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Proposed Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC135-20
VAC Chapter title(s)	Real Estate Regulations
Action title	Amend to adjust fees
Date this document prepared	July 27, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Real Estate Board (“the Board”) intends to amend the Real Estate Regulations to adjust license application, renewal, and reinstatement fees for real estate licenses and certificates.

The Board must establish fees adequate to support the costs of the Board’s operations and a proportionate share of the Department’s operations. By the close of the next biennium (2022-2024), fees will not provide adequate revenue for those costs. The Department of Professional and Occupational Regulation (“the Department”) is funded almost entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees. The Department receives no general fund money.

The Department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation. The Board has no other source of revenue from which to fund its operations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms or technical definitions are used in this form.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 of the Code of Virginia ("the Callahan Act") Regulatory boards to adjust fees states, in part:

Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation maintained under § [54.1-308](#) shows that unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201.A.4 describes each regulatory board's power and duty to "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation..."

Section 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charges to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each board distinctly;

- accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustment are mandatory in accordance with these code sections. The Board exercises discretion on how the fees are adjusted by determining the amount of adjustment for each fee type. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for operating cycles.

On May 19, 2022, the Board reviewed its current and projected financial position, and authorized an adjustment to license application, renewal, and reinstatement fees so that fees are sufficient, but not excessive to cover expenses

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The agency is the Real Estate Board. Chapter 21 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for real estate licensees. Section 54.1-2105 of the Code of Virginia states, in part:

- A. The board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate regulations.

In addition, § 54.1-201 of the Code of Virginia states, in part:

- A. The powers and duties of regulatory boards shall be as follows:
 - 4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

Further, § 54.1-113 of the Code of Virginia states, in part:

- A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of the Department's operations. Current fees do not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds the Department's authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

Substance

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.

The Board reviewed the fees listed in 18 VAC 135-20-80, 18 VAC 135-20-120, 18 VAC 135-20-140 and 18 VAC 135-20-370 and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the regulant population.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The Code of Virginia establishes the Board as the state agency that oversees licensure of real estate individuals and firms providing services in Virginia. The Board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the Code of Virginia requires the Department to comply with the Callahan Act.

The advantages of this change to the public is that the Board will continue to be financially solvent. There are no disadvantages to the public or the Commonwealth in raising the Board's fees as proposed here.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

No federal requirements have been identified.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies impacted by this change.

Localities Particularly Affected

There are no localities particularly impacted by this change.

Other Entities Particularly Affected

There are no other entities impacted by this change

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

The regulations for the Real Estate Board are being amended to increase application, renewal, reinstatement, and miscellaneous fees. This regulatory action will increase the revenue for the Board sufficiently to meet the Board's projected expenditures. There is no direct economic or fiscal impact to other state agencies or businesses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR 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. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:	The Real Estate Board is increasing the application, renewal, reinstatement, and miscellaneous fees. The approximately
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<p>a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>\$1,700,000 increase in annual revenue will be recorded in fund 09222. No increase in costs or other effects to expenditures are expected.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>Other state agencies are only affected when paying license fees for employees of the agency. The cost would be the amount of the fee paid for those individuals.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There is no benefit to other state agencies. The benefit to DPOR is that the Board will have sufficient revenue to cover the Board expenses.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Localities are only affected when paying license fees for employees of the locality. The cost would be the amount of the fee paid for those individuals.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There is no benefit to the localities from this regulation change.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>All salespersons, brokers, sole proprietors, business entities, firms, schools and instructors are affected by the fee change. Fees paid to apply renew, reinstate, or maintain the license are increasing.</p>
<p>Agency's best estimate of the number of such entities that will be affected. 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>As of July 1, 2022 there are 54,795 salespersons, 11,400 brokers, 2,112 sole proprietors, 5,771 firms and branches, 4,193 business entities, 210 schools, and 497 instructors. Most firms and business entities are considered small businesses and are affected by the change.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>The major categories for the fee changes are listed here. Applications fees are increasing as follows: Salespersons from \$150 to \$185 Broker/Business Entities, School and Instructor from \$190 to \$220 Firms from \$250 to \$300 Renewal fees are increasing as follows: Salespersons from \$65 to \$95 Broker from \$80 to \$115 Business Entities, School from \$90 to \$145 Instructor from \$75 to \$120 Firms from \$160 to \$215 Transfers between firms from \$60 to \$90 No other costs are expected for individuals or businesses.</p>

Benefits the regulatory change is designed to produce.	There are no benefits to the licensed individuals and businesses affected by the regulation change. The regulatory change does allow the board to continue licensing the individuals and businesses and continue protecting the health, safety and welfare of citizens.
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Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The following alternatives to the regulatory change were considered:

- Reduce services. Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.
- Obtain a Treasury loan to fund operations. The Department could request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- Supplement Board activities with general funds. The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department’s Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304(3), and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Real estate licenses are issued mainly to individuals, and do not fall within the meaning of the term “small business” as defined in § 2.2-4007.1.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The adjustment of fees is mandated by statute. Consequently, there is no flexibility.

