance with and shall bear the final terms as shall be set forth in the required Certificate of Determinations as executed by an authorized officer of the University so long as such terms are within the parameters set forth in the Bond Authorizing Resolution.
4. That this Resolution shall take effect immediately upon adoption.

Adopted this ____ day of October, 2010.

Chairman

Secretary

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Secretary of the Higher Education Policy Commission does hereby certify that the foregoing Resolution was duly adopted by the members of the Commission at a regular meeting duly held, pursuant to proper notice thereof, on October __, 2010, at Institute, West Virginia, a quorum being present and acting throughout, and which Resolution is a true, correct and complete copy thereof as witness my hand and the seal of the Commission this _____, __, 2010.

Secretary, Higher Education Policy
Commission

EXHIBIT A

[COPY OF MARSHALL BOARD OF GOVERNORS RESOLUTION]

**RESOLUTION OF THE MARSHALL UNIVERSITY
BOARD OF GOVERNORS**

RESOLUTION AUTHORIZING THE REFUNDING OF CERTAIN OUTSTANDING BONDS PREVIOUSLY ISSUED BY THE WEST VIRGINIA HIGHER EDUCATION INTERIM GOVERNING BOARD ON BEHALF OF MARSHALL UNIVERSITY AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS; AUTHORIZING THE FINANCING OF THE COSTS OF SUCH REFUNDING, CERTAIN CAPITAL IMPROVEMENTS AND RELATED EXPENSES THROUGH THE ISSUANCE BY THE MARSHALL UNIVERSITY BOARD OF GOVERNORS OF REVENUE BONDS IN ONE OR MORE SERIES OF TAXABLE OR TAX-EXEMPT OBLIGATIONS, OR ANY COMBINATION THEREOF, IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$45,000,000; AUTHORIZING THE EXECUTION OF A TRUST INDENTURE WITH RESPECT TO EACH SERIES OF BONDS; AUTHORIZING THE SALE OF EACH SERIES OF BONDS TO CITIGROUP GLOBAL MARKETS INC., CREWS & ASSOCIATES, INC. AND RAYMOND JAMES & ASSOCIATES, INC. PURSUANT TO ONE OR MORE BOND PURCHASE AGREEMENTS WITH RESPECT TO THE BONDS AND THE EXECUTION AND DELIVERY OF SUCH BOND PURCHASE AGREEMENTS; AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT FOR EACH SERIES OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS AND AGREEMENTS IN CONNECTION WITH EACH SERIES OF THE BONDS, INCLUDING BUT NOT LIMITED TO A CONTINUING DISCLOSURE AGREEMENT, PRELIMINARY OFFICIAL STATEMENT, OFFICIAL STATEMENT AND A TAX CERTIFICATE; DELEGATING TO THE PRESIDENT AND THE SENIOR VICE PRESIDENT FOR FINANCE AND ADMINISTRATION OF MARSHALL UNIVERSITY AND THE CHAIRMAN AND VICE-CHAIRMAN OF THE MARSHALL UNIVERSITY BOARD OF GOVERNORS CERTAIN RESPONSIBILITIES IN CONNECTION WITH THE SALE AND ISSUANCE OF EACH SERIES OF THE BONDS, INCLUDING THE SELECTION OF A TRUSTEE THEREFOR, THE PURCHASE OF MUNICIPAL BOND INSURANCE FOR EACH SERIES OF THE BONDS, THE DESIGNATION OF A PORTION OF THE BONDS AS TAXABLE BUILD AMERICA BONDS AND THE INVESTMENT OF BOND PROCEEDS; AND TAKING OTHER ACTIONS IN CONNECTION WITH THE SALE AND ISSUANCE OF THE BONDS

WHEREAS, the Board of Governors of Marshall University (the “Board”) proposes to refinance all or a portion of the following outstanding bonds previously issued by the West Virginia Higher Education Interim Governing Board (the “Refunding”): \$40,690,000 West Virginia Higher Education Interim Governing Board, University Facilities Revenue Bonds, Series 2001 A (Marshall University Projects) and to provide for the financing of certain capital improvements (the “Projects”), if any, as may be determined by an Authorized Representative (as defined herein) and listed in Exhibit C to the Certificate of Determination (as defined herein); and

