

**VIRGINIA:**  
**IN THE SUPREME COURT OF VIRGINIA**  
**AT RICHMOND**

**IN THE MATTER OF**  
**SUPREME COURT RULES**  
**PART 6, § IV**  
**PARAGRAPHS 13.1, 16, and 19**

**PETITION OF THE VIRGINIA STATE BAR**

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**VIRGINIA:**

**IN THE SUPREME COURT OF VIRGINIA  
AT RICHMOND**

**CONSOLIDATED PETITION  
IN THE MATTER OF  
SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPHS 13.1, 16 AND 19**

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE  
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar (VSB), by its president and executive director, pursuant to Part 6, § IV of the Rules of this Court, and requests review and approval of the proposed amendments to Supreme Court Rules of Part 6, § IV of the Rules of Court governing the Organization and Government of the VSB, as set forth below.

**I. IN THE MATTER OF  
SUPREME COURT RULES, PART 6, § IV  
PARAGRAPH 13.1**

The proposed amendments to Paragraph 13.1 of Part 6, § IV of the Rules of Court governing the Organization and Government of the VSB were approved by a vote of the Council of the VSB, 61 to 1, on February 27, 2021.

**A. Overview of the Issue**

The VSB proposes amending Paragraph 13.1 of Part 6, § IV of the Rules of the Supreme Court of Virginia to prospectively extend the time for new active status

lawyers to complete the Harry L. Carrico Professionalism Course (the “Course”) to 24 months. Additionally, the VSB proposes granting new active status lawyers, who have been prohibited from taking the Course during the COVID-19 pandemic, a retrospective 36-month extension.

Due to COVID-19, the Course has been suspended since March 2020 and compliance deadlines have been globally extended until July 31, 2021. The VSB anticipates courses will begin again in July 2021 with six courses scheduled during fiscal year 2022 at physically distanced capacities. There is, however, a backlog of approximately 1,400 new active status lawyers who still need to complete the Course and whose attendance was deferred during the pandemic. Meanwhile, the VSB continues to accrue new active status lawyers who are required to attend the Course.

This petition seeks two objectives, (1) to give affected backlogged lawyers 36 months from their original active status date to complete the Course. Additionally, (2) the petition seeks to provide all future new active lawyers 24 months to complete the Course.

Permanently extending the overall compliance deadline to 24 months, from 12 months, will allow new active status attendees to gain practical experience before analyzing the issues addressed in the Course. Granting the retrospective 36-month extension for those affected by COVID-19 will provide additional reasonable time to complete the course while also allowing new active status lawyers a range of courses to select from, instead of creating a surge of demand for the first resumed courses.

Importantly, the Standing Committee on Professionalism met in late 2020 and confirmed its desire for Course attendance to remain in-person and not to pursue a virtual Course to remediate the backlog.

The proposed revisions to the Rule are included below in Section III. No rule change is recommended for the 36-month extension and the VSB asks that such extension be granted by the text of the Order if the Court approves the petition.

### **B. Publication and Comments**

Notice of the proposed Paragraph 13.1 amendment was published on the VSB's website on December 2, 2020 and distributed in the VSB's E-News on December 3, 2020. The comment period for the amendment closed on January 8, 2020.

No comments were received. At the Council meeting on February 27<sup>th</sup>, there were no questions about the proposed extensions. The motion to adopt the amendment passed 61-1.

### **C. Proposed changes**

The text of the proposed amendments is as follows with additions underlined and deletions in strikethrough:

#### **13.1 Suspension for Failure to Complete Professionalism Course—**

Each person admitted to the Virginia State Bar on or after July 1, 1988, as an active member shall complete the course of study prescribed by the Executive Committee of the Virginia State Bar and approved by the Supreme Court of Virginia on the Rules of Professional Conduct and the lawyer's broader professional obligations, and any active member who fails to complete the course shall be suspended unless an extension

is obtained for good cause shown. Such course of study shall be funded by attendance fees paid by those attending the course.

Any active member licensed after June 30, 1988, and any other member who changes his or her membership to active status shall complete the required course within ~~twelve~~ twenty-four months of becoming an active member. Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein.