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 is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

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- 1) There is a continued need for regulation of the real estate profession. Due to the personal and financial nature of these professions, at least minimal competency of those engaged in the profession is necessary to protect the health, safety, and welfare of the public. Since the vast majority of regulants either are or work for small businesses, this necessitates the continued regulation of small businesses. The proposed amendments balance the need for minimally competent professionals with the need for simple and clear regulations. The amendments add clarity to the regulations, and where possible, regulations are repealed or incorporated into other regulations.
 - 2) There were no comments regarding this fee action
 - 3) This regulatory action is a simple fee adjustment.
 - 4) The Board has no knowledge of the proposed regulations overlapping, duplicating, or conflicting with any federal or state law or regulation.
 - 5) The last fee related regulatory change was made in 2004.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments received.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Christine Martine, Executive Director, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, FAX: 866-826-8863, email:reboard@dpor.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC135-20-80		Salesperson by education and examination fee is \$150. Salesperson by reciprocity fee is \$150. Salesperson's or broker's license as a business entity fee is \$190. Broker by education and examination fee is \$190.	The new application fee is increased to \$185 to facilitate compliance with the Callahan Act. The new application fee is increased to \$185 to facilitate compliance with the Callahan Act. The new application fee is increased to \$220 to facilitate compliance with the Callahan Act. The new application fee is increased to \$220 to facilitate compliance with the Callahan Act.

		<p>Broker by reciprocity fee is \$190.</p> <p>Broker concurrent license fee is \$140.</p> <p>Firm license fee is \$250.</p> <p>Branch office license fee is \$190</p> <p>Transfer application fee is \$60</p> <p>Activate application fee is \$60.</p> <p>Downgrade to salesperson.</p> <p>Upgrade to broker.</p>	<p>The new application fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$185 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$300 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$90 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$90 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is \$120 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is \$120 to facilitate compliance with the Callahan Act.</p>
<p>18VAC135-20-120</p>		<p>Salesperson renewal fee is \$65.</p> <p>Salesperson's or broker's license as a business entity renewal fee is \$90.</p> <p>Broker renewal fee is \$80.</p> <p>Concurrent broker renewal fee is \$80.</p> <p>Firm renewal fee is \$160.</p> <p>Branch office renewal fee is \$90.</p>	<p>The renewal fee is increased to \$95 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$145 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$115 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$115 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$215 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$145 to facilitate compliance with the Callahan Act.</p>
<p>18VAC135-20-140</p>		<p>Salesperson reinstatement fee is \$100.</p> <p>Salesperson's or broker's license as a business entity reinstatement fee is \$135.</p> <p>Broker reinstatement fee is \$120.</p> <p>Concurrent broker reinstatement fee is \$120.</p>	<p>The reinstatement fee is increased to \$145 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$180 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$180 to facilitate compliance with the Callahan Act.</p>

		<p>Firm reinstatement fee is \$245.</p> <p>Branch office reinstatement fee is \$135.</p>	<p>The reinstatement fee is increased to \$315 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$220 to facilitate compliance with the Callahan Act.</p>
<p>18VAC135-20-370</p>		<p>Proprietary school certificate new application fee is \$190.</p> <p>Proprietary school certificate renewal fee is \$90.</p> <p>Proprietary school certificate reinstatement fee is \$135.</p> <p>Prelicense instructor certificate new application fee is \$190.</p> <p>Prelicense instructor certificate renewal fee is \$75.</p> <p>Prelicense instructor certificate reinstatement fee is \$110</p>	<p>The new application fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$145 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The new application fee is increased to \$220 to facilitate compliance with the Callahan Act.</p> <p>The renewal fee is increased to \$120 to facilitate compliance with the Callahan Act.</p> <p>The reinstatement fee is increased to \$180 to facilitate compliance with the Callahan Act.</p>