WHEREAS, pursuant to the authority contained in Chapter 18, Article 23 of the Code of West Virginia, 1931, as amended (the “Bond Act”) and Chapter 13, Article 2G of the Code of West Virginia, 1931, as amended (the “State Refunding Bond Act,” and together with the Bond Act, hereinafter collectively referred to as the “Act”), this Board is authorized to issue revenue bonds to finance the costs of the Refunding, the Projects, if any, and related expenses, including the costs of issuance of the Bonds; and

WHEREAS, this Board has determined to issue revenue bonds in one or more series as tax-exempt obligations in an aggregate principal amount of not to exceed \$45,000,000 with respect to the Refunding and the financing of the Projects, if any, (collectively, the “Bonds”), pursuant to the Act and for the purposes set forth above (provided, that the portion of the Bonds allocable to the Projects, if any, may be issued as federally tax-exempt or taxable bonds); and

WHEREAS, the Bonds will be issued pursuant to the terms of and secured under one or more Bond Trust Indentures or other Security Agreements (whether one or more, the “Indenture”) between the Board and the trustee to be selected as described herein (the “Trustee”); and

WHEREAS, the principal of and interest on the Bonds will be payable and secured by rents, fees, charges or other income received by or accrued to Marshall University (the “University”) from the operation and use of all dormitories, student housing facilities, food service facilities and motor vehicle parking facilities now or hereafter situate on the Huntington, West Virginia campus of the University and owned by the University (collectively, the “Revenues”) and other sources of revenue and otherwise in the manner and to the extent provided for in the Indenture for each series of Bonds and shall be special obligations of the State of West Virginia (the “State”) and shall not constitute debts of the State; and

WHEREAS, it is in the best interest of this Board to grant to the President and Senior Vice President for Finance and Administration of the University and the Chairman and Vice-Chairman of the Board, acting together or individually (each, an “Authorized Officer”), the power and authority to establish the final terms and provisions of and execute the Bonds, the Indenture and the Bond Purchase Agreement, to select a Trustee,

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bond insurer, if any, and other participants, each as hereinafter defined, to determine the Projects, if any, to be financed with the proceeds of the Bonds and to designate, if in the best interests of the Board and the University, such portion of the Bonds, if any, as are allocable to Projects as “Build America Bonds” and make such tax elections as are consistent therewith; and

WHEREAS, this Board finds and represents that it has full power and authority to issue the Bonds and to make the respective pledges for the payment thereof as will be set forth in the Indenture and the Bonds, and to execute and deliver the Indenture and such other documents hereinafter described and, on behalf of the owners of the Bonds, to grant a lien on and security interest in the Revenues, other sources of revenue and funds described in each Indenture, as permitted under the Act, and to execute and deliver such other documents and to take the actions contemplated thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE MARSHALL UNIVERSITY BOARD OF GOVERNORS, AS FOLLOWS:

Section 1. Findings and Determinations. This Board specifically finds and determines as follows:

(a) It has full power and authority to issue the Bonds and to make the respective pledges for the payment thereof as are described in the recitals hereto and more particularly set forth in the respective Indenture for each series of Bonds, and to enter into the respective Indenture and the other agreements relating to the Bonds, the Refunding and the Projects, if any, and this Board has taken or will take by the adoption of this Resolution all actions necessary to authorize its proper officers to sign, seal and deliver the Indenture, the Bond Purchase Agreement, the Bonds, the Continuing Disclosure Agreement and the other agreements relating thereto and to authorize the distribution of one or more Preliminary Official Statements and authorize the distribution of one or more Official Statements.

(b) This Resolution is adopted pursuant to and in accordance with the provisions of the Act, and the Bonds shall be issued pursuant to and in accordance with the Act.

(c) Citigroup Global Markets Inc. (as lead underwriter), Crews & Associates, Inc. and Raymond James & Associates, Inc. (collectively the “Underwriters”) are hereby appointed as the underwriters for the Bonds. The Authorized Officers are hereby authorized and directed, upon advice of counsel, to enter into one or more Bond Purchase Agreements with the Underwriters for each respective series of the Bonds (whether one or more, the “Bond Purchase Agreement”). It is understood by this Board that the Underwriters will be compensated only from the proceeds of the Bonds.

