



*Commonwealth of Virginia*

**REGULATIONS GOVERNING CERTIFICATION  
OF CERTAIN INSTITUTIONS TO CONFER  
DEGREE, DIPLOMAS AND CERTIFICATES**

**STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA**

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## Chapter 31

### REGULATIONS GOVERNING CERTIFICATION OF CERTAIN INSTITUTIONS TO CONFER DEGREE, DIPLOMAS AND CERTIFICATES

#### Part I

#### Definitions; Prohibitions; Advertising

#### **8VAC40-31-10. Definitions**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Academic credit" means the measure of the total time commitment an average student is expected to devote to learning per week of study. Generally, one unit of credit represents a total of three hours per week of in-class and out-of-class work (Carnegie Unit of Credit). In this context, an hour is defined as 50 minutes. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Academic-vocational" means a noncollege degree school that offers degree and nondegree credit courses at a site in Virginia or via telecommunications equipment located in Virginia.

"Accreditation" means a process of external quality review used by higher education to scrutinize colleges, universities and educational programs for quality assurance and quality improvement. This term applies to those accrediting organizations recognized by the United States Department of Education.

"Adjunct faculty" means professional staff members of businesses, industries and other agencies and organizations who are appointed by institutions and schools on a part-time basis to carry out instructional, research or public service functions.

"Administrative capability" means a branch (i) maintains or has access to all records and accounts; (ii) has an administrator; (iii) offers courses that consist of a large number of unit subjects that comprise a program of education or a set curriculum large enough to allow pursuit on a continuing basis; and (iv) provides student services, including but not limited to financial aid, admissions, career placement assistance, or registration.

"Agent" means a person who is employed by any institution of higher education or noncollege degree school, whether such institution or school is located within or outside this Commonwealth, to act as an agent, solicitor, procurer, broker or independent contractor to procure students or enrollees for any such institution or school by solicitation in any form at any place in this Commonwealth other than the office or principal location of such institution or school.

"Avocational" means instructional programs that are not intended to prepare students for employment but are intended solely for recreation, enjoyment, personal interest, or as a hobby or courses or programs that prepare individuals to teach such pursuits.

"Branch" means an additional location, operated by a school with an approved existing site. A branch campus must have administrative capability exclusive of the main campus and adequate resources to ensure that the objectives of its programs can be met.

"Career-technical school" means a school that does not offer courses for degree credit at a site in Virginia or via telecommunication equipment located in Virginia; same as academic-vocational school.

"Certificate" means the credential awarded by a school upon the successful completion of a program that consists of one or more technical courses, usually completed in less than 26 weeks, normally with a single skill objective.

"Certification" means the process of securing authorization to operate a private or out-of-state postsecondary school or institution of higher education and/or degree, certificate, or diploma program in the Commonwealth of Virginia.

"Change of ownership" means the change in power within a school. Change of ownership may include, but is not limited to, the following situations: (i) sale of the school; (ii) merger of two or more schools if one of the schools is nonexempt; or (iii) change from profit to nonprofit or collective.

"CIP code" means the six-digit number assigned to each discipline specialty in the Classification of Instructional Programs (CIP) taxonomy maintained by the National Center for Education Statistics.

"Clock (or contact) hour" means a minimum of 50 minutes of supervised or directed instruction and appropriate breaks.

"College" means any institution of higher education that offers degree programs.

"Conditional certification" means a status that may be granted by the council to a school certified to operate in Virginia to allow time for the correction of major deficiencies or weaknesses identified in the school's administration that are of such magnitude that, if not corrected, may result in the suspension or revocation of the school's certificate to operate. During a period of conditional certification, a school may not enroll new students or confer any degrees, diplomas, or certificates.

"Council" means the State Council of Higher Education for Virginia.

"Course for degree credit" means a single course whose credits are applicable to the requirements for earning a degree, diploma, or certificate.

"Course registration materials" means any official documents provided to students for the purpose of formal enrollment into the school, a specific program, or a certain course.

"Credit" means (i) the quantitative measurement assigned to a course generally stated in semester hours, quarter hours, or clock hours or (ii) the recognition awarded upon successful completion of coursework.

"Credit hour" means a unit by which a school may measure its coursework. The number of credit hours assigned to a traditionally delivered course is usually defined by a combination of the number of hours per week in class, the number of hours per week in a laboratory, and/or the number of hours devoted to externship multiplied by the number of hours in the term. One unit of credit is usually equivalent to, at a minimum, one hour of classroom study and outside preparation, two hours of laboratory experience, or three hours of internship or practicum, or a combination of the three multiplied by the number of weeks in the term. Emerging delivery methodologies may necessitate determining a unit of undergraduate or graduate credit with nontime-based methods. These courses shall use demonstration of competency, demonstration of proficiency, or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Degree" means any earned award at the associate, baccalaureate, master's, first professional, or doctoral level that represents satisfactory completion of the requirements of a program or course of study or instruction beyond the secondary school level and includes certificates and specialist degrees when such awards represent a level of educational attainment above that of the associate degree level.

"Degree program" means a curriculum or course of study that leads to a degree in a discipline or interdisciplinary specialty and normally is identified by a six-digit CIP code number.

"Diploma" means an award that represents a level of educational attainment at or below the associate degree level and that normally consists of up to (i) 1,500 clock hours, (ii) 90 quarter hours, or (iii) 60 semester hours.

"Distance education" means education that uses the Internet, one-way transmission and two-way transmission through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications; audio conferencing; or video cassettes, DVDs, and CD-ROMs to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between student and instructor.

"Existing institution" or "existing postsecondary school" means any postsecondary school that either (i) has been in operation in Virginia for two or more calendar years as of July 1, 2004, and has been certified to operate continuously during that period or (ii) has been approved to operate as a postsecondary school in another state, is accredited by an accrediting agency recognized by the United States Department of Education, and is certified to operate in Virginia.

"Full-time faculty" means a person whose: (i) employment is based upon an official contract, appointment, or agreement with a school; (ii) principal employment is with that school; and (iii) major assignments are in teaching and research. A full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

"Graduate credit hours" means credits hours earned for successful completion of courses beyond the baccalaureate level, generally awarded at the 500 series and above.

"Gross tuition collected" means all fees collected or received on either a cash or accrual accounting method basis for all instructional programs or courses, except for nonrefundable registration and application fees and charges for materials, supplies, and books that have been purchased by, and are the property of, the student.

"In-state institution" means an institution of higher education that is formed, chartered or established within Virginia. An out-of-state institution shall be deemed an in-state institution for the purposes of certification as a degree-granting institution if (i) the institution has no instructional campus in the jurisdiction in which it was formed, chartered, established, or incorporated and (ii) the institution produces clear and convincing evidence that its main or principal campus is located in Virginia.

"Institution of higher education" or "institution" means any person, firm, corporation, association, agency, institute, trust, or other entity of any nature whatsoever offering education beyond the secondary school level that has received certification from the council and either: (i) offers courses or programs of study or instruction that lead to, or that may reasonably be understood to be applicable to, a degree; (ii) operates a facility as a college or university or other entity of whatever kind that offers degrees or other indicia of level of educational attainment beyond the secondary school level; (iii) uses the term "college" or "university," or words of like meaning, in its name or in any manner in connection with its academic affairs or business; or (iv) offers approved courses of degree credit or programs of study leading to a degree or offers degrees either at a site in Virginia or via telecommunications equipment located within Virginia.

"Instructional faculty" means a person employed by a school who is engaged in instructional, research, or related activities.

"Instructional site" means a location in Virginia where a postsecondary school (i) offers one or more courses on an established schedule and (ii) lacks administrative capability.

"Multistate compact" means any agreement involving two or more states to offer jointly postsecondary educational opportunities, pursuant to policies and procedures set forth by such agreement and approved by council.

"New institution" or "new postsecondary school" means any postsecondary school that seeks certification and has been in operation in Virginia for less than two calendar

years as of July 1, 2004, and has neither operated in another state as a postsecondary institution nor has been approved to operate in another state as a postsecondary institution.

"Noncollege degree school" means any postsecondary school that offers courses or programs of study that do not lead to an associate or higher level degree at a site in Virginia or via telecommunications equipment located within Virginia. Such schools may be academic-career-technical or career-technical.

"Out-of-state institution" means an institution of higher education that is formed, chartered, established or incorporated outside Virginia.

"Part-time faculty" means a person whose: (i) annual employment is based upon an official contract, appointment, or agreement with a school and (ii) courseload of teaching assignments is of lesser quantity than that expected of a full-time faculty member and/or is of lesser quantity than the school's definition of a full load of courses.

"Postsecondary education" means the provision of formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or equivalent or who are beyond the age of compulsory high school attendance. It includes programs of an academic, career-technical, and continuing professional education purpose, and excludes avocational and adult basic education programs.

"Postsecondary education activities" means researching, funding, designing, and/or conducting instructional programs, classes, or research opportunities, designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance.

"Postsecondary school" or "school" means any entity offering formal instructional programs with a curriculum designed primarily for students who have completed the requirements for a high school diploma or its equivalent or who are beyond the age of compulsory high school attendance, and for which tuition or a fee is charged. Such schools include programs of academic, career-technical, and continuing professional education, and exclude avocational and adult basic education programs. For the purposes of this chapter, a "postsecondary school" shall be classified as either an institution of higher education as defined in this section or a noncollege degree school, as defined in this section.

"Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in Virginia providing education or training for tuition or a fee that (i) augments a person's occupational skills; (ii) provides a certification; or (iii) fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Any entity that offers programs beyond the secondary school level, including programs using alternate modes of delivery, shall be included in this definition so long as tuition and fees from such programs constitute any part of its revenue.

