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Fast-Track Regulation Agency Background Document

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| Agency name | Board of Housing and Community Development |
| Virginia Administrative Code (VAC) Chapter citation(s) | 13 VAC5-112 |
| VAC Chapter title(s) | Enterprise Zone Grant Program Regulation |
| Action title | Amend Application Requirements |
| Date this document prepared | February 2024 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed regulatory action related to the Enterprise Zone Grant Program would increase the threshold for which a Job Creation Grant applicant is required to have a CPA attestation with their grant application. Current regulations require CPA attestation for applicants creating more than 25 jobs. The proposed change would increase the threshold to 40 jobs, reducing the regulatory burden for smaller businesses.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

BHCD – Board of Housing and Community Development
EZ – Enterprise Zone
JCG – Job Creation Grant

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On December 11, 2023, the Board of Housing and Community Development adopted the amendment of 13VAC5-112 Section 290 to increase the CPA attestation threshold from 25 to 40 for Job Creation Grant applicants.

Mandate and Impetus

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

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth” as well as Executive Order 19 (2022) which requires every regulatory agency “to review all existing regulations...to reduce the overall regulatory burden on the public.”

This action is not the result of a mandate.

This action is expected to be noncontroversial because it is reducing regulatory requirements by expanding an exemption that would reduce the cost for some Job Creation Grant applications. The scope of those affected by this change will be minimal.

Legal Basis

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

The Board of Housing and Community Development is promulgating this regulation under section 59.1-541 of the Code of Virginia.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The proposed regulatory action would reduce regulatory burden for small businesses submitting Job Creation Grant (JCG) applications for the Enterprise Zone Grant Program. The proposed change would reduce the application cost for certain JCG applicants as some applicants would no longer be required to pay for the services of a CPA in order to obtain a CPA attestation as part of the application.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulatory action related to the Enterprise Zone Grant Program would increase the threshold for which a Job Creation Grant applicant is required to have a CPA attestation with their grant application. Current regulations require CPA attestation for applicants creating more than 25 jobs. The proposed change would increase the threshold to 40 jobs.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of this proposed action is that certain small businesses submitting Job Creation Grant (JCG) applications for the Enterprise Zone Grant Program would no longer be required to obtain a CPA attestation when submitting an application, reducing costs for those applicants. There are no disadvantages to the public as a result of this proposed action.

As a result of this proposed action, DHCD staff would be required to conduct additional review of JCG applications that are newly exempt from submitting a CPA attestation. DHCD staff already conducts additional review of JCG applications that are currently not required to submit a CPA attestation.

Requirements More Restrictive than Federal

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

No applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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

Other State Agencies Particularly Affected

None.

Localities Particularly Affected

None.

Other Entities Particularly Affected

Small businesses seeking Enterprise Zone grants would be affected.

Economic Impact

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

Impact on State Agencies

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | No change. |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | None. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | Reduces cost and regulatory burden for grant applicants. |

Impact on Localities

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

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None. |
| Benefits the regulatory change is designed to produce. | Reduces cost and regulatory burden for grant applicants. |

Impact on Other Entities

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

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | ORM Economic Impact form – Table 4 |
| Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | ORM Economic Impact form – Table 4 |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | ORM Economic Impact form – Table 4 |
| Benefits the regulatory change is designed to produce. | |

Alternatives to Regulation

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

See ORM Economic Impact form – Tables 1b & 1c

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

Regulatory Flexibility Analysis

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

See ORM Economic Impact form – Tables 1b & 1c

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

Public Participation

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

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to: Chase Sawyer, 600 E. Main Street, Suite 300, Richmond, VA 23219, 804-310-5872 (o), 804-371-7090 (f), chase.sawyer@dhcd.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of

the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

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

Table 1: Changes to Existing VAC Chapter(s)

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of new requirements |
|--------------------------------|---|--|---|
| 13VAC5-112-290 | | JCG applicants creating 25 or fewer jobs are exempt from submitting a CPA attestation with their applications. JCG applicants creating more than 25 jobs are required to submit a CPA attestation. | The proposed action would expand the current CPA attestation exemption to exempt JCG applicants creating 40 or fewer jobs from having to submit a CPA attestation. This change would reduce costs and regulatory burden for small businesses. |
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

| New chapter-section number | New requirements | Other regulations and law that apply | Intent and likely impact of new requirements |
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If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

| Emergency chapter-section number | New chapter-section number, if applicable | Current <u>emergency</u> requirement | Change, intent, rationale, and likely impact of new or changed requirements since emergency stage |
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