“Good cause shown” as used herein shall include illness, hospitalization or such other cause as may be determined by the Executive Committee, whose determination shall be final. The Executive Director of the Virginia State Bar is authorized to grant extensions for compliance with this paragraph until the next Executive Committee meeting. Any determination by the Executive Committee or the Executive Director may be reviewed by the Supreme Court on request of the member seeking an extension.

The amendments effective March 1, 2017, authorize the VSB executive director to grant, for good cause, an extension request from a member who fails to complete the Professionalism Course by the deadline.

#### **D. Conclusion**

“The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar.” Va. Code § 54.1-3910. Pursuant to this statutory authority, the Court has promulgated such rules. After notice to the VSB membership and a comment period publicized through VSB publications, the proposed amendments were then unanimously approved by the Executive Committee and passed Council by a vote of 61-1 on February 26 and 27, 2020, respectively.

THEREFORE, the Virginia State Bar, by its president and executive director, respectfully requests the Court to adopt the foregoing amendments to Part 6, § IV, Paragraph 13.1 for the reasons set forth above.

**II. IN THE MATTER OF  
SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPH 16**

Pursuant to Part 6, § IV of the Rules of this Court, the Virginia State Bar requests review and approval of the proposed amendments to Paragraph 16 of Part 6, § IV of the Rules of Court governing the Organization and Government of the VSB, as set forth below. The proposed amendments were approved by a vote of the Council of the VSB, 57 to 2, on February 27, 2021.

**A. Overview of the Issue**

The VSB proposes amending Paragraph 16 of Part 6, § IV of the Rules of the Supreme Court of Virginia to reduce the required fee each member of the VSB must pay as part of their annual dues in support of the Clients’ Protection Fund (the “Fund”).

This amendment is sought due to the adequate capitalization of the Fund (~\$10.9M as of December 31, 2020) and a recent history of modest demands on the Fund not exceeding assessments plus interest. For example, in the first half of fiscal year (FY) 2021 (July 1, 2020-December 31, 2020) total claims paid against the Fund equaled \$78,980, down from an annual peak of \$900,560 in FY 2010. Assessments and interest on the Fund corpus are expected to eclipse the extrapolated claims total of approximately \$160,000 for FY 2021. Assessments received from VSB members

in FY 2020 were \$319,355, down from a peak of \$813,060 in 2018 when the assessment was \$25. Interest received on the Fund's investments equaled \$207,574 in the last complete accounting year (July 1, 2019-June 30, 2020). Attached hereto is an annual report of the Fund with a spreadsheet at page 5 listing the financial data summary including the Fund balance, assessments received, and claims paid. The annual assessment was last reduced on July 1, 2018 from \$25 to \$10.

The proposed revisions to the Rule are included below in Section III.

### **B. Publication and comments**

Notice of the proposed Paragraph 16 amendment was published on the VSB's website on November 12, 2020 and distributed in the VSB's E-News on December 3, 2020. The comment period for the amendment closed on January 8, 2020.

No comments were received. At the Council meeting on February 27<sup>th</sup>, some members voiced concern that the Fund could suffer a run of claims that might jeopardize its security and for that reason sought to keep the assessment static.

The motion to adopt the amendment passed 57-2.

### **C. Proposed changes**

The text of the proposed amendment is as follows with additions underlined and deletions in strikethrough:

The Council may establish a Clients' Protection Fund for the purposes of reimbursing all or part of losses sustained by a client or other person or entity to whom a fiduciary duty is owed as a result of dishonest conduct of a member of the Virginia State Bar. The Board shall be appointed by Council, and shall receive, hold, manage, invest and distribute funds appropriated to it by Council or otherwise received, in



accordance with procedures established by Council.

Effective July 1, ~~2018~~2021, each active member of the Virginia State Bar shall be assessed a required fee of ~~\$10~~\$5 for the Clients' Protection Fund on the bar's annual dues statement. The fee shall be in addition to each member's annual dues as prescribed in Part 6, Section IV, Paragraph 11 of these rules, and it shall be paid on or before the 31st day of July each fiscal year.

