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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 the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates
Action title	Regulatory Language for Enrollment Agreement Legislation
Date this document prepared	1/28/2021

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.

This regulatory action comes as a result of a 2017 legislative mandate to create regulatory language to amend 8VAC 40-31. Legislation that became effective July 1, 2017 requires institutions certified by the State Council of Higher Education for Virginia to enter into an enrollment agreement with each student and provide student disclosures prescribed by the Council. This action creates the language for the regulation and describes requirements of enrollment agreements now prescribed by law.

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” or “Council” are used for the State Council of Higher Education for Virginia.

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.

The Council passed the following Resolution on March 23, 2021 approving the final regulations:

BE IT RESOLVED that the State Council of Higher Education for Virginia approves the Proposed Enrollment Agreement Final Regulations. 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.

Legislation that became effective July 1, 2017 requires institutions certified by the State Council of Higher Education for Virginia to enter into an enrollment agreement with each student and provide student disclosures prescribed by the Council. This action creates the language for the regulation.

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* grants the State Council of Higher Education for Virginia the authority to regulate Certain Private and Out-of-State Institutions of Higher Education.

§ 23.1-215 of the *Code of Virginia* 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 chapter.

HB2040 legislation passed during the 2017 session charges SCHEV with creating regulatory language for required enrollment agreements.

§ 23.1-230 of the *Code of Virginia* charges Council to determine the required disclosures for enrollment agreements.

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.

Legislation passed in 2017 requires Council to create requirements for an enrollment agreement that will be used by institutions certified to operate in Virginia by SCHEV. The new regulatory language will benefit both regulated institutions and students enrolled in those schools. The institution will be protected by requiring students to acknowledge that the school has provided student protection disclosures prior to enrollment and the student is protected by receiving these disclosures, in writing, prior to enrollment.

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.

The proposed amendments include a definition of "enrollment agreement" and describes the required elements of the enrollment agreement.

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. Primary Advantages and disadvantages to the public
This regulation applies specifically to institutions that are certified to operate in Virginia by SCHEV. Implementation will affect the institutions and the students enrolled in those institutions. The primary advantage to the institutions is that they will have one place to disclose all required information to students. The school will have proof that they have provided this information when the student signs the document (either physically or electronically) if the student claims the information was not provided. The student benefits from the enrollment agreement because important information regarding items such as the right to cancel or refund policies are all disclosed in one place.
The disadvantage to a school is the need to create an enrollment agreement if they currently do not have one. There is no disadvantage to the student.
2. Primary advantages and disadvantages to the agency
The agency will be better equipped to ensure that students are properly advised of the student protections they are entitled to when they sign on to attend a school. Right now there is no requirements in Virginia regulation that requires a school to provide an enrollment agreement. While a school may disclose students' right to a refund, or the right to send a complaint to SCHEV if the school does not resolve his grievance, these disclosures are often made in different

places and a student may have difficulty finding them. In addition, it is often the school’s word against the student’s word whether the disclosures were actually made at the time of enrollment.

- (3) Other pertinent matters of interest to the regulated community, government officials, and public
None

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.

Regulatory oversight of postsecondary education is a function of the state; therefore, the federal government has no corresponding rule or law.

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

Not applicable

Localities Particularly Affected

Not applicable

Other Entities Particularly Affected

Not applicable

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.

Commenter	Comment	Agency response
Thomas Beckett, American Public Education, Inc.	(1) Suggested that Enrollment agreement could be met by various methods and documents already provided to students instead of a single	(1) SCHEV staff believes providing all the disclosures in one place makes it clearer for both parties. Currently, for those institutions that do not have enrollment documents, information that is required for student protections can be found in

	<p>document called an “enrollment agreement”.</p> <p>(2) Requested SCHEV consider the “start date” a good faith attempt on both the part of the student and the institution to set the anticipated start date.</p> <p>(3) Requested “the total number of credit hours or clock hours to complete the program of study” be clarified</p> <p>(4) recommended that SCHEV permit institutions to disclose institutional charges and fees in accordance with and with reference to the nature and structure of their academic programs”</p> <p>(5) requests the acceptance of electronic signatures</p> <p>(6) requests that SCHEV omit the portion of the proposed regulation. Requiring a new enrollment agreement must be completed in the event that the student (i) delays his start date, (ii) changes the program of enrollment; or (iii) drops from the program and re-enrolls at a later date</p>	<p>multiple places- catalog, student handbook, electronically, etc. This would ensure that all disclosures are made in the same place and the student can acknowledge the receipt of important information on one document. The general assembly clearly calls for an “enrollment agreement “.</p> <p>(2) SCHEV agrees that there are many reasons why an anticipated start date may change. So long as there is not a large discrepancy between the “start date” on the enrollment document and the actual start date, SCHEV does not have an issue with this. (3) Regarding the question whether the “the total number of credit hours or clock hours to complete the program of study” takes into account “transfer” credits, the answer is no. Whether or not to accept transfer credits is always at the discretion of the school and this determination is never made at the time of enrollment. (4) SCHEV notes that disclosure of this information is already required by current regulation and it is specific to each program. This regulation now requires the information to be provided as part of the enrollment agreement. (5) SCHEV has determined that electronic signatures will be permitted. (6) SCHEV will not consider this option since staff has first-hand experience with records that do not accurately reflect programs or start dates. This is particularly burdensome when SCHEV is required to piece together information to determine whether students from closed institutions are entitled to a refund and how much the refund should be.</p>
<p>Kari Farrow, VT Graduate School</p>	<p>I support adding language to be included in enrollment agreement between students and regulated institutions. I attended a liberal arts institute for my undergraduate education and my language requirement encouraged me to get a minor in German. I feel that having a diverse back ground in courses outside one's major really adds to the overall educational experience</p>	<p>SCHEV appreciates your input on the process.</p>

	<p>as well as creating different opportunities for students that they may not have had before. It also gives students an opportunity to be more culturally aware and broaden their world view. There is also many studies that have shown studying a language increases creativity, critical-thinking, problem-solving skills and overall mental flexibility and functioning.</p>	
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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.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
8 VAC 40-31-10 Definitions		None	Add definition of “enrollment agreement”

8 VAC 40-31-160 E (2)		None	Add language and requirements for institutions certified by SCHEV to enter into an enrollment agreement with each student and provide student disclosures prescribed by the Council. Serves to protect both student and institution.