TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

SERIES 48
RESEARCH TRUST FUND PROGRAM

§133-48-1. General.

1.1. Scope. This rule establishes guidelines, procedures and documentation standards for the distribution of funds, as legislatively provided, in the West Virginia Research Trust Fund.

1.2. Authority. West Virginia Code §18B-18A-1 *et seq.*

1.3. Filing Date. April 8, 2022.

1.4. Effective Date. June 5, 2022.

1.5. Sunset Date. This rule shall terminate and have no further force or effect on June 5, 2027.

§133-48-2. Definitions.

2.1. Commission. West Virginia Higher Education Policy Commission.

2.2. Chancellor. Individual employed as Chancellor for Higher Education pursuant to W.Va. Code § 18B-1B-5.

2.3. Competitive Award. Any grant or fund transfer provided through a process that is initiated by an open request for proposals, includes a merit review, and results in a selected number of grants being provided to support proposed activities.

2.4. Designation. A specification made by either the donor or the institution that sets forth the exact use or specific endowment placement for a gift.

2.5. Directed Research Endowment or Research Endowment. An account established at or administered by a participating institution or its affiliated research corporation or foundation for purposes of funding qualified activities under this program.

2.6. Directed Research Endowment Plan or Research Plan. The strategies and procedures formally approved and adopted by a governing board of a participating institution outlining how the institution proposes to use directed research endowment proceeds to meet research goals and objectives.

2.7. Directed Research Endowment Proceeds or Endowment Proceeds. Investment earnings accruing to a participating institution's directed research endowment and available for expenditure by the participating institution or its affiliated research corporation.

2.8. Foundation. A corporation created, organized and located in West Virginia that meets the following conditions:

2.8.a. Is organized and operated for educational purposes in support of one or more state institutions of higher education and other affiliated organizations;

2.8.b. Is designated by the governing board of one or more state institutions of higher education to receive charitable contributions for educational purposes on behalf of the institution or institutions;

2.8.c. Does not have any part of its earnings inuring to the benefit of any private shareholder or individual;

2.8.d. Is not disqualified from tax exemption under 26 U.S.C. § 501(c)(3) for any reason; and,

2.8.e. Does not participate or intervene in, on behalf of or in opposition to any political campaigns for public office.

2.9. Fiscal Year. The state fiscal budget year which begins on July 1 and ends on June 30.

2.10. Participating Institution. Marshall University, West Virginia University, or West Virginia State University.

2.11. Qualified Private Donation or Qualified Donation. Any private donation, gift, or external bequest provided to a directed research endowment on or after March 8, 2008.

2.12. Qualified Private Donation Pledge or Qualified Pledge. Any pledge, commitment, or other agreement to give a private donation to a directed research endowment that is made pursuant to a written agreement between the donor and the appropriate institution or its affiliated research corporation or foundation on or after March 8, 2008.

2.13. Research Corporation. An organization created pursuant to the provisions of W.Va. Code § 18B-12-1 *et seq*.

2.14. State College. The West Virginia School of Osteopathic Medicine, Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, or West Liberty University for the purposes of this rule.

2.15. State Match or Match Funds. Any and all funds awarded from the trust fund in response to a private qualified donation.

2.16. STEM Fields. All science, technology, engineering and mathematics disciplines as defined by the Commission master plan.

2.17. Trust Fund. The special account designated as the West Virginia Research Trust Fund and administered by the Commission.

2.18. Vice Chancellor for Science and Research or Vice Chancellor. The Commission's chief scientific employee charged with overseeing the trust fund, compliance with these rules, record keeping, and authorization of disbursement of funds under the general direction of the Chancellor.

§133-48-3. Administration.

3.1. The Vice Chancellor administers the program under the general direction of the Chancellor and the Commission and in consultation with the Advisory Council.

§133-48-4. Eligibility Criteria.

4.1. During the first five years of the trust fund's existence (or five years after more funds are deposited) and in compliance with this rule, the Commission shall disburse up to sixty-five (65) percent of moneys in this account to match qualified donations and pledges received by West Virginia University, thirty (30) percent of moneys to match qualified donations and pledges received by Marshall University and five (5) percent of moneys to match qualified donations and pledges received by West Virginia State University.

4.2. State colleges are eligible to receive awards through a competitive process established by the Commission. Only those funds derived from investment earnings accruing in the Research Trust Fund or those that remain unmatched by the participating institutions by July 1, 2015 are available to state colleges pursuant to section 12 of this rule.

4.3. Scientific disciplines. Only those scientific disciplines or combinations of interdisciplinary research activities in the list below are eligible for trust fund matches.