All monies collected under this Paragraph 16 shall be accounted for and paid into the State Treasury of Virginia and transferred by the bar from the Treasury to the Clients' Protection Fund. The bar shall report annually on or about January 15 to the Supreme Court of Virginia on the financial condition of the Clients' Protection Fund, and the assessment will be discontinued whenever directed by the Court.

Failure to comply with the requirements of this Paragraph 16 shall subject the active member to penalties set forth in Part 6, Section IV, Paragraph 19 of these rules.

#### **IV. Conclusion**

“The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar.” Va. Code § 54.1-3910. Pursuant to this statutory authority, the Court has promulgated such rules. After notice to the VSB membership and a comment period publicized through VSB publications, the proposed amendments were then unanimously approved by the Executive Committee and passed Council by a vote of 57-2 on February 26 and 27, 2020, respectively.

**III. IN THE MATTER OF  
SUPREME COURT RULES  
PART 6, § IV  
PARAGRAPH 19**

Pursuant to Part 6, § IV of the Rules of this Court, the Virginia State Bar requests review and approval of the proposed amendments to Paragraph 19 of Part 6, § IV of the Rules of Court governing the Organization and Government of the VSB, as set forth below. The proposed amendments were approved by a vote of the Council of the VSB, 58 to 3, on February 27, 2021.

**A. Overview of the Issue**

The VSB proposes amending Paragraph 19 of Part 6, § IV of the Rules of the Supreme Court of Virginia to reduce the delinquency fees associated with failure to comply with the Court’s Rules relating to a lawyer’s membership in the bar from \$50 to \$25; and to reduce the administrative suspension reinstatement fee from \$150 to \$75.

Specifically, a delinquency fee of \$50 is currently assessed for lawyers who fail to pay timely any of four non-MCLE membership requirements. This often results in a lawyer who misses the deadline paying penalties up to \$200, for the total of the four requirements—in addition to the underlying fees themselves. These include (i) annual dues, (ii) annual Client Protection Fund assessment, (iii) validation of Professional Liability Insurance, and (iv) annual Wellness Fund assessment.

Additionally, if a member is administratively suspended after failing to cure his/her delinquency within 60 days of receiving notice, he/she must pay a \$150 reinstatement fee. This reinstatement fee is also multiplied in cases where a lawyer fails to satisfy each of the four registration requirements. This proposal would halve the reinstatement fee to \$75.

These delinquency and reinstatement fees can easily eclipse a lawyer's annual dues. As an example, a lawyer who fails to timely pay the required fees, is administratively suspended, and then seeks reinstatement can face a registration bill of up to \$1,090.

This petition is sought upon the advice of the VSB Regulatory Compliance staff who frequently receive complaints about what is perceived as excessive delinquency fees. Because of the growing number of regulatory rules assessing a fee over time, the associated delinquency fees have become more financially burdensome, and the following proposal is sought.

The proposed revisions to the Rule are included below in Section III.

### **B. Publication and Comments**

Notice of the proposed Paragraph 19 amendment was published on the VSB's website on November 16, 2020 and distributed in the VSB's E-News on December 3, 2020. The comment period for the amendment closed on January 8, 2020.

There was one comment from a member of the VSB who voiced his support of the proposed change. At the Council meeting on February 27<sup>th</sup>, some members

believed reducing the delinquency fee would reward lawyers who do not comply with the regulatory rules.

The motion to adopt the amendment passed 58-3.

### **C. Proposed Changes**

The text of the proposed amendment is as follows with additions underlined and deletions in strikethrough:

#### **19. Procedure for the Administrative Suspension of a Member—**

Whenever it appears that a member of the Virginia State Bar has failed to comply with any of the Rules of Court relating to such person's membership in the bar, the Secretary-Treasurer shall mail a notice to the member advising of the member's noncompliance and demanding (1) compliance within sixty (60) days of the date of such notice and (2) payment of a delinquency fee of \$5025, for each Rule violated, provided, however, that the delinquency fee for an attorney who does not comply with the timely completion requirements of Paragraphs 13.2 and 17 (C) of these rules shall be \$100, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs 13.2 and 17 (D) of these rules shall be \$100, and shall increase by \$100 on February 1 for noncompliance with the certification requirements. The notice shall be mailed to the member at his ~~last~~ address of record with on file ~~at~~ the Virginia State Bar.