(d) Steptoe & Johnson PLLC (“Bond Counsel”) is hereby appointed as bond counsel for the Bonds. It is understood by the Board that Bond Counsel will be compensated only from the proceeds of the Bonds.

(e) It is in the best interests of this Board and the University that an Authorized Officer have the power and authority to execute and deliver one or more certificates of this Board (whether one or more, the "Certificate of Determination") setting forth the final terms and provisions of the Bonds and the Bond Purchase Agreement.

Section 2. The Bonds. There is hereby authorized to be issued and the Board hereby determines to issue, pursuant to the Act, its Bonds in one or more series, in an aggregate principal amount not to exceed \$45,000,000, and to expend all of the proceeds to finance the costs of the Refunding, the Projects, if any, and of related expenses, including but not limited to all costs incurred in connection with the issuance of the Bonds, such Bonds to be secured by and payable exclusively from the respective Revenues, other sources of revenue and funds pledged under the Indenture. The exact aggregate principal amount of the Bonds, not to exceed \$45,000,000, shall be approved by an Authorized Officer, such approval to be evidenced by the execution by an Authorized Officer of the Certificate of Determination, substantially in the form attached hereto as Exhibit A and incorporated herein by reference. The Bonds shall contain a recital that they are issued pursuant to the Act or other applicable provisions of state law, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. The portion of the Bonds that are allocable to the Refunding shall be issued as tax-exempt obligations. If the Bonds are issued in part to finance the Projects, then such portion of the Bonds shall either be in a separate Series of the Bonds or the Series financing both the Refunding and the Project shall be referred to as “Improvement and Refunding” Bonds. In addition, should a portion of the Bonds be issued to finance the Project, then the Authorized Representatives shall have the authority to, in their discretion, designate such Bonds as Federally taxable “Build America Bonds” and make such tax elections as are consistent therewith.

Section 3. Indenture, Bond Purchase Agreement, Continuing Disclosure Agreement, Preliminary Official Statement, Official Statement and Tax Certificate.

It is anticipated that the Indenture, Bond Purchase Agreement, Continuing Disclosure Agreement, Preliminary Official Statement, Official Statement and one or more Tax Certificates shall be prepared, delivered and executed in connection with the issuance of the Bonds (all of the foregoing documents, except the Bonds, are hereinafter collectively referred to as the “Bond Documents”). The Authorized Officers, with the assistance of counsel, are authorized to negotiate and approve the form and content of the Bond Documents under such terms and conditions as are, in the opinion of such Officers, in the best interests of the Board and the State. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Bond Documents prior to or simultaneously with the issuance of the Bonds for and on behalf of the Board, in the form

and upon those terms and conditions as approved by the Authorized Officers, with assistance of counsel, and such approval shall be conclusively evidenced by the execution of the Bond Documents by an Authorized Officer.

Section 4. Terms of Bonds. The Bonds shall be designated and dated such date or dates, shall be issued in one or more series, not to exceed \$45,000,000 in aggregate principal amount, shall mature on such date or dates not later than 22 years from their respective issuance dates, shall bear interest at such rate or rates of interest not to exceed seven percent (7%) per annum and shall have such redemption provisions and other terms all as set forth in the Certificate of Determination. The Bonds shall be in the denominations and in registered form, be payable in the medium of payment and at such places, be subject to mandatory and optional redemption prior to maturity and be entitled to the priorities and Revenues, other sources of revenues and funds, all as provided in the Indenture. The estimated cost of the Projects is not more than \$5,000,000.

Section 5. Bond Insurance. The Authorized Officers, with the assistance of counsel, are, at their discretion, authorized to negotiate and approve bond insurance to insure the payment of principal of and interest on the Bonds (“Bond Insurance”), under such terms and conditions as are in the best interests of the Board and the University. Bond insurance shall not be obtained unless in the opinion of the Authorized Officers it is in the best interests of the University to do so. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the documents relating to the Bond Insurance prior to or simultaneously with the issuance of the Bonds for and on behalf of the Board, in the form and upon those terms and conditions as approved by the Authorized Officers, and such approval shall be conclusively evidenced by the execution of the documents relating to the Bond Insurance by an Authorized Officer.

