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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-41
<b>Regulation title</b>	Neighborhood Assistance Tax Credit Program
<b>Action title</b>	Amend the NAP tax credit program regulation to make technical and substantive changes.
<b>Document preparation date</b>	April 20, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the proposed action is to amend the regulation for the Neighborhood Assistance Program (NAP). NAP is a state tax credit program established by the General Assembly in 1981. The program uses tax credits as an incentive for businesses and, with certain restrictions, individuals, to make donations to eligible projects. To be an eligible project an organization must be a 501(c)(3) or (4) whose primary function is providing assistance to low-income individuals and families. The amendments will make several technical and clarifying changes, including updating code citations and correcting inconsistencies in terminology. In addition, amendments are being proposed to ensure the availability of tax credits and their equitable distribution among approved projects. Also, amendments are being proposed to ensure fairness in the valuation of certain donated items and to improve the process for determining eligibility of organizations applying to participate in NAP.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Legal authority for promulgation of this regulation is in §§ 63.2-217 and 63.2-2002 of the Code of Virginia. While we are required to have regulations for this program, § 63.2-2002 allows the department the discretion to develop regulations for the equitable distribution of tax credits and the fair and efficient operation of the program.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

Changes being considered to the NAP regulation include:

- Imposing a maximum cap of \$500,000 in tax credits that may be allocated to a NAP approved project during a program year.

The cap would prevent larger projects from monopolizing the majority of the tax credits, allowing a more equitable distribution among all approved projects. Although no approved projects allocation has reached this level, in recent years approved organizations have been requesting increasingly larger allocations of tax credits. Five hundred thousand in tax credits would allow an organization to receive over \$1,000,000 in donations. Six other states with similar programs have a set cap on the amount of credits that can be allocated to any participating project. We anticipate that at least one large project will object to this regulation.

- Adding language addressing eligibility of foundations as NAP projects.

In FY 1998, the Neighborhood Assistance Act (Act) was amended to narrow the focus of the program and limit eligibility for participation to organizations whose primary function is providing assistance to low income individuals. In order to qualify for the program some organizations that would otherwise be ineligible appear to have begun establishing foundations solely for the purpose of participating in NAP. This amendment is an attempt to ensure that the primary function of a project is to benefit low income individuals as opposed to benefiting another organization which does not meet the eligibility criteria for NAP.

- Adding language regarding donation of items to be sold or auctioned by NAP projects.

The additional language addressing donated items will ensure that businesses receive a tax credit that reflects the value received by the NAP project. Currently businesses may donate items that will be sold or auctioned and claim a value much higher than is received for the item. This results in the business receiving a disproportionately higher tax credit in relation to the benefit received by the project. This will make the process when dealing with sold items more equitable. This change is intended to be similar to recent changes the IRS has made to the federal regulations relating to donations made by individuals. We anticipate a number of comments on this from organizations that sell items as a fundraising tool.

- Adding language to ensure that determination of eligibility to participate as a project in NAP will be made based on the totality of information provided in documentation required by the department.

The new language will include a requirement that at least 60 percent of the clients of organizations applying to participate in NAP have incomes at 150 percent or less of the federal poverty level. This change will make the regulation consistent with practice. The Act stipulates that eligibility is limited to nonprofits whose primary function is providing assistance for impoverished individuals. Sixty percent ensures that participating organizations meet the intent of the program. However, the department will consider percentage of clients served along with types of service provided, viability of the organization, and other factors in determining eligibility to participate in the program.

- Correcting code cites as a result of recodification of sections of the Code of Virginia.
- Making word changes to maintain consistency in terminology used throughout the regulation.
- Clarifying that appeals of department decisions must be in writing.

The changes and clarifications to this regulation will make the program more equitable and the language more consistent, benefiting NAP projects, their donors and the clients they serve. Improvements to this program will have a direct impact on the NAP projects and an indirect impact on families and individuals they serve. Ensuring that only viable organizations participate in NAP helps protect the health, safety, and welfare of citizens who receive their services.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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An alternative to these amendments would be to amend the NAP Act in the Code of Virginia. This will be considered during the development of the regulation; however, it is unlikely that legislation will be pursued as regulations can provide a level of detail and flexibility inappropriate for statute. VDSS will receive input from both NAP programs and donors and will consider their suggestions in the development of these regulations.

## Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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NAP does not have a direct impact on families and family stability. These regulations impact nonprofit organizations and their donors. The services provided by these nonprofits impacts families.