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Proposed Regulation Agency Background Document

Agency name	Board for Hearing Aid Specialists and Opticians
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 80-30
VAC Chapter title(s)	Optician Regulations
Action title	OPT Fee Adjustment 2023
Date this document prepared	May 9, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Board for Hearing Aid Specialists and Opticians (“the Board”) proposes to amend the Optician Regulations to adjust license application, renewal, and reinstatement fees for optician licenses.

The Department of Professional and Occupational Regulation (“DPOR”) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees. DPOR receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds DPOR’s authorized special revenue appropriation.

The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of DPOR’s operations. The Board’s balance from the 2020-2022 biennium was operating at a loss. At the close of the 2022-2024 biennium, the Board will be operating at a loss. By the close of the next biennium (2024-2026), fees will not provide adequate revenue for those costs.

The Board has no other source of revenue from which to fund its operations.

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.

"DPOR" means the Department of Professional and Occupational Regulation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulatory change was prompted by a DPOR review of the Board's financial position, and projected revenues and expenses for the 2024-2026 biennium. The DPOR's Financial Services Director reported that at current fee levels, the Board's expenditures are projected to exceed revenues by more than 10% by the close of the 2024-2026 biennium.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 of the Code of Virginia states ("the Callahan Act"), in part:

Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 of the Code of Virginia states, in part:

A. The powers and duties of regulatory boards shall be as follows:

4. 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 proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

Section 54.1-304 of the Code of Virginia states, in part:

Each of the regulatory boards within the Department shall be a separate board. All of the administrative functions of the regulatory boards shall be under the direction and supervision of the Director.

In the performance and discharge of his duties with respect to the regulatory boards, the Director shall:

3. Collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards and Department shall be paid;

Section 54.1-308 of the Code of Virginia states:

The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and charged to the accounts of the respective boards. The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board.

These Code sections require DPOR to:

- Pay expenses of each board and the Department from revenues collected;
- Establish fees adequate to provide sufficient revenue to pay expenses;
- Account for the revenues collected and expenses charged to each board; and
- Revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, DPOR:

- Accounts for the revenue collected for each board distinctly;
- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
- Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. **If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.**

Fee adjustments are mandatory in accordance with these code sections. The Board exercises minimal discretion on how the fees are adjusted by determining the amount of adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

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.

The promulgating agency is the Board for Hearing Aid Specialists and Opticians. Section 54.1-201 of the Code of Virginia enumerates the powers and duties of regulatory boards and states, in part:

- A. The powers and duties of regulatory boards shall be as follows:
 - 1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
 - 4. 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 proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
 - 5. To 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 practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

In addition, § 54.1-113 of the Code of Virginia states, in part:

- A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

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 is intended to solve.

The goal of this regulatory change is to adjust the Board's fees. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of DPOR's operations. Current fees do not provide adequate revenue for those costs.

DPOR is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds the Department's authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations. As detailed in the "Issues" section, failure to adjust fees may result in several disadvantages to the public, the regulated community, and the Commonwealth.

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 Board reviewed the fees listed in 18 VAC 80-30-50, and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

The following are the proposed fee increases to be made in this regulatory action.

Fee Type	Current Fee	New Fee	Change
Application for licensure	\$100	\$125	+\$25
Application for contact lens certification	\$100	\$125	+\$25
Renewal	\$100	\$125	+\$25
Late renewal (includes renewal fee)	\$125	\$150	+\$25
Reinstatement (includes renewal and late renewal fees)	\$225	\$275	+\$50

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.

The Code of Virginia establishes the Board as the state agency that oversees licensure of opticians providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations.

DPOR and the Board are obligated to comply with the Callahan Act and other applicable statutes. The fee adjustments adopted by the Board will ensure that the Board has sufficient revenues to fund its operating expenses.

The following primary advantages of the regulatory change are:

- Continued services. With the change, there would be no delays in processing applications and issuing licenses to applicants who are required to obtain credentials to perform the business of real estate professionals.
- Maintained public protection. DPOR would be effective in ensuring that real estate services are performed in a manner that protects the public health, safety, and welfare of citizens of the Commonwealth of Virginia.

