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Final Regulation Agency Background Document

Agency name	Office of the State Inspector General
Virginia Administrative Code (VAC) citation(s)	1 VAC42-30
Regulation title(s)	Fraud and Abuse Whistle Blower Reward Fund Regulation
Action title	Initial Promulgation of <i>Fraud and Abuse Whistle Blower Reward Fund Regulation</i>
Date this document prepared	February 5, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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 regulation defines the Fraud and Abuse Whistle Blower Reward Fund (Fund) and its administration by the Office of the State Inspector General (OSIG), including eligibility requirements, amount, distribution, process for leftover moneys at the end of the fiscal year, and the Fund's establishment on the books of the Comptroller.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Commonwealth" means the Commonwealth of Virginia.

"Disclosure" means a voluntary formal or informal communication or transmission of (i) any violation of any law, rule, or regulation; (ii) gross mismanagement; (iii) a gross waste of funds; (iv) an abuse of authority; or (v) a substantial and specific danger to public health or safety.

"Employee" means any individual who is employed on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable no more often than biweekly in whole or in part by a Virginia governmental agency.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the governmental agency.

"Executive branch agency" or "agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act.

"Fraud" means the intentional deception perpetrated by an individual or an organization, either internal or external to state government, that could result in a tangible or intangible benefit to themselves, others, or the Commonwealth, including local government, or could cause detriment to others or the Commonwealth. Fraud includes a false representation of the facts, whether by words or by conduct. Fraud also includes false or misleading statements, the concealment of essential information, or information or actions that deceive or are intended to deceive.

"Fraud and Abuse Whistle Blower Protection Act Program" or "WBPA Program" means the policy of the Commonwealth that Commonwealth citizens and employees of state government are freely able to report instances of wrongdoing or abuse committed by their employing agency, other state agencies, or independent contractors of state agencies.

"Fraud and Abuse Whistle Blower Reward Fund" or "fund" means the fund used solely to provide monetary rewards to Commonwealth citizens who have disclosed information of wrongdoing or abuse under the WBPA Program that results in a recovery of at least \$5,000.

"Good faith report" means a reported incident of possible wrongdoing or abuse made without malice, for which the person reporting has reasonable cause to believe wrongdoing or abuse occurred.

"Governmental agency" means (i) any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act and any independent agency; (ii) any county, city, town, or local or regional governmental authority; and (iii) any local school division as defined in § 22.1-280.2:2 of the Code of Virginia.

"Hotline coordinator" means a qualified employee, designated by a governmental agency director or chief administrator, responsible for conducting State Fraud, Waste and Abuse Hotline investigations referred to the agency by OSIG.

"Internal audit director" means a director of a governmental agency internal audit program.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state, local, or agency standards for which specific corrective or disciplinary action is warranted.

"Nonstate agency" means any public or private foundation, authority, institute, museum, corporation, or similar organization that is (i) not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act and (ii) wholly or principally supported by state funds. "Nonstate agency" shall not include any such entity that receives state funds (a) as a subgrantee of a state agency; (b) through a state grant-in-aid program authorized by law; (c) as a result of an award of a competitive grant or a public contract for the procurement of goods, services, or construction; or (d) pursuant to a lease of real property as described in subdivision 5 of § 2.2-1149 of the Code of Virginia.

"Office of the State Inspector General" or "OSIG" means the governmental agency that conducts independent investigations, performance audits, and other services designed to provide objective and useful information to the Commonwealth and those charged with its governance and promotes efficiency and effectiveness in state government executive branch agencies in accordance with Article 1 (§ 2.2-307 et seq.) of Chapter 13.2 of the Code of Virginia.

"Public body" means any legislative body; any authority, board, bureau, commission, district, agency, or political subdivision of the Commonwealth, including counties, cities, towns, city councils, boards of supervisors, school boards, planning commissions, and boards of visitors of institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System. For the purposes of this chapter, the term "public body" does not include the courts of the Commonwealth.

"Reward" means a monetary benefit payable from the fund by OSIG to an eligible whistle blower.

"Screening process" means OSIG's internal review to ensure reports of information or disclosures of wrongdoing fall within the authority of the WBPA Program.

"State Fraud, Waste and Abuse Hotline" or "hotline" means the program (i) that provides Commonwealth citizens with a confidential and anonymous method to report suspected occurrences of fraud, waste, and abuse in state agencies and institutions and (ii) that provides the Commonwealth a way to investigate such occurrences to determine their validity and make appropriate recommendations to address deficiencies.

"Whistle blower" means a Commonwealth employee or citizen who witnesses or has evidence of wrongdoing or abuse and who makes a good faith, open, and public report of the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or an employee. "Wrongdoing" includes (i) any violation of any law, rule, or regulation; (ii) gross mismanagement; (iii) a gross waste of funds; (iv) an abuse of authority; or (v) a substantial and specific danger to public health or safety.

