



Virginia Department of Planning and Budget **Economic Impact Analysis**

8 VAC 40-31 Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates

State Council of Higher Education for Virginia

Town Hall Action/Stage: 5391/9259

July 7, 2021; updated July 12, 2021 to include additional information provided by the agency

Summary of the Proposed Amendments to Regulation

The State Council of Higher Education for Virginia (SCHEV) proposes to increase the fees it charges to private postsecondary schools, including out-of-state schools operating in Virginia. The fee increases are intended to cover the operating costs of the Private Postsecondary Education (PPE) unit, which oversees nearly 300 private education institutions to ensure that institutions certified to operate in the Commonwealth meet minimal academic and administrative capability standards.

In addition, a legislative mandate enacted by the 2020 Acts of Assembly requires SCHEV to certify out-of-state postsecondary schools offering distance learning programs in Virginia, unless those schools are participants of a reciprocity agreement to which the Commonwealth belongs. Thus, the proposed fee changes include new fees for the certification of out-of-state online institutions of higher education that are not members of the National Council for State Authorization Reciprocity Agreements (NC-SARA).

Background

Virginia Code § 23.1-215 directs SCHEV to establish (i) minimum standards for private providers of postsecondary education, (ii) procedures by which a postsecondary school may seek approval to confer degrees in the Commonwealth, (iii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this article meet the minimal standards, (iv) protections for students attending postsecondary schools subject to the provisions

of this article, and (v) information to assist persons who rely on postsecondary degrees or certificates to judge the competence of individuals in receipt of such degrees or certificates.¹

The PPE unit was established within SCHEV to meet these statutory obligations, thereby protecting the citizens of the Commonwealth from fraudulent or substandard educational institutions. To accomplish this, the PPE unit currently regulates 291 private postsecondary schools, including 126 degree-granting institutions of higher education (IHE) and 165 career-technical schools (now called non-degree schools, abbreviated as NDS) at more than 300 locations throughout Virginia.^{2,3} Staff responsibilities include approving new postsecondary schools, approving programs, completing compliance audits, granting exemptions, approving agents, and annually recertifying postsecondary schools. In addition, the PPE unit is also charged with investigating student complaints against all postsecondary institutions in the Commonwealth, investigating schools operating without authorization, ensuring student protections for students enrolled in certified postsecondary schools, assisting with school closures, the retention of student transcripts, and serving as the repository for student records from closed institutions.

Virginia Code § 23.1-224 authorizes SCHEV to “establish nonrefundable fees for services and methods for collecting such fees.”⁴ The PPE unit of SCHEV is funded solely by revenue collected from certification application fees; annual recertification fees; agent fees; religious exemption fees; transcript fees; and program approval fees. SCHEV does not receive general funds to perform the duties delegated to the PPE unit, which has no other source of revenue from which to fund its operations.

PPE fees were last evaluated for an increase in 2009. The fee schedule derived from that analysis was adequate to meet the needs of the PPE unit at that time. However, due to a delay in the implementation of the new regulation, the fees did not become effective until February

¹ See <https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-215/>.

² Virginia Code § 23.1-213 defines “institution of higher education” as private entities that have received approval from SCHEV to use the term “college” or “university” in its name, enroll students, and offer approved courses for degree credit or programs of study leading to a degree. “Non-college degree school” is defined as any entity that offers courses or programs of study that do not lead to a degree. “Postsecondary school” is defined to include both IHE and NDS. See <https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-213/>.

³ Numbers taken from the Agency Background Document (ABD), page 1. See https://townhall.virginia.gov/L/GetFile.cfm?File=100\5391\9259\AgencyStatement_SCHEV_9259_v1.pdf.

⁴ See <https://law.lis.virginia.gov/vacode/title23.1/chapter2/section23.1-224/>.

2014.⁵ Although SCHEV reports that the fees were adequate to cover the operating expenditures for a few years immediately following the increase, the agency states that this is no longer the case. Due to increases in indirect cost assessments by SCHEV and salary increases mandated by the General Assembly, the PPE unit's operating costs have risen such that they exceeded revenue in FY 2020.

Table 1 (below) compares the current and proposed fees for both IHE and NDS. In setting the new fees, SCHEV has sought to minimize the burden on smaller schools and attract new NDS to the Commonwealth. Accordingly, NDS would face no increase to their initial fee or non-refundable administrative fee. In addition, the PPE unit has a handful of schools that collect very small annual tuition. For 2018, for example, one income tax school reported a total tuition income of \$26,000, a barber school reported tuition income of \$28,000, and a dental assisting school reported tuition income of \$15,000. The agency believes that raising the annual renewal fee beyond the \$250 that they currently charge would be burdensome on the smallest schools. Thus, the annual renewal fee for schools with an annual gross tuition under \$50,000 would remain unchanged. For all other schools, SCHEV proposes to increase renewal fees such that schools with higher enrollment rates (and thus higher tuition revenue) would face greater percentage increases. SCHEV also proposes to create a new category that would consist of postsecondary schools receiving over \$5 million in annual gross tuition.