"Program" means a curriculum or course of study in a discipline or interdisciplinary area that leads to a degree, certificate, or diploma.

"Program area" means a general group of disciplines in which one or more degree programs, certificates, or diplomas may be offered.

"Program of study" means a curriculum of two or more courses that is intended or understood to lead to a degree, diploma, or certificate. It may include all or some of the courses required for completion of a degree program.

"Provisional certification" means a preliminary approval status granted by the council to a new school applicant that has demonstrated substantial compliance with the provisions of this chapter pursuant to § 23.1(213-229) of the Code of Virginia. Such a status may include any conditions imposed by the council to ensure compliance with the provisions of this chapter. The provisionally certified school must demonstrate compliance with all conditions within one calendar year of the initial grant of provisional certification.

"Surety instrument" means a surety bond or a clean irrevocable letter of credit issued by a surety company or banking institution authorized to transact business in Virginia adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with filing a claim against the instrument.

"Teach-out agreement" means the process whereby a closed or closing school undertakes to fulfill its educational and contractual obligations to currently enrolled students.

"Telecommunications activity" means any course offered by a postsecondary school or consortium of postsecondary schools where the primary mode of instructional delivery is by television, videocassette or disc, film, radio, computer, or other telecommunications devices.

"Unearned tuition" means the portion of tuition charges billed to the student but not yet earned by the institution; the unearned tuition represents future educational services to be rendered to presently enrolled students.

"University" means any institution offering programs leading to degrees or degree credit beyond the baccalaureate level.

"Vocational" means a noncollege degree school that offers only noncollege credit courses. Such schools have programs of instruction offering a sequence of courses that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Vocational education shall not include instructional programs intended solely for recreation, enjoyment, personal interest, or as a hobby, or courses or programs that prepare individuals to teach such pursuits.

**8VAC40-31-20. Prohibited acts.**

A. Except as in accordance with this chapter, no person or other entity shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, any degree, degree credit, diploma, or certificate.

B. No person or other entity shall use or attempt to use in connection with any business, trade, profession, or occupation any degree or certification of degree or degree credit, including but not limited to a transcript of coursework that has knowingly been fraudulently issued, obtained, forged, or materially altered.

C. Unless exempted from the provisions of this chapter pursuant to § 23.1-226 of the Code of Virginia, no person, firm, or school may represent that credits earned at or granted by that person, firm, or school are applicable for credit toward a degree, except under such conditions and in a manner specified and approved by the council in accordance with this chapter.

D. Without prior certification, no person or other entity subject to the provisions of this chapter shall use in any manner within the Commonwealth of Virginia the term "college" or "university" or abbreviations or words of similar meaning in its name or in any manner in connection with its academic affairs or business or in any literature, catalog, pamphlet, or descriptive materials.

1. This subsection shall not apply to any person or other entity that (i) used the term "college" or "university" openly and conspicuously in its title within the Commonwealth prior to July 1, 1970; (ii) was granted authority to operate in Virginia by the council between July 1, 1970, and July 1, 2002, and maintains valid authority to so operate in Virginia after July 1, 2002; (iii) was exempted from the provisions of Chapter 21 (§ 23-265 et seq.) of Title 23 of the Code of Virginia as such law was in effect prior to July 1, 2002; or (iv) was authorized by the council to use a name prior to a request for certification.

2. For only as long as the provisions of Item 158 D of Chapter 912 of the 1996 Acts of Assembly shall be in effect, this subsection shall not apply to an individual proprietorship, association, co-partnership or corporation that uses the words "college" or "university" in its training programs solely for its employees or customers, that does not offer degree-granting programs, and whose name includes the word "college" or "university" in a context from which it is clear that such entity is not an educational school.

E. The council may refuse to certify school names and terms that have the potential to mislead the general public about the school's affiliation or association with any state-supported institution of higher education in Virginia. Terms such as, but not limited to, "public university," "public college," or "community college" may be protected from use by private institutions of higher education.

**8VAC40-31-30. Advertisements, announcements, and other promotional materials.**

A. A school certified to operate by the council in accordance with this chapter shall include in any print and electronic catalogs (i) a clear statement that the council has

certified the school to operate in Virginia and (ii) a complete address of the main campus and all branch locations within Virginia.

B. A school certified to operate by council in accordance with this chapter shall include in all publicity, advertisement, and promotional materials distributed to current or prospective students (i) a clear statement that the council has certified the school to operate in Virginia, (ii) the school's complete name as indicated on the certificate to operate, and (iii) the address of at least one branch campus located in Virginia.

C. A school with its main campus not located in Virginia that has a physical presence in Virginia shall state in its print and electronic catalog distributed in Virginia that:

1. Each course or degree, diploma, or certificate program offered in Virginia is approved by the governing body of the school; and
2. The appropriate state agency, if any, in the state where the main campus of the school is located has granted whatever approval may be necessary for the school to:
  - a. Offer courses or degree, diploma, or certificate programs at the level for which credit is being awarded for those courses or programs in Virginia; and
  - b. Ensure that any credit earned for coursework offered by the school in Virginia may be transferred to another of the school's locations outside Virginia as part of an existing degree, diploma, or certificate program offered by the school.

D. No advertisement, announcement, or any other material produced by or on behalf of a postsecondary school shall in any way indicate that the school is supervised, recommended, endorsed, or accredited by the Commonwealth of Virginia, by the State Council of Higher Education, or by any other state agency in Virginia.

## Part II Exemptions

### **8VAC40-31-40. State-supported institutions.**

This chapter shall not apply to the institutions named in §§ 23.1-203 subdivision 24 and 23.1-1101 of the Code of Virginia, including their branches, divisions, or colleges, or to any state-supported institution of higher education that may be established by the Commonwealth of Virginia in the future.

### **8VAC40-31-50. Religious institutions.**

A. The council shall exempt from the provisions of Chapter 21.1 (Chapter 2, article 3) of Title 23.1 of the Code of Virginia any school whose primary purpose is to provide religious training or theological education, provided that the school:

1. Awards only degrees, diplomas, or certificates that (i) carry titles that indicate the school's primary purpose plainly upon their face and (ii) state that the school is excluded from the requirement of state certification; and
2. States plainly in its catalogs and other publications that (i) the school's primary purpose is to provide religious training or theological education; (ii) the school's

degrees, diplomas, or certificates are so titled and worded; and (iii) the school is exempt from the requirement of state certification.

B. The title of each degree, diploma, or certificate awarded by a school that claims an exemption under the provisions of this section must reflect that the school's primary purpose is religious education.

1. The titles of religious degrees that may be awarded include, but are not limited to, (i) Bachelor of Education in a specific religion, (ii) Master of Divinity, and (iii) Doctor of Sacred Theology.

2. Secular degrees may not be awarded in any discipline, including religion, religious education, and biblical studies. Titles of secular degrees that may not be awarded include, but are not limited to, (i) Associate of Arts, (ii) Associate of Science, (iii) Associate of Applied Science, (iv) Associate of Occupational Science, (v) Bachelor of Arts, (vi) Bachelor of Science, (vii) Master of Arts, (viii) Master of Science, (ix) Doctor of Philosophy, and (x) Doctor of Education.

C. Exemptions granted after July 1, 2002, will be for a maximum of five years. A school wishing to maintain an exempt status must reapply to council at least six months prior to the expiration of the exemption period. An exempt school shall not make claims of "approval," "endorsement," or other such terms by the council in any of its promotional materials. An exempt school shall clearly state in its catalogs and promotional materials that it is exempt from the requirements of state regulation and oversight.

D. A school that awards secular degrees in addition to religious degrees, certificates or diplomas, as defined in subsections A and B of this section, must comply with the provisions for certification for all nonreligious degree programs.

E. Each school requesting religious exemption must apply on forms provided by and in a manner prescribed by the council.

F. The council, on its own motion, may initiate formal or informal inquiries to confirm that this chapter is not applicable to a religious school if the council has reason to believe that the school may be in violation of the provisions of this section.

1. Any school that claims an exemption under subsections A and B of this section on the basis that its primary purpose is to provide religious training or theological education shall be entitled to a rebuttable presumption of the truth of that claim.

2. It shall be the council's responsibility to show that a school is not exempt under subsections A and B of this section.

3. The council assumes no jurisdiction or right to regulate religious beliefs under this chapter.

G. A school whose claim for exemption under subsections A and B of this section is denied by the council shall have the opportunity to appeal the council's action in accordance with 8VAC40-31-70.

