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Fast-Track Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia (SCHEV)
Virginia Administrative Code (VAC) citation(s)	8VAC 40-31
Regulation title(s)	Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
Action title	Regulatory Language for Enrollment Agreement Legislation
Date this document prepared	05/31/2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action is a 2017 legislative mandate to create regulatory language to amend 8VAC 40-31. New legislation requires institutions certified by the State Council of Higher Education for Virginia to enter into an enrollment agreement with each student and provide student disclosures prescribed by the Council.

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.

“SCHEV” or “Council” is used for the State Council of Higher Education for Virginia.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 23, 2017, the State Council of Higher Education for Virginia (SCHEV) held its annual training for regulated institutions and announced it would convene a task force comprised of representative regulated institutions and the Career College Advisory Board to assist in the regulatory language for HB2040 legislation passed during the 2017 session. On May 24, 2017, SCHEV convened the task force and finalized the wording for amending 8VAC40-31 et seq by adding the definition of “Enrollment Agreement” to 8 VAC 40-31-10 and adding the requirements for enrollment agreements to 8VAC40-31-160(E)(2).

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.

Article 3 of Chapter 2 of Title 23.1 of the *Code of Virginia* grants the State Council of Higher Education for Virginia the authority to regulate Certain Private and Out-of-State Institutions of Higher Education.

§ 23.1-215 of the *Code of Virginia* authorizes the State Council of Higher Education for Virginia to adopt, pursuant to the Administrative Process Act, such regulations as may be necessary to implement the provisions of this chapter.

§ 23.1-230 of the *Code of Virginia* charges Council to determine the required disclosures for enrollment agreements.

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.

This action is a 2017 legislative mandate to create regulatory language to amend 8VAC 40-31. New legislation requires institutions certified by the State Council of Higher Education for Virginia to enter into an enrollment agreement with each student and provide student disclosures prescribed by the Council. The new regulatory language will benefit both regulated institutions and students enrolled in those schools. The institution will be protected by requiring students to acknowledge that the school has provided student protection disclosures prior to enrollment and the student is protected by receiving these disclosures, in writing, prior to enrollment.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

There are three reasons why we believe that this proposed regulatory language will be noncontroversial. First, while there has never been a requirement for regulated institutions to have an enrollment agreement, SCHEV has always encouraged institutions to have enrollment agreements as a best practice. We estimate that at least 90% of regulated institutions currently have enrollment agreements. Second, the regulation being submitted is requiring the enrollment agreements to contain information currently required to be disclosed to students by other means (such as in a catalog) or information that is available to potential students on other agency websites (such as pass rates for first time test takers for nursing licensure.) While the current common practice is to refer students to areas where they may obtain information required to be disclosed, the enrollment agreement will provide proof that the disclosures are being made to potential students prior to enrollment, thus protecting both the student and the institution. Third, SCHEV convened a task force to obtain the input of regulated institutions and the Career College Advisory Board regarding the proposed wording. The group reached a consensus on the proposed wording for the regulation which has been submitted as agreed to.

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.

The proposed amendments to *Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates* include a definition of "enrollment agreement" and defines the required elements of the enrollment agreement.

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.

The advantages of the amended regulation are that individual students will be provided with important disclosures prior to enrolling in the institution. These disclosures will include, but not be limited to transferability of credits to other institutions, their rights to cancellation, refund policies and the grievance process. The student's acknowledgement provides the institution with proof that the disclosures were made. This protects the institution from false accusations that the institution did not provide required disclosures at the time of enrollment.

There are no disadvantages.

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.

Federal regulations do not speak to enrollment agreements. However, for those institutions that have Title IV eligibility (the ability to provide federal financial aid to its students), continued eligibility is dependent on providing 30 disclosures to students and prospective students on a variety of topics, most of which we have not covered in the proposed wording for the regulation. Therefore, the proposed regulations for enrollment agreements do not exceed federal requirements for those schools eligible to offer federal financial aid.

