

PRIVATE POSTSECONDARY EDUCATION
Guidelines and Approval Process for Exemption from Certification
for Postsecondary Schools Otherwise Subject to Regulation
Initial Effective Date: June 1, 2018
Revision Date: February 17, 2021

I. Authority

Pursuant to Virginia Code § 23.1-219(A)(3), without obtaining the certification of the Council or a determination that the activity or program is exempt from certification requirements, no postsecondary school/entity shall offer degrees, courses for degree credit, programs of study leading to a degree, or courses for non-degree credit, either at a site or via telecommunications equipment located within the Commonwealth. Code of Virginia § 23.1-226 allows exemption from the requirement of certification for certain specified activities or programs.

The Virginia Administrative Code (8VAC40-31-60) further defines additional types of programs, degrees, diplomas and certificates that are exempt from council action.

SCHEV has the authority to determine whether an exemption applies.

II. Purpose

The State Council of Higher Education for Virginia provides these guidelines for clarity concerning programs and courses that qualify for exemption from the requirement of certification, and to delineate the process for receipt, review, and approval of the exemption.

Exemption from certification is not automatic. If the activities or programs/courses being offered are eligible for an exemption, a school must still apply for and receive written approval of the exemption from SCHEV to remain in compliance with the law.

Any program that is advertised, or verbally represented in any other way, by a school, individual, entity or organization as enhancing an individual's preparation for employment or other commercial pursuit will be deemed to be vocational (i.e., not "avocational," see definition below), and therefore ineligible for exemption from certification.

III. Definitions

For purposes of this guidance document, the following definitions will apply:

"Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a

hobby, or courses or programs that prepare individuals to teach such pursuits (8VAC40-31-10).

“Benevolent order” means a social or charitable public service organization exempt from paying federal income taxes under § 501(c) (3) of the Internal Revenue Code.

"Civic organization" (or club) means any local service club, veterans' post, fraternal society or association, volunteer fire or rescue group, or local civic league or association of 10 or more persons not proprietary but operated exclusively for educational and charitable purposes, including the promotion of community welfare. Net earnings such organizations are devoted exclusively to charitable, educational, recreational or social welfare purposes.

"Continuing or professional education" means those classes, courses, and programs designed specifically for individuals who have completed a degree in a professional field that:

- (i) are intended to fulfill the continuing education requirements for licensure or certification in such professional field,
 - (ii) have been approved by a legislatively or judicially established board or agency responsible for regulating the practice of the profession, and
 - (iii) are offered exclusively to an individual practicing in such professional field.
- (8VAC40-31-10)

“Fraternal organization” means a group based on a common bond in which members meet for a mutually beneficial purpose of a social, professional, academic or religious nature.

"Non-college degree school" means any person or other entity that offers postsecondary courses or programs of study that do not lead to a degree (§23.1-213).

"Postsecondary school" means any institution of higher education or non-college degree school offering formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent. "Postsecondary school" does not include avocational and adult basic education programs (§23.1-213).

“Professional body” means an organization or group comprised of members of a particular professional field.

“Professional field” means an occupation that requires both (i) the completion of academic training resulting in a certificate, diploma or degree and (ii) licensure or registration to be eligible for employment in the occupation.

“Professional practice” means to be occupationally engaged in a licensed or registered professional field.

“Trade association” means an organization created by businesses that operate in a specific industry and whose main focus is collaboration between companies.