**8VAC40-31-60. Schools, programs, degrees, diplomas, and certificates exempt from council action.**

A. The following activities or programs offered by schools and not leading to a degree otherwise subject to this chapter shall be exempt from its provisions:

1. Any school subject to the provisions of Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia.
2. Any honorary degree conferred or awarded by a school, as long as the degree (i) does not represent the satisfactory completion of all or any part of the requirements of a program or course of study and (ii) is normally regarded as one that is intended to be commemorative in nature in recognition of an individual's contributions to society. Such degree must state on its face that it is honorary in nature.
3. Any nursing education program offered by a school to the extent that the program is regulated by the Virginia Board of Nursing.
  - a. The Virginia Board of Nursing is the state agency authorized to license registered nurses and to approve nursing programs with regard to the adequacy of the curricula and resources for preparing students to take the licensing examination.
  - b. In order to offer a degree in nursing, a school must obtain council certification prior to seeking approval from the Virginia Board of Nursing.
4. Any professional program for professional or occupational training offered by a school to the extent that the program is (i) subject to approval by a regulatory board pursuant to Title 54.1 of the Code of Virginia; or (ii) subject to approval by any other state or federal agency; and (iii) offered by a school that is not seeking degree-granting status such that it would be required to obtain prior council certification.
5. Any course or program of study given by or approved by any professional body, fraternal organization, civic club, or benevolent order principally for continuing or professional education or similar purpose and for which no certificate, degree, or degree credit is awarded.
6. Any course or program of study conducted on a not-for-profit basis by firms or organizations for the training of their own employees only, provided that such instruction is offered at no charge to such employees and with no advertising for open enrollment.
7. Courses or programs offered through approved multistate compacts, including but not limited to the Southern Regional Education Board's Electronic Campus.
8. Those courses offered and delivered by a postsecondary school that is accredited by an entity recognized by the U.S. Department of Education (USDOE) for accrediting purposes, if such courses are provided solely on a contractual basis for which no individual is charged tuition and for which no advertising has been made for open enrollment.
9. Any school, institute or course of instruction offered by any trade association or any nonprofit affiliate of a trade association on subjects related to the trade, business or profession represented by such association.
10. Any public or private high school accredited or recognized by the Virginia Board of Education that has offered or may offer one or more courses cited in this chapter if any tuition, fees and charges made by the school are collected as

may be permitted by Title 22.1 of the Code of Virginia, in the case of a public school, or pursuant to regulations prescribed by the relevant governing body of such private school.

11. Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public or private school or to prepare an individual for an examination for professional practice or higher education.

12. Schools of fine arts or other avocational courses that are conducted solely to further artistic appreciation, talent, or for personal development or information and programs that prepare individuals to teach such pursuits.

B. Notwithstanding the provisions of this section, if a school offers any nonexempt programs, the school as a whole, including all of its programs, is subject to the provisions of certification.

C. Notwithstanding the exemptions provided in this section, a school may seek certification for an otherwise exempt activity or program.

**8VAC40-31-70. Denial of exemption; appeal of action.**

If the council denies a request for exemption the executive director shall ensure that the school is afforded an opportunity to be heard. The procedures set forth in 8VAC40-31-220 shall apply.

Part III  
Role of the Council and Staff

**8VAC40-31-80. Role of the council.**

A. Pursuant to § 23.1-224 of the Code of Virginia, the council may establish fees for services and the methods for collecting such fees.

B. Pursuant to § 23.1-215 of the Code of Virginia and unless otherwise indicated, the council delegates authority for administering the requirements of Chapter 21.1 (Chapter 2, Article 3) of Title 23.1 of the Code of Virginia and this chapter to the executive director.

C. Pursuant to § 23.1-215 of the Code of Virginia, the council shall adopt certification criteria for the operation of postsecondary schools in Virginia.

D. Only the council may refuse to grant certification, or revoke or suspend certification. In these instances, the council will be responsible for ensuring due process and compliance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**8VAC40-31-90. Role of the executive director.**

A. In addition to other administrative responsibilities vested in the executive director of the council, the executive director shall carry out the following administrative responsibilities relative to this chapter:

1. Authorize certification to operate for postsecondary schools that meet the certification criteria.
2. Authorize the use of the term "college" or "university" in a school's name.
3. Authorize religious exemptions.
4. Authorize emergency action pursuant to § 23.1-222 of the Code of Virginia, in the event a school has received an adverse action by the USDOE or by its accrediting agency that threatens a disruption of the operation of the school and exposes students to a loss of course or degree credit or financial loss. All emergency actions shall be reported to council at its next meeting to either ratify or take such actions as it may deem necessary. The authority of the executive director in these instances includes the authority to:
  - a. Suspend new enrollment in specified programs, degree levels or in all programs and degree levels.
  - b. Require the school to provide a guaranty instrument or increase the penal amount of a current guaranty.
  - c. Take other actions as may be necessary to protect the rights of currently enrolled or future students.
5. Assess administrative fees.
6. Authorize the release of a surety instrument requirement.

B. The executive director may delegate certain administrative responsibilities to the council staff.

**8VAC40-31-100. Role of the council staff.**

A. The council staff shall:

1. Provide oversight and administration for purposes of compliance with Chapter 21.1 (Chapter 2, Article 3) of Title 23 of the Code of Virginia.
2. Review initial and annual certification requirements for all schools.
3. Perform random and periodic school visits to review, inspect and investigate school compliance.
4. Investigate as necessary all noncertified postsecondary school activities operating in the Commonwealth of Virginia.
5. Monitor the accreditation activities of all nonaccredited postsecondary schools operating in the Commonwealth of Virginia.
6. Investigate all written and signed complaints or adverse publicity or any situation that may adversely affect students or consumers.
7. Share with state or federal agencies and appropriate accrediting bodies information regarding the operation or closure of postsecondary schools operating in Virginia.

B. The executive director may delegate other responsibilities as deemed appropriate.

Part IV

Schools for which Certification is Required

**8VAC40-31-110. Certain existing approvals and exemptions continued.**

A. An institution of higher education that was approved or authorized to confer degrees at a particular level or to offer one or more degree programs or program areas may continue to confer those degrees and to offer those programs until and unless the school's approval or authorization is revoked by the council in accordance with § 23.276.4 of the Code of Virginia.

B. If authorization to grant or confer academic or professional degrees is revoked for an institution otherwise exempt from the requirements of certification, pursuant to § 23.1-219 of the Code of Virginia, the institution will be subject to the provisions of certification in place at the time of the revocation.

**8VAC40-31-120. Certification required for new and existing postsecondary schools.**

A. Unless otherwise exempted from these regulations, all instructional offerings of a new or existing postsecondary school in Virginia are subject to this chapter, even when the credit awarded for those offerings may be transferred to a location outside Virginia.

B. A new postsecondary school must become certified to operate prior to engaging in activities related to postsecondary education via telecommunications activity, mail correspondence courses, or at a location within the Commonwealth.

1. The determination for certification of telecommunications activities or mail correspondence courses may be based upon, but not limited to, physical presence.

2. With the exception of degree programs, academic credit and other courses offered exclusively from outside the Commonwealth of Virginia through individual and private interstate communication, all telecommunications activities and mail correspondence courses are subject to the certification criteria required for all postsecondary schools.

C. Existing postsecondary schools must recertify compliance with certification criteria on an annual basis in order to continue offering postsecondary courses and programs.

D. Postsecondary schools operating branches in Virginia must certify each separately.

E. Noncertified postsecondary schools that seek to establish a postsecondary education consortium, agreement, partnership, or other similar arrangement with an existing certified postsecondary school must meet all requirements for certification as set forth in these regulations and must become certified to operate prior to engaging in postsecondary education activities within the Commonwealth of Virginia.

Part V  
Certification Criteria

**8VAC40-31-130. Application of certification criteria.**

A. The certification criteria shall include, but not be limited to (i) procedures by which a postsecondary school may apply for certification and (ii) criteria designed to ensure

that all postsecondary schools that are subject to this chapter meet minimal academic or career-technical standards.

B. Postsecondary schools, by notarized signature of the chief executive officer, will be responsible for certifying total compliance with certification criteria on an initial and annual basis.

C. Postsecondary schools must be in compliance with all local, state, and federal statutes, laws, and codes.

D. Initial site visit. Council staff shall conduct an initial site visit prior to certification. The school shall demonstrate that the facilities conform to all federal, state, and local building codes and that it is equipped with classrooms, instructional and resource facilities, and laboratories adequate for the size of the faculty and student body and adequate to support the education programs offered by the school.

E. Provisional certification. An initial certification applicant may be granted provisional certification for a period not to exceed one year during which time the institution shall meet all conditions established by council for provisional certification. During the period of provisional certification, the school:

1. May advertise, provided that all advertisements and promotional materials state that the school is Provisionally Certified to Operate by the State Council of Higher Education for Virginia;
2. May recruit and register students, however, may not collect more than an initial nonrefundable fee of \$100 from each student;
3. May recruit and hire faculty and staff; and
4. May not offer postsecondary instruction or confer certificates, diplomas or degrees.

F. If the institution has not complied with all necessary standards and conditions within the period specified by the provisional certification, a new application for certification must be submitted.

#### **8VAC40-31-140. Certification criteria for institutions of higher education.**

A. This section shall apply to each institution of higher education for which certification is required.

B. In order to award a degree, the institution's programs must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree.

1. An associate degree shall be granted only after the successful completion of at least 60 semester hour or 90 quarter credit hours of collegiate level study.
2. A bachelor's degree shall be granted only after the successful completion of at least 120 semester hours or 180 quarter credit hours of collegiate level study.

3. A master's degree shall be granted only after the successful completion of the requirements for a bachelor's degree and at least 30 semester hours or 45 quarter credit hours of collegiate level study.
4. The doctoral degree shall be granted only after the successful completion of a minimum of three years of full-time graduate study or equivalent (90 semester hours or 135 quarter credit hours) beyond the bachelor's degree, including dissertation credits or research study.
5. Exceptions to these standards must be approved by the council. Proposed programs will be evaluated by the standards of similar programs in public or private postsecondary institutions.
6. A student shall complete a minimum of 30% of course work at the institution in order to be granted a degree from that institution.
7. An institution that awards life or work experience credit shall have its related transfer policy approved by the council. No more than 30% of the credit in a student's degree program may be awarded for life or work experience.

C. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective.

