

## 18 VAC 80-20 – HEARING AID SPECIALISTS REGULATIONS

### BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

#### DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

##### **AGENCY RESPONSE TO ECONOMIC IMPACT ANALYSIS (EIA) PERFORMED BY THE VIRGINIA DEPARTMENT OF PLANNING AND BUDGET (DPB):**

The Board concurs with the analysis for #1, 2, and 3 in the Summary of Proposed Amendments to Regulations. The Board respectfully disagrees with #4 and 5 of the Summary, as well as the sections: Projected Impact on Employment, Effects on the Use and Value of Private Property, and both Small Businesses sections.

##### **Summary Item #4 - The Proposed Regulations would “consolidate the initial licensure and licensure by reciprocity fees.**

*EIA position – “Although on its face, this change is cost neutral for affected entities, the Board is seeking to increase the initial licensure fee to \$85 in a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7104>). The two actions analyzed together indicate that individuals seeking licensure by reciprocity will likely have to pay more than the [sic] currently do to become licensed. Assuming the higher initial licensure fee is promulgated, individuals seeking licensure by reciprocity will pay higher fees in all instances where the examination fee is greater than \$55.”*

##### Agency Response:

The benefit of consolidating the initial licensure fee and the licensure by reciprocity fee will be that the regulations will be clearer, and more easily understood by the regulants and the general public. These two fees are the same amount and serve the same purpose, but listing them separately in the regulations causes confusion for applicants. This regulatory change is meant solely to simplify language in the fees sections by reducing two separate fee entries with the same content into one entry. Many of the Board’s under the Department of Professional and Occupational Regulation successfully utilize this model.

The EIA states that this change is cost neutral, then proceeds to analyze a separate regulatory action, even linking to the other action. While the EIA does not explicitly state the costs outweigh the benefits of this action, it claims that individuals seeking licensure by reciprocity will likely pay higher fees. In actuality, this regulatory action does not change fees at all, and uses simplified language to maintain the same fee for all applicants for licensure, whether applying by reciprocity or not. Further, the Board believes this regulatory change will be beneficial to the regulants and public, independent of the separate action referenced by the EIA. In fact, this is the reason the Board brought separate actions, because this simplification is necessary regardless of the actual amount of the fee.

##### **Summary Item #5 - The Proposed Regulations would remove the examination fee (and other language pertaining to the fee) from the schedule of fees and insert language that allows the exam fee**

**to be set by agreement between a vendor, so long as the vendor is chosen in compliance with the Virginia Public Procurement Act.**

*EIA Position - "This change will increase uncertainty for these groups and will also likely lead to higher costs for licensees which may then be passed on to members of the public who use hearing aid services."*

Agency Response:

The current regulations set the examination fee at \$110.00. By setting the exam fee in the regulations, the Board is effectively unable to modernize its exam. When the exam fee is set in regulations, the process to update the exam, or change the exam, is extremely limited. Any desired change must go through the standardized regulatory review process. This also means that if the administration costs of the exam increase, whether through inflation, or other reasonable causes, and the Board is unable to adjust the examination fee capped at \$110.00, the Board will have to absorb that cost, increasing its expenses and thus expedite the requirement for a fee increase action to maintain the budget balancing requirements of the Callahan Act. Removing the exam fee from the regulations frees the Board from having to seek regulatory changes every time it needs to update the exam, or exam expenses change. Further, this change brings the regulation in line with the most of the Boards under the Department of Professional and Occupational Regulations ("DPOR"), including the Optician regulations.

As noted in the NOIRA and Agency Background Document, the Board's current written examination is a proprietary paper and pencil exam and is being phased out by the exam owner. The company that owns the exam has transitioned to a computer based exam, and the Board would like to be able to explore procuring a modernized exam, in compliance with the Virginia Public Procurement Act ("PPA"). By eliminating the reference to a specific fee, and authorizing setting the fees based on an exam vendor negotiated in compliance with the PPA, the Board will be able to adapt more quickly if it loses access to its current exam, or if it is able to acquire a new, modernized exam. This allows the Board to more ably fulfill its statutory mission to protect the health, safety, and welfare of the public through ensuring licensed professionals are minimally competent.

The EIA's claim that this will likely lead to higher costs for the licensees is unsupported. While the Board may need to seek a change in its exam in the future, the competitive bidding process implemented under the PPA may result in a lower or equivalent exam fee.

**Projected Impact on Employment -**

*EIA Position – "Likely increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists."*

Agency Response:

This regulatory action does not propose a fee increase. The EIA position on the projected impact on employment appears to be directed at a separate regulatory action. The EIA does not identify how any of the proposed changes in this regulatory action would impact employment. The changes proposed in this regulatory action simplify and modernize the regulations and are not anticipated to have a negative impact on employment.

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

*EIA Position – “To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value.”*

### Agency Response:

As noted above, this regulatory action does not propose a fee increase. The EIA position on the Effects on the Use and Value of Private Property appears to be directed at a separate regulatory action, and does not reference any of the proposed changes in this regulatory action.

Regardless of the EIA response’s relation to a separate action, the Board disagrees with the characterization of an occupational license as private property. The Board, in consultation with the Attorney General’s office, maintains that an occupational license is a legal status conferred by the state granting special privileges to the licensee, not private property.

Further, it is not clear how increasing the cost of the license decreases its value. Changing the cost of the license does not affect its function, characteristics, or the usability of the license, factors that would normally determine its value. In this sense, it is not clear how a fee change alone can change the value of a license. The EIA takes the position that a fee increase leads to a decrease in the number licensees. If this is the case, then the license would be more scarce. A decrease in supply would likely result in increased value. So if the license is more scarce due to the fee increase, its value would increase, not decrease as the EIA indicates.

## **Small Businesses: Costs and Other Effects-**

*EIA Position – “To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them.”*

### Agency Response:

As noted above, this regulatory action does not propose a fee increase. The EIA position on the Small Businesses: Costs and Other Effects appears to be directed at a separate regulatory action, and does not reference any of the proposed changes in this regulatory action.

Further, the changes made by this regulatory action are not anticipated to have any negative effect on small business costs. The changes in this action are clarifying changes, updates to reflect current business practices, and a consolidation and simplification of the categories of application fees. This simplification should reduce the regulatory burden on licensees, including small businesses. In fact, the Board takes the position that by streamlining and simplifying its regulations, small businesses will experience reduced costs, as owners and employees will have to spend less time and resources reading and understanding the regulations.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact-**

*EIA Position – “The Board could likely mitigate adverse impacts for licensees and the public by leaving fees structured as they currently are.”*

### Agency Response:

These regulatory changes are clarifying and simplifying in nature, and are meant to have a positive impact on the licensee population. Further, to the extent the EIA is referring to the fee increase as fee structure, this regulatory action does not propose a fee increase.