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Final Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC 40-31
VAC Chapter title(s)	Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
Action title	Fee Changes
Date this document prepared	3/24/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Private Postsecondary Education (PPE) unit of the Academic Affairs division of the State Council of Higher Education for Virginia is responsible for regulating private and out-of-state postsecondary educational institutions operating in Virginia. The PPE unit currently regulates 101 degree-granting institutions and 179 career-technical schools at more than 250 locations throughout Virginia. Staff responsibilities include approval of new postsecondary schools; program approvals; compliance audits; granting exemptions; agent approvals; and annual recertification of postsecondary schools. 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.

SCHEV does not receive general funds to perform the duties delegated to the PPE unit by Code and Regulation. The Code of Virginia (Virginia Code) allows Council to establish nonrefundable fees for services provided by the PPE unit. All salaries, benefits and expenditures are paid out of the fees collected from regulated institutions.

The issue addressed here is the need for SCHEV to increase its fees to cover the essential functions of the PPE unit. While the PPE unit performs many functions, the underlying purpose in the performance of these duties is to protect the citizens of the Commonwealth from fraudulent or substandard educational institutions and to ensure that institutions certified to operate in Virginia meet minimal academic and administrative capability standards. PPE has no other source of revenue from which to fund its operations.

Since the NOIRA, fees for out-of-state online institutions of higher education and postsecondary schools that are not members of the National Council for State Authorization Reciprocity Agreements (NC-SARA) have been added, to align with legislative mandate enacted in the 2020 General Assembly session. The new law that will become effective July 1, 2022 requires out-of-state postsecondary schools offering distance education to Virginia citizens to be certified by the State Council of Higher Education for Virginia or be participants in a reciprocity agreement to which the Commonwealth belongs. Schools that need to be certified by SCHEV will be required to pay initial and annual fees that are comparable to fees paid by in-state schools. These fees were added to the proposed regulation in the Proposed Stage.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

SCHEV and "Council" mean the State Council of Higher Education for Virginia.
PPE means the Private Postsecondary Education unit of SCHEV.
NOIRA means the Notice of Intended Regulatory Action under APA.

Statement of Final Agency Action

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 22, 2022, Council approved the following resolution:

BE IT RESOLVED that the State Council of Higher Education for Virginia approves the Proposed Fee Changes Regulation (8VAC40-31-260 Fees). Council further authorizes staff to make any necessary technical or formatting changes that may be necessary to put the regulations into final form.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

Pursuant to Virginia Code § 23.1-224, Council may establish nonrefundable fees for services and methods for collecting such fees. PPE fees were last evaluated for an increase over ten years ago. The fee schedule derived from the 2009 analysis provided a fee increase 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 2014. While the fees were adequate to cover the costs of operating expenditures in the few years immediately following the increase, this is no longer the case due, among other reasons, to increases in indirect cost assessments by SCHEV and salary increases mandated by the General Assembly. These changes constitute significant de facto revenue reductions for a non-general fund unit such as PPE. PPE has implemented an austere budget, with severe reductions in expenses for essential activities such as compliance audits and training for regulated institutions. However, reducing expenditures to this extent is not feasible in the long run since the performance of these duties is the very thing that protects students from fraudulent or substandard educational institutions.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Article 3 of Chapter 2 of Title 23.1 of the Code of Virginia mandates that the State Council of Higher Education for Virginia regulate Certain Private and Out-of-State Institutions of Higher Education.

Virginia Code § 23.1-215 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 Article.

Virginia Code § 23.1-224 grants Council authority to establish nonrefundable fees for services and methods for collecting such fees.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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. The unit does not receive money from general funds.

SCHEV must establish fees adequate to support the direct and indirect costs of operating the PPE unit. Indirect costs are assessed to the PPE unit via a cost allocation method that ensures an equitable distribution of costs assumed by SCHEV but consumed by the PPE unit. The annual assessment allows SCHEV to collect PPE's share of rent; VITA charges; general operations fees; budget and finance services; and a proportionate share of the Directors' time dedicated to oversight of the PPE.

The deficit in the PPE unit budget in FY2021 is based on an austere budget that severely limits the unit's operation in the areas of compliance audits, and institutional training. This is not a long-term solution. The unit cannot adequately perform its duties by drastically cutting expenses. Virginia Code § 23.1-215 charges Council with the significant responsibility of ensuring student protections for those attending certified institutions. New schools are only certified to operate after they have been given a thorough

assessment to ensure they will be operating within the confines of Virginia law and regulation. Annual recertifications verify financial compliance as well as enrollment and graduation data. Compliance audits verify student records, refunds, quality of online education and faculty qualifications to teach subjects assigned. PPE staff also handles student complaints, investigates institutions operating without certification; and issues transcripts for closed institutions. In order to perform all these duties effectively, the PPE unit must 1) maintain adequate staffing; 2) have sufficient funds to cover the expense of travel and accommodations for its compliance investigators; 3) have adequate resources to pay for the costs of sustaining an online portal and database; and 4) be able to provide crucial and timely training for staff and regulated institutions.

