



## Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Board of Accountancy
<b>Virginia Administrative Code (VAC) citation</b>	Subsection A of 18VAC5-22-20
<b>Regulation title</b>	Fees
<b>Action title</b>	Increasing Fees the Virginia Board of Accountancy Charges for Services It Provides
<b>Date this document prepared</b>	May 14, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Code of Virginia establishes the Virginia Board of Accountancy (Board) as the state agency that oversees licensing of CPAs providing services in Virginia. The Board's sole mission is to protect the citizens of the Commonwealth, and it views licensing as a broad concept that offers the public significant protection by prescribing requirements for formal and continuing professional education, examination, and experience; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the accountancy statutes and regulations.

As an independent, nongeneral fund agency, fees the Board charges for services it provides are its only source of revenues. Therefore, fees the Board charges for services it provides must be sufficient to fund both its operating expenses and the required accumulation of cash in its Trust Account (designed primarily to have sufficient cash to fund expenses incurred in the study,

research, investigation, or adjudication of matters involving possible violations of the accountancy statutes or regulations). Increases in operating expenses have caused expenses to exceed revenues during the fiscal years ended June 30, 2007 - 2011. Those deficiencies in revenues were funded through transfers of cash from the Trust Account. The Board forecasts that by early in 2013, it will have virtually no cash, either in the Operating Account or the Trust Account. The Board believes its operating activities are efficient and services cannot be eliminated. This Form TH-03 is designed solely to propose increases in the prescribed fees that will ensure that the Board is able to fund its operating expenses and that, based on the experience of boards of accountancy in other states, the Trust Account will be sufficient to fund expenses involving possible violations of the accountancy statutes or regulations. It is critical that the Trust Account be replenished to comply with its primary statutory requirement.

There have been no changes to the proposed regulations from publication of the proposed regulation to this final regulation.

**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 or board taking the action, and (3) the title of the regulation.*

On May 10, 2012, the Virginia Board of Accountancy voted, effective May 14, 2012, to adopt the amendments to Subsection A of 18VAC5-22-20 (Fees) as listed in the Substance section of this document as final. The proposed fees, as adopted, have not changed since the publication of the proposed stage.

**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.*

The proposed regulatory action is mandated by the following sections of the Code of Virginia:

- a. Subdivision 4 of § 54.1-4403 describes the Board’s power and duty to “levy and collect fees for the issuance, renewal, or reinstatement of Virginia licenses that are sufficient to cover all expenses of the administration and operation of the Board.”
- b. Subdivision 5 of § 54.1-4403 describes the Board’s power and duty to “levy on holders of Virginia licenses special assessments necessary to cover expenses of the Board.”
- c. Subdivision 14 of § 54.1-4403 describes the Board’s power and duty to “enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.”

- d. Subdivision 15 of § 54.1-4403 describes the Board’s power and duty to “do all things necessary and convenient for carrying into effect this chapter and regulations promulgated by the Board.”
- e. Subsection A of § 54.1-4404 describes the Board’s power and duty to “employ an Executive Director who . . . with approval of the Board, may employ such additional staff as needed. The annual salary of the Executive Director shall be established by the Board.”
- f. Subsection B of § 54.1-4404 describes the Board’s power and duty to “subject to the approval of the Attorney General . . . employ such other counsel as it deems necessary.”
- g. Subsection A of § 54.1-4405 provides that the Board of Accountancy Fund (the Fund) be “established as a special fund in the state treasury. All fees collected as provided in this chapter and regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Fund. Any interest income shall accrue to the Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.”
- h. Subsection B of § 54.1-4405 provides that “notwithstanding any law to the contrary, the Board shall have the discretion to use the moneys in the Fund to support its operations as the Board deems appropriate.”
- i. Subsection A of § 54.1-4405.1 provides that “a special nonreverting fund (except as set forth in subsection B), to be known as the Board of Accountancy Trust Account (the Trust Account)” be “created in the state treasury.” “The purpose of the Trust Account is to provide a supplemental source of funds to the Board on a timely basis for (i) its use in the study, research, investigation, or adjudication of matters involving possible violations of the provisions of this chapter or regulations promulgated by the Board or (ii) any other purpose that the Board determines is germane to its statutory purposes and cannot otherwise be funded through the Fund. The Trust Account shall consist of transfers from time to time by the Board from the Fund and earnings on the Trust Account.”
- j. Subsection B of § 54.1-4405.1 provides that “all disbursements from the Trust Account shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board. Funds remaining in the Trust Account at the end of a biennium shall continue to remain in the Trust Account and accrue earnings. Upon a determination by the Board that the Trust Account balance exceeds the amount needed for the purposes set forth in subsection A, the Board may transfer the excess to the Fund.”
- k. § 54.1-4406 states, “Within the parameters of policies and guidelines established by the Board, the Executive Director shall have the power and duty to:

1. Employ personnel and assistance necessary for the operation of the Board and the purposes of this chapter;
  2. Make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Board and the execution of its powers under this chapter, including, but not limited to, contracts with the United States government, with agencies and governmental subdivisions of the Commonwealth, and with other states;
  3. Accept grants from the United States government, its agencies and instrumentalities and any other source, and to these ends, the Board shall have the power to comply with conditions and execute agreements that are necessary, convenient, or desirable;
  4. Serve as the secretary of the Board;
  5. Maintain all records of the Board;
  6. Collect and account for all fees and deposit them into the Board of Accountancy Fund, from which the expenses of the Board shall be paid;
  7. Enforce all statutes and regulations the Executive Director is required to administer;
  8. Exercise other powers necessary to function as the sole administrative officer of the Board; and
  9. Perform any additional administrative functions prescribed by the Board.”
- l. § 54.1-4420 provides that “the Board’s financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives, or by a firm selected by the Board through a competitive procurement.”
  - m. Subsection A of § 54.1-4423 provides that “the Board may develop a roster of consultants and may contract with consultants to assist the Board in investigating and evaluating violations of the provisions of this chapter and regulations promulgated by the Board and to provide expert testimony as necessary in any subsequent administrative hearing or court proceeding. The consultants' compensation shall be determined and paid by the Board.”

The accountancy statutes prescribe requirements for ensuring that the Board accomplishes its sole mission of protecting the public. For example, § 54.1-4403 of the Code of Virginia states, “The Board shall have the power and duty to:

1. Establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity.

2. Examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration and grading of the CPA examination.
3. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by licensees, and to effectively administer the regulatory system.
4. Levy and collect fees for the issuance, renewal, or reinstatement of Virginia licenses that are sufficient to cover all expenses of the administration and operation of the Board.
5. Levy on holders of Virginia licenses special assessments necessary to cover expenses of the Board.
6. Initiate or receive complaints concerning the conduct of holders of Virginia licenses or concerning their violation of the provisions of this chapter or regulations promulgated by the Board, and to take appropriate disciplinary action if warranted.
7. Initiate or receive complaints concerning the conduct of persons who use the CPA title in Virginia under the substantial equivalency provisions of § [54.1-4411](#) or firms that provide attest services or compilation services to persons or entities located in Virginia under the provisions of subsection C of § [54.1-4412.1](#), and to take appropriate disciplinary action if warranted.
8. Initiate or receive complaints concerning violations of the provisions of this chapter or regulations promulgated by the Board by persons who use the CPA title in Virginia under the substantial equivalency provisions of § [54.1-4411](#) or firms that provide attest services or compilation services to persons or entities located in Virginia under the provisions of subsection C of § [54.1-4412.1](#), and to take appropriate disciplinary action if warranted.
9. Revoke, suspend, or refuse to reinstate a Virginia license for just causes as prescribed by the Board.
10. Revoke or suspend, for just causes as prescribed by the Board, a person's privilege of using the CPA title in Virginia under the substantial equivalency provisions of § [54.1-4411](#) or a firm's privilege of providing attest services or compilation services to persons or entities located in Virginia under the provisions of subsection C of § [54.1-4412.1](#).
11. Establish requirements for peer reviews.
12. Establish continuing professional educational requirements as a condition for issuance, renewal, or reinstatement of a Virginia license.
13. Expand or interpret the standards of conduct and practice in § [54.1-4413.3](#).
14. Enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.

15. Do all things necessary and convenient for carrying into effect this chapter and regulations promulgated by the Board.”

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.*

Subsection H of § 54.1-4402 of the Code of Virginia gives the Board the responsibility of enforcing the accountancy statutes and establishing by regulation rules and procedures for the implementation of those statutes.

- a. The accountancy statutes are in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia.
- b. The Board’s regulations (regulations) are in Chapter 22 of Agency 5, Title 18 of the Virginia Administrative Code (18VAC5-22).

As an independent, nongeneral fund agency, fees the Board charges for services it provides are its only source of revenues. Penalties assessed by the Board for violations of the accountancy statutes and regulations do not provide revenues for the Board. Instead, they are deposited into the Commonwealth’s Literary Fund.

