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Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation(s)	18 VAC 50-22
Regulation title(s)	Board for Contractors Regulations
Action title	Amendments to Improve Application Integrity
Date this document prepared	November 10, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

These proposed regulatory amendments will increase the integrity of the information used by the Board for Contractors to determine eligibility for licensure. There are no changes to the requirements themselves; experience levels, net worth requirements, examination requirements, and exam requirements all remain the same. Documentation to verify these requirements will change to ensure accuracy and integrity of the information submitted as part of the application. This includes the submission of identification of the individuals listed on the application, third party verification of experience, verification of financial standing, and other similar criteria. Current regulations currently leave the choice of documentation, when required, to be determined by the licensing staff. These amendments will make the documentation more uniform and consistent.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are not technical terms or acronyms that are being used in this document that are not defined in the Regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

During the past eighteen months, several instances involving the submission of false documentation, forged verification forms, and questionable identity have been brought to the attention of the Board for Contractors. The majority of these instances have resulted in disciplinary action being taken against the licensee, usually in the form of the revocation of the license and a monetary sanction. To date nearly 100 such cases have been adjudicated by the Board or are scheduled to be heard by the Board, and there are more than 100 currently in the investigative stages.

A review of these cases has found that the Board's current documentation requirements are insufficient to ensure that the information being provided by the applicant is valid. This includes, but is not limited to, verification of identification, experience documentation, determination of fiscal responsibility, and verification of employment status. The application process has been modified somewhat, in those areas that do not require an amendment of the regulations, but the Board has identified other requirements that should be implemented to reduce the instances of application fraud.

The Board is tasked with ensuring that contractors meet minimum competency standards as well as minimum financial standards to ensure that the public is protected from unqualified or incompetent contractors as well as to ensure that contractors have the fiscal health to enter into contracts that can be for hundreds of thousands of dollars. In order to ensure that these minimum standards are met it is critical that the documentation reviewed by the Board to determine license eligibility is accurate and trustworthy.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Section 18 VAC 50-22-10 – General Definitions: The Board will add two definitions to the existing list of definitions.

Sections 18 VAC 50-22-40, 50-22-50, and 50-22-60: The Board will amend these sections to include submission of identification, experience verification, employment verification, credit checks, and verification of fiscal standing (as applicable) as deemed necessary by the Board to meet the statutory and regulatory requirements.

Sections 18 VAC 50-22-220 and 50-22-230: The Board will amend these sections to include documentation that must be submitted in order to ensure that a licensee meets the eligibility requirements to make changes to its license.

Sections 18 VAC 50-22-310: The Board will amend the requirements for prelicense education providers to attend training provided by the Board.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1) The primary advantage to the public is that these regulations will help to ensure that the license holders actually meet the minimum competency requirements to get a license and the public can feel more confident that the license wasn't acquired fraudulently. The only disadvantage to applicants applying for licenses is that they will need to provide licensing staff with more supporting paperwork.

2) The primary advantage to the agency is there will be fewer investigations on license holders for acquiring the license fraudulently. The disadvantage to the licensing staff is that they will need to do more research on the front end before issuing the license.

3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities would be particularly affected by these regulations.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Eric Olson, c/o Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233; email: contractor@dpor.virginia.gov; fax (866) 430-1033. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The agency is using the participatory approach in the development of the proposal. Pursuant to the Public Participation Guidelines, 18 VAC 50-11-10 *et seq.*, a panel will not be used.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

**Board for Contractors
Economic and Fiscal Impact of Proposed Regulation**

Summary:

The Contractors regulations under the Board for Contractors are being amended to include a requirement that applicants submit a credit report with each firm application. The new requirement will help ensure the accuracy and integrity of information provided to the Board on applications. This in turn helps to ensure licensed contractors have met the minimum competency and financial standards designed to protect the public. No fiscal impact to the state is expected from this change. A nominal cost to the applicant is expected.

All costs incurred in support of board activities and regulatory operations are paid by the Department and funded through fees paid by applicants and regulants. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Economic Impact:

<p>Projected cost to the state to implement and enforce the proposed regulation, including:</p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no projected costs to localities.</p>
<p>Description of the individuals, businesses, or</p>	<p>Sole proprietors and firms that apply for a</p>

<p>other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>contractor’s license are affected by this change to the regulations.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Contractor applicants have averaged more than 5,000 per year over the last five years. It is estimated that more than 4,000 of the applicants per year are considered small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Contractor applicants may incur the cost of obtaining a credit report for the company, although there are free credit report options. Credit report costs may vary by the service provider.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The new requirement will help ensure the accuracy and integrity of information provided to the Board on applications. This in turn helps to ensure licensed contractors have met the minimum competency and financial standards designed to protect the public.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternatives have been identified at this time.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational

standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

- 1) The establishment of less stringent compliance or reporting requirements may allow applicants that do not meet the minimum competency standards to acquire a license that could have a direct impact on the safety of the public.
- 2) No changes to established schedules or deadlines for compliance are being proposed.
- 3) The promulgation of these regulations will actually bring a consolidation and simplification to the application process as it will establish reporting and documentation requirements that will be consistent for all applicants for a contractor license.
- 4) Notwithstanding the fact that the vast majority of contractor license holders are small business, most of these proposed amendments contain a clause that allows the Board to consider alternative documentation. That would allow a business that is either unable to obtain or finds it prohibitively difficult to obtain, the required documentation, the opportunity to have an alternative method explored through a review of the application by the Board. That particular process is already in place and is used occasionally by applicants for licensure.
- 5) The majority of the regulants are small businesses. Exempting them from the proposed requirements would be contrary to the request.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This form is not being used to report the result of a periodic review/small business impact review.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments would have no impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 50-22-10		General Definitions	Added definitions for “credit report” and “nationally recognized credit agency”.
18 VAC 50-22-40 B		This section requires that the qualified individual of a firm for a Class C license be 1) 18 years old 2) Has 2 years of experience 3) Is either a member of responsible management or a full time employee of the firm 4) Holds the appropriate certification, license or has completion the required examination.	The proposed changes will keep the current requirements for the qualified individual and require supporting documentation. The experience will need to be verified now by a building official, building inspector, registered design professional, a licensee of the Board for Contractors, a licensee of another regulatory agency, or other individual/organization approved by the Board. If the qualified individual is a full time employee and not a member of the responsible management, they will need to provide documentation verifying their employment with the firm. The required certifications and licenses list has been updated with current and corrected information. To ensure the truthfulness of the data that the applicant provides, supporting documentation will now be required.
18 VAC 50-22-40 C		This section currently requires the firm, qualified individual, and all members of responsible management to provide information for any	The proposed changes will now require the firm to submit a credit report in addition to each member of responsible management to provide information for any adverse financial history in the past 5

		adverse financial history in the past 5 years.	<p>years. The qualified individual will no longer be required to submit this information.</p> <p>The Board has determined that most contractors find themselves being disciplined by the Board because of financial difficulties. The Board would like to ensure that the firm has good financial stability before issuing them a license.</p> <p>The Board does not feel that the qualified individual needs to submit adverse financial history because if they are just a full time employee of the company, their financial status should have no effect on the firm.</p>
	18 VAC 50-22-40 G		<p>This is a new section that will require the firm for Class C applicants to provide a copy of photo IDs for each member of responsible management and each qualified individual.</p> <p>Many of the fraud cases that the Board has adjudicated have been due to questionable identity. Having photo IDs submitted for each person listed on the application will hopefully reduce this issue.</p>
	18 VAC 50-22-40 H		<p>This new section will require that each person listed on the application will have to sign that application acknowledging their role.</p> <p>Frequently staff will talk with an individual that was not aware that they were listed on the application for licensure.</p>
18 VAC 50-22-50 B		This section requires the designated employee of a firm applying for a Class B license to be 1) 18 years old 2) Is either a member of responsible management or a full time employee of the firm 3) Has passed the board-approved examination 4) Has followed the rules established with regard to conduct at the examination site.	<p>The proposed changes would add the requirement for providing employment verification documentation to be submitted if the designated employee is a full time employee of the firm and not a member of responsible management.</p> <p>This documentation is necessary to ensure the individual meets the requirements of the regulations.</p>
18 VAC 50-22-50 C		This section requires that the qualified individual of a firm for a Class B license be 1) 18 years old 2) Has 3 years of experience 3) Is either a member of responsible	The proposed changes will keep the current requirements for the qualified individual and require supporting documentation. The experience will need to be verified now by a building official, building inspector, registered design

		<p>management or a full time employee of the firm 4) Holds the appropriate certification, license or has completion the required examination.</p>	<p>professional, a licensee of the Board for Contractors, a licensee of another regulatory agency, or other individual/organization approved by the Board. If the qualified individual is a full time employee and not a member of the responsible management, they will need to provide documentation verifying their employment with the firm. The required certifications and licenses list have been updated with current and corrected information.</p> <p>To ensure the truthfulness of the data that applicant is providing, supporting documentation will now be required.</p>
18 VAC 50-22-50 C		<p>Current requirement is that the firm applying for a Class B license shall submit information on its financial position and a net worth of \$15,000 or more.</p>	<p>In addition to the current requirement the Board will require the firm to submit verification of assets being in the firm's name and on a form provided by the Board. Verification of liquid assets must be less than 60 days old and fixed assets must be less than one year old. A firm may submit a review or audit by a CPA instead of the form provided by the Board.</p> <p>The Board has learned that many applicants did not actually meet the net worth requirement.</p>
18 VAC 50-22-50 E		<p>This section currently requires the firm, designated employee, qualified individual, and all members of responsible management to provide information for any adverse financial history in the past 5 years.</p>	<p>The proposed changes will now require the firm to submit a credit report and each member of responsible management to provide information for any adverse financial history in the past 5 years. The qualified individual and designated employee will no longer be required to submit this information.</p> <p>The Board has determined that most contractors find themselves being disciplined by the Board because of financial difficulties. The Board would like to ensure that the firm has good financial stability before issuing them a license.</p> <p>The Board does not feel that the qualified individual or designated employee needs to submit adverse financial history because if they are just a full time employee of the company, their financial status should have no effect on the firm.</p>
	18 VAC 50-22-50 I		<p>This is a new section that will require the firm for Class B applicants to provide a copy of photo IDs for each member of</p>

