



Virginia Department of Planning and Budget **Economic Impact Analysis**

16 VAC 5-80 Adjudication
Virginia Employment Commission
Town Hall Action/Stage: 5958/9617
June 27, 2022

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

The Virginia Employment Commission (VEC) seeks to make a number of discretionary changes to 16 VAC 5-80 *Adjudication* that would conform the regulation to current practice.

Background

VEC proposes to update the regulation to reflect how appeals for unemployment benefit decisions are currently handled. VEC reports that some of the proposed changes have been phased in over time while many took place with the implementation of the new online system, Virginia Unemployment Information System in late 2021.² Although the regulation was last updated in 2002, VEC reports that individuals filing unemployment insurance claims could access information on the current policies and requirements via the VEC website.³ As a matter of practical use for both employers and claimants, the information provided on the VEC website

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See <https://www.vec.virginia.gov/node/13530>.

³ See <https://www.vec.virginia.gov/appeals>, <https://www.vec.virginia.gov/unemployed/Claimant-Handbook/Appeal-Rights>, and <https://www.vec.virginia.gov/unemployed/appeals/faq>.

contains greater detail than the regulation. Rather than add all of these details to the regulation, the proposed amendments would mainly update outdated and incorrect information, clarify ambiguous language, and update the list of forms at the end of the chapter.

In addition, the 2014 federal Workforce Innovation and Opportunity Act required significant changes to VEC operations and service delivery. VEC reports that these changes included closing VEC local offices and offering services through “One-Stop” service centers operated with mandated partners and local Workforce Development Boards.⁴ As a result, references to local offices are obsolete, meetings have been replaced with telephone calls in various instances, and appeals are further streamlined within the Commission’s Administrative Law Division between the Office of First Level Appeals and the Office of Commission Appeals. The proposed amendments would also update the regulation to reflect these administrative changes.

The most substantive changes are as follows:

- Section 10 *Deputy’s determinations or decisions* would be amended to reflect that predetermination fact-finding proceedings may be conducted with a deputy when it is “deemed necessary by the commission in order to resolve an outstanding issue on a claim,” whereas the current language states that such proceedings may be conducted “whenever a request is made by the claimant, his liable employer, or his interested subsequent employing unit, for the purpose of gathering information to determine benefit eligibility or qualification.” The option to conduct the proceeding in person would be removed, so that the only remaining option would be to conduct the proceeding telephonically.

In general, changes are proposed to reflect the flow of information in new, modernized systems and better align with regulations of the United States Department of Labor (USDOL). VEC states that the USDOL, “has set Core Measures” for Unemployment Insurance Program Performance... To the best of [our] knowledge, these Core Measures are not enforced with penalties, however, the Agency seeks to adhere to DOL best practices whenever possible.”⁵

⁴ See <https://www.dol.gov/agencies/eta/wioa> for information on the Workforce Innovation and Opportunity Act.

⁵ VEC email dated June 23, 2022. The USDOL standards can be found here: [Core_Measures.pdf \(doleta.gov\)](#)

- Section 20 *First level appeals* would be updated throughout such that “the Administrative Law Division” would be replaced with “the Administrative Law Division’s Office of First Level Appeals.” The information to be provided on a written appeal would be updated to match the information currently required on the appeal form (name and last four digits of the claimant’s social security number). In-person or split meetings, which would have been scheduled at the “regional adjudication center most convenient for the party who will be appearing in person... (or at VEC’s discretion) at any other convenient location...” under the current language would now be scheduled “at a location administratively feasible for the commission” under the proposed language. VEC has clarified that the Administrative Law Division no longer has funds to schedule an in person hearing “at any other convenient location, provided the alternate location does not cause undue hardship or unreasonable travelling expenses to the party participating in person.”⁶ VEC specifically reported that, “Our current organizational concept, budget realities and growing reliance on telephonic hearings and our centralized adjudication center dictates this change.”
- Section 30 *Commission review* would be updated throughout such that “the Administrative Law Division” would be replaced with “the Administrative Law Division’s Office of Commission Appeals.” Under the current language the commission may permit oral arguments via telephone conference call “upon the consent of all interested parties;” the proposed language would only allow this at the commission’s discretion. VEC also proposes to add that “Parties may submit affidavits in lieu of personal appearance at hearings scheduled for additional evidence issues such as reopening of an appeals examiner’s hearing or timeliness of an appeal to the Office of Commission Appeals.”
- In section 40 *Oaths, subpoenas, ex parte communications, and approval of attorney’s fees*, the word “field” would be removed from “field tax representatives” to reflect the closure of field offices.

⁶ VEC email dated June 28, 2022.

Estimated Benefits and Costs

Since the proposed changes are intended to conform the regulation to current practice, the primary benefits of the proposed changes would be to update the regulation to provide accurate information regarding Virginia's regulatory requirements with respect to the appeals process for unemployment claims determinations.

A number of proposed changes would grant greater discretion to VEC regarding whether to schedule predetermination screening proceedings, the location of in-person hearings, and whether hearings are conducted in-person or via telephone conference calls. These changes may make the appeals process less flexible for claimants or employers, and inconvenience those who may previously have requested an in-person meeting at the local field office closest to them. However, such impact would not result from the regulatory changes proposed here but rather the effort that have already been implemented to streamline VEC's operations and service delivery and make it more efficient. Lastly, these broader efforts to streamline VEC service delivery and make it more efficient may benefit claimants and employers to the extent that it allows for faster resolution of appeals.

Businesses and Other Entities Affected

The proposed amendments affect individuals or their employers who seek to appeal a decision or determination in an unemployment insurance claim, including those seeking to escalate a first level appeal to a commission appeal.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁷ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed changes may reduce flexibility for some claimants and employers, but are part of a broader process change that likely benefits claimants and employers to the extent that it allows for greater efficiency in appeals resolution. Thus, an adverse impact is not indicated.

⁷ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

Small Businesses⁸ Affected:⁹

The proposed amendments do not affect requirements for small businesses that are involved in an unemployment insurance claim. Thus they would not adversely affect small businesses.

Localities¹⁰ Affected¹¹

The proposed amendments would not affect any locality in particular or create new costs for any local government. Consequently, an adverse economic impact is not indicated for localities.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment. The closure of local field offices may have reduced employment; however, those changes have been implemented as part of a broader modernizing process and would not result from the changes proposed here.

Effects on the Use and Value of Private Property

The proposed changes do not create new costs for businesses and thus would not affect the value of private property. The proposed amendments do not affect real estate development costs.

⁸ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁹ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁰ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.