The accountancy statutes require the Board to maintain two cash accounts:

- 1. *The Board of Accountancy Fund.* As shown in the legal basis section of this Form TH-03, this account is required by subsection A of § 54.1-4405 of the Code of Virginia. This account is designed to have sufficient cash to fund the operating expenses of the Board. Although the accountancy statutes refer to this account as the *Fund*, the Board refers to it as the *Operating Account* to clearly distinguish between the purpose of this account and the purpose of the other cash account required by the accountancy statutes.
- 2. *The Board of Accountancy Trust Account (Trust Account).* As shown in the legal basis section of this Form TH-03, this account is required by subsection A of § 54.1-4405.1 of the Code of Virginia. This account is designed to have sufficient cash to fund expenses incurred in the study, research, investigation, or adjudication of matters involving possible violations of the accountancy statutes or regulations. However, the accountancy statutes also permit using cash in the account to fund other expenses that are germane to the Board’s statutory purposes and cannot otherwise be funded through the Operating Account.

Fees the Board charges for services it provides must be sufficient to fund both its operating expenses and the needed accumulation of cash in the Trust Account. Virginia CPA licensure fees

have not been increased since 1991 (over 20 years). During this time, the profession has continually grown, technology has changed with significantly increased expenditures as a result of the Virginia Information Technologies Agency (VITA) and Northrop Grumman outsourcing, tax and accounting rules have become increasingly more complex, the enforcement process requires more time and resources, overall expenses have risen with inflation, and the need for staff resources has increased. As a result, the Board has run an operating deficit for five consecutive years. Projections indicate the Board will exhaust all cash balances by early calendar year 2013.

All increases in expenditures must be absorbed by the existing fee structure (revenues). Comparing fiscal year 2003 expenditures to the fiscal year 2012 budget, the following are highlights of significant increases in state mandated expenditures during this time:

- Nearly 800 percent increase in information technology-related expenses paid to the Virginia Information Technologies Agency (VITA) and the outsourcing with Northrop Grumman.
- Nearly 200 percent increase in building rental expenses (2007 state-mandated consolidation with other state agencies).
- State-mandated employee salary increases and bonuses approved by the General Assembly and the Governor.
- Compliance with new internal control requirements as a result of the Sarbanes-Oxley Act (Agency Risk Management and Internal Control Standards).

A significant portion of the Board expenditures are state-mandated. Excluding salaries and fringe benefits, only 6 percent of the Board's budget is considered "discretionary". In addition, the Board no longer benefits from interest earnings on its cash balances, with such earnings now being deposited to the state's general fund. Rising or new costs relative to state-mandated expenditures, coupled with no fee increase for over 20 years, have led to the Board's current financial status.

The Board believes its operating activities are efficient and services cannot be eliminated. In addition, it is critical that the Trust Account be replenished to comply with its primary statutory requirement to protect the citizens of the Commonwealth.

The need for the Trust Account has been demonstrated in other states by the highly-publicized fraudulent financial reporting by Enron, WorldCom, and other well-known entities and by the highly-publicized misappropriation of assets by Bernie Madoff and other prominent figures. In each of these cases, licensees were implicated. Studying, researching, investigating, or adjudicating whether circumstances that led to the perpetration of such fraud constitute violations of the accounting statutes or regulations requires complex considerations. However, fraud is not the only matter for which studying, researching, investigating, or adjudicating possible violations of the accountancy statutes or regulations requires complex considerations. These complex considerations require the use of experts with specialized knowledge and skills, and the expenses incurred by boards of accountancy are typically significant.

Subsection A of 18VAC5-22-20 prescribes the fees the Board charges for services it provides. This Form TH-03 is designed solely to propose increases in the prescribed fees that will ensure that the Board is able to fund its operating expenses and that, based on the experience of boards of accountancy in other states, the Trust Account will be sufficient to fund expenses the Board incurs in studying, researching, investigating, or adjudicating matters involving possible violations of the accountancy statutes or regulations.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

- a. A fee of \$20 is added for processing additional applications to take one or more sections of the CPA examination.
- b. A fee of \$25 is added for a preliminary evaluation of whether a person has met the requirements to take the CPA examination.
- c. The fee for processing an application for issuance of a Virginia license to a *person* is increased from \$24 to \$75.
- d. The fee for processing an application for issuance of a Virginia license to a *firm* is increased from \$24 to \$100.
- e. The fee for processing an application for the *timely* renewal of a *person's* Virginia license is increased from \$24 to \$60.
- f. The fee for processing an application for the *timely* renewal of a *firm's* Virginia license is increased from \$24 to \$75.
- g. The additional fee for processing an application for the renewal of a *person's* Virginia license that is *not timely* is increased from \$25 to \$100.
- h. The additional fee for processing an application for the renewal of a *firm's* Virginia license that is *not timely* is increased from \$25 to \$100.
- i. The fee for processing an application for reinstatement of a *person's* Virginia license is increased from \$250 to \$350.
- j. The fee for processing an application for reinstatement of a *firm's* Virginia license is increased from \$250 to \$500.
- k. The fee for processing an application for lifting the suspension of a *person's* privilege of using the CPA title in Virginia is increased from \$250 to \$350.