			<p>responsible management, designated employee, and each qualified individual.</p> <p>Many of the fraud cases that the Board has adjudicated have been due to questionable identity. Having photo IDs submitted for each person listed on the application will hopefully reduce this issue.</p>
	18 VAC 50-22-50 J		<p>This new section will require that each person listed on the application will have to sign that application acknowledging their role.</p> <p>Frequently staff will talk with an individual that was not aware that they were listed on the application for licensure.</p>
18 VAC 50-22-60 B		<p>This section requires the designated employee of a firm applying for a Class A license to be 1) 18 years old 2) Is either a member of responsible management or a full time employee of the firm 3) Has passed the board-approved examination 4) Has followed the rules established with regard to conduct at the examination site.</p>	<p>The proposed changes would add the requirement for providing employment verification documentation to be submitted if the designated employee is a full time employee of the firm and not a member of responsible management.</p> <p>This documentation is necessary to ensure the individual meets the requirements of the regulations.</p>
18 VAC 50-22-60 C		<p>This section requires that the qualified individual of a firm for a Class A license be 1) 18 years old 2) Has 5 years of experience 3) Is either a member of responsible management or a full time employee of the firm 4) Holds the appropriate certification, license or has completion the required examination.</p>	<p>The proposed changes will keep the current requirements for the qualified individual and require supporting documentation. The experience will need to be verified now by a building official, building inspector, registered design professional, a licensee of the Board for Contractors, a licensee of another regulatory agency, or other individual/organization approved by the Board. If the qualified individual is a full time employee and not a member of the responsible management, they will need to provide documentation verifying their employment with the firm. The required certifications and licenses list have been updated with current and corrected information.</p> <p>To ensure the truthfulness of the data that applicant is providing, supporting documentation will now be required.</p>
18 VAC 50-22-60 D		<p>Current requirement is that the firm applying for a Class A license shall submit</p>	<p>In addition to the current requirement the Board will require the firm to submit verification of assets being in the firm's</p>

		information on its financial position and a net worth of \$45,000 or more.	<p>name and on a form provided by the Board. Verification of liquid assets must be less than 60 days old and fixed assets must be less than one year old. A firm may submit a review or audit by a CPA instead of the form provided by the Board.</p> <p>The Board has learned that many applicants did not actually meet the net worth requirement.</p>
18 VAC 50-22-60 E		This section currently requires the firm, designated employee, qualified individual, and all members of responsible management to provide information for any adverse financial history in the past 5 years.	<p>The proposed changes will now require the firm to submit a credit report and each member of responsible management to provide information for any adverse financial history in the past 5 years. The qualified individual and designated employee will no longer be required to submit this information.</p> <p>The Board has determined that most contractors find themselves being disciplined by the Board because of financial difficulties. The Board would like to ensure that the firm has good financial stability before issuing them a license.</p> <p>The Board does not feel that the qualified individual or designated employee needs to submit adverse financial history because if they are just a full time employee of the company, their financial status should have no effect on the firm.</p>
	18 VAC 50-22-60 I		<p>This is a new section that will require the firm for Class A applicants to provide a copy of photo IDs for each member of responsible management, designated employee, and each qualified individual.</p> <p>Many of the fraud cases that the Board has adjudicated have been due to questionable identity. Having photo IDs submitted for each person listed on the application will hopefully reduce this issue.</p>
	18 VAC 50-22-60 J		<p>This new section will require that each person listed on the application will have to sign that application acknowledging their role.</p> <p>Frequently staff will talk with an individual that was not aware that they were listed on the application for licensure.</p>
18 VAC 50-22-220 A		The current section requires any change in responsible management to be submitted in writing within 90 days of	The proposed changes will require that changes to responsible management should be reported on a form provided by the Board. In addition to the form the

		the change.	<p>following items should also be submitted for all new members of responsible management: 1) Photo ID 2) Adverse financial history within the past 5 years 3) Disclosure of any current or previous contractor license being held and any disciplinary action 3) Disclosure of all misdemeanor convictions within 3 years and any felony convictions.</p> <p>This information is required for new applicants already and should be required for changes to the license as well.</p>
18 VAC 50-22-230		Current requirement is for any changes to addresses or firm name must be reported to the Board in writing within 30 days.	The proposed changes are to require these changes to be submitted on a form provided by the Board to ensure enough information is received to make the change requested.
18 VAC 50-22-310		Current requirements for prelicense education providers are that they must submit an application for course approval and maintain a record for each student for 5 years.	<p>The proposed change adds an additional requirement that each provider must send a representative to attend one contractor remedial education course every two years.</p> <p>Remedial education is provided to contractors by the Board for Contractors. They provide the most current information on licensing requirements. To ensure the education providers are relaying the most current information to their students it is imperative that they keep up to date on any regulatory changes. This course will help ensure that happens.</p>