



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22VAC40-680
<b>Regulation title</b>	Virginia Energy Assistance Program– Low Income Home Energy Assistance Program
<b>Document preparation date</b>	June 15, 2011

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. The Energy Assistance Program (EAP) administered by the Department of Social Services was established in accordance with the federal Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35) as amended through August 1999. The Low-Income Home Energy Assistance Program (LIHEAP) statute was amended in 2005 by the Energy Policy Act (Public Law 109-58).

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

Two alternatives were considered: (i) to not apply for federal LIHEAP funding/not operate the EAP thereby, eliminating the need for a regulation or (ii) to not promulgate a regulation for the EAP and operate the program based on federal statute. Both of these alternatives while considered were rejected for the reasons provided.

Currently, the Commonwealth receives approximately \$100 million annually in federal LIHEAP funding to offer and administer the EAP. Unlike other federally funded programs, there is no state match required to receive LIHEAP funding. To not apply for and accept federal LIHEAP funding would cause the Commonwealth to forego substantial revenue and would be extremely detrimental to low-income households who depend on this assistance to meet their winter heating and summer cooling needs. While there are other entities that offer energy assistance programs, no program is as comprehensive and robust as the EAP.

The federal LIHEAP statute does not require grantees to promulgate state regulations to receive and administer LIHEAP funding. However, the Code of Virginia (Section 63.2-505) requires the State Board of Social Services to promulgate regulations governing the amount of public assistance individuals receive. By definition at Section 63.2-100 EAP is defined as a public assistance program. Having regulations promulgated through the Administrative Procedure Act (APA) is particularly important on issues related to eligibility criteria and the determination of benefit levels both of which are routinely challenged through the appeals process and court proceedings. Given the current EAP regulations are limited and only address eligibility criteria, benefit levels, application periods and administrative costs for local departments of social services, it is in the public interest to retain regulations governing the administration of the EAP.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No comments were received.

### Effectiveness

*Please 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.*

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The existing regulation meets the criteria set forth in Executive Order 14 and is necessary for the protection of public health, safety and welfare. The regulation is clear and concise and written in a manner easily understood.

### Result

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The agency recommends that the regulation stay in effect without change.

### Small business impact

*In order to minimize the economic impact of regulations on small business, 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 complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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Because this regulation makes revenue available to over 700 vendors, the impact of the regulation on small businesses is positive. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. The regulation is not complex and does not overlap, duplicate or conflict with other federal or state laws or regulations. The last evaluation of this regulation occurred in 2007. Since that time, enhancements in technology have provided a more streamlined automated payment process for participating vendors. Business entities that provide EAP goods and services are eligible to participate as vendors in the EAP. Payments to vendors are determined by their respective products, self-designated service areas, and by customer selection. There is no need to amend or repeal the regulation to minimize the economic impact on small businesses.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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Increases in home energy costs, a difficult economy and the unemployment rate have created additional hardships for many individuals and families in the Commonwealth. In recent years, the number of households served has substantially increased. Approximately 40% of all households served by the EAP have annual incomes less than \$10,000. These families have little room in their budgets to absorb even modest increases in energy costs, making the need for energy assistance services even more critical. Energy subsidies from the EAP cover approximately 25% of a household's energy costs and have a positive impact on the family stability by reducing their energy burden.