



# COMMONWEALTH of VIRGINIA

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September 14, 2015

Peter Blake  
Executive Director  
State Council of Higher Education for Virginia  
James Monroe Building  
101 North 14<sup>th</sup> Street  
Richmond, Virginia 23219

**Re: Senior Citizen Higher Education Program Regulations  
(8 VAC 40-20)**

Dear Mr. Blake:

The State Council of Higher Education for Virginia ("SCHEV") has asked for a review of its authority to promulgate and amend the above-referenced regulations.

Under Virginia Code § 4006(A)(4)(a), the amendment of these regulations is not subject to the Virginia Administrative Process Act because amendment is necessary to conform to changes in Virginia statutory law where no agency discretion is involved and the regulations shall be filed with the Registrar within 90 days of the new law's effective date. In addition, Virginia Code § 23-9.6:1(15) vests SCHEV with the authority to promulgate such regulations as may be necessary to carry out its powers and duties under the Code. Pursuant to Va. Code § 23-38.56 of the Senior Citizens Higher Education Act of 1974 ("the Act"), SCHEV prescribes regulations by which the provisions of the Act are implemented. Because the promulgation of regulations for the implementation of the Act is expressly the responsibility of SCHEV, it is my view that SCHEV has the mandated authority to promulgate such regulations and amend them as necessary. Further, in 2015, the General Assembly amended the maximum income to be eligible for the terms of the Act. *See* Va. Code Ann. § 23-38.56. I find that it is necessary and appropriate to amend the regulations cited above accordingly.

I further find that the proposed regulations are consistent with the statutory grant of authority to promulgate them, are consistent with the statutes, and are internally consistent. The proposed regulations do not appear to conflict with state or federal statutes. And the proposed regulations appear to have no Constitutional defect.

If you require additional assistance on this matter, please do not hesitate to contact me.

Respectfully,

/s/

Mike F. Melis  
Assistant Attorney General