1. For terminal occupational/technical programs leading to the Associate of Occupational Science (A.O.S.) degree, general education courses must compose at least 15% of the total credit hours required for the degree.
2. For terminal occupational/technical programs leading to the Associate of Applied Science (A.A.S.) degree, general education courses shall compose at least 25% of the total credit hours required for the degree.
3. For all university parallel associate degree programs, general education courses shall compose at least 25% of the total credit hours required for the degree, and required courses in the major field of study shall compose no more than 50% of the total credit hours required for the degree in a specific discipline.

D. Faculty must be qualified and appropriately credentialed as follows:

1. All instructional faculty teaching in a terminal occupational/technical program leading to the Associate of Applied Science (A.A.S.) or Associate of Occupational Science (A.O.S.) degree shall:
  - a. If teaching general education courses, hold a baccalaureate degree from an accredited college or university, plus at least 18 graduate credit hours in the discipline being taught.
  - b. If teaching occupational/technical courses, hold either (i) an associate degree from an accredited college or university in the discipline being taught or (ii) qualify for a faculty appointment by virtue of scholarly or professional achievements.
2. All instructional faculty teaching in a college-transfer program at the associate level shall:
  - a. If teaching general education courses or in programs in the liberal arts and sciences, hold a baccalaureate degree from an accredited college or university, plus at least 18 graduate credit hours in the discipline being taught.

- b. If teaching occupational/technical courses, hold a baccalaureate degree from an accredited college or university in the discipline being taught or qualify by virtue of professional or scholarly achievement.
3. All instructional faculty members who teach in programs at the baccalaureate level shall:
  - a. Hold a master's degree in the discipline being taught or hold a master's degree in an area other than that being taught with at least 18 graduate semester hours in the teaching discipline from an accredited college or university.
  - b. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements and/or demonstrated competences in the discipline can be shown. The institution must document and justify any such exception.
4. All instructional faculty teaching in a program at the master's level or higher shall hold a doctoral or other terminal degree in the discipline being taught from an accredited college or university. Exception to academic preparation requirements for instructional faculty may be made in instances where substantial documentation of professional and scholarly achievements and/or demonstrated competences in the discipline can be shown. The institution must document and justify any such exception.

E. In addition to the instructor qualifications in subsection D of this section, the institution must certify that:

1. All instructional courses for degree credit require a minimum of 15 contact hours for each semester credit hour or a minimum of 10 contact hours for each quarter credit hour, or the equivalent, and an expectation for additional assignments beyond scheduled instructional activities.
2. The elective and required courses for each program are offered on a schedule and in a sequence that enables both full-time and part-time students to complete the program in a reasonable period of time.
3. The institution's instructional faculty at each location holds either full-time, part-time, or adjunct appointments.
4. The institution's academic programs shall ensure that: (i) a properly credentialed and course qualified instructor teaches each course; (ii) a credentialed and course qualified academic advisor is available to meet the concerns of the student, and that a student contact by any method will elicit a response from the advisor within a reasonable timeline; (iii) continual curriculum development and oversight for each major and concentration/track is maintained; and (iv) a program director is named and designated to oversee each program area.
5. A plan is in place that ensures interaction between student and faculty, and among students.

F. All senior administrators must be individually qualified by education, experience, and record of conduct to assure effective management, ethical practice, and the quality of degrees and services offered. The term "senior administrator" generally

encompasses individuals who have administrative or managerial authority within an institution. This includes by function, but is not limited to titles of Chief Executive Officer, President, Chancellor, Dean, Provost, or Owner. Boards must collectively demonstrate financial, academic, managerial, and any necessary specialized knowledge, but individual members need not have all of these characteristics. Any controlling organization or owner is subject to this standard.

1. The senior administrators shall hold at least an earned baccalaureate degree from an accredited college or university and shall have sufficient experience to qualify for the position.
2. Each branch of the institution certified to operate in Virginia must designate one person as the branch/campus director.
  - a. The director must hold a baccalaureate degree from an accredited college or university with at least one year of experience in administration or institutional management.
  - b. Exception to academic preparation requirements for director may be made in instances where substantial documentation of professional and scholarly achievements and/or demonstrated competences in administration/institutional management can be shown. The institution must document and justify any such exception.
3. Duties of the director include, but are not limited to:
  - a. Be available at the school location for at least 50% of the operational time each week the school has students present unless an assistant director is available. If the school operates a site in Virginia, a director must be assigned to manage the site's operation; however, the director may designate a person at the site to handle day-to-day administrative matters in his absence.
  - b. Be responsible for the institution's program or programs, organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to certification, and all other administrative matters related to certification.
  - c. Implicitly accepts knowledge of and responsibility for compliance with the Code of Virginia and its implementing regulations including, but not limited to, advertising, records maintenance, annual deadlines, and fee payments.
4. Senior administrators in the positions described in this section must be of good reputation and character. A person is considered of good reputation and character if:
  - a. The person has no felony convictions related to the operation of a school;
  - b. The person has not been convicted or pleaded guilty to a crime of fraud or theft under state or federal law within the previous 10 years and has not had a judgment entered against him in his individual capacity in a civil action based upon any theory of fraudulent activity within the previous 10 years;
  - c. The person has not controlled or managed a postsecondary educational institution that has ceased operation during the past five years without providing for the completion of programs by its students or without providing tuition refunds; and
  - d. The person has not knowingly falsified or withheld information from the council.

5. Administrative personnel must be appropriately experienced, and educated in the field for which they are hired, or receive documented, relevant training within the first year of employment. Administrative personnel generally encompasses individuals who oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to, titles of financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement), and the registrar.

**8VAC40-31-150. Certification criteria for career-technical schools.**

A. The criteria in this section shall apply to each career-technical school for which certification is required.

B. The course, program, curriculum and instruction must be of quality, content and length to adequately achieve the stated objective.

C. Faculty, if teaching technical courses for career-technical programs not leading to a degree and not offered as degree credit, must either (i) hold an associate degree from an accredited college or university in the discipline being taught or (ii) possess a minimum of two years of technical/occupational experience in the area of teaching responsibility or a related area. The instructor must hold the appropriate certificate or license in the field, if certification or licensure is required to work in the field.

D. In addition to the instructor qualifications in subsection C of this section, the career-technical school must certify that:

1. Courses of study conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or conform to recognized training practices in those fields.
2. A plan is in place that ensures interaction between student and faculty, and among students.

E. Administrators must demonstrate their qualifications for their particular responsibilities through educational background, relevant work experience, or record of accomplishments in previous educational work settings. Owners and administrators must be of good reputation and character. A person is considered of good reputation and character if:

1. The person has no felony convictions related to the operation of a school;
2. The person has not been convicted or pleaded guilty to a crime of fraud or theft under state or federal law within the previous 10 years and has not had a judgment entered against him in his individual capacity in a civil action based upon any theory of fraudulent activity within the previous 10 years;
3. The person has not controlled or managed a postsecondary educational institution that has ceased operation during the past five years without providing for the completion of programs by its students or without providing refunds; and
4. The person has not knowingly falsified or withheld information from the council.

**8VAC40-31-160. Certification criteria for all postsecondary schools.**

A. The criteria in this section shall apply to all postsecondary schools for which certification is required. With regard to postsecondary schools that are accredited by an accrediting agency recognized by the U.S. Department of Education, the council may apply a presumption of compliance with criteria in this section if the school has complied with an accreditation standard directed to the same subject matter as the criteria. The council need not apply this presumption if the accreditation standard is deficient in satisfying an identifiable goal of the council. The council shall articulate reasons that the accreditation standard is deficient.

B. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;
2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;
3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;
4. A description of the postsecondary school's activities including telecommunications activities away from its principal location, and a list of all program areas in which courses are offered away from the principal location;
5. A list of all locations in Virginia at which the postsecondary school offers courses and a list of the degree and nondegree programs currently offered or planned to be offered in Virginia;
6. For each Virginia location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students who were enrolled in each program offered;
7. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year; and
8. For unaccredited institutions of higher education and career-technical schools only, the total number of students who report employment in their field of study within (i) six months of completion or graduation and (ii) one year of completion or graduation.

C. The postsecondary school or branch shall have a current, written document available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the school;
2. The chief operating officer, president, or director at that branch in Virginia;
3. The principal administrators and their credentials at that branch in Virginia; and
4. The students, if students participate in school governance.

D. The postsecondary school shall have, maintain, and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for

admission to the school and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school that are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;
2. The criteria for acceptance of transfer credit where applicable;
3. The criteria for refunds of tuition and fees;
4. Students' rights, privileges, and responsibilities; and
5. The established grievance process of the school, which shall indicate that students should follow this process and may contact council staff to file a complaint about the school as a last resort. The written policy shall include a provision that students will not be subjected to adverse actions by any school officials as a result of initiating a complaint.

E. The postsecondary school shall maintain records on all enrolled students. At a minimum, these records shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained by the school, its successors, or its assigns for a minimum of three years after the student's last date of attendance.
2. A transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in an electronic database with backup by the school, its successors, or its assigns.
3. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.) must be retained permanently. Any changes or alterations to student records must be accurately documented and signed by an appropriate school official.
4. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance. When tuition and fees are paid by the student in installments, a clear disclosure of truth-in-lending statement must be provided to and signed by the student.
5. The school shall make the documents referenced in subdivisions 1 through 4 of this subsection available to the student upon request. Academic transcripts shall be provided upon request if the student is in good financial standing.

F. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing, at a minimum, the following information:

1. The number of students enrolled in each program offered.
2. For each Virginia location, the total number of students that completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year.