In the event the member fails to comply with the directive of the Secretary-Treasurer within the time allowed, the Secretary-Treasurer will then mail a notice to the member by certified mail to advise (1) that the attorney's membership in the bar has been administratively suspended and (2) that the attorney may no longer practice law in the Commonwealth of Virginia or in any way hold himself or herself out as a member of the Virginia State Bar. Thereafter the attorney's membership in the Virginia State Bar may be reinstated only upon showing to the Secretary-Treasurer (1) that the attorney has complied with all the Court's rules relating to his or her membership in the bar and (2) upon payment of a reinstatement fee of \$45075 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with Paragraphs 13.2 and 17 of these rules shall be

\$250, and shall increase by \$50 for each subsequent such suspension, not to exceed a maximum of \$500.

Whenever the Secretary-Treasurer notifies a member that his or her membership in the bar has been administratively suspended, the Secretary-Treasurer shall also (1) advise the Chief Judges of the circuit and district in which the attorney has his or her office, as well as the clerks of those courts and the Clerk of the Supreme Court, of such suspension and (2) publish notice of the suspension in the next issue of the *Virginia Lawyer Register*.

An administrative suspension shall not relieve the delinquent member of his or her annual responsibility to attend continuing legal education programs or to pay his or her dues to the Virginia State Bar.

#### **D. Conclusion**

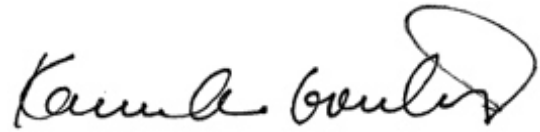
“The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar.” Va. Code § 54.1-3910. Pursuant to this statutory authority, the Court has promulgated such rules. After notice to the VSB membership and a comment period publicized through VSB publications, the proposed amendments were then unanimously approved by the Executive Committee and passed Council by a vote of 58-3 on February 26 and 27, 2020, respectively.

THEREFORE, the Virginia State Bar, by its president and executive director, respectfully requests the Court to adopt the foregoing amendments to Part 6, § IV, Paragraphs 13, 16 and 19 for the reasons set forth above.

Respectfully submitted,  
VIRGINIA STATE BAR



By: Brian L. Buniva, President

A handwritten signature in black ink, appearing to read "Karen A. Gould". The signature is written in a cursive style with a large, looping flourish at the end.

By: Karen A. Gould, Executive Director

Dated this 8th day of March 2021.



# Virginia State Bar

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January 14, 2021

VIA EMAIL

Chief Justice Donald W. Lemons  
Supreme Court of Virginia  
101 N. 8th Street  
Richmond, VA 23219

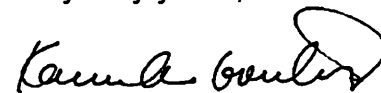
RE: Clients' Protection Fund report

Dear Chief Justice Lemons:

Paragraph 16 of Part 6, Section IV of the Rules of the Supreme Court of Virginia directs the bar to report annually to the Court on the financial condition of the Clients' Protection Fund. Pursuant to that requirement, I am enclosing the December 31, 2020 cash balance report, statement of revenue and expenses, and the schedule of investments. I am also enclosing a financial summary for fiscal year 1976 through the first half of fiscal year 2021. The final balance of cash and investments on December 31, 2020 was \$10,980,850.50.

Please let me know if I can answer any questions or provide you with additional information.