Section 6. Sale of the Bonds. The Bonds shall be sold to the Underwriters pursuant to the Bond Purchase Agreement, for the price or prices and upon the terms set forth in the Certificate of Determination and the Bond Purchase Agreement. The execution and delivery of the Bond Purchase Agreement is hereby authorized. Following the execution of the Certificate of Determination, the Authorized Officers are hereby authorized and directed to execute the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Authorized Officer, his or her execution thereof to be conclusive evidence of such approval.

Section 7. Certificate of Determination. An Authorized Officer is hereby authorized and directed to set forth the separate series, if any, the final principal amount or amounts, the maturities, the interest rates, the redemption provisions, the price or prices, the Projects to be financed with the proceeds of the Bonds, if any, and other terms and details of the Bonds, subject to the parameters set forth herein, including but not limited to Section 4, in the Certificate of Determination to be executed and delivered in

connection with the sale of the Bonds. Assuming such parameters are met, the Certificate of Determination shall have full force and effect as if adopted as a part of this Resolution.

Section 8. Official Statements. (a) The preparation and distribution of a preliminary official statement with respect to each series of the Bonds (whether one or more, the "Preliminary Official Statement"), is hereby authorized in such form as may be approved by an Authorized Officer; and (b) The preparation and distribution of a final Official Statement with respect to each series of the Bonds (whether one or more, the "Official Statement") is hereby authorized in such form as may be approved by an Authorized Officer, such approval to be evidenced by the execution by an Authorized Officer of such Official Statement; and the delivery by the Underwriters to prospective purchasers of the Bonds of the Official Statement is hereby authorized and approved with respect to each series of Bonds.

Section 9. Continuing Disclosure Agreement. So long as any of the Bonds remain outstanding, the Board and the University shall provide certain annual financial information and material event notices regarding the University as described in paragraph (b)(5)(i) of SEC Rule 15c2-12 promulgated by the Securities and Exchange Commission and/or as otherwise required by law.

Section 10. Bonds Are Special Obligations. The Bonds are special obligations of the Board payable solely from and secured by the Revenues, other sources of revenue and funds pledged under the Indenture. Each series of the Bonds, together with the interest thereon, is a special obligation of the State and shall not constitute a debt of the State, and the credit or taxing power of the State shall not be pledged therefor, but the Bonds shall be payable only from the respective Revenues, revenues and funds pledged for their payment as provided in the Indenture. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon, on this Resolution or on any of the documents executed in connection therewith, including but not limited to the Bonds and the Bond Documents, against any official, member, officer or employee of this Board, the University or the State or any person executing the Bonds, and neither members of this Board nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 11. Personal Liability. None of the present or future employees, officers or board members of the Board or the University, or any person executing the Bonds or the Bond Documents relating thereto shall be personally liable for the Bonds or any other obligation relating to the issuance of such Bonds, or be subject to any personal liability by reason of the issuance of the Bonds.

Section 12. Appointment of Trustee. The Authorized Officer shall appoint a fiduciary to serve in the capacities of Trustee, Registrar and Paying Agent under the Indenture, as set forth in the Certificate of Determination.

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Section 13. Formal Actions. The Board hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the Board, and that all deliberations of the Board which resulted in formal action, were meetings open to the public, in full compliance with all applicable legal requirements.

Section 14. Incidental Actions. The Authorized Officers are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates, including but not limited to guaranteed investment contracts with respect to the Bond proceeds, and to take such other action as may be necessary or appropriate in order to effectuate the execution, delivery and/or receipt of the Indenture, the Bond Purchase Agreement, the Preliminary Official Statement, the Official Statement, the Continuing Disclosure Agreement, the issuance and sale of the Bonds and the investment of the Bond proceeds, and for carrying out the transactions contemplated therein, all in accordance with the Act and other applicable provisions of the Code of West Virginia of 1931, as amended, including any action necessary with respect to The Depository Trust Company. The execution, delivery and due performance of the Bond Documents and all documents and instruments required in connection therewith are hereby in all respects approved, authorized, ratified and confirmed, including any and all acts heretofore taken in connection with the issuance of the Bonds.