Substance

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.

Fee schedule in existing regulation is being changed to increase certain fees.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) One primary advantage to the public is that consumer protections for students at the regulated schools will be enabled to continue at sufficient levels.
- 2) Other primary advantages to the agency and the Commonwealth are that the PPE unit will be able to fund its operations. The unit will be fully staffed and able to perform the necessary duties to regulate the schools under its purview, providing students of certified schools with adequate consumer protections against fraud and/or substandard service.
- 3) Increased fees disadvantage the regulated community due to increased operating costs, but the schools will benefit from the assurance that the unit has adequate resources to respond to concerns and conduct business effectively.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected: The Board of Nursing and The Department of Professional and Occupational Regulation regulates certain schools that are certified by SCHEV to operate.

Localities Particularly Affected: No localities are particularly affected.

Other Entities Particularly Affected: Schools required to be certified by SCHEV will see increased operating expenses from required fees. However, care was taken to minimize the burden on the smaller schools. The smallest certified schools, those collecting less than \$50,000 in tuition will see no increases in recertification fees.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comment was received during the Proposed stage.

Commenter	Comment	Agency response

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes were made to the text since the previous stage was published.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Table 1: Changes to Existing VAC Chapter(s)

The PPE unit regulates degree and non-degree postsecondary schools with annual tuition and fee collections ranging between \$2500 and \$84,000,000. Currently, regulated postsecondary schools pay recertification fees each year on a sliding scale from \$250 to \$5,000 based on tuition and fee collections. The PPE unit also collects fees for a variety of other services performed by the unit.

The chart below shows current fees and proposed fees. In preparing these recommendations, SCHEV took the following items into consideration:

- Care was taken to minimize the burden on the smaller schools. The smallest certified schools, those collecting less than \$50,000 in tuition will see no increases in recertification fees.
- For the remaining schools, SCHEV has proposed recertification fee increases in proportion to the size of the school. Fee increases for those schools will be 20%, 50% or 100%. The 100% increase is limited to those schools earning revenue at the highest end of the spectrum— \$5,000,000 or more in annual gross tuition.
- SCHEV also considered fee increases for performing duties that require the largest number of man-hours to complete and for institutions that provide the greatest risk to student protections (e.g. unaccredited institutions).
- Finally, the fee structure proposed here is intended to be sustainable for PPE and SCHEV for the next decade or more.
- Since the NOIRA, fees for out-of-state online institutions of higher education and postsecondary schools that are not members of the National Council for State Authorization Reciprocity Agreements (NC-SARA) have been added, to align with legislative mandate enacted in the 2020 General Assembly session. The new law that will become effective July 1, 2022 requires out-of-state postsecondary schools offering distance education to Virginia citizens to be certified by the State Council of Higher Education for Virginia or be participants in a reciprocity agreement to which the Commonwealth belongs. Schools that need to be certified by SCHEV will be required to pay initial and annual fees that are comparable to fees paid by in-state schools.

CHART I

Item	Current Fee	Proposed Fee
New school orientation session, per person	\$150	No Change
Initial fee for all new institutions of higher education	\$6,000	\$10,000

Initial fee for all new non-degree schools	\$2,500	No Change
Annual fee for all <u>unaccredited</u> institutions of higher education	\$6,000	\$10,000
Initial fee for out-of-state online institutions of higher education that are not members of NC-SARA (NEW)	N/A	\$10,000
Renewal fee for out-of-state online institutions of higher education that are not members of NC-SARA (NEW)	N/A	\$10,000
Renewal fee for all postsecondary schools with an annual gross tuition collected less than \$50,000, as recorded on most recent financial statement	\$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
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
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
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$1,000,000, but less than \$5,000,000, as recorded on most recent financial statement	\$5,000	\$7,500
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than \$5,000,000 as recorded on most recent financial statement (New Category)	N/A	\$10,000
Returned payment check fee	\$35	No Change
Initial or renewed exemption application/request for name acknowledgement/agent registration	\$300	\$350
Nonrefundable administrative fee (withdrawal of application) (nondegree)	\$500	No Change
Nonrefundable administrative fee (withdrawal of application) (degree)	\$1,000	\$2,000
Request for Change in Degree Level Authorization (NEW)	N/A	\$1,000
Request duplicate certificate to operate due to school name or address change	\$100	No Change
Request duplicate agent permit, to replace lost/stolen/misplaced permit	\$100	No Change

Application fee for each additional program, modification to an existing program, or program deletion.	\$100	No Change
Application fee for each additional site instructional location	\$100	\$300