There are no disadvantages to the public or the Commonwealth in adjusting the Board’s fees as detailed. The adjusted fees allow the Board to meet the requirements of applicable statutes, while being the least burdensome to the Board’s regulant population.

Disadvantages of not allowing this regulatory change are as follows:

- Reduction of services. Reductions in services would result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and would decrease DPOR’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare. Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative.
- Obtain a Treasury loan to fund operations. DPOR might have to request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- Supplement Board activities with general funds. DPOR currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. DPOR’s Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1304(3), and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies that are particularly affected by this change.

Localities Particularly Affected

There are no localities particularly affected by this change.

Other Entities Particularly Affected

There are no other entities that are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Summary:

The regulations for opticians are being amended to increase the application, renewal, late renewal and reinstatement fees. This regulatory action will increase the revenue for the Board sufficiently to meet the Board’s projected expenditures. There is no direct economic or fiscal impact to other state agencies or businesses.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program’s revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>The Board for Hearing Aid Specialists and Opticians is increasing the application, renewal, and reinstatement fees for the opticians. The biennium (2024-2026) total projected revenue at \$241,021 will have an approximate \$47,346 increase in annual revenue that will be recorded in fund 09222. No increase in costs or other effects to expenditures are expected.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>Other state agencies are only affected when paying license fees for employees of the agency. The cost would be the amount of the fee paid for those individuals.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There is no benefit to other state agencies. The benefit to DPOR is that the Board will have sufficient revenue to cover the Board expenses.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>Localities are only affected when paying license fees for employees of the locality. The cost would be the amount of the fee paid for those individuals.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There is no benefit to the localities from this regulation change.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>All opticians are affected by the fee change. Also, individuals seeking to become licensed as an optician will be affected. Fees paid to apply are increasing and fees paid to renew or maintain the license are increasing.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As of December 31, 2023, there are 1,730 licensed opticians. All applicants and licensees are individuals, and no small businesses are affected by this change.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>Individuals seeking to enter the profession will encounter higher licensing fees. The major categories for the fee changes are listed here. Applications fees are increasing from \$100 to \$125. Renewal fees are increasing from \$100 to \$125. Late renewal fees are increasing from \$125 to \$150. Reinstatement fees are increasing from \$225 to \$275. No other costs</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to the licensed individuals affected by the regulation change. The regulatory change does allow the board to continue licensing the individuals and continue protecting the health, safety and welfare of citizens.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

DPOR has considered the following alternatives to increasing fees for opticians:

- Reduce services.** Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.

- **Obtain a Treasury loan to fund operations.** The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- **Supplement Board activities with general funds.** The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department's boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The adjustment of fees is mandated by statute. Consequently, there is no flexibility.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action is not being used to conduct a periodic review or small business impact review

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's 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 following publication of the previous stage.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Kelley Smith, Executive Director
Board for Hearing Aid Specialists and Opticians
Department of Professional and Occupational Regulation

By E-Mail to:
HASOPT@dpor.virginia.gov

By FAX to:
(866)245-9693

By U.S. Mail to:
9960 Mayland Drive, Suite 400
Henrico, Virginia 23233

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
30-50	N/A	<p>This section establishes the fees for initial licensure, renewal of licenses, and reinstatement of licenses.</p> <p>The fee for an initial licensure application is \$100. This fee applies to applicants applying for licensure by either examination or endorsement.</p> <p>The fee for a contact lens certification application is \$100. This fee applies to applicants applying for licensure by either examination or endorsement.</p> <p>The fee for renewal of a license is \$100.</p> <p>The late renewal fee is \$125. This fee includes the \$100 renewal fee.</p> <p>The fee for reinstatement of a license is \$225. This fee includes the renewal and late renewal fees.</p>	<p>The initial license application fee will be increased from \$100 to \$125.</p> <p>The contact lens certification application fee will be increased from \$100 to \$125.</p> <p>The renewal fee is increased from \$100 to \$125.</p> <p>The late renewal fee is increased from \$125 to \$150.</p> <p>The reinstatement fee is increased from \$225 to \$275.</p> <p>The new fees will facilitate compliance with the Callahan Act.</p>