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.

There are no localities that will bear disproportionate material impact.

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.

Not Applicable

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.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and	Not Applicable
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b) a delineation of one-time versus on-going expenditures	
Projected cost of the new regulations or changes to existing regulations on localities.	Not Applicable
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The institutions that are required to obtain certification from SCHEV will be affected by these changes
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.	SCHEV regulates approximately 300 postsecondary institutions of which approximately 50% would be considered small businesses.
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.	Not applicable. All institutions must already provide disclosures in other formats. There are no administrative costs associated with compliance.
Beneficial impact the regulation is designed to produce.	Provides student protections as well as protections for the regulated institutions.

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.

There are no alternatives. We are mandated to create regulatory language by Chapter 298 (2017)

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) 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.

Commenter	Comment	Agency response

Not applicable

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.

Not applicable

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.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
8VAC40-31-10. Definitions	<u>"Enrollment agreement" means a legally binding document signed by a</u>	None	To add definition of enrollment agreement

	<p><u>student and an authorized representative of an institution, prior to the time instruction begins, and contains required disclosures. A copy of the completed enrollment agreement shall be given to the student upon execution.</u></p>		
<p>8VAC40-31-160 (E)(2) Certification criteria for all postsecondary schools</p>	<p><u>2. An original enrollment agreement signed by the student and an authorized representative of the school.</u> <u>a. At the time of enrollment, the agreement shall contain, at a minimum:</u> <u>(1) student name, address and phone number;</u> <u>(2) institution name, address and phone number;</u> <u>(3) name of the educational program, start date, and the total number of credit hours or clock hours to complete the program of study and type of credential awarded upon completion (certificate, diploma or degree);</u> <u>(4) estimated cost of all institutional charges and fees including, but not limited to: tuition, fees, equipment charges, supplies, textbooks, and uniforms;</u> <u>(5) the institution's refund policy, which must be in compliance with 8VAC40-31-160 N(1-12) ;</u> <u>(6) a labeled section titled "STUDENT'S RIGHT TO CANCEL" which shall provide the terms for cancellation. Specifically,</u> <u>i. The school shall provide a period of at least three business days, excluding weekends and holidays by which the student applicant must cancel in order to</u></p>	<p>None</p>	<p>To provide requirements for enrollment agreement disclosures.</p>

	<p><u>receive refund of all monies paid less a non-refundable fee not to exceed \$100. The actual date by which the student applicant must cancel shall be specified in the agreement.</u></p> <p><u>ii. The school shall disclose that following the cancellation period, a student applicant may cancel his enrollment agreement, by written notice, at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school will refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100, whichever is less;</u></p> <p><u>(7) a notice stating that the transferability of credit and credentials earned is at the sole discretion of the receiving institution;</u></p> <p><u>(8) for enrollees in programs leading to professional licensure, the school shall disclose annual pass rates for first time test takers for the last three years, if applicable. If results are not available, the school must provide a written explanation. This disclosure must be signed by the student;</u></p> <p><u>(9) a statement informing students of the institution's grievance policy;</u></p> <p><u>(10) a statement informing students that the institution is certified to operate by SCHEV and providing full contact information for Council;</u></p> <p><u>(11) a statement that reads: "By signing below, I certify that I have been</u></p>		
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	<p><u>provided access to the institution’s electronic or print catalog, bulletin, or brochure.”</u> <u>(12) a statement that reads: “ I understand that this is a legally binding agreement. My signature below certifies that I have read, understood and agreed with my rights and responsibilities. Further, I certify that I understand the institution’s cancellation and refund policies and I understand and agree to these policies.”</u> <u>(13) following the statement in “12” above, the document provides places for signatures of the student and authorized representative of the school and date the document was signed</u></p> <p><u>b. A new enrollment agreement must be completed in the event that the student (i) delays his start date, (ii) changes the program of enrollment; or (iii) drops from the program and re-enrolls at a later date.</u></p>		
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If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.