IV. Qualifying Exemptions

1. A professional or occupational training program offered by a non-college degree school subject to the approval of
 - (i) a regulatory board pursuant to Title 54.1 of the Code of Virginia, or
 - (ii) another state or federal governmental agency.
 - To qualify for this exemption, the entity must submit evidence of a valid and current approval by the appropriate board or agency.
 - Examples of boards listed under Title 54.1 include, but are not necessarily limited to: Barbers and Cosmetologists, Contractors, Dentistry, Nursing, Polygraph Examiners, Real Estate Brokers and Pharmacy.
 - Example of a state agency that approves training programs: Virginia Department of Criminal Justice Services.
 - Example of a federal agency that regulates training programs: Federal Aviation Administration.
2. Any course or program of instruction provided or approved by a professional body, fraternal organization, civic club or benevolent order for which the principal purpose is continuing or professional education and for which no degree credit is awarded (§23.1-226(4)).
 - To qualify for this exemption:
 - The course or program offered by the entity must meet the definition of “continuing or professional education” (see definitions under item III above); and
 - The entity providing the course or program must qualify as a professional body, fraternal organization, civic club, or benevolent order (see definitions under item III above).
3. Any course or program offered through approved multistate compacts in which Virginia is a member, including the Southern Regional Education Board's Electronic Campus.
 - To qualify for this exemption, the entity must submit proof of approval from a multistate compact (§23.1-226(5)).
4. Any course offered and delivered by a postsecondary school solely on a contractual basis for which no individual is charged tuition and there is no advertising for open enrollment (§23.1-226(6)).
 - To qualify for this exemption, the postsecondary school must meet the following conditions:
 - Training/education is provided solely on a business-to-business basis;
 - The school does not advertise or otherwise solicit enrollment from the public at large; and
 - Self-paying students are not accepted, i.e., tuition payments are made by the contracting business.

5. Any course of instruction offered by a trade association or a nonprofit affiliate of a trade association on subjects relating to the trade, business or profession represented by such association (§23.1-226(7)).
 - To qualify for this exemption:
 - The entity offering the course or program must qualify as a trade association (see definitions under item III above), and;
 - The instruction must be directly related to the trade represented by the organization.

6. Tutorial instruction that satisfies at least one of the following three descriptions:
 - (i) supplements regular classes for students enrolled in any public or private school (§23.1-226(9)).
 - To qualify for this exemption, the tutorial instruction must be offered solely to public or private secondary students seeking supplemental instruction.
 - (ii) prepares an individual for an examination for professional practice or higher education.
 - To qualify for this exemption, the tutorial instruction must be offered either to individuals who have completed academic training resulting in a certificate, diploma or degree in a professional field and are seeking tutorial instruction for an exam that will enable them to enter professional practice (see definition of “professional practice” above); or to individuals seeking tutorial instruction for entrance exams required for undergraduate or graduate school admission.
 - (iii) prepares an individual for an examination to demonstrate proficiency or to maintain proficiency in an occupational field.
 - To qualify for this exemption, the tutorial instruction must be offered solely to experienced practitioners of an occupation who are seeking tutorial instruction to prepare for a specific examination that will enable them to secure or maintain a recognized third-party certification.

Note: This exemption requires that the instruction provided is not designed to prepare an individual for initial entry into a professional field.

7. Any course or program of study conducted on a not-for-profit basis by firms or organizations for the training of their own employees only, provided that such instruction is offered at no charge to such employees and with no advertising for open enrollment (8VAC40-31-60(A)(6)).

8. Schools of fine arts or other avocational courses that are conducted to further artistic appreciation, talent, or for personal development or information, and programs that prepare individuals to teach such pursuits (8VAC40-31-60(A)(12)).

9. Any postsecondary school whose primary purpose is to provide religious or theological education.

- To qualify for this exemption the postsecondary school may only award degrees, diplomas or certificates that reflect that the school's primary purpose is religious education (e.g., M.Div., Doctor of Theology).
- See also Code of Virginia § 23.1-226(C) and 8 VAC 40-31-50. Religious Institutions.

V. Applying for qualifying exemptions

Entities that will provide courses, programs or training that meet one or more of the exemption categories described under qualifying exemptions 1-8 in this document must submit an “*Application for Certification Exemption*” to the office of Private Postsecondary Education for review and approval/disapproval.

The “*Application for Certification Exemption*” can be found at the following link:

<https://ppe.schev.edu/ppe-forms-and-regulations?accitem=Virginia%20Code%20and%20Regulations%20for%20Schools>

VI. Applying for exemption as a religious exempt school

To secure approval as a religious exempt school, described under qualifying exemption 9 in this document, the school shall submit a “*Request for Name Acknowledgement for Religious Exempt Institutions*” and an “*Institutional Application for Religious Exemption*” to the office of Private Postsecondary Education for review and approval.

Forms to apply for a religious exemption can be found at the following link:

<https://ppe.schev.edu/ppe-forms-and-regulations?accitem=Virginia%20Code%20and%20Regulations%20for%20Schools>