



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: 5705/9327
October 28, 2021

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 380 of the 2020 Acts of Assembly, the State Council of Higher Education for Virginia (SCHEV) proposes to add certification requirements for out-of-state schools offering distance learning in Virginia. Out-of-state schools that are members of the National Council for State Authorization Reciprocity Agreements (NC-SARA) would be exempt from these certification requirements. The proposed amendments would require out-of-state schools that are not members of NC-SARA to: (i) apply for SCHEV authorization by demonstrating authorization and good standing in the state where the school has legal domicile, (ii) provide certain disclosures to Virginia students seeking to enroll in a distance learning program, and (iii) pay a certification fee.

Background

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.¹

Accordingly, out-of-state schools that are part of NC-SARA would not require certification. Schools that do require certification would have to demonstrate that they meet the following

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0380+hil>.

criteria: (i) the institution is authorized to operate by the appropriate entity in the state where the institution has legal domicile, (ii) the institution is accredited by an accrediting body approved by the U.S. Department of Education with a scope of authority that includes distance learning, (iii) the institution is in good legal standing, including having no current or pending show cause or probationary actions against it, and (iv) the institution demonstrates minimum financial stability to qualify for certification.

Upon receiving certification, out-of-state schools seeking to enroll Virginia students would be required to provide prospective enrollees with a notification that the school is certified, a notification outlining the procedures a student may follow to file a complaint against the school, including contacting SCHEV as a last resort, and a notification stating that the transferability of credits earned at the school is at the sole discretion of the receiving institution. Further, institutions offering programs leading to professional licensure would be required to provide prospective students with a notification regarding whether completion of the program would be sufficient to meet licensure requirements in Virginia. Lastly, the institution would be required to inform SCHEV and enrolled students in Virginia of “any adverse action by the U.S. Department of Education or by its accrediting agency that threatens a disruption of the operation of the institution and/or exposes students to a loss of course or degree credit or financial loss.”

Institutions would have to pay SCHEV a nonrefundable initial and renewal authorization fee as provided in 8 VAC 40-31-260.² The proposed amendments include a requirement that applications for annual renewal be submitted at least 90 days prior to the expiration date specified on the certificate of authorization.

Estimated Benefits and Costs

The proposed changes to fees would increase costs for out-of-state institutions providing distance learning programs in Virginia while providing greater protections to students in Virginia seeking to enroll in distance learning programs from out-of-state institutions. As long as the demand for distance learning programs from out-of-state schools remains robust, these institutions would most likely absorb the costs of the application and renewal fees. Schools may also pass on all or part of these costs to students, either spreading out the cost across all students,

² In a separate regulatory action, SCHEV has set the initial fee and renewal fee at \$10,000. See <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5391> for details.

or specifically across Virginia residents. Out-of-state schools that choose not to apply for certification would have two options: they may join NC-SARA instead of going through the certification process, or choose not to enroll students from Virginia.³

Virginia students and their families would benefit from greater oversight of distance learning programs, particularly those not part of NC-SARA. In particular, the proposed amendments would require that distance learning programs provide notifications to prospective students regarding the certification status, transferability of credits, and if applicable, whether the program meets licensing requirements in Virginia. Students and families would benefit from greater transparency and SCHEV could take action if certified schools are found to not provide these notifications. However, such consumer protection benefits would be limited if uncertified schools are able to enroll Virginia students undetected, and if students and their families are unaware of the certification and notification requirements.

Businesses and Other Entities Affected

The proposed amendments would not impact any postsecondary educational institutions in Virginia; they apply only to out-of-state schools that do not participate in NC-SARA. The number of such schools is unknown. Virginia students seeking to enroll in distance learning programs would benefit from greater oversight of out-of-state schools' distance learning programs.

An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposal would increase costs for out-of-state schools offering distance learning in Virginia that are not members of NC-SARA. Thus, an adverse impact is indicated.

Small Businesses⁴ Affected

The proposed amendments would not affect small businesses in Virginia.

³ This applies for schools with legal domicile in 49 states (all but California), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. California schools would not have the option of joining NC-SARA since their state is not party to the agreement. See <https://www.nc-sara.org/sara-states>.

⁴ 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.”

Localities⁵ Affected⁶

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

Projected Impact on Employment

The proposed amendments are unlikely to affect employment in Virginia since they only apply to certain out-of-state schools.

Effects on the Use and Value of Private Property

The proposed amendments increase costs for out-of-state private schools offering distance learning in Virginia that are not members of NC-SARA. The value of such private schools may be modestly reduced. 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.

⁵ “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.

⁶ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.