




COMMONWEALTH of VIRGINIA

Office of the Attorney General

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE 
Assistant Attorney General

DATE: May 15, 2017

SUBJECT: Exempt Regulation Section - 22VAC40-41-20 (Exempt Action for
Neighborhood Assistance Programs)

I am in receipt of the attached regulation. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulatory action serves to bring the Neighborhood Assistance Program regulation into conformity with § 58.1-439.20 of the Code of Virginia, to comply with Senate Bill 1168 (2017). The legislation added an audit requirement for organizations to receive tax credits under the Neighborhood Assistance Program.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

Further, it is my view that this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire

Attachment

Project 5118 - none

DEPARTMENT OF SOCIAL SERVICES

Amend NAP Regulation to Conform to the Code of Virginia

22VAC40-41-20. Purpose; procedure for becoming an approved organization; eligibility criteria; termination of approved organization; appeal procedure.

A. The purpose of the Neighborhood Assistance Program is to encourage business firms and individuals to make donations to neighborhood organizations for the benefit of low-income persons.

B. Neighborhood organizations that do not provide education services and that wish to become an approved organization must submit an application to the commissioner. Neighborhood organizations that provide education services must submit an application to the Superintendent of Public Instruction. The application submitted to the Superintendent of Public Instruction must comply with regulations or guidelines adopted by the Board of Education. The application submitted to the commissioner must contain the following information:

1. A description of eligibility as a neighborhood organization, the programs being conducted, the low-income persons assisted, the estimated amount that will be donated to the programs, and plans for implementing the programs.
2. Proof of the neighborhood organization's current exemption from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, or the organization's eligibility as a community action agency as defined in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.) or housing authority as defined in § 36-3 of the Code of Virginia.

3. For neighborhood organizations with total revenues (including the value of all donations) (i) ~~in excess of more than \$100,000 for the organization's most recent year ended, an audit or review for such year performed by an independent certified public accountant the most recent year~~ or (ii) of \$100,000 or less for the organization's most recent year ended, a compilation for such year performed by an independent certified public accountant; for the most recent year. The audit, review or compilation shall be performed by an independent certified public accountant. "Total revenues" means all revenues, including the value of all donations for the organization's most recent year. a copy of the organization's current federal form 990; a current brochure describing the organization's programs; and a copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.

4. A copy of the organization's current federal form 990.

5. A current brochure describing the organization's programs.

6. A copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.

4 7. A statement of objective and measurable outcomes that are expected to occur and the method the organization will use to evaluate the program's effectiveness.

C. To be eligible for participation in the Neighborhood Assistance Program, the applicant and any of its affiliates must meet the following criteria:

1. Applicants must have been in operation as a viable entity, providing neighborhood assistance for low-income people, for at least 12 months.

2. Applicants must ~~be able to demonstrate that at least 50% of the total people~~ persons served shall be low-income and at least 50% of the total expenditures revenues were for

shall be used to provide services to low-income persons, or eligible students with disabilities.

3. Applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization.

4. Applicants must demonstrate that at least 75% of total revenue received is expended to support their ongoing programs each year.

D. Beginning with tax credit allocations for fiscal year 2016-2017, the applicant and any of its affiliates must meet the following requirements:

1. Affiliates of neighborhood organizations must demonstrate that at least 50% of the persons served are low-income persons;

2. Affiliates of neighborhood organizations must demonstrate that at least 50% of the revenues are used to provide services to such persons;

3. Affiliates must also meet the definition of "neighborhood organization" under § 58.1-439.18 of the Code of Virginia; and

4. Affiliates are not required to submit an audit, review, or compilation, and such reports shall not apply in determining the eligibility of the neighborhood organization submitting a proposal.

E. Requirements in subsection D of this section do not apply to a neighborhood organization submitting a proposal and any of its affiliates, provided that:

1. The neighborhood organization otherwise meets all statutory requirements and regulations;

2. The neighborhood organization received a fiscal year 2013-2014 allocation of neighborhood assistance tax credits; and

3. No affiliate of the neighborhood organization submits a proposal for or receives an allocation of tax credits pursuant to this chapter for the program year for which the neighborhood organization has submitted its proposal.

F. The application period will start no later than March 15 of each year. All applications must be received by the Department of Social Services no later than the first business day of May. An application filed without the required audit, review, or compilation will be considered timely filed provided that the audit, review, or compilation is filed within 30 days immediately following the deadline.

G. Those applicants submitting all required information and reports and meeting the eligibility criteria described in this section will be determined an approved organization. The program year will run from July 1 through June 30 of the following year.

H. The commissioner may terminate an approved organization's eligibility based on a finding of program abuse involving illegal activities or fraudulent reporting on contributions.