

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

22 VAC 40-920 Appeals of Financial Sanctions for Local Departments of Social Services
Department of Social Services
Town Hall Action/Stage: 4369/7486
August 5, 2016

Summary of the Proposed Amendments to Regulation

Pursuant to the federal regulation 2 CFR §200.341,¹ the State Board of Social Services (Board) proposes to establish rules for local departments of social services (local departments) to appeal State Department of Social Services (SDSS) notifications of recovery.

Result of Analysis

The proposed regulation is beneficial in that it will provide a regulatory framework for local departments of social services that contest a notification of recovery and provides standards for the appeal process. However, the proposal to exclude the Commissioner's decisions from judicial review and the proposed timeframes within which to file an appeal and documentation supporting that appeal may be costly for local departments that receive a notification of recovery.

Estimated Economic Impact

The SDSS conducts administrative reviews of funds sent to local departments for programs such as food stamp assistance and temporary assistance for needy families. When through administrative review the SDSS determines that a payment to a local department was too high, it issues a notification of recovery. Examples of causes of payments being too high include

¹ See http://www.ecfr.gov/cgi-bin/text-idx?SID=30737db065c6bf2b497c1aaae3cd9a3&mc=true&node=pt2.1.200&rgn=div5#se2.1.200_1341

incorrectly claiming certain items or activities as being reimbursable and charging too much for rent.² The SDSS recovers the excess payment by reducing a future payment or payments by the amount of the overpayment. No penalty or interest is charged.³

Pursuant to federal regulation 2 CFR §200.341, the Board is required to provide the local departments an opportunity to appeal an enforcement action (notification of recovery) involving federal awards such as food stamp assistance or temporary assistance for needy families. Currently the SDSS provides local departments the ability to appeal a financial recovery in various guidance manuals, but there are no standard rules.⁴ Furthermore, there is no known Virginia statute or regulation addressing this appeals process. Thus, the Board proposes to establish regulatory rules for appeals of notification of recovery by local departments.

The proposed rules establish that local departments have 15 calendar days from the date of notification of a recovery decision to object to it in writing, and 15 calendar days from the date the local department objected in writing to submit all relevant information, documentation or data supporting the appeal. In addition, the Commissioner has 60 days to issue his/her decision. Failure to comply with the timelines would result in the loss of the right to appeal. The decision of the Commissioner is final, binding, and is not subject to judicial review.⁵

Since 2008 there have been 42 notifications of recovery issued. The magnitude of the 42 assessed overpayments ranged from \$15 to \$2.9 million; however, most have been under \$1,000. Of the 42 cases, only two have been appealed.⁶

The proposed action will establish the regulation for the appeals process and ensure compliance with the federal regulation. The rules will also inform all parties as to their respective appeal rights. Moreover, the proposed regulation will bring consistency to the process. Finally, the rules will have the force of law which is more enforceable compared to guidance manuals.

The stated intent of the proposed regulation is to provide a regulatory framework in which a local department is afforded an opportunity to appeal an enforcement action involving

² Source: State Department of Social Services

³ Ibid

⁴ See the Brief Summary section of the Agency Background Document:
http://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\73\4369\7486\AgencyStatement_DSS_7486_v3.pdf

⁵ The proposed process does not provide an opportunity for the local departments to ask the Commissioner to reconsider the decision.

⁶ Source: State Department of Social Services

federal awards. Some of the proposed rules may be costly for local departments that receive a notification of recovery. For example, the proposed regulation will exclude the Commissioner's decisions from judicial review. This proposed requirement is not necessary for compliance with federal regulation 2 CFR §200.341. This particular change prevents local departments from challenging decisions in court. Similarly, the right to appeal will be lost if a local department fails to note its objection within 15 calendar days or fails to make its case with information, documents, and data within 15 calendar days after the notice of appeal. In some cases, a large dollar amount may be at issue and the issue may be complicated requiring research. In such cases, the proposed deadlines may not be sufficient to give the local departments enough time to act on recovery decisions, especially during the holiday season. Extending the time lines somewhat would not introduce significant costs for the SDSS, but may enable local departments with staff busy on other matters sufficient time to determine whether they should appeal, and to prepare documents for appeal if necessary.

Businesses and Entities Affected

The proposed appeal process applies to 120 local departments of social services.

Localities Particularly Affected

The proposed changes apply statewide.

Projected Impact on Employment

No impact on employment is expected.

Effects on the Use and Value of Private Property

No impact on the use and value of private property is expected.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:**Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, 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.”

Costs and Other Effects

The proposed regulation does not apply to small businesses.

Alternative Method that Minimizes Adverse Impact

No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses:

The proposed regulation does not apply to non-small businesses.

Localities:

The proposed regulation may adversely affect local departments of social services and localities as discussed above.

Other Entities:

The proposed regulation does not apply to other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

ooo & lsg