Section 15. Effective Date. This Resolution shall take effect immediately upon its adoption, and all prior resolutions or parts thereof inconsistent herewith are hereby repealed.

Adopted this 26th day of August, 2010.

MARSHALL UNIVERSITY
BOARD OF GOVERNORS

Chairman

Secretary

EXHIBIT A

CERTIFICATE OF DETERMINATIONS

The undersigned, [Chair or Vice-Chair of the Marshall University Board of Governors (the "Board")][President or Senior Vice President of Finance Administration of Marshall University], in accordance with a Bond Resolution adopted by the Board on August 26, 2010 (the "Resolution"), with respect to the \$_____ Marshall University Board of Governors [Improvement and] Refunding Revenue Bonds, Series 2010 (the "Bonds"), hereby finds and determines as follows:

1. [She][He] is an Authorized Officer within the meaning of the Resolution.
2. The Bonds shall be dated _____, 2010.
3. The Bonds shall be issued in the aggregate principal amount of \$_____ .
4. Such principal amount does not exceed \$45,000,000, being the maximum principal amount authorized by the Resolution.
5. The Bonds shall mature in the amounts and on the dates and shall be subject to mandatory sinking fund redemption in the amounts and on the dates set forth on Schedule 1 attached hereto and incorporated herein.
6. The Bonds shall bear interest at the rates and produce the yields set forth on Schedule 1 attached hereto and incorporated herein, which rates do not exceed seven percent (7%) per annum.
7. The Bonds shall be subject to optional redemption as set forth on Schedule 2 attached hereto and incorporated herein.
8. The Bonds shall be sold to Citigroup Global Markets Inc., Crews & Associates, Inc. and Raymond James & Associates, Inc. (the "Underwriters"), pursuant to the terms of the Bond Purchase Agreement by and between the Underwriters and the Board, at an aggregate purchase price of \$_____ (representing par value, less an underwriting discount of \$_____ plus a net original issue [premium/discount] of \$_____ (original issue premium of \$ minus original issue discount of \$_____)), plus accrued interest of \$_____ on the Bonds from _____, 2010 to _____, 2010 (the "Closing Date").

9. The proceeds of the Bonds shall be applied as set forth on Schedule 3 attached hereto and incorporated herein, including any additional determinations deemed necessary by the [Authorized Officer].

10. _____ is hereby designated by the [Authorized Officer] to serve in the capacities of Trustee, Registrar and Paying Agent under the Indenture.

11. The Preliminary Official Statement of the Board dated _____, 2010, is hereby ratified and deemed final within the meaning of paragraph (b)(1) of Rule 15c3-12 under the Securities Exchange Act of 1934, with such changes, omissions, insertions and revisions as the Authorized Officer (as defined in the Resolution) shall deem advisable. Such signature to evidence approval thereof.

12. The final Official Statement of the Board attached hereto is hereby authorized and deemed final within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, with such changes, omissions, insertions and revisions as the Authorized Officer (as defined in the Resolution) shall deem advisable, such signature to evidence approval thereof.

13. The Bonds, if any, listed on Schedule 3 shall be designated as that portion of the Bonds allocable to the Projects, if any, and which are designated as Build America Bonds for Federal income tax purposes.

[14. (“Bond Insurer”) has offered Bond Insurance for the Bonds pursuant to the terms of a commitment letter dated _____, 2010 (the “Commitment”). The Bond Insurer is approved and the Commitment for the Bond Insurance is accepted.]

The undersigned hereby certifies that the foregoing terms and conditions of the Bonds are within the limitations prescribed by the Resolution, and the Bonds may be issued with such terms and conditions as authorized by the Resolution.

WITNESS my signature this day of _____, 2010.

MARSHALL UNIVERSITY
BOARD OF GOVERNORS

By: _____
Its: _____

Schedule 1

Maturities

Mandatory Redemption.

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Schedule 2

Optional Redemption

Extraordinary Optional Redemption of the Bonds

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Schedule 3

Application of Proceeds and Other Funds.

[EXHIBIT WILL SHOW APPLICATION OF BOND PROCEEDS TO REFUNDING AND PROJECTS, IF ANY]

**West Virginia Higher Education Policy Commission
Meeting of October 5, 2010**

ITEM: Approval of Option for Construction of Allied Health and Technology Building at the Erma Byrd Public Higher Education Center

RECOMMENDED RESOLUTION: *Resolved*, that the West Virginia Higher Education Policy Commission selects Option 3 for design and construction of the Allied Health and Technology Building at the Erma Byrd Public Higher Education Center site.

