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Proposed Regulation Agency Background Document

Agency name	State Council of Higher Education for Virginia (SCHEV)
Virginia Administrative Code (VAC) citation(s)	8 VAC 40-31
Regulation 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	May 6, 2020 (revised)

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"SCHEV" or "Council" are used for the State Council of Higher Education for Virginia

Mandate and Impetus

Please 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, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "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."

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

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

Please 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

Please 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

Please 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

Please 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.

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

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “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

Not Applicable

Localities Particularly Affected

Not Applicable

Other Entities Particularly Affected

Not Applicable

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please 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. Please keep in mind that this is change versus the status quo.

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>Not Applicable</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>Not Applicable</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>One of SCHEV's responsibilities is to ensure student protections for students enrolled in certified schools. Currently, SCHEV is required to verify whether the school is providing required disclosures to students by verifying information from various locations (ie: website, documents, catalog, student handbook, etc.) The enrollment agreement would provide all the required disclosures in one place AND requires a student signature. SCHEV staff can verify not only that the disclosure have been made but also that the student has acknowledged the receipt of these by just verifying the information in one place.</p>

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Not Applicable
Benefits the regulatory change is designed to produce.	Not Applicable

Impact on Other Entities

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.	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.
Agency’s best estimate of the number of such entities that will be affected. Please 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.	SCHEV regulates approximately 300 institutions in Virginia. Of these approximately 80 can be described as small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please 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.	It is difficult to assess the cost that will be incurred by schools. Most schools already have enrollment agreements that will need to be revised, Other schools will need to create an enrollment agreement. The cost of revising or creating an enrollment agreement also depends on whether it is done by the school or if they use an outside source to create or revise the form. Finally, some schools may have an “electronic” form as opposed to a paper form.
Benefits the regulatory change is designed to produce.	Better student protections for students who will know their rights at the time of enrollment.

Alternatives

Please 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.

There are no alternatives.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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.

Not applicable

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, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), 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, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

Not applicable

Public Comment

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

Commenter	Comment	Agency response
Jennifer McGahey, Reformed	Enrollment agreement requirements are already communicated to students in other	During the 2017 legislative session, the general assembly passed legislation requiring certified postsecondary schools to

<p>Theological Seminary</p>	<p>ways and this would pose an administrative burden.</p>	<p>enter into an enrollment agreement with each student. The purpose of the enrollment agreement is to provide student protections by requiring the school to disclose obligatory information. The student’s acknowledgement of the disclosures protects the school in the event that a student lodges a complaint against the school for not providing disclosures. The general assembly charged Council with identifying the required disclosures, thus the regulatory language that was submitted for review. The types and methods of disclosure and the enrollment agreement requirements were created from SCHEV staff’s extensive experience with student complaints as well as input from a group of regulated institutions gathered together to create the regulatory language. SCHEV has found that student disclosures are not effective when students must hunt for them in various places. The commenter has implied that the law requiring an enrollment agreement is burdensome. As the school has noted, many of these are already required so placing these in one document instead of a multitude of places should not be burdensome.</p>
<p>Peter Bruce; Institute for Statistics Education</p>	<p>Commented that the document with the changed language was not readily provided to institutions. Questioned the need to obtain “pen and paper” signatures. Cited undue burden.</p>	<p>(1) SCHEV staff has been discussing the submission of regulatory language for the 2017 enrollment agreement legislation with its regulated institutions since at least early 2017. During the annual summit for regulated institutions in April 2017, SCHEV staff asked for volunteers to assist with the regulatory language. A committee of 10, representing institutions and the Council convened to work out the proposed language. In April 2018, an update was provided to all schools attending the annual summit in regard to the proposed regulatory language. In addition, SCHEV sent copies of the proposed language to the contacts at all regulated schools identifying the proposed language. SCHEV considers these actions as providing ample opportunity for regulated institutions to review the proposed language. (2) SCHEV is aware that electronic signatures are commonly used by many factions, including the US Department of Education. SCHEV has determined that electronic signatures will be permitted.</p>

<p>Thomas Beckett; American Public University</p>	<p>(1) Suggested that Enrollment agreement could be met by various methods and documents already provided to students instead of a single document called an "enrollment agreement". (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. (3) Requested "the total number of credit hours or clock hours to complete the program of study" be clarified (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" (5) requests the acceptance of electronic signatures (6) requests to omit requirement that "[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>(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 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 ". (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>Erin Parker; University of Maryland University College</p>	<p>Requests clarification that the right to 3 business days to cancel for a student applicant applies only at the time of admission and not at the time of registration for classes.</p>	<p>The Virginia Administrative Code defines a student applicant as "one who has applied for admission to a school". Further, the regulation states that a student applicant will not be considered a student until the first day of classes. 8VAC 40-31-160 N (4) states that a student applicant may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to</p>

		refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or \$100, whichever is less. This is different than the right to cancellation.
Michael Saunders, Director of Military and Consumer Policy & Ramond Curtis, State Policy Manager	Recommend that not contain forced arbitration clauses, Go-it-alone clauses or Gag clauses.	In 2017, when the wording for the enrollment agreements was created with the assistance of certified schools, there was a question regarding whether schools could be legally prevented from including these clauses in enrollment agreements. In 2020, the general assembly passed legislation that will prevent certified schools from incorporating these items into an enrollment agreement. The regulation for that law will be written and vetted separately.

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, *the State Council of Higher Education* is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

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>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Sylvia Rosa-Casanova, 101 N. 14 Street 10th Floor Richmond, VA 23219; PH: 804-225-3399 Fax: 804-225-2604 sylviarosacasanova@schev.edu. 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 not be held following the publication of this stage of this regulatory action.

Detail of Changes

Please 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.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
8VAC-40-31-10 Definitions		None	Add definition for "Enrollment Agreement"
8VAC-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.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case "current section number" or "current chapter-section number" would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: "Changes from the Emergency Regulation." In this case "current section number" or "current chapter-section number" would refer to the **emergency** regulation.