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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-901
VAC Chapter title(s)	Community Services Block Grant Program
Action title	Amend CSBG as a Result of Periodic Review
Date this document prepared	4/21/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Local community action agencies receive core funding from the Community Services Block Grant (CSBG) and General Assembly appropriated funds. These agencies address issues of poverty and increase self-sufficiency of low-income families. 22VAC40-901 sets out the framework for the allocation formula, expansion of community action agency service areas, designation of community agencies and localities as community action agencies, and the process for evaluating requests for designation.

The modified and added language in this action align the sections of the Virginia Administrative Code that detail the process for evaluation, recommendation, and designation of a community action agency. The language was modified in 22VAC40-901-50 to make clear that the Department of Social Services evaluates and makes a recommendation for designation to the Secretary of Health and Human Resources, for preparation of a recommendation to the Governor.

Beyond this language alignment, the remaining changes remove two statements that "strongly encouraged" organizations and localities seeking designation to pursue technical assistance from the

Department. Finally, language was added to 22VAC40-901-60 and 22VAC40-70 that aligns the process for designation as that provided in 22VAC40-901-80.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CSBG Community Services Block Grant
OAG Office of Attorney General

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-901, Community Services Block Grant, on 4/21/2021.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The action was prompted by a periodic review. During the periodic review, the OAG identified and recommended all of the changes presented in this action.

The rulemaking is considered noncontroversial for two reasons. One, the main changes were deemed by OAG to be an alignment to all of the other language that required final approval by the Secretary and Governor, and to the Virginia Community Action Act (which lists the Secretary and Governor in the process for expansion approval). Although Section 50 did not previously detail the requirement for approval beyond the Department level, that was the process being followed, as the expansion of an existing agency into a service area does require the modification of funding allocation, and the changing of a Designation letter to include the localities served. Second, the other changes were removals of language OAG deemed better for guidance than regulation, as it included some criteria for review that wasn't required, but more helpful.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The State Board of Social Services is the promulgating agency. Section § 63.2-217 authorizes the Board to promulgate regulations necessary to carry out Title 63.2. In addition, the regulatory changes are promulgated under the Department of Social Services' authority as the designated Community Action Act agency, as set out in § 2.2-5401.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This chapter sets parameters for evaluation, recommendation, and designation of community action agencies. The rationale for the changes is aligning sections for uniformity and clarity, and removing provisions not appropriate for a regulation. The CSBG Program provides services that are essential to protect the welfare of citizens and the chapter sets out clear framework for administration of the program.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory change clarifies and aligns the sections of the Virginia Administrative Code that detail the process for evaluation, recommendation, and designation of a community action agency. This change ensures that language in: 22VAC40-901-50 (Expansion of community action agency service area); 22VAC40-901-60 (Designation of a community organization as a community action agency); and 22VAC40-901-70 (Designation of a locality or group of localities as a community action agency), are in alignment with section 22VAC40-901-80 (Evaluation of requests for designation as a new community action agency). Specifically, language was modified in 22VAC40-901-50 to make clear that the Department evaluates and makes a recommendation to the Secretary of Health and Human Resources, for preparation of a recommendation to the Governor for Designation.

Beyond this language alignment, the remaining changes were to remove two statements that "strongly encouraged" those seeking designation to pursue technical assistance prior to seeking