Table 1: Comparison of current and proposed fees

Fee type (changes italicized and underlined)	Current fee	Proposed fee	Percentage increase
New school orientation session, per person	\$150	\$150	No change
Initial fee for all new IHE	\$6,000	\$10,000	67%
Initial fee for all new NDS	\$2,500	\$2,500	No change
Annual fee for all unaccredited IHE ⁶	\$6,000	\$10,000	67%
<i><u>Initial fee for out-of-state online IHE that are not members of NC-SARA</u></i>	N/A	\$10,000	N/A
<i><u>Renewal fee for out-of-state online IHE that are not members of NC-SARA</u></i>	N/A	\$10,000	N/A

⁵ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=3048>.

⁶ SCHEV clarified that, "We give new institutions 6 years to become accredited. During the pendency, they will only pay the annual fee for unaccredited institutions, not both fees." There are currently only 5 unaccredited institutions.

Renewal fee for all postsecondary schools with an annual gross tuition collected less than \$50,000, as recorded on most recent financial statement	\$250	\$250	No change
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$50,000 but less than \$100,000, as recorded on most recent financial statement	\$1,000	\$1,200	20%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$100,000 but less than \$500,000, as recorded on most recent financial statement	\$2,500	\$3,000	20%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$500,000 but less than \$1,000,000, as recorded on most recent financial statement	\$4,000	\$6,000	50%
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$1,000,000, <i>but less than \$5,000,000</i> , as recorded on most recent financial statement	\$5,000	\$7,500	50%
<i>Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$5,000,000, as recorded on most recent financial statement</i>	N/A	\$10,000	N/A
Returned check fee	\$35	\$35	No change
Initial or renewed exemption application/request for name acknowledgement/agent registration	\$300	\$350	17%
Nonrefundable administrative fee (withdrawal of application)	\$500 for NDS, \$1000 for IHE	\$500 for NDS, \$2,000 for IHE	No change for NDS, 100% increase for IHE
<i>Request for change in degree level authorization</i>	N/A	\$1,000	N/A
Request duplicate certificate to operate due to school name or address change	\$100	\$100	No change
Request duplicate agent permit, to replace lost/stolen/misplaced permit	\$100	\$100	No change
Application fee for each additional site (<i>instructional location</i>)	\$100	\$300	200%
Application fee for each additional program or modification to an existing program, <i>or program deletion</i>	\$100	\$100	No change

In addition, a new fee of \$1,000 for a request for change in degree level authorization would be added, the fee for each additional instructional location would be increased threefold from \$100 to \$300, and the application fee for additional programs and modifications to existing programs would now be extended to cover program deletion as well.

Lastly, the proposed changes include a new initial and renewal fee for “out-of-state online institutions of higher education that are not members of NC-SARA.” Chapter 380 of the 2020 Acts of Assembly added a definition of “distance learning” and amended Virginia Code §23.1-219 to add:

*Any degree-granting postsecondary school providing distance learning to residents of the Commonwealth from a location outside of the Commonwealth shall be certified to operate in the Commonwealth or shall be a participant in a reciprocity agreement to which the Commonwealth belongs...for the purpose of consumer protection.*⁷

Since this requirement creates new duties for the PPE unit, the new fees are intended to cover the expenses that would arise from discharging those duties. SCHEV has indicated that these fees were set to be high enough to “cover reasonable and anticipated administrative costs of regulating an out-of-state institution that is not a SARA member. The most burdensome duty we will have is conducting site visits outside of Virginia, first within the first 18-24 months of certification, and then about every 3 years regularly. The need for a site visit can also be triggered by an influx of complaints or other information that would raise compliance concerns, so there needs to be funding available for those contingencies.”

Estimated Benefits and Costs

The proposed changes to fees would directly increase costs for private postsecondary educational institutions in Virginia and for out-of-state institutions providing distance learning programs in Virginia. As long as the demand for postsecondary educational programs remains robust, these private institutions would most likely pass on the increased costs to their students rather than reduce their staff or program offerings. Depending on enrollment rates, the increased costs would be distributed across a large number of students and are unlikely to have a significant impact on the cost of attending any single program at any particular institution. Virginia students and their families would benefit from the PPE unit’s continued ability to ensure

⁷ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0380+hil>.

the quality of postsecondary education provided by private institutions in the Commonwealth, including maintained capacity for investigating fraudulent practices and greater oversight of online programs, particularly those not part of NC-SARA.

Businesses and Other Entities Affected

The proposed amendments would impact the 126 degree-granting institutions and 165 career-technical schools that the PPE unit currently oversees as well as new private postsecondary education institutions that may be established in the future. SCHEV has indicated that 206 of the 291 postsecondary schools are operated as for-profit businesses. Although an institution's status as a for-profit has no bearing on the fees charged, for-profit institutions tend to have higher enrollment rates and gross tuition revenue, and would accordingly fall in the higher fee brackets.

Small Businesses⁸ Affected

As per the ABD, about 120 of the private postsecondary education institutions overseen by the PPE unit would meet the definition of a small business; however, some of these may be not-for-profit educational institutions and thus may not be considered businesses in the traditional sense.

Localities⁹ Affected¹⁰

The proposed amendments do not introduce new costs for local governments, and are unlikely to affect any locality in particular.

Projected Impact on Employment

As mentioned previously, the proposed fee changes are unlikely to impact employment at private postsecondary education institutions since these costs can be easily spread out over the current and future student body.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed fee changes are unlikely to affect the use or value of private property for private postsecondary educational institutions. Real estate development costs are not affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.