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 Inspector General adopted the *Fraud and Abuse Whistle Blower Reward Fund Regulation* as a final regulation on February 5, 2019.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no changes to previously-reported information regarding the mandate for the promulgation of this regulation.

Legal Basis

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

- 1) Subsection E of § 2.2-3014 of the *Code of Virginia*.
- 2) State Inspector General (subsection A.8 of § 2.2-309 of the *Code of Virginia*).

Purpose

Please 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's intended to solve.

This regulation will:

- Provide direction to state agency employees and citizens for reporting instances of fraud and/or abuse within executive branch agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed within executive branch agencies and non-state agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed by independent contractors of state agencies.
- Provide resources to pay monetary rewards to state agency employees and citizens who provide relevant information to the OSIG that results in recovery of funds on behalf of the Commonwealth.
- Provide statutory protection for state employees and citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

Substance

Please 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.

This is the first issue of the Fraud and Abuse Whistleblower Fund regulation. The proposed regulation defines the Fraud and Abuse Whistle Blower Reward Fund (Fund) and its administration by the Office of the State Inspector General, including Fund eligibility requirements, Fund amount, Fund distribution,

process for leftover Fund moneys at the end of the fiscal year, and the establishment of the Fund on the books of the Comptroller.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Proposed definition of terms	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Provide readers with definitions for technical terms in regulations and how technical terms apply to Whistle Blower Reward Fund.
20	Proposed OSIG responsibilities	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains OSIG's role in administering the Whistle Blower Protection Act Program and the Whistle Blower Reward Fund.
30	Proposed WBPA Program/Fund Notification	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains how OSIG will communicate information about and advertise the WBPA Program and the Whistle Blower Reward Fund.
40	Proposed guidelines for reporting alleged fraud, abuse, or wrongdoing	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Provides readers with guidelines for reporting instances of alleged fraud, waste, or other wrongdoing in state government executive branch agencies.
50	Proposed guidelines for OSIG receipt of an allegation	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains process OSIG staff perform when receive a whistle blower allegation under the WBPA program.
60	Proposed guidelines for OSIG's allegation investigative process	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains process OSIG follows when investigating a whistle blower allegation.
70	Proposed guidelines for Whistle Blower Reward Fund as a non-reverting fund	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains structure of Whistle Blower Reward fund and what happens to its moneys.
80	Proposed guidelines for fund payments made out to whistle blowers	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains how payments from the Whistle Blower Reward Fund are made to whistle blowers and defines the regulations surrounding payments.
90	Proposed whistle blower protections under the Whistle Blower Protection Act	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains to readers what legal protections whistle blowers have as a result of the Whistle Blower Protection Act, including antiretaliation regulations.
100	Proposed annual report guidelines	Subsection E of § 2.2-3014 and subsection A.8 of § 2.2-309 of the <i>Code Virginia</i>	Explains the annual report OSIG must provide the General Assembly and the Governor concerning the

			WBPA Program and the Whistle Blower Reward Fund.
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Issues

Please 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 final regulation will provide direction to all citizens of the Commonwealth of Virginia (including state employees) for reporting instances of fraud and/or abuse within executive branch agencies.

This regulation will:

- Provide direction to state agency employees and citizens for reporting instances of fraud and/or abuse within executive branch agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed within executive branch agencies and non-state agencies.
- Encourage state agency employees and citizens of the Commonwealth to report instances of fraud, abuse, or other wrongdoing committed by independent contractors of state agencies.
- Provide resources to pay monetary rewards to state agency employees and citizens who provide relevant information to the OSIG that result in recovery of funds on behalf of the Commonwealth.
- Provide statutory protection for state employees and citizens who report instances of abuse or wrongdoing from discrimination or retaliation by state agencies.

All moneys recovered by the State Inspector General as the result of whistle blower activity and alerts originating with the Office of the State Inspector General shall be deposited in the Fund (85 percent of all sums recovered shall be remitted to the institutions or governmental agencies on whose behalf the recovery was secured by the State Inspector General unless otherwise directed by a court of law). Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

Moneys in the Fund shall be used solely to (i) provide monetary rewards to persons who have disclosed information of wrongdoing or abuse under this chapter and the disclosure results in a recovery of at least \$5,000 or (ii) support the administration of the Fund, defray Fund advertising costs, or subsidize the operation of the Fraud, Waste and Abuse Hotline.

There are no anticipated disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no changes to previously-reported information regarding any other state agencies, localities, or other entities that are particularly affected.

Localities Particularly Affected

There are no changes to previously-reported information regarding any other state agencies, localities, or other entities that are particularly affected.

Other Entities Particularly Affected

There are no changes to previously-reported information regarding any other state agencies, localities, or other entities that are particularly affected.

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

No public comment was received.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

No changes have been made to the text since the previous stage was published in Virginia Register of Regulations.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

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