Very truly yours,

  
Karen A. Gould

**VIRGINIA STATE BAR  
CLIENTS' PROTECTION FUND  
CASH BALANCE  
AS OF DECEMBER 31, 2020**

<b>Cash Balance as of July 1, 2020</b>	<b>\$ 10,650,621.50</b>
Year-to-Date Revenue through December 31, 2020	409,329.00
Year-to-Date Expenses through December 31, 2020	<u>(79,100.00)</u>
<b>Cash Balance as of December 31, 2020</b>	<b><u>\$ 10,980,850.50</u></b>
<b>Liability for claims approved but not paid:</b>	<b><u>51,000.00</u></b>
<b>Available Cash Balance as of December 31, 2020:</b>	<b><u>\$ 10,929,850.50</u></b>

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**Funds Invested/Maintained as Follows:**

BB&T Business Checking Account	347,517.17
Federal Home Loan Bank	5,933,333.33
Federal Home Loan Mortgage Corp.	1,500,000.00
Federal National Mortgage Association	0.00
Federal Farm Credit Bank	<u>3,200,000.00</u>
<b>Total Cash and Investments</b>	<b><u>\$ 10,980,850.50</u></b>



**VIRGINIA STATE BAR  
CLIENTS' PROTECTION FUND  
MONTHLY STATEMENT OF REVENUE & EXPENSES  
FOR DECEMBER 2020**

	<b>BALANCE 12/1/2020</b>	<b>DEC 2020 ACTIVITY</b>	<b>BALANCE 12/31/2020</b>
<b>REVENUE</b>			
<b>INTEREST:</b>			
Investment Interest	\$ 64,689.38	\$ 16,995.00	\$ 81,684.38
<b>REIMBURSEMENT FROM ATTORNEYS:</b>			
AG's Collections	-	400.00	400.00
Debt Set-Off Receipts	552.00	0.00	552.00
Individual Restitution	7,159.89	177.73	7,337.62
<b>TRANSFERS:</b>			
CPF Assessment	316,005.00	3,350.00	319,355.00
<b>Total Revenue:</b>	<b>\$ 388,406.27</b>	<b>\$ 20,922.73</b>	<b>\$ 409,329.00</b>
<b>EXPENSES</b>			
Bank Service Charges	-	0.00	0.00
Attorney General's Fees	-	120.00	120.00
CPF Board Expenses - Oper. Acct. Reim.	-	0.00	0.00
Payments to Clients	78,980.00	0.00	78,980.00
<b>Total Expenses:</b>	<b>\$ 78,980.00</b>	<b>\$ 120.00</b>	<b>\$ 79,100.00</b>
<b>Total Revenue Over/(Under) Expenses</b>	<b>\$ 309,426.27</b>	<b>\$ 20,802.73</b>	<b>\$ 330,229.00</b>

**SCHEDULE OF INVESTMENTS  
AS OF DECEMBER 31, 2020**

<b>MATURITY DATE</b>	<b>INVESTMENT</b>	<b>TERM</b>	<b>ISSUE DATE</b>	<b>COUPON RATE</b>	<b>CARRYING AMOUNT</b>
12/23/2024	Federal Farm Credit Bank	4 years	12/23/2020	0.320%	200,000.00
3/4/2025	Federal Home Loan Bank	4.5 years	9/4/2020	0.550%	200,000.00
8/27/2025	Federal Home Loan Bank	5 years	8/27/2020	0.600%	200,000.00
9/22/2025	Federal Home Loan Bank	5 years	9/22/2020	0.500%	100,000.00
4/15/2026	Federal Home Loan Mtg Corp	5.5 years	10/15/2020	0.550%	500,000.00
8/12/2026	Federal Home Loan Bank	6 years	8/12/2020	0.740%	100,000.00
10/15/2026	Federal Home Loan Mtg Corp	6 years	10/15/2020	0.700%	500,000.00
10/27/2026	Federal Farm Credit Bank	6 years	10/27/2020	0.720%	200,000.00
2/25/2027	Federal Farm Credit Bank	6.5 years	8/25/2027	0.840%	400,000.00
3/25/2027	Federal Home Loan Bank	7 years	3/25/2020	1.500%	700,000.00
6/25/2027	Federal Home Loan Bank	7 years	6/25/2020	1.000%	750,000.00
6/29/2027	Federal Home Loan Bank	7 years	6/29/2020	1.090%	800,000.00
7/6/2027	Federal Home Loan Bank	7 years	7/6/2020	1.000%	600,000.00
10/21/2027	Federal Home Loan Mtg Corp	7 years	10/21/2020	0.800%	500,000.00
1/21/2028	Federal Farm Credit Bank	7.25 years	10/21/2020	0.900%	200,000.00
2/3/2028	Federal Farm Credit Bank	7.95 years	2/18/2020	2.220%	400,000.00
6/22/2028	Federal Farm Credit Bank	8 years	6/22/2020	1.120%	800,000.00
9/10/2029	Federal Farm Credit Bank	9 years	9/10/2020	1.230%	200,000.00
9/24/2029	Federal Home Loan Bank	9 years	9/24/2020	1.100%	300,000.00
1/22/2029	Federal Farm Credit Bank	9 years	1/22/2020	2.450%	200,000.00
3/25/2030	Federal Home Loan Bank	10 years	3/25/2020	2.000%	700,000.00
4/16/2030	Federal Home Loan Bank	10 years	4/16/2020	1.875%	400,000.00
5/14/2030	Federal Home Loan Bank	10 years	5/14/2020	1.600%	183,333.33
6/24/2030	Federal Farm Credit Bank	9.5 years	9/24/2020	1.250%	600,000.00
7/23/2030	Federal Home Loan Bank	10 years	7/23/2020	1.250%	500,000.00
10/29/2030	Federal Home Loan Bank	10 years	10/29/2020	1.280%	400,000.00
<b>Total Investments - Principal</b>					<b>10,633,333.33</b>
<b>Average Coupon Rate 1.123%</b>					