4.3.a. Energy and environmental sciences;

4.3.b. Nanotechnology and materials sciences;

4.3.c. Biological, biotechnical and biomedical sciences;

4.3.d. Transportation technology and logistics;

4.3.e. Biometrics, security, sensing, and related identification technologies; and

4.3.f. Gerontology.

4.4. Any external gift meeting the standards established by this rule and included in the institution's approved research plan is eligible for equal matching amounts from the trust fund.

§133-48-5. Institutional Research Plans.

5.1. Prior to disbursement of any trust fund moneys to a participating institution, the governing board of that participating institution shall submit to the Commission a directed research endowment plan. The plan shall provide the Commission with an explanation of the institution's comprehensive research objectives and plans to build competitive research infrastructure in the specified scientific disciplines as well as comprehensive measures for achieving this goal.

5.2. The Commission encourages the participating institutions to consider the value of clustering research programs around academic disciplines and encourages the creation of a critical mass of scholarly researchers who can address state and national needs.

5.3. The Commission encourages collaboration and cooperation among universities, centers, corporations and federal laboratories that increase opportunities for partnerships in discovery, learning and knowledge creation.

5.4. The Commission encourages institutions to plan for endowments that recognize interdisciplinary problem solving and teams of scientists across departmental, college and institutional lines.

5.5. The research plan will include, but is not limited to, the following:

5.5.a. An assessment of the participating institution's current research initiatives in STEM fields, including any initiatives falling within disciplines or areas of research specified by this rule;

5.5.b. An assessment of the potential outcomes of specific research lines proposed for enhancement by the institution;

5.5.c. A narrative describing the current or proposed collaborations, particularly with other institutional partners, that play or will play a significant collaborative role in achieving institutional objectives;

5.5.d. A narrative describing the centers, institutes or other academic units proposed, currently under development, or currently operating, that play or will play a significant role in achieving institutional research objectives;

5.5.e. An analysis of possible strategies to enhance current research initiatives;

5.5.f. An outline of the participating institution's proposed uses of endowment proceeds, including the anticipated costs associated with each proposed use and identification of any specific disciplinary hires;

5.5.g. A narrative describing major research equipment acquisitions currently under consideration that will contribute substantially to the plan;

5.5.h. A cost analysis for achieving research goals with a comparison to the expected endowment proceeds available to the institution;

5.5.i. An evaluation of how the research plan furthers the purposes of:

5.5.i.1. The trust fund's goals;

5.5.i.2. The state's strategic plan for science and technology; and

5.5.i.3. The research needs of the institution.

5.5.j. Identification of the proposed uses for which alternative funding sources may be sought to enhance the comprehensive research initiatives contemplated by the participating institution. Alternative funding sources exclude qualified donations, matching moneys from the trust fund, and the endowment proceeds generated from the trust fund; and

5.5.k. How the amount allocated for distribution to the participating institution will be directed within institutional goals.

5.6. The governing board of each participating institution shall submit its approved research plan to the Vice Chancellor prior to submitting its first request for a distribution of matching moneys from the trust fund.

5.7. The Vice Chancellor shall conduct a thorough review of the plan for compliance with the provisions of §18B-18A-1 *et seq.* and this rule.

5.8. The approved plan serves as the overarching document for guiding future endowment activities, research investments and reports.

§133-48-6. Expenditure Compliance Procedures.

6.1. Uses of Program Funds. When trust funds are transferred to institutions for deposit into specific endowments in approved scientific disciplines, the participating institutions may use up to one hundred (100) percent of the annual investment earnings from the endowments to pay the base salaries of newly endowed department chairs, new professorship positions, new research scientists and staff positions, including research technicians and support personnel, and to fund graduate or undergraduate student research fellowships, research infrastructure, and mission support as described below.

6.1.a. Chairs. New faculty positions, salary supplements to existing faculty positions, and associated expenses for those positions, including start-up costs, salaries, benefits, travel, and other professional expenses as permitted by university policy.

6.1.b. Professorships. New faculty positions, salary supplements to existing faculty positions, and associated expenses for those positions, including start-up costs, salaries, benefits, travel, and other professional expenses as permitted by university policy.

6.1.c. Research Scholars. Salaries, benefits, and other personnel-related expenses associated with non-tenured or recently tenured faculty who exhibit the potential to assume chair or professorship positions after tenure has been awarded and/or superior scholarly work has been achieved. Research scholars shall have clearly defined research agendas that relate specifically to the fields of study envisioned for the ultimate occupants of the chairs or professorships.

6.1.d. Research Scientists. Salaries, benefits and other personnel related expenses associated with non-tenured scientists who exhibit high scientific achievement in the sanctioned areas of research.