3. A description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.
4. A broad description, including academic and/or career-technical objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.
5. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.
6. The school's refund policy for tuition and fees pursuant to subsection N of this section.
7. The school's procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his initiation of a complaint proceeding.
8. The name and address of the school's accrediting body, if applicable.
9. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates or diplomas.
10. A statement that accurately describes the transferability of any courses.
11. A statement that accurately represents the transferability of any diplomas, certificates, or degrees offered by the school.
12. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational or technical programs and that credits generally earned in these programs are not applicable to other degrees.
13. The academic or course work schedule for the period covered by the publication.
14. A statement that accurately details the type and amount of career advising and placement services offered by the school.
15. The name, location, and address of the main campus, branch, or instructional site operating in Virginia.

G. The school must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Evaluation of school effectiveness must be completed on a regular basis and must include, but not be limited to:

1. An explanation of how each program is consistent with the mission of the school.
2. An explanation of the written process for evaluating each degree level and program, or career-technical program, once initiated and an explanation of the procedures for assessing the extent to which the educational goals are being achieved.
3. Documented use of the results of these evaluations to improve the degree and career-technical programs offered by the school.

H. Pursuant to § 23.1-215 B of the Code of Virginia, the school must maintain records that demonstrate it is financially sound; exercises proper management, financial

controls and business practices; and can fulfill its commitments for education or training. The school's financial resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the USDOE Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited, reviewed or compiled financial statement. Career-technical schools shall provide the results of an annual audited, reviewed or compiled financial statement or the school may elect to provide financial information on forms provided by council staff. The financial report shall be prepared in accordance with generally accepted accounting principles (GAAP) currently in effect. The financial report shall cover the most recent annual accounting period completed.
2. The USDOE composite score range is -1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection I of this section; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

I. Pursuant to § 23.1-215 B of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia that is adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the non-Title IV funds that have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in an audited financial statement as a Current (non-Title IV) Tuition Liability. A school certified under this regulation shall be exempt from the surety instrument requirement if it can demonstrate a USDOE composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years. The school's eligibility for the surety waiver shall be determined annually, at the time of recertification.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or instructional site in the Commonwealth of Virginia are exempt from the surety bond requirement.
2. New schools and unaccredited existing schools must complete at least five calendar years of academic instruction and/or certification to qualify for the surety waiver or exemption.
3. Existing schools seeking a waiver of the surety instrument requirement must submit an audited financial statement for the most recent fiscal year end that reflects the appropriate composite score as indicated in this subsection.

J. The school shall have a current written policy on faculty accessibility that shall be distributed to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside a course's regularly scheduled class hours at each branch and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.
2. No school, agent, or admissions personnel shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

L. All programs offered via telecommunications or distance education must be comparable in content, faculty, and resources to those offered in residence, and must include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings. Telecommunication programs and courses shall adhere to the following minimum standards:

1. The educational objectives for each program or course shall be clearly defined, simply stated, and of such a nature that they can be achieved through telecommunications.
2. Instructional materials and technology methods must be appropriate to meet the stated objectives of the program or course. The school must consider and implement basic online navigation of any course or program, an information exchange privacy and safety policy, a notice of minimum technology specification for students and faculty, proper system monitoring, and technology infrastructure capabilities sufficient to meet the demands of the programs being offered.
3. The school shall provide faculty and student training and support services specifically related to telecommunication activities.
4. The school shall provide for methods for timely interaction between students and faculty.
5. The school shall develop standards that ensure that accepted students have sufficient background, knowledge, and technical skills to successfully undertake a telecommunications program.

M. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and selections of materials. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. In accordance with § 23.1-215 B of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Each school shall establish, disclose, and utilize a system of tuition and fee charges for each program of instruction. These charges shall be applied uniformly to all similarly circumstanced students. This requirement does not apply to group tuition rates to business firms, industry, or

governmental agencies that are documented by written agreements between the school and the respective organization.

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subdivision 2 of this subsection, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program.

2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, excluding weekends and holidays, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.

4. Following the period described in subdivision 3 of this subsection, a student applicant (one who has applied for admission to a school) 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 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. A student applicant will be considered a student as of the first day of classes.

5. The date of the institution's determination that the student withdrew should be no later than 14 calendar days after the student's last date of attendance as determined by the institution from its attendance records. The institution is not required to administratively withdraw a student who has been absent for 14 calendar days. However, after 14 calendar days, the institution is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to have withdrawn, the end of the 14-day period begins the timeframe for calculating the refunds. In the event that a written notice is submitted, the effective date of termination shall be the date of the written notice. The school may require that written notice be transmitted via registered or certified mail, or by electronic transmission provided that such a stipulation is contained in the written enrollment contract. The school is required to submit refunds to individuals who have terminated their status as students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner. An institution that provides the majority of its program offerings through distance learning shall have a plan for student termination, which shall be provided to council staff for review with its annual or recertification application.

6. In the case of a prolonged illness or accident, death in the family, or other special circumstances that make attendance impossible or impractical, a leave of absence may be granted to the student if requested in writing by the student or designee. No monetary charges or accumulated absences may be assessed to the student during a leave of absence. A school need not treat a leave of

absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if:

- a. The school has a formal, published policy regarding leaves of absence;
  - b. The student followed the institution's policy in requesting the leave of absence and submits a signed, dated request with the reasons for the leave of absence;
  - c. The school determines that there is a reasonable expectation that the student will return to the school;
  - d. The school approved the student's request in accordance with the published policy;
  - e. The school does not impose additional charges to the student as a result of the leave of absence;
  - f. The leave of absence does not exceed 180 days in any 12-month period; and
  - g. Upon the student's return from the leave of absence, the student is permitted to complete the coursework he began prior to the leave of absence.
7. If a student does not resume attendance at the institution on or before the end of an approved leave of absence, the institution must treat the student as a withdrawal and the date that the leave of absence was approved should be considered the last date of attendance for refund purposes.
8. The minimum refund policy for a school that financially obligates the student for a quarter, semester, trimester or other period not exceeding 4-1/2 calendar months shall be as follows:
- a. For schools that utilize an add/drop period, a student who withdraws during the add/drop period shall be entitled to 100% refund for the period.
  - b. For unaccredited schools and schools that do not utilize an add/drop period:
    - (1) A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.
    - (2) A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.
    - (3) A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.
9. The minimum refund policy for a school that financially obligates the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:
- a. A student who enters the school but withdraws or is terminated during the first quartile (25%) of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.
  - b. A student who withdraws or is terminated during the second quartile (more than 25% but less than 50%) of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.
  - c. A student who withdraws or is terminated during the third quartile (more than 50% but less than 75%) of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

- d. A student who withdraws after completing more than three quartiles (75%) of the program shall not be entitled to a refund.
10. The minimum refund policy for a school that offers its programs completely via telecommunications or distance education shall be as follows:
- a. For a student canceling after the 5th calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.
- b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:
- (1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.
- (2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.
- (3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.
- (4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.
- c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.
- d. If the school uses standard enrollment terms, such as semesters or quarters, to measure student progress, the school may use the appropriate refund policy as provided in subdivision 8 or 9 of this subsection.
11. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.
12. Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges are not required to be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents, prior to enrollment in the course or program. The school shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund.
13. For programs longer than one year, the policy outlined in subdivisions 9, 10, and 11 of this subsection shall apply separately for each academic year or portion thereof.

14. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

15. When notes, contracts or enrollment agreements are sold to third parties, the school shall continue to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have been remitted to the school by the student or on behalf of the student.

O. The school shall keep relevant academic transcripts for all teaching faculty to document that each has the appropriate educational credentials in the area of teaching responsibility. In the event teaching qualification is based on professional competencies and/or scholarly achievements, relevant documentation to support reported experience must be retained by the school.

P. If an internship, externship, or production work is necessary as a part of the school's education program, the school must adhere to the following:

1. When programs contain internships or externships, in any form, the professional training must:

- a. Be identified as part of the approved curriculum of the school and be specified in terms of expected learning outcomes in a written training plan.
- b. Be monitored by an instructor of record during the entire period of the internship.
- c. Not be used to provide labor or as replacement for a permanent employee.
- d. Be performed according to a specified schedule of time required for training including an expected completion date.
- e. If the internship, externship, or production work is part of the course requirement, the student may not be considered as a graduate or issued a graduation credential until the internship, externship, or production work has been satisfactorily completed.

2. When receiving compensation for services provided by students as part of their education program, the school must clearly inform customers that services are performed by students by (i) posting a notice in plain view of the public or (ii) requiring students to wear nametags that identify them as students while performing services related to their training.

Q. An institution shall notify council staff of the following occurrences no later than 30 days prior to said occurrence:

1. Addition of new programs or modifications to existing program. Program names must adhere to the CIP taxonomy maintained by the National Center for Education Statistics.
2. Addition of a new branch location or instructional site.
3. Address change of a branch or instructional site in Virginia.

Notification of the above-referenced occurrences shall be submitted in writing on forms provided by and in a manner prescribed by the council.

R. An institution shall notify the council of the following occurrences no later than 30 days following said occurrence.

1. Naming of new school president.
2. Naming of new campus or branch director.
3. Naming of person responsible for the regulatory oversight of the institution.

**8VAC40-31-165. Equipment and facilities.**

A. All buildings where courses of instruction are being conducted must comply with all municipal, county, state, and federal regulations as to fire, safety, health, and sanitation codes or regulations.

B. Lighting, heating, and ventilation must meet institutional needs. The equipment and facilities must be suitable to meet the training specified in the course content for the maximum student enrollment. Where applicable, all equipment, premises, and facilities must be maintained in conformity with state and federal rules and regulations.

