



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

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**18 VAC 80-30 Opticians Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 6260/10332**  
June 21, 2024

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The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The Board for Hearing Aid Specialists and Opticians (Board) proposes to increase fees paid by opticians for applications for licensure, application for contact lens certification, renewal, late renewal and reinstatement.

## **Background**

Code of Virginia § 54.1-201 A.4 imposes a duty on professional boards 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 proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR)...” In addition, Virginia Code § 54.1-113, known as the Callahan Act, requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when “unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

for the past biennium, whichever is greater.”<sup>2</sup> The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which “expenses allocated to [the board] for the past biennium...[are] more than ten percent greater or less than money collected on behalf of the board.” Because this action would increase fees, the Callahan Act does not appear to be directly invoked.

Lastly, the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to “offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the Department’s information technology systems requirements.” The most recent version of this language appears in Item 353 of the 2024 Appropriation Act.<sup>3</sup>

DPOR reports that between 2014 and 2024, staffing costs increased by 25 percent, from about \$10.27 million to \$12.79 million; this increase was driven by a 25 percent increase in salaries mandated by the General Assembly and a 13 percent increase in the number of filled full-time equivalent positions. The cost to lease DPOR’s office space, which includes rent, security, and service fees charged by the Department of General Services, has increased by 11 percent from 2014 to 2024, from about \$1.06 million to \$1.18 million. Contractual services, which includes payments to the Virginia Information Technologies Agency, increased by 49 percent during this period, from roughly \$1.75 million to \$2.61 million. In addition, the agency anticipates spending \$2 million to implement a new licensing system and \$550,000 for necessary physical security enhancements to the office space in 2025.

DPOR reports that the Board last increased fees for opticians in 2005, and that expenses have steadily outpaced revenues such that the Board has been operating with a deficit since fiscal year 2020 and is projected to end the current (2022-2024) biennium with a \$65,065 deficit.<sup>4</sup> As a

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<sup>2</sup> See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 *Acts of Assembly*.

<sup>3</sup> See <https://budget.lis.virginia.gov/item/2024/2/HB6001/Chapter/1/353/>. Under Item 4-13.00 of the Appropriation Act, “the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act.” Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

<sup>4</sup> As a ratio of the Board’s expenditures for the 2022-2024 biennium, this translates to a -25% Callahan Act percentage, which would have justified a fee increase under the old Callahan Act language. However, as mentioned previously, the Callahan Act no longer addresses when DPOR boards should increase their fees, only when they should be decreased.

result, all operating funds have already been exhausted, and the Board is drawing funding from other boards. DPOR's projections indicate that although the number of license applicants is projected to continue increasing, leading to a growth in revenue, the Board will only break even in the 2028-2030 biennium at the current fees.

The proposed fee structure, summarized in the table below, is expected to increase the Board's revenues by approximately \$47,346 per year, or \$94,692 per biennium. This additional revenue in itself is projected to pull the Board out of its deficit position in the 2026-2028 biennium. This Board also oversees hearing aid specialists and raised fees for those professionals in a separate action last year.<sup>5</sup> The Board may break even sooner, in the 2024-2026 biennium, as a combined result of that action and the fee increases proposed here.

<b>FEE TYPE</b>	<b>CURRENT FEE</b>	<b>NEW FEE</b>	<b>\$ CHANGE</b>	<b>PERCENTAGE CHANGE</b>
Application for licensure	\$100	\$125	\$25	25.00%
Application for contact lens certification	\$100	\$125	\$25	25.00%
Renewal	\$100	\$125	\$25	25.00%
Late renewal (includes renewal fee)	\$125	\$150	\$25	20.00%
Reinstatement (includes renewal and late renewal fees)	\$225	\$275	\$50	22.22%

### **Estimated Benefits and Costs**

DPOR reports that the cash balance at the end of the 2022-2024 biennium is projected to be -\$65,065, a deficit. As mentioned previously, if fees remain unchanged, the Board's balance is projected to stay in a deficit until the 2028-2030 biennium. DPOR projections indicate that the fee increases would bring in an additional \$47,346 per year, and the Board anticipates that the new fees would become effective in FY 2025. Increased Board revenues would contribute towards allowing DPOR to continue to meet the agency's operating costs without needing

<sup>5</sup> See <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5274>.

General Fund allocations. The proposed changes would increase fees for currently licensed opticians as well as those who seek to become licensed in the future.

### **Businesses and Other Entities Affected**

The proposed fee increases would affect currently licensed opticians, as well as those seeking licensure in the future. DPOR reports that as of December 31, 2023, there were 1,730 licensed opticians. DPOR also reports that approximately 125 new license applications were processed in 2023.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>7</sup> Since the proposed amendments would increase fees, an adverse impact is indicated.

### **Small Businesses<sup>8</sup> Affected:<sup>9</sup>**

#### Types and Estimated Number of Small Businesses Affected

Small firms that employ opticians and pay for their licensure fees would be affected by the proposed fee increases. Since the Board licenses individuals but not firms and would not have data on the number of firms that paid for their employees' licensure fees even if they did, no data on the number of affected small firms are available.

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<sup>6</sup> Pursuant to Virginia 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.

<sup>7</sup> Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>8</sup> 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."

<sup>9</sup> 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.

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### Costs and Other Effects

To the extent that small firms that employ opticians pay for their licensure fees, their costs would increase commensurately with the proposed increases.

### Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

### **Localities<sup>10</sup> Affected<sup>11</sup>**

The proposed amendments would neither affect any locality in particular nor create new costs for any local governments.

### **Projected Impact on Employment**

The proposed amendments are not expected to substantively affect total employment. Given the small nature of the proposed fee increases, individuals would unlikely be deterred from seeking licensure as opticians.

### **Effects on the Use and Value of Private Property**

The proposed amendments would not substantively affect the value of private property. Real estate development costs would not be affected.

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<sup>10</sup> “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.

<sup>11</sup> Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.