6.1.e. Research Staff. Salaries, benefits, and other personnel-related expenses associated with full-time or part-time staff assistants who are directly linked to the research activities of an endowed chair, professor, scholar or scientist as defined above.

6.1.f. Graduate Fellowships. Stipends for outstanding graduate students, which may include travel and other expenses as permitted by university policy.

6.1.g. Undergraduate Fellowships. Funds may be used to support scholarships for outstanding undergraduate students who are directly linked to activities of an endowed chair or professor. These may include travel and other expenses as permitted by university policy.

6.1.h. Research Infrastructure. Start-up and operating expenses that are directly linked to the research activities of an endowed chair, professor, research scholar or research scientist, including equipment, materials and supplies, and other research-related expenses as permitted by university policy.

6.1.i. Mission Support. Program funds may be used to support research and graduate missions at participating institutions. Consideration shall be given to expenditures for mission support activities such as: (1) expenditures that enhance the research capability of university libraries (i.e., scientific books, journals, research materials, media, and equipment); (2) start-up costs, equipment, and supplies that support faculty, graduate student, or undergraduate student research activities; (3) funding for visiting scholars, lecture series, and faculty exchanges; and (4) expenditures for the dissemination of research findings (i.e., nationally prominent publications and presentations at conferences, symposia, seminars, or workshops). However, priority shall be given to mission support expenditures that encourage the research-related activities of faculty and students. Expenditures for general personnel expenses that are not directly linked

to an endowed chair, professor, research scholar, or research scientist do not qualify as mission support activities.

6.2. Any combination of these activities may be proposed for inclusion in the institutional research plan required under section 5 and are eligible for designated endowments as funds are secured.

§133-48-7. Criteria for Qualified Donations and Pledges.

7.1. Matching Requirements. The trust fund is conceived as a way to bring new money from external sources into the State's system of postsecondary education. In order to receive state funds, participating institutions shall provide dollar-for-dollar matching funds that satisfy the following requirements:

7.1.a. Donations and pledges shall be newly generated to be eligible for state match. Newly-generated contributions are those pledged and received by the participating institution on or after March 8, 2008.

7.1.b. Donations and pledges shall be from external sources to be eligible for state match. External source contributions are those that originate outside the participating institution and its affiliated foundation or research corporation. Eligible sources of external funding include, but are not limited to, businesses, non-governmental foundations, corporations and alumni or other individuals. Funds received from federal, state and local government sources are not eligible for state match.

7.1.c. State appropriations and allocations (e.g., West Virginia Research Challenge Fund) and student-derived revenues (e.g., tuition and fees revenue) are not eligible for state match.

7.1.d. An undirected qualified donation may be directed by the institution toward an endowment under this rule; however, current institutional foundation funds are not eligible for state match.

7.1.e. The minimum institutional request is $50,000. A participating institution may combine smaller donations to meet the $50,000 minimum.

7.1.f. All funds, both state and private, shall be permanently endowed. "Endowed" means that only the investment earnings, and not the principal, are eligible for expenditure.

7.1.g. Requests for state matching funds shall identify the donor funds received in cash and those that are pledges.

7.1.h. Pledges, or promises of future payment, are eligible for state match provided they are based on a written contract or agreement and include a payment schedule that does not exceed the reallocation date of July 1, 2015. Pledge payment schedules showing receipts to date and scheduled future payments shall be included in the audited financial statements of the institution, research corporation and/or the foundation and included in the annual report specified in section 14 of this rule.

7.1.i. Participating institutions shall notify the Vice Chancellor in writing immediately when a gift has been revoked, when a pledge payment is more than 12 months past due, or if there are unpaid pledges remaining six months before the reallocation date of July 1, 2015.

7.1.j. If pledged funds are not received by the due date, the participating institution shall replace the portion of private funds not received with another eligible cash gift. If pledged funds are not received by the reallocation date, the unmatched portion of the state funds, plus an allowance for accrued interest, shall revert to the trust fund for reallocation. In such cases, the time frame for the replacement or return of

state funds shall be determined by the Vice Chancellor in negotiation with institutional representatives, but may not be longer than six months.

§133-48-8. Distribution from the Trust Fund; Documentation Required.