C. Equipment shall be maintained in good working order.

Part VI  
Certification Requirements

**8VAC40-31-170. Initial certification, recertification, and change of ownership.**

A. An institution shall not use the term "college" or "university" or words of similar meaning until it has received acknowledgment from council staff that the name is not in violation of 8VAC40-31-20.

1. A school may not use the term "college" in its name unless the school has been approved or seeks to offer programs at the associate degree or above.
2. A school may not use the term "university" in its name unless the school has been approved or seeks to offer programs at the master's degree or above.
3. The council may refuse to approve a name change when, in the council's judgment, the proposed name is likely to mislead the public about the school's identity or the nature of its programs.
4. A school seeking certification must notify council staff of its proposed name prior to filing such name with the State Corporation Commission.
5. Prior to receiving certification to operate, a copy of the school's certificate from the Virginia State Corporation Commission authorizing it to transact business in the Commonwealth under the acknowledged name must be submitted to council staff.

B. A school shall not operate in the Commonwealth of Virginia without first receiving certification to operate from the council. Certified schools shall not enter into any agreement to deliver or develop courses or programs of study in Virginia with noncertified postsecondary schools.

C. An out-of-state postsecondary school seeking certification to operate in the Commonwealth of Virginia must secure written documentation from the higher education coordinating and/or approving agency in the state or country in which the school is formed, chartered, established, or incorporated indicating that the school is operating in good standing. If the school formerly operated in another state or country but is not operating there at the time of its application to operate in Virginia, the school must secure from the higher education coordinating and/or approving agency documentation that it closed in good standing and would be allowed to reestablish a

postsecondary school in that state or country. These written documentations must be provided to council staff.

D. A school submitting its initial application for certification will have 180 days to complete the application process, after which time its application will be withdrawn by the council and it will receive a refund of the application fee minus the nonrefundable administrative fee as listed in 8VAC40-31-260D..

E. All certifications shall expire on the certificate expiration date. Applications for recertification must be submitted to council staff at least 60 days prior to the expiration date of the current certification. If a school allows its certification to operate to expire, the school shall not be eligible for recertification and must submit an application for initial certification including the appropriate application fee.

F. Certification is not transferable. In the event of a change of ownership of a certified school, the new owner or governing body must secure certification. The school must apply for certification within 45 business days following a change of ownership. During the 45-day period and the time required for the council staff to process the new application, up to and not exceeding 90 days, the old certification shall remain in effect provided that no changes have been made in the academic programs, policies, or financial considerations such that the change would constitute or create a violation of council's policies.

1. The following constitutes a change of ownership:
  - a. Purchase of the entire school or assets of school.
  - b. Transfer, sale, or purchase of stock, membership, or other direct or beneficial ownership interest by a single entity or by multiple entities in a single transaction or a series of transactions that results in at least 51% change in control.
2. The acquisition of an interest in a certified school by bequest, descent, survivorship, or operation of law does not constitute a change of ownership. However, the person acquiring the ownership interest shall send written notice to the council of such acquisition within 30 days of its closing or validation. The council may determine on a case-by-case basis that other similar transfers may not constitute a change of ownership.
3. New school owners are responsible for maintaining and servicing all student records that were the responsibility of the prior owners of the school.
4. New school owners are responsible for resolving all student complaints that were the responsibility of the prior owners of the school or that were filed with the council prior to the final approval of the change of ownership.
5. New school owners are responsible for honoring the terms of current student enrollment agreements, institutional scholarships, or institutional grants for all students who were enrolled or taking classes at the time the change of ownership took place.

G. Council staff will process all applications, conduct the site visit, and provide notice to applicants within 45 business days of receipt of a completed application package. Approval of the certificate to operate by the council is subject to scheduling of council meetings and other factors affecting the agendas of council meetings.

H. Valid-through dates of certificates to operate and due dates of recertification applications are as follows:

1. Out-of-state private degree-granting and career-technical school certificates are valid for one year beginning on September 1 of the calendar year and ending on August 31 of the following calendar year. Applications are due not later than July 2.
2. Out-of-state public institution certificates are valid for one year beginning on September 15 of the calendar year and ending on September 14 of the following calendar year. Applications are due not later than July 16.
3. In-state private nonprofit institution certificates are valid for one year beginning on October 1 of the calendar year and ending on September 30 of the following calendar year. Applications are due not later than August 2.
4. In-state proprietary degree-granting and career-technical school certificates are valid for one year beginning on October 15 of the calendar year and ending on October 14 of the following calendar year. Applications are due not later than August 16.
5. In-state proprietary career-technical school certificates (letters A-D) are valid for one year beginning on November 1 of the calendar year and ending on October 31 of the following calendar year. Applications are due not later than September 2.
6. In-state proprietary career-technical school certificates (letters E-P) are valid for one year beginning on November 15 of the calendar year and ending on November 14 of the following calendar year. Applications are due not later than September 16.
7. In-state proprietary career-technical school certificates (letters Q-Z and others) are valid for one year beginning on December 1 of the calendar year and ending on November 30 of the following calendar year. Applications are due not later than October 2.

**8VAC40-31-180. Application requirements.**

A. Each certification to operate attests that the school is in compliance with Chapter 21.1 (Chapter 2, Article 3) of Title 23 of the Code of Virginia and with this chapter.

B. To apply for certification, the following information must be submitted:

1. A completed certification application package provided by council staff.
2. A statement regarding the school's accreditation status, if applicable.
  - a. Career-technical schools must provide a statement that the courses of study offered conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established or that courses conform to recognized training practices in those fields.
  - b. Out-of-state institutions and career-technical schools requesting initial certification must be accredited by an accrediting organization recognized by the U.S. Department of Education (USDOE) and must provide evidence that there has been no determination of limitation, suspension, revocation, or termination by the USDOE, an accrediting body, or a state regulatory body against the school within the past five years.

- c. Unaccredited in-state institutions that offer courses for degree credit and existing unaccredited out-of-state career-technical schools must submit a plan of action for securing accreditation from an organization recognized by the USDOE, including the name of the accrediting organization and timeframe. In order to remain eligible for certification, the postsecondary school must secure, at a minimum, candidacy status or equivalent within three years of its initial date of certification, and initial accreditation no later than six years after initial certification. Changes to the plan of action timeframe for accreditation will be granted only at the discretion of the council.
  - d. Unaccredited in-state institutions that undergo a change of ownership during the time period covered by the plan of action for securing accreditation, and that wish to remain eligible for certification under new ownership, will remain on the plan of action timeframe established by the former ownership. This plan of action timeframe begins from the initial date of certification under the former ownership and encompasses the accreditation dates established in the plan of action put into place by the former ownership. No additional time will be granted for obtaining the minimum level of accreditation required of the plan of action due to the change in ownership. Changes to the plan of action timeframe for accreditation will not be granted except at the discretion of the council.
3. A transacted surety instrument form, with the State Council of Higher Education for Virginia named as the obligee.
  4. A three-year projected budget that indicates that the school is capable of maintaining operational continuity for up to three years. The budget should demonstrate:
    - a. That the individual, partnership, or corporation that owns the school is solvent and has the financial capacity to support the operation; and
    - b. A positive net worth, accompanied by a reasonable debt to equity ratio.
  5. A completed checklist, signed and dated, acknowledging full compliance with certification criteria, along with a notarized attestation statement signed by the chief executive officer or equivalent.
  6. A company check in the correct, nonrefundable amount made payable to the Treasurer of Virginia.
  7. A copy of the school's certificate, if incorporated, from the State Corporation Commission providing authorization to transact business within the Commonwealth.
  8. For schools whose main campus is not in Virginia, a copy of the school's authorization to operate from the state agency in which its main campus is domiciled. No institution found to be operating illegally in another state shall be certified to operate in Virginia. An institution that has lost its legal authority to operate in another state shall be required to submit written documentation that describes the circumstances under which its authority was lost and to submit written documentation of the steps taken to remedy these circumstances before making application for certification in Virginia.
  9. A complete listing of all sites, along with their addresses, phone numbers (if applicable), and programs offered at the site.
  10. For new postsecondary school applicants, a signed and notarized statement provided by the president or CEO, that attests to any previous involvement in the

operation of a postsecondary school or any previous involvement by any administrator, owner, controlling shareholder, or member of the school's governing board in the operation of a postsecondary school. At a minimum, this statement shall include the name(s) of previous schools, the dates of the involvement, the positions held within the school, the location, the status (open/closed, and accredited/nonaccredited) of the school, any known violation of federal or state financial aid rules by the school, any known violations of the policies of an accreditor of the school, any bankruptcy filings by the school, and conviction or civil penalty levied by any legal entity in connection with this or any other educational entity in which he was employed or invested.

11. A complete list of all diploma, certificate, or degree program offerings during the valid period of the certification. This list shall consist of the number of hours required for completion of each program, the Classification of Instructional Programs (CIP) Code where applicable, and the type of program and degree.

a. New and unaccredited schools must also include their estimated annual enrollment projections and number of students per program; and

b. Schools that are renewing certificates to operate shall include from the previous year the following information:

(1) The number of degrees, certificates, or diplomas conferred for each program offered by the school at its Virginia facility.

(2) The number of students graduating and the number enrolled at its Virginia facility.

c. Unaccredited institutions of higher education and career-technical schools shall include, from follow-up surveys of graduates, the number of students reporting placement in jobs relating to their field of study within six months; and one year of graduation.

