



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22VAC40-690
<b>Regulation title</b>	Virginia Child Care Provider Scholarship Program
<b>Action title</b>	Update Child Care Provider Scholarship Regulation
<b>Date this document prepared</b>	February 20, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Virginia Child Care Provider Scholarship Program regulation was originally established to provide parameters around the use of federal Child Care and Development Block Grant funds to pay for undergraduate courses for child care providers with the goal of improving child care quality. During the periodic review process, it was determined that minor revisions were needed. Annually, the General Assembly appropriates \$600,000 of federal funds for courses in higher education for child care providers which are used for this program. The changes include Code citation updates, revising the appeal process section to be compliant with Virginia law, and updating the application form.

### Statement of final agency action

*Please 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.*

The State Board of Social Services approved final action on 22VAC40-690, Virginia Child Care Provider Scholarship Program, on February 20, 2013.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The Code of Virginia, § 63.2-217, provides the State Board of Social Services with the authority to promulgate the regulation. Additional statutory authority includes 42 U.S.C.S. § 9858, et seq.; 42 U.S.C.S. § 1958e and h; and Virginia Code §§ 63.2-206, 63.2-207.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The regulation is needed to provide the legal right to appeal eligibility decisions regarding scholarship awards for child care providers or those intending to become providers. Modifications are required to bring the regulation in compliance with current state law, including citation updates and revisions to the appeal process.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

During the public comment period of the periodic review process, there were no comments made about this regulation. As part of the periodic review, the Office of the Attorney General recommended the use of the fast-track process to make very minor Code citation updates and to update about the appeal process, as these actions are not expected to be controversial.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

---

The main changes are to update the statutory authority Code citations by adding 42 U.S.C.S. § 9858, et seq.; to 22 VAC 40-690-10; adding 42 U.S.C.S. § 1958e to 22 VAC 40-690-15 through -30 and 22 VAC 40-690-40 through -65; and 42 U.S.C.S. §1958e & h to 22 VAC 40-690-35.

For 22 VAC 40-690-35, the wording must be changed to more accurately reflect the current appeal process.

The application Form was revised to include date-of-birth, last five digits of the Social Security Number, and updated Virginia Community College System course information. This information will be helpful in tracking applicants' use of the program.

## Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*
- 

The primary advantage to the public with these changes is that the Code citations will be correct for easier reference and the appeal information will coincide with the Administrative Process Act. Additionally, the application form was revised to require better data tracking information on each applicant with the new online application and tracking system. There are no disadvantages to the public or the Commonwealth for making these changes.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

---

There are no applicable federal requirements and no requirements that exceed applicable federal requirements of this proposal.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No locality bears any identified disproportionate material impact which would not be experienced by other localities.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

The agency explored the repeal of this regulation and it was determined by the Office of the Attorney General that the regulation was required to provide a method for the public to appeal eligibility decisions. The regulation provides a framework and guidelines for administering the Virginia Child Care Provider Scholarship Program.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	Funding is provided through the federal Child Care and Development Fund. No additional funding is required to implement this regulatory action.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	No cost is anticipated.
<b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	The majority of child care providers will not be affected by the regulation change; however, the appeal updates could impact those child care providers who wish to change their scholarship eligibility status.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,</b>	In general a very small percentage of individuals or businesses will be impacted by this change. No small businesses will be impacted by this regulation change.

<p>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.</p>	
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There are no additional costs for the regulation change.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Child care providers who are denied eligibility to a Scholarship Program award may benefit from the revised appeal process. The majority of child care providers will not be impacted.</p>

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

Following the periodic review, the agency considered repealing the regulation. However, the Office of Attorney General determined that the regulation must be retained. The regulation is as less intrusive and burdensome as possible.

**Periodic review/small business impact review result**

***If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.***

*If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

- (1) The agency did not receive any public comments from the public comment period during the periodic review.
- (2) The regulation meets the criteria of Executive Order 14 (2010) with clear and understandable language. The agency is making Code citation and appeal process updates in order to provide a clearly-written regulation and easily-followed information about the statutory authority and how to appeal denial decisions.