8.1. A participating institution seeking a distribution of state matching funds from the trust fund first shall obtain qualified donations and/or qualified pledges meeting the conditions in section 7 in an amount equal to the amount of matching moneys requested for distribution and shall submit a request to the Commission setting forth the following:

8.1.a. The amount of qualified donations and/or qualified pledges used to request matching moneys from the trust fund and the total amount of any previous distributions of matching moneys from the trust fund;

8.1.b. The amount requested for distribution to the participating institution;

8.1.c. A designation of the applicable research endowment(s) into which the requested matching moneys are to be deposited, e.g., "The Joe and Sally Smith Endowed Chair in Chemistry;" and

8.1.d. An explanation of how the proposed use of the endowment proceeds furthers the purposes of the trust fund and addresses the research needs of the participating institution as identified in the research plan, including any additional strategic objectives or outcomes that have been established for the specific endowed research activity.

8.2. In conjunction with the written request, the institution shall submit documentation for the external qualified gifts and/or pledges including:

8.2.a. A cover letter that transmits the documentation, any particulars, and information required by this Section;

8.2.b. A pledge letter specifying the designation, amount and payment schedule signed by the donor for qualified pledges;

8.2.c. A deposit ticket or gift receipt and any designation identified by the donor for qualified donations;

8.2.d. A designation made in writing by the institution and submitted with the request if a qualified gift is undesignated by the donor;

8.2.e. An invoice for the amount requested from the trust fund, specifying the endowment into which the state match is to be deposited;

8.2.f. Designation of a technical manager or responsible institutional contact such as a dean, academic officer, or research director, who shall oversee the implementation or supervision of the activity, program or individual sponsored by the endowed funds. Complete contact information shall be provided; and

8.2.g. Designation of a financial manager or compliance officer who shall be responsible for all associated financial statements or reports relating to the endowed funds or expenditures of proceeds. Complete contact information shall be provided.

8.3. The participating institution shall cause the state matching funds to be transferred to its affiliated foundation.

8.3.a. State matching funds are to be invested in the same manner as institutional endowment funds relative to availability under section 11.1 of this rule.

§133-48-9. Commission Review.

9.1. The Vice Chancellor shall conduct a review of each request for distribution of matching money from the trust fund for compliance with the provisions of both §18B-18A-1 *et seq.* and this rule and may request additional information if necessary.

9.2. The Vice Chancellor shall use the institution's approved research plan to determine if requests for distributions from the trust fund are valid and shall consider any additional information or details that expand upon the specific area of research, including research plans, strategies, objectives and projected outcomes as provided under sections 8.1.d. or 9.1. of this rule.

9.3. If all criteria are met, the Vice Chancellor shall approve the match.

9.4. If all the criteria are not met, the Vice Chancellor shall issue a letter to the institution detailing the reason(s) the match could not be approved.

9.5. When the match is approved, the Vice Chancellor shall submit the invoice to the State Auditor for payment.

§133-48-10. Appeals.

10.1. A participating institution may appeal a decision related to administration of trust funds under the terms of this rule to the Vice Chancellor in writing within ten (10) days of receiving notification. The Vice Chancellor shall issue a written decision upholding or reversing the initial decision within twenty (20) days of receipt of the appeal. Decisions that may be appealed include, but are not limited to, disapproval of a request for distribution of matching money from the trust fund.

10.2. A participating institution may further appeal to the Chancellor in writing the decision of the Vice Chancellor within ten (10) days of receipt of notification of the decision. The Chancellor shall issue a written decision upholding or reversing the decision of the Vice Chancellor within twenty (20) days of receipt of the appeal.

10.3. Any appeal made shall set forth in detail the grounds for the appeal. The decision rendered at each level shall address in writing each of the grounds raised.

§133-48-11. Availability Limits and Reallocation of Trust Funds.

11.1. Availability. Participating institutions shall provide documentation for and request transfers of state matching funds up to the limits provided in these rules on or before July 1, 2015. All trust fund dollars provided by the West Virginia Legislature in the original corpus which are being matched by outstanding pledges shall remain available for withdrawal until that date.

11.2. Reallocation. If one of the participating institutions fails to have deposited into its research endowments the requisite amount of qualified donations and/or fails to have made subsequent requests for matching trust fund distributions by the end of this five-year period, then any funds allocated to the

participating institution that have not been distributed shall be reallocated for distribution to the other participating institutions.

11.2.a. To be eligible to receive a distribution of reallocated moneys, the other participating institutions shall have excess qualified donations deposited in its research endowment(s) in an amount equal to or greater than the amount requested for distribution from available reallocated moneys.

11.2.b. If the other participating institutions do not have excess qualified donations on deposit, the available moneys in the trust fund shall be reallocated for distribution by the Commission to state colleges in accordance with the provisions for those institutions established in section 12 of this rule.

11.3. Within 90 days after the reallocation date, the Vice Chancellor shall complete a final assessment of the status of the trust fund and determine if there are funds available for reallocation to the other participating institution and/or the state colleges.

§133-48-12. Procedures for State Colleges.