C. An existing postsecondary school licensed by any other state agency empowered by the Code of Virginia to license the school, its teachers or curriculum, or both, must become certified prior to enrolling any student into a course for degree credit or program of study. The school must submit an application for certification to operate that shall contain all of the requirements outlined in 8VAC40-31-160 B and C.

D. When a branch campus of a school is under different ownership or different school name than the main campus of the school, the branch campus must submit an application for certification to operate and must pay a separate certification fee than the main campus of the school.

E. Any proprietary postsecondary school must provide evidence of a valid business license from the locality within which it seeks to operate. If and when council receives confirmation that a school is operating without the required business license, council shall take action as required by § 23.1-218 of the Code of Virginia.

F. All postsecondary schools seeking certification to operate in Virginia must undergo and successfully complete a site visit prior to the issuance of the certificate to operate.

### **8VAC40-31-190. Withdrawal of application by a postsecondary school.**

A. A school that has submitted an application to the council may withdraw that application without prejudice at any time.

B. Withdrawal of an application by a school shall result in revocation by the council of all authorizations associated with that application that previously had been granted to the school.

C. A school that has withdrawn an application may submit, at any time and without prejudice, a new application to the council in accordance with Part V (8VAC40-31-130 et seq.) of this chapter.

D. A school that withdraws an application prior to receiving notification of certification will receive a refund of the filing fee minus an administrative processing fee.

**8VAC40-31-193. Loss of accreditation.**

A. In the event of the loss of accreditation of a certified school, the council will move to revoke the school's certificate to operate.

B. The council may waive the revocation provided the school does the following within 30 days of the loss of accreditation:

1. Provide council staff with a copy of the accreditor's letter and full report explaining the reason for the revocation;
2. Provide council staff with a written explanation why the loss of accreditation should not impact the school's certification to operate in Virginia and any supporting documentation; and
3. Submit to an audit to determine compliance with the council's regulations.

C. Council staff shall consider the accreditor's report, the school explanation for the loss of accreditation, and the findings of the audit to prepare a report for the council that recommends:

1. Initiate revocation of the school's certificate to operate; or
2. Grant conditional certification, during which time the school may not enroll new students. The terms of the conditional certification will be fixed at staff discretion based upon their findings.

D. The school must maintain a surety instrument during the totality of the conditional certification period.

E. The school shall provide written notification to all enrolled students of its loss of accreditation from its accrediting body and of its provisional certification status with the council.

F. The school shall be eligible to apply for full certification upon meeting the following conditions:

1. Provide documentation that the issues causing the loss of accreditation have been resolved.
2. Demonstrate full compliance to the provisions of this chapter by virtue of an audit during the conditional certification period.

**8VAC40-31-195. Suspension or revocation of certificate to operate.**

A. The council may (i) suspend, revoke, or refuse to issue or renew a certificate to operate; (ii) modify the certificate to operate to conditional; or (iii) impose a penalty pursuant to § 23.1-228 of the Code of Virginia for any one or combination of the following:

1. Violation of any provision of this chapter pursuant to Chapter 21.1 (Chapter 2, Article 3) of Title 23 of the Code of Virginia, the council's minimum standards, or any rule made by the council.
2. Furnishing of false, misleading, deceptive, altered, or incomplete information or documents to the council.
3. Violation of any attestations made in an application for a certificate to operate.
4. Presenting to prospective students, either at the time of solicitation or enrollment, or through advertising, mail circulars, or telephone solicitation, misleading, deceptive, false, or fraudulent information relating to any program, employment opportunity, or opportunities for enrollment after entering or completing programs offered by the school.
5. Presenting to prospective students, either at the time of solicitation or enrollment, or through advertising, mail circulars, or telephone solicitation, misleading, deceptive, false, or fraudulent information relating financial aid offered by the school.
6. Failure to provide or maintain premises or equipment for offering programs in a safe and sanitary condition as required by law or by state regulations or local ordinances.
7. Refusal by an agent while performing duties common to agents to display his agent's permit upon demand of a prospective student or council staff member or other interested persons.
8. Failure to maintain financial resources adequate to conduct satisfactorily the courses of instruction offered or to retain an adequate, qualified instructional staff.
9. Offering training or programs other than those acknowledged by the council.
10. Illegal discrimination in the acceptance of students.
11. Failure to provide the council or council staff within a reasonable timeframe any information, records, or files pertaining to the operation of the school or recruitment and enrollment of students or in response to an audit.
12. Employment of enrolled students in any commercial activity from which the school derives revenue without reasonable remuneration to the students unless the students are engaging in activities that are an integral component of their educational program.
13. Engaging in or authorizing other conduct that constitutes fraudulent or criminal activity.

B. A school is entitled to exercise its rights under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) prior to the denial, suspension, or revocation of its certificate to operate, pursuant to 8VAC40-31-220.

**8VAC40-31-200. Audit requirements.**

A. All certified postsecondary schools shall be subject to random periodic audits. The purpose of such audit shall be to verify compliance with Chapter 21.1 (Chapter 2, Article 3) of Title 23 of the Code of Virginia and the provisions outlined in this chapter.

B. At the discretion of council staff, an audit review committee shall consist of the executive director or designee and may:

1. Include individuals with the experience in the disciplines in which the school provides instruction; and/or
2. Consist of council staff.

C. Audits shall be random or triggered by, but not limited to, the following events:

1. Council staff concerns based on questionable information in the initial or recertification application.
2. Greater than average volume and frequency of negative student complaints or adverse publicity.
3. Difficulty securing accreditation within the specified time period.
4. Adverse action by the USDOE or the school's accrediting agency.
5. A USDOE composite financial responsibility score of less than 1.0.

D. Following an audit of the school, council staff shall prepare a report with recommendations for review by the council. If a school is found noncompliant, the council may:

1. Determine no action is necessary and have the report filed;
2. Change the status to conditional certification and require remedial action(s) within a specified timeframe;
3. Initiate suspension or revocation of the school's certificate to operate.

**8VAC40-31-210. Duplication of and need for instruction for degree credit is irrelevant.**

In considering a school's application, the council shall not take into account either duplication of effort by public and private schools in Virginia or need within the Commonwealth for the course for degree credit, program of study, or degree program for which certification is sought.

Part VII

Procedures for Conducting Fact-Finding Conferences and Hearings

**8VAC40-31-220. Procedural rules for the conduct of fact-finding conferences and hearings (§§ 2.2-4019 through 2.2-4030 of the Code of Virginia).**

A. Fact-finding conference; notification, appearance, conduct.

1. Unless emergency circumstances exist that require immediate action, no order shall be issued to refuse to grant a certification, to revoke or suspend a prior certification, or to add conditions to any certification except upon written notice stating the basis for such action and the right of the affected parties to appear at an informal fact-finding conference.
2. If the council determines that grounds exist to refuse to grant a certification, to revoke or suspend a prior certification, or to add conditions to any certification,

the council shall provide written notice of its intention to take the proposed action to the interested parties at the address of record. The notice shall be sent by certified mail, return receipt requested, and shall state the reasons for the proposed action.

3. Notification shall provide information about informal fact-finding conference procedures, including the rights of interested parties to (i) reasonable notice thereof; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof; (iii) have notification of any contrary fact bases or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision; and (v) be informed briefly and generally, in writing, of the factual or procedural basis for an adverse decision. If no withdrawal occurs, an informal fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. A party wishing to waive its right to a conference and proceed directly to formal hearing shall notify the council at least 14 days before the scheduled conference.

4. If after consideration of information presented during an informal fact-finding conference, the council determines that a basis for action still exists, the interested parties shall be notified in writing within 60 days of the informal fact-finding conference, via certified mail, of the decision, the factual or procedural basis for the decision, and the right to appeal the decision by requesting a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant information.

5. Parties may enter into a consent agreement to settle the issues at any time prior to a formal hearing. If one party desires to enter into a consent agreement prior to the informal fact-finding conference or the formal hearing, as the case may be, then it shall give reasonable notice to the other party prior to the conference or hearing. A party's delay may result in denial of the proposed consent agreement.

6. Following execution of the consent agreement, council staff may make frequent attempts to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.

**B. Hearing; notification, appearance, conduct.**

1. If, after the council renders a decision following an informal fact-finding conference, an interested party desires to appeal the decision by requesting a formal hearing, it shall notify the council within 14 days of the date of receipt of the certified letter.

2. Parties to a formal hearing shall be given reasonable notice of the (i) time, place, and nature thereof; (ii) basic law under which the council contemplates its possible exercise of authority; and (iii) matters of fact and law asserted or questioned by the council.

3. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the party's/representative's absence and make a recommendation.

4. The formal hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia and maintained in the office of the Executive Secretary of the Supreme Court.

5. In the formal hearing, the parties shall be entitled to be accompanied and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, and to conduct cross-examination. The presiding officer at the formal hearing may (i) administer oaths and affirmations; (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence; (iii) hold conferences for the settlement or simplification of issues by consent; (iv) dispose of procedural requests; and (v) regulate and expedite the course of the hearing.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practical, in the county or city in which the school is located. Hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, videoconference or similar technology in order to expedite the hearing process.

D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. Prior to the recommendation of the hearing officer, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) a statement of reasons therefor. On request, opportunity shall be afforded for oral arguments to the hearing officer or to the council as it may permit in its discretion. The council shall receive and act on exceptions to the recommendation of the hearing officer prior to rendering a decision.

3. The council shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall be served on the parties concerned; become a part of the record; and briefly state the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the council is operating, together with the appropriate order, certificate to operate, or denial thereof.

E. Agency representation. The executive director's designee may represent the council in an informal conference or at a hearing.