- l. The fee for processing an application for lifting the suspension of a *firm*'s privilege of providing attest services or compilation services for persons or entities located in Virginia is increased from \$250 to \$500.
- m. A fee of \$25 is added for providing or obtaining information about a person's grades on sections of the CPA examination.
- n. A fee of \$25 is added for processing an online request for verification that a person or firm holds a Virginia license.
- o. A fee of \$50 is added for processing a manual request for verification that a person or firm holds a Virginia license.
- p. A fee of \$100 is added for not responding within 30 calendar days to any request for information by the board under subsection A of 18VAC5-22-170.
- q. The additional fee for not using the online payment option for any service provided by the board is increased from \$5 to \$25.

## 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.*

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The Code of Virginia establishes the Board as the state agency that oversees licensing of CPAs providing services in Virginia. The Board's sole mission is to protect the citizens of the Commonwealth, and it views licensing as a broad concept that offers the public significant protection by prescribing requirements for formal and continuing professional education, examination, and experience; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the accountancy statutes and regulations.

As discussed in the purpose section of this Form TH-03, the proposed fee increases will ensure that the Board has sufficient revenues to fund its operating expenses and to ensure that the Trust Account is sufficient to comply with statutory requirements.

There are no disadvantages to the public or the Commonwealth in raising the Board's fees as proposed in this Form TH-03.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

N/A

Section number	Requirement at proposed stage	What has changed	Rationale for change

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response
Rebecca C. Quinn	Objected to the proposed \$25 fee for processing online requests <i>(from citizens)</i> for verification that a person or firm holds a Virginia license.	Ms. Quinn was sent a response that clarified a misunderstanding, to include the following: “This fee package does not in any way affect an individual’s ability to verify an individual or firm’s licensure status in Virginia, FOR FREE. We already have that ability on our website – called Licensee Search. This is a free service to anyone. The proposed fee for verification of licensure is for requests we receive from currently licensed CPAs and businesses that seek an “official letter of verification” from the Board to be sent to other individuals or organizations, and often request more detailed information than the general licensure status of individuals and firms found on our website. This information is often sent to employers, other state boards of accountancy, various societies and even other countries. These requests often require staff research, preparation of a letter and mailing costs.”

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
Subsection A of 18VAC5-22-20	No change	<ul style="list-style-type: none"> <li>• Processing an application to take the CPA examination - \$120</li>   <li>• No current requirement</li>   <li>• Processing an application for issuance of a Virginia license - \$24</li>   <li>• Processing an application for the timely renewal of a Virginia license - \$24</li>   <li>• Additional fee for processing an application for a license renewal that is not timely - \$25</li>   <li>• Processing an application for reinstatement of a</li> </ul>	<ul style="list-style-type: none"> <li>• Processing an initial application to take one or more sections of the CPA examination - \$120</li> <li>• Processing additional applications to take one or more sections of the CPA examination - \$20</li>   <li>• Preliminary evaluation of whether a person has met the requirements to take the CPA examination - \$25</li>   <li>• Processing an application for issuance of a Virginia license to a person - \$75</li> <li>• Processing an application for issuance of a Virginia license to a firm - \$100</li>   <li>• Processing an application for the timely renewal of a person’s Virginia license - \$60</li> <li>• Processing an application for the timely renewal of a firm’s Virginia license - \$75</li>   <li>• Additional fee for processing an application for the renewal of a person’s Virginia license that is not timely - \$100</li> <li>• Additional fee for processing an application for the renewal of a firm’s Virginia license that is not timely - \$100</li>   <li>• Processing an application for reinstatement of a person’s Virginia license - \$350</li> </ul>

		<p>Virginia license - \$250</p> <ul style="list-style-type: none"> <li>• Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia or for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia - \$250</li> <li>• No current requirement</li> <li>• No current requirement</li> <li>• Providing an additional wall certificate - \$25</li> <li>• No current requirement</li> <li>• Additional fee for not using the online payment option for any service provided by the board - \$5</li> </ul>	<ul style="list-style-type: none"> <li>• Processing an application for reinstatement of a firm’s Virginia license - \$500</li> <li>• Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia - \$350</li> <li>• Processing an application for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia - \$500</li> <li>• Providing or obtaining information about a person’s grades on sections of the CPA examination - \$25</li> <li>• Processing requests for verification that a person or firm holds a Virginia license:             <ol style="list-style-type: none"> <li>1. Online request - \$25</li> <li>2. Manual request - \$50</li> </ol> </li> <li>• Providing an additional wall certificate - \$25</li> <li>• Additional fee for not responding within 30 calendar days to any request for information by the board under subsection A of 18VAC5-22-170 - \$100</li> <li>• Additional fee for not using the online payment option for any service provided by the board - \$25</li> </ul>
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