STAFF MEMBER: Richard Donovan

BACKGROUND:

The West Virginia Higher Education Policy Commission was awarded a \$3.96 million Health Resources and Services Administration (HRSA) grant in 2010. Through the dedication and support of Senator Robert C. Byrd, these funds were made available and will be utilized to construct an Allied Health and Technology (AH&T) Building at the Erma Byrd Public Higher Education Center site. Commission staff and representatives from Bluefield State College, Concord University, New River Community and Technical College, and Southern West Virginia Community and Technical College have been working with a programming consultant to identify the allied health and technology programs to be housed in this facility and the space needed to teach these programs, along with faculty offices and ancillary space needs. In addition to the AH&T Building, the Council for Community and Technical College Education plans to build a new headquarters for New River Community and Technical College at the Erma Byrd Center with \$13.5 million in funds from the Lottery Revenue Bond proceeds recently issued for community and technical college facilities.

Given the multi-institutional nature of the site, there are a range of options related to the placement of the AH&T Building. These options are as follows:

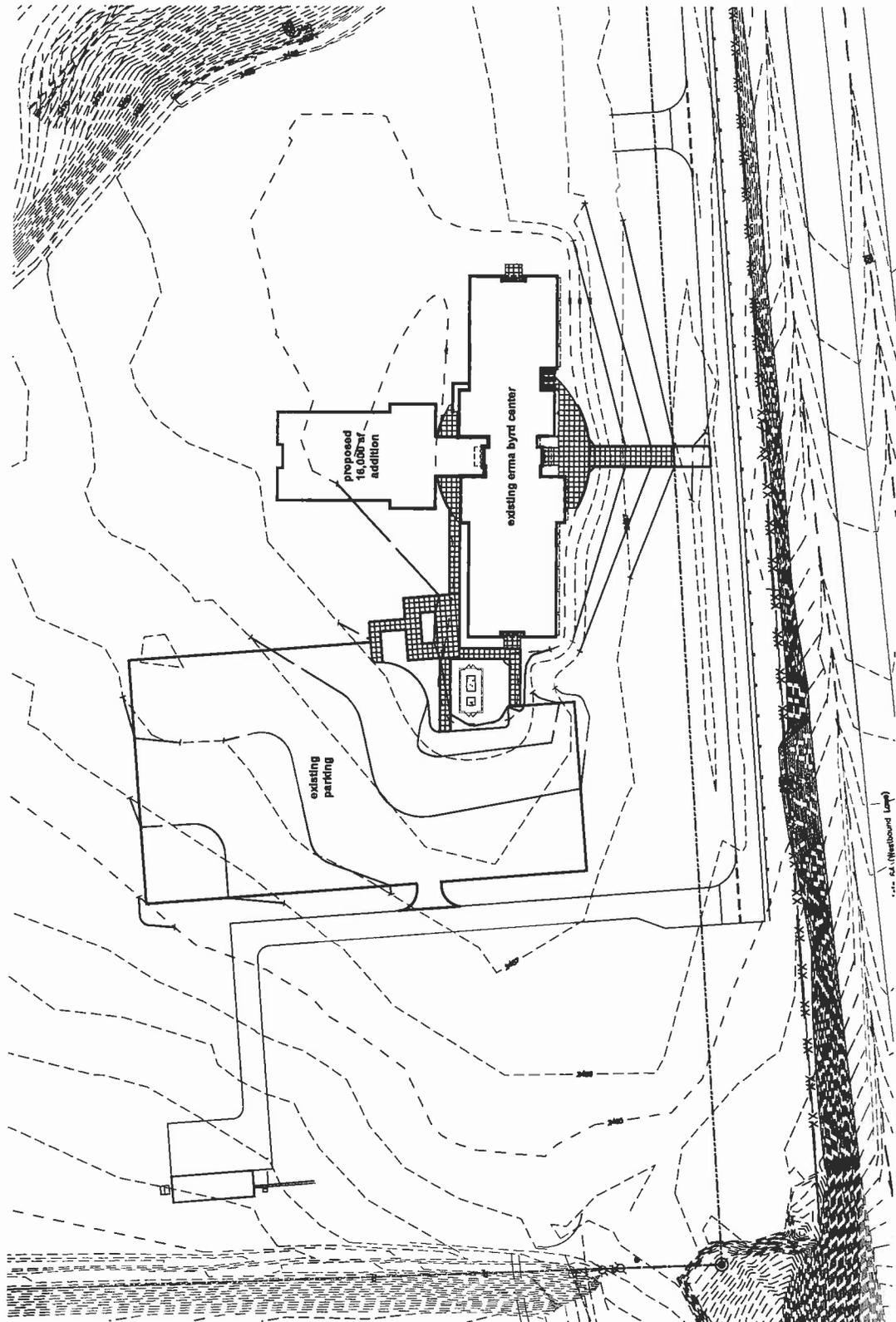
- Option 1 attaches the AH&T Building to the Erma Byrd Center (see Exhibit A). An architect working with Father Thomas Acker estimates that a building of approximately 16,000 square feet can be built with the following benefits:
 - The occupants of the addition would have immediate access to the atrium, concession area, library, and classrooms in the Erma Byrd Center.
 - No new roads need to be built. The parking lot would likely need some additional places.
 - If the Commission desired, the same superintendent and evening security could handle this complex, thus sharing costs and saving money.