## Part VIII

### Criminal Prosecution for Violation; Civil Enforcement

#### **8VAC40-31-230. Criminal prosecution for violation.**

A. Any violation of any provision of § 23.1-228 of the Code of Virginia that is found by council to have been committed by any person, firm, association, postsecondary school, trust, or other entity that offers or confers degrees, diplomas, certificates, programs, or courses of study shall be punishable as a class 1 misdemeanor.

B. Each degree, diploma, certificate, program, or course of study offered or conferred in violation of this chapter or each violation of the provisions of § 23.1-228 of the Code of Virginia shall constitute a separate offense.

C. The council shall take any action required by the Code of Virginia to deter illegal or improper acts that may violate the requirement for school certification. Pursuant to § 23.1-218 of the Code of Virginia, upon confirmation of any notification or discovery of any postsecondary school operating without its certification or approval, the council shall notify, in writing, the relevant local commissioner of the revenue or other official serving such equivalent functions of the postsecondary school's violation of such certification or approval requirements, and shall recommend revocation of the school's business license.

#### **8VAC40-31-240. Civil enforcement.**

Upon the determination of the council that any school, or its agents or representatives, is in violation of this chapter, the council may institute a proceeding in equity to enjoin the violation.

### Part IX Additional Regulations

#### **8VAC40-31-250. Virginia law to apply to agreements.**

The laws of Virginia shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person enrolling in any course or program offered or to be offered by a postsecondary school in Virginia and also between that postsecondary school and any person employed or offered employment by that postsecondary school in Virginia.

#### **8VAC40-31-260. Fees.**

A. All fees collected by council staff will be deposited in the State Treasury.

B. All fees are nonrefundable with the exception of withdrawal of an application in which case all fees will be refunded minus a nonrefundable administrative fee noted in subsection D of this section.

C. Fees must be paid with a company check and made payable to the Treasurer of Virginia.

D. The annual fee is based on the annual gross tuition received by each administrative branch of institutions certified to operate in Virginia. For out-of-state institutions certified to operate in Virginia, annual gross tuition means income generated from students enrolled at Virginia locations. The flat fee schedule is as follows:

New school orientation session, per person	\$150
Initial fee for all new institutions of higher education	\$6,000
Initial fee for all new career-technical schools	\$2,500
Annual fee for all unaccredited institutions of higher education	\$6,000
Renewal fee for all postsecondary schools with an annual gross tuition collected less than \$50,000, as recorded on most recent financial statement	\$250
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
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
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
Renewal fee for all postsecondary schools with an annual gross tuition collected greater than or equal to \$1,000,000, as recorded on most recent financial statement	\$5,000
Returned check fee	\$35
Initial or renewed exemption application/request for name acknowledgement/agent registration	\$300
Nonrefundable administrative fee (withdrawal of application)	\$500 career-technical, \$1000 institutions of higher education
Request duplicate certificate to operate due to school name or address change	\$100
Request duplicate agent permit, to replace lost/stolen/misplaced permit	\$100
Application fee for each additional site	\$100
Application fee for each additional program or modification to an existing program	\$100

E. A school that submits a payment that is returned for any reason must resubmit the required payment, any applicable late fee, and the assessed returned check fee of \$35 via a money order or certified bank check only.

#### **8VAC40-31-270. Receipt of applications, correspondence and other materials.**

A. All applications, forms, letters or other materials relating to, or required by this chapter should be sent to:

State Council of Higher Education for Virginia  
ATTN: Private and Out-of-State Postsecondary School Certification

James Monroe Building, 9th Floor  
101 North Fourteenth Street  
Richmond, Virginia 23219

B. The mail of items specified in subsection A of this section shall not constitute receipt of them by the council unless sent by registered or certified mail, return receipt requested.

**8VAC40-31-280. Closure of a postsecondary school.**

A. The council, on its own motion, may authorize a postsecondary school whose application for certification to operate is denied in accordance with 8VAC40-31-200 to continue to offer instruction to all currently enrolled students until the end of the semester, quarter, or other academic term during which certification is denied.

B. The council, on its own motion, may authorize a school whose certification is revoked in accordance with 8VAC40-31-200 to offer the coursework necessary for all currently enrolled students to complete their programs and to award degrees, certificates or diplomas to those students, provided that the school:

1. Offers coursework only to those students who were enrolled at the time the school's certification was revoked; and
2. Offers all necessary coursework on a schedule that permits all currently enrolled students to complete their programs in a reasonable period of time.

C. When a school decides to voluntarily cease operations, it must immediately inform the council of the following:

1. The planned date for the termination of operations.
2. The planned date and location for the transfer of student records.
3. The name and address of the organization to receive and manage the student records and the name of the official who is designated to manage transcript requests. The organization designated for the preservation of the student records may not be corporately connected to the closing school. The council may receive student records, subject to subsection D of this section, if an appropriate depository has not been established.
4. Arrangements for the continued education of currently enrolled students via teach-out agreement or other practical solution. The teach-out plan shall consist of, but not be limited to, the following:
  - a. Identification of the school's official date of closure;
  - b. A listing by program of students enrolled at the time of the school's closure including addresses, telephone numbers, and estimated graduation dates for each student;
  - c. The status of all current refunds due and balances owed;
  - d. A listing of those students who had prepaid for any portion of their training and a calculation of the total amount that was prepaid by each student;
  - e. Signed agreement with one or more local educational institutions able to provide adequate education to all students in all programs; and
  - f. Procedures for awarding graduates their certificates, diplomas, or degrees.

5. A listing of all former students, including full name, last known mailing address, email address, program of study, dates of enrollment, date of completion, and credential awarded, if applicable.

D. In the event of school closure or revocation of certification, the school shall make provisions for transferring all official records of students to the council office, or secure a location that will maintain the records permanently, notify all students of this location and how they may obtain official copies. The records transferred to the council office, or other depository, shall include the academic records of each student, which should include:

1. Academic transcripts showing the basis of admissions, transfer credits, courses, credits, grades, graduation authorization, and student name changes for each student;
2. Transcripts of financial aid for each student, if maintained;
3. Foreign student forms for foreign students;
4. Veterans Administration records for veterans;
5. Copies of degrees, diplomas, and certificates awarded, if maintained;
6. One set of course descriptions for all courses offered by the school; and
7. Evidence of accreditation, if any, during the years covered by transcripts.

E. The school shall notify all enrolled students of the pending closure immediately, describing their financial obligations as well as their rights to a refund or adjustment, and provisions made for assistance toward completion of their academic programs, whether in the institution that is closing, or by contract with another institution or organization to teach out the educational programs. Such agreements must be approved by the council.

F. The council shall seek the advice of the Career College Advisory Board on matters relating to closures of its member schools.

**8VAC40-31-290. Waiver by council.**

The council may waive or modify the certification requirements for an accredited school if the council finds that such waiver or modification will not conflict with the intent of the regulations and that in light of the school's mission, literal application of such requirement(s) creates an unreasonable hardship on the school.

**8VAC40-31-300. (Repealed.)**

**8VAC40-31-310. Student Tuition Guaranty Fund.**

A. The executive director shall appoint in writing a Director of the Student Tuition Guaranty Fund.

B. The purpose of the fund is to reimburse tuition due students at schools certified to operate when the school ceases to operate.

C. Schools seeking initial certification after July 1, 2004, shall not be required to pay into the fund. All other schools that were certified to operate prior to July 1, 2004, under

the provisions of § 22.1-321 of the Code of Virginia, shall be subject to the provisions valid at the time of its recertification.

D. A claim shall be made against the fund only if it arises out of the cessation of operation by a school at which the student was enrolled or was on an approved leave of absence at the time of the closure and the closure prevented the student from completing the program of study for which he enrolled on or after July 1, 2004. Claims shall be filed with the director of the fund on forms prescribed by the council within three years after cessation of operation by the school. Claims filed after that period shall not be considered. Claims shall be limited to the unearned tuition paid to the closing institution for which the student received no educational instruction.

E. The director will attempt to secure a teach-out agreement as outlined in 8VAC40-31-280 C 4 prior to issuing a refund of the unearned tuition to a student unable to complete a program of study due to a school closure. If a teach-out agreement cannot be secured, the director shall proceed with a claim against the closed school's surety instrument.

- F. The executive director shall administer the fund upon the following basis:
1. The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund;
  2. All payments into the fund shall be maintained by the state comptroller who shall deposit and invest the assets of the fund in any savings accounts or funds that are federally or state insured, and all interests or other return on the fund shall be credited to the fund;
  3. Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Student Tuition Guaranty Fund."

G. When a claim is allowed by the director, the executive director, as agent for the fund, shall be subrogated in writing to the amount of the claim and the executive director shall thereby be authorized to take all steps necessary to perfect the subrogation rights before payment of the claim. Refunds will be made, first, to the lender issuing student financial aid or the guarantor of the loan, and second, to the student. In the event no financial aid was involved, then refunds will be made to the student.

#### **8VAC40-31-320. Agent registration.**

A. Agents representing one or more noncertified accredited postsecondary schools must:

1. Register with the council prior to soliciting in Virginia; and
2. Pay an annual fee of \$300 per school represented.

B. Agents representing noncertified unaccredited postsecondary schools shall not conduct business in Virginia.

C. Agents operating instructional sites in Virginia must seek council certification.

D. Agent permits expire on December 31 of each calendar year. An application for an agent permit renewal must be submitted to council staff at least 60 days prior to the expiration date.

E. Refusal by an agent to display his agent's permit upon request of a prospective student, council staff member, or other interested person may result in the revocation of the agent permit.