12.1. Until such time as the trust fund is fully distributed, interest earnings shall be deposited as accrued. The Commission shall use a portion of those moneys derived from investment earnings accruing to the trust fund, as well as moneys that are not matched and distributed to participating institutions prior to July 1, 2015, for distribution to state colleges.

12.2. As funds are realized, the Vice Chancellor shall issue competitive notices or requests for proposals to the state colleges. A merit-review of the scientific potential of the proposed research activity shall be conducted by peer scientists under the general direction of the Vice Chancellor.

12.3. Solicitations for science, technology, engineering and/or mathematics (STEM) projects at state colleges shall:

12.3.a. Establish a level of funds currently available for distribution;

12.3.b. Identify the number of anticipated awards based on the availability of funds, establishing equal amounts available for each institution;

12.3.c. Identify specific research targets or thematic areas for proposals;

12.3.d. Provide specific application procedures and deadlines for application;

12.3.e. Specify matching requirements, including documentation of gift deposits;

12.3.f. Specify a reasonable deadline for obtaining qualified donations; and

12.3.g. Provide latitude for lesser amounts of support if only smaller qualified donations are obtained by the institution.

12.4. To qualify for a distribution of state matching moneys, a state college shall meet the following conditions:

12.4.a. Obtain qualified donations of private gifts in an amount equal to or greater than the amount of state match funds requested from the proceeds identified as available for distribution from the trust fund.

12.4.b. Deposit the qualified donations and any state match distributed from the trust fund when an award is provided into the accounts of the institution or its affiliated research corporation or foundation.

12.4.c. If an institution collects only a portion of the matching funds needed, then the unmatched portion of the award shall revert to the trust fund for reallocation during the next competition.

12.4.d. Qualified donations and state matching moneys may be expended only for a proposed research-oriented initiative developed in response to requests for proposals and approved by the Commission.

12.5. Eligible research areas include all scientific disciplines or interdisciplinary STEM fields available at state colleges or in collaboration with the participating institutions.

12.6. All proposals shall be institutional infrastructure-building in nature, not individual researcher projects. Each institution shall seek to create "areas of distinction" or "centers of excellence" or strengthen one or two areas of talent and expertise for capacity building in STEM fields that are unique strengths. However, partnerships, consortia and research alliances with other institutions with common or complementary interests are encouraged.

12.7. State colleges may elect, at their discretion, to place all or some portion of the qualified donation and/or state match into a designated endowment. Otherwise, all funds are available for immediate expenditure for STEM projects proposed as a result of the requests for proposals.

12.8. The Commission may provide periodic award cycles throughout the life of the trust fund at such times as sufficient interest or other funds are accrued and available for distribution.

§133-48-13. Coordination with Other Research Programs.

13.1. The Commission shall coordinate awards from the trust fund with other sponsored research programs managed by its Division of Science and Research. The comprehensive resources and awards made under the West Virginia Research Challenge Fund and Eminent Scholars Recruitment and Enhancement programs shall be monitored for continuity in achieving the objectives of the state's strategic plan for science and technology.

13.2. The Commission shall not award state funds to any endowment or state college program that materially duplicates support provided under a complementary state program.

13.3. The Commission encourages leveraging state funds to obtain qualified private donations and other broader external sources of funding to support the state college's approved research plan.

§133-48-14. Reporting Requirements.

14.1. By August 15, 2009, and annually thereafter, each participating institution shall provide an annual report to the Commission that includes a full accounting of the trust funds, endowment proceeds, and adherence to the objectives established by the research plan.

14.2. Each participating institution shall detail in its annual report to the Commission the total amount of qualified donations received, the investment earnings realized and any anticipated expenditures of the research endowment proceeds in its annual operating budget.

14.3. By October 1, 2013, after the five-year implementation of the trust fund program is complete, the participating institutions shall provide a comprehensive report to the Commission on the impact of the trust fund on research competitiveness, institutional growth and infrastructure development. Strategic goals realized and those yet to be realized shall be articulated clearly in the report. A full accounting of all trust funds, proceeds, outcomes, and designated endowments shall be included in the comprehensive report.

14.4 Each participating institution's research corporation and/or foundation shall provide the Commission with an audited financial statement annually. These statements shall be treated as confidential.

14.5. Awards to state colleges shall contain a reporting requirement on the specific outcomes of the award and establish a timeframe for submission.

14.6. Institutions expending any proceeds from the trust fund, donations and gifts, or the research endowments contrary to the provisions of this rule, or Commission approval or direction shall be responsible for reimbursing the appropriate institutional or Commission account the amount of funds improperly expended, plus statutory interest.