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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** *MAL*
Assistant Attorney General

DATE: **April 5, 2021**

SUBJECT: **Fast-Track Regulations to Amend Community Service Block Grant
Regulations as result of Periodic Review; 22VAC40-901 et seq. (5694/9220)**

I am in receipt of the attached regulations amending the Community Service Block Grant regulations (22 VAC 40-901 *et seq.*) as a result of the periodic review of these regulations required under Virginia Code § 2.2-4017. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

The Virginia Health and Human Services Secretary has designated the Virginia Department of Social Services (the “Department”) as the Designated Agency under Virginia Code § 2.2-5401, and Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions and purpose of Title 63.2. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the Department shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track

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regulation serving as the Notice of Intended Regulatory Action. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esq.

Attachment

Project 6591 - Fast-Track

Department Of Social Services

Amend CSBG as a Result of Periodic Review

22VAC40-901-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private, nonprofit agency that has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Community organization" means a private nonprofit organization, including faith-based organizations.

"Department" means the Virginia Department of Social Services.

"Local share" means cash or in-kind goods and services donated to community action agencies or community action statewide organizations to carry out their responsibilities.

"Locality" means a county or city in the Commonwealth.

"Low-income person" means a person who is a member of a household with a gross annual income equal to or less than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.

22VAC40-901-50. Expansion of community action agency service area.

A. A locality that is not served by a designated community action agency may ~~reach an agreement~~ develop a request with an existing community action agency for the provision of services in that locality. The request will include: ~~The locality and the community action agency may submit a proposal to the department that includes plans for the expansion of services into the locality and a provision describing how the locality will be represented on the board of the community action agency. Upon department approval of the proposal, the governing body of the locality may must adopt a resolution designating the community action agency as their community action agency and forward this resolution to the Department of Social Services. In adopting the resolution, the governing body must have allowed the opportunity for public comment. Upon receipt of the resolution, the locality will be included in the community action agency's service area.~~

1. The way in which the locality will be represented on the board of the existing community action agency.

2. A resolution adopted by the locality requesting the designation of the existing community action agency as the community action agency for the locality. In adopting the resolution, the governing body must have allowed the opportunity for public comment.

3. The existing community action agency's history of successfully providing a variety of services to low-income individuals. Examples would include operating four or more programs aimed at various segments of the low-income population and can include community and economic development.

4. The low-income population in the proposed designated service area should be large enough to justify funding a variety of programs.

5. The existing community action agency must be able to demonstrate financial stability.

6. The existing community action agency must have financial procedures in place to meet Generally Accepted Accounting Principles (GAAP).

7. The existing community action agency must have developed a plan for providing Community Services Block Grant funded services within the proposed service area. This plan must be developed with input from a variety of sources, including the low-income population of the proposed service area.

B. The department is responsible for evaluating and making recommendations to the Governor on any request for the designation of an existing community action agency in a previously unserved locality. Upon completion of this evaluation, the department will forward to the Secretary of Health and Human Resources a recommendation on what action the Governor should take regarding designation of the existing community action agency. If the Governor designates the existing community action agency in the locality, the locality will be added to the service area of the existing community action agency.

22VAC40-901-60. Designation of a community organization as a community action agency.

A. To be designated as a community action agency, a community organization's purpose shall include working for the reduction of poverty and the revitalization of low-income communities through the identification of local needs and the provision of a broad range of services to meet those needs. The organization must have the recommendation of the governing body of the localities to be served, must be financially viable, and must meet administrative standards, financial management standards, and other requirements established by federal and state laws and regulations. In order for the department to support the designation

of a community organization to become a community action agency, the following conditions should exist:

1. The organization's governing board must meet, or be in the process of changing to meet, the requirements of federal and state law related to community action agency boards.
2. Each locality in the proposed service area must have approved a resolution recommending the designation of the organization as a community action agency. In adopting the resolution, the governing body must have allowed the opportunity for public comment.
3. The organization and its management should have a history of successfully providing a variety of services to low-income individuals. Examples would include operating four or more programs aimed at various segments of the low-income population. ~~This can include community and economic development. Services currently being provided by the community organization should not be limited to a single segment of the population.~~
4. The low-income population in the proposed designated service area should be large enough to justify funding a variety of programs.
5. The organization ~~should be financially stable.~~ must be able to demonstrate financial stability. ~~This would include funding from a variety of federal and/or state sources as well as private and/or local government funding. The organization should have a sufficient reserve of unrestricted funds to avoid cash flow problems; for example, a reserve equal to or exceeding three months' operating expenses.~~
6. The organization must have financial procedures in place to meet Generally Accepted Accounting Principles (GAAP). ~~This would normally be supported by a review of prior independent audits.~~

7. The organization must have developed a plan for providing Community Services Block Grant funded services within the proposed service area. This plan must ~~have been~~ be developed with input from a variety of sources including the low-income population of the proposed service area.

B. A community organization wishing to be designated as a community action agency must submit a written request to the department. The request must include documentation verifying that all of the criteria listed in this section are met. ~~Any community organization wishing to become a community action agency is strongly encouraged to contact the department and request technical assistance in this process.~~ The request will be evaluated as per 22VAC40-901-80.

22VAC40-901-70. Designation of a locality or group of localities as a community action agency.

If no existing community action agency or other community organization is willing and able to provide services, a locality or group of localities can request that the department ~~designate~~ recommend one or more localities for designation as a community action agency. ~~Any locality or group of localities wishing to become a community action agency are strongly encouraged to contact the department and request technical assistance in this process.~~ This request must include the following documentation:

1. A description of the efforts made to obtain services through an existing community action agency or a community organization that could have been designated as a community action agency.
2. A resolution adopted by the locality or each of a group of localities requesting that it be designated as a community action agency. In adopting the resolution, the governing body or bodies must have allowed the opportunity for public comment.

3. A resolution adopted by the locality or each of a group of localities establishing a community action board that meets the requirements of federal and state law related to public community action agencies.

4. A plan for providing CSBG-funded services within the proposed service area. This plan must ~~have been~~ be developed with input from a variety of sources including the low-income population of the proposed service area.

5. The request submitted to the department will be evaluated as per 22VAC40-901-80.