**Virginia State Bar  
Clients' Protection Fund  
Financial Summary**

Fiscal Year	Fund Balance-July 1	Contributions	CPF Assessment	Interest	Other	Petitions Paid:		Fund Balance-June 30
		From Bar Operating Budget		Earned on Investments	Deposits & Charges	Number	Amount	
1976 -1999	0	3,077,022	0	1,321,076	259,237	513	1,954,663	2,702,672
2000	2,702,672	0	0	147,239	-20,909	26	72,884	2,756,118
2001	2,756,118	0	0	146,568	46,042	54	132,099	2,816,630
2002	2,816,630	0	0	139,203	9,566	31	61,458	2,903,941
*2003	2,903,547	0	0	111,218	17,379	60	244,893	2,787,251
2004	2,787,251	500,000	0	142,255	32,907	72	227,074	3,235,339
2005	3,235,339	250,000	0	125,848	16,191	80	280,956	3,346,421
2006	3,346,421	0	0	135,464	17,244	47	161,838	3,337,291
2007	3,337,291	0	0	144,532	24,641	25	99,877	3,406,588
2008	3,406,588	0	672,375	168,011	20,528	18	202,899	4,064,603
2009	4,064,603	0	687,525	202,134	17,688	16	177,556	4,794,393
2010	4,794,393	0	703,395	153,016	27,624	218	900,560	4,777,868
**2011	4,777,868	0	721,050	152,556	17,101	165	228,140	5,440,435
2012	5,440,435	100,000	742,225	192,471	55,365	52	648,902	5,881,594
2013	5,881,594	0	755,850	126,798	13,542	34	325,078	6,452,707
2014	6,452,707	0	770,275	101,935	-14,780	57	353,540	6,956,597
2015	6,956,597	0	789,270	103,189	8,351	59	260,412	7,596,994
2016	7,596,994	0	800,025	108,509	15,986	43	212,288	8,309,226
2017	8,309,226	0	805,600	110,900	29,386	50	343,428	8,911,684
2018	8,911,684	0	813,060	138,161	5,891	28	103,130	9,765,666
2019	9,765,666	0	329,250	183,992	11,361	25	132,303	10,157,966
2020	10,157,966	0	326,355	207,574	-10,614	10	30,659	10,650,622
Dec 31, 2020	10,650,622	0	319,355	81,684	8,170	15	78,980	10,980,851
<b>Grand Total</b>		<b>3,927,022</b>	<b>9,235,610</b>	<b>4,444,333</b>	<b>607,897</b>	<b>1,698</b>	<b>7,233,617</b>	

\* Beginning fund balance for 2003 changed from the ending balance in 2002 due to a change in the method of accounting for investments from an historical cost basis to an amortized cost basis.

\*\* Petitions Paid is net 3 checks totalling \$3,503.56 written in FY 2010 and voided in FY 2011.