- The infrastructure utilities are available at this location by relatively simple tap.
 - There is no need for an additional biology lab in the addition since the one in the Erma Byrd Center is used less than forty percent of the time for physics, chemistry, biology, and geology (the existing lab could be used by all three options eliminating any duplication).
 - It keeps Bluefield State College's health related programs all together since they will continue to use the Erma Byrd Center for administration and supporting courses.
 - The mechanical infrastructure can use part of what is already in place in the Erma Byrd Center and by some small extension can add to the chiller equipment next to the west entrance door to serve the AH&T Addition.
 - The information technology service room and the electrical room in the Erma Byrd Center would easily serve the addition.
- Option 2 is for a stand alone building built in reasonably close proximity to the west end and behind the Erma Byrd Center, but not attached to it (see Exhibit B). The programming consultant working for the Commission estimates that the budget would support the construction of approximately 14,000 square feet. This option would require a larger percentage of the building to be devoted to non-teaching space since it would require its own dedicated HVAC and electrical systems, restrooms, and public spaces. Option 2 is the least cost effective option.
 - Option 3 attaches the AH&T Building to the New River Community and Technical College facility, but in such a way that it has a distinct architectural separation (see Exhibit B). The programming consultant estimates that the budget would support construction of an 18,000 square foot facility under this option. As with Option 2, the AH&T Building would be built in close proximity to the Erma Byrd Center and would be able to take advantage of the amenities offered by the Erma Byrd Center in addition to providing the following benefits:
 - Administrative fees associated with a combined project would be less than those associated with two separate projects or buildings. Administrative fees include the costs associated with the production, advertising and bidding of the construction package(s).
 - General conditions costs associated with the smaller project would be eliminated. General conditions are the general contractor's costs for providing a project manager, job site superintendent, job trailer, safety training and rental equipment over the duration of the project.
 - The cost associated with providing separate site utility infrastructure (electrical, water and sewer) for the Allied Health facility would be eliminated. There would be some cost associated with increasing the size of the site infrastructure to accommodate one larger facility, but this would be minimal and would result in overall savings.

- The cost of each contractor's mobilization for construction of the second project can be eliminated.
- The cost of mechanical equipment would be reduced. Up-sizing the central plant to accommodate an additional 18,000 square feet is significantly less expensive than providing two separate systems and would be less expensive to operate over the life of the facility. A combined central plant would also occupy less total building area than two separate facilities.
- Common spaces such a lobby, stair towers and elevators could be shared with the New River Community and Technical College facility.

In the final analysis, Commission staff believes that Option 3 provides the most cost effective approach to build the AH&T Building and results in significantly more square footage with the limited budget available for this project.

EXHIBIT A





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Conceptual Master Plan
 Beckley Higher Education Center Beckley, West Virginia