Pursuant to § 2.2-4007.1 E and F:

- (1) The regulation is needed to provide a fair appeal process for denied applicants. The regulation also provides a framework and formal guidance for the Scholarship Program.
- (2) No complaints were received. Most child care providers appreciate this regulation and the potential assistance it provides. Each year, the General Assembly appropriates \$600,000 of the federal Child Care and Development Fund for a Scholarship Program for Virginia child care providers and this is the base funding used to help child care providers attend undergraduate courses in early childhood. Without this Scholarship Program, many Virginia child care providers would not have the opportunity to attend college classes and earn college credit toward a degree in early childhood development/education. Research tells us that the quality of child care depends on the education level of the teacher. Child care teachers with more education and skills are contributing to better prepared kindergartner, which leads to lower school retention rates and student success in school and life.
- (3) The regulation is not complex, but straightforward and gives priority to individuals who are currently working in the child care field.
- (4) This regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
- (5) This regulation was last reviewed in August 2004. Technology has provided an online application system and improved the tracking of the scholarships, making this program very efficient and less labor-intensive to administer.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation helps strengthen the family through increased child development knowledge and skills of early childhood teachers who are working with young children. The children benefit from their teachers’ new knowledge and skills by receiving higher quality of care and education. Research demonstrates that higher quality of care during the early years reduces grade retention, improves academic scores, and establishes a strong foundation for the children for a more successful life, increasing the likelihood of college graduation and making a positive contribution to society. Scholarship recipients also educate parents and have the opportunity to strengthen families through their work with students’ families. Offering a college education supports low-income child care providers, increasing their disposable family income by paying for tuition and technology fees, and providing a helping hand to improve an individual’s station in life.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact.*

Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
40-690-10	N/A	Statutory Authority § 63.2-217 of the <i>Code of Virginia</i>	Add to Statutory Authority: §§ 63.2-206 and 63.2-207 of the <i>Code of Virginia</i> 42 U.S.C.S. §9858, et seq.
-15 through -30; -40, -55, -60, -65	N/A	Statutory Authority § 63.2-217 of the <i>Code of Virginia</i>	Add to Statutory Authority: §§ 63.2-206 and 63.2-207 of the <i>Code of Virginia</i> 42 U.S.C.S. §9858e
-35	N/A	Statutory Authority § 63.2-217 of the <i>Code of Virginia</i>	Add to Statutory Authority: §§ 63.2-206 and 63.2-207 of the <i>Code of Virginia</i> 42 U.S.C.S. §9858e and h
-35	N/A	A. Any person denied a scholarship who believes the denial was contrary to law or regulations may request an informal conference, as provided for by §9-6.14:11 of the <i>Code of Virginia</i> , with the designee of the Commissioner, by filing a written Notice of Appeal with the department within 33 days of the date of the denial letter. The Notice of Appeal must be received by the department within the 33-day time period. The decision of the informal conference shall constitute a final agency case decision	Replace the existing section A. with the following: A. Any person denied a scholarship who believes the denial was contrary to law or regulations may appeal the denial pursuant to the Administrative Process Act (§ 2.2-4000, et seq.). Section 2.2-4019 of the <i>Code of Virginia</i> provides the aggrieved party the right to request an informal conference within 15 days of the date of denial. The informal conference is a fact-finding process and gives the aggrieved party an opportunity to present information that the denial decision was based on factual error or misinterpretation of facts. The aggrieved party may be required to provide verification of facts. The department then has 90 days from the date of the informal conference to issue its official decision in writing, including the right to continue the appeal process pursuant to the

		and shall be appealable as provided for in Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia. The informal conference may be conducted by telephone if both parties consent.	Administrative Process Act. The informal conference may be conducted by telephone if both parties consent.
FORMS	N/A	Virginia Child Care Provider Scholarship Program Application, Form # 032-05-0032-03 (eff. 3/08).	Replace with the revised Application Form Number: Virginia Child Care Provider Scholarship Program Application, Form # 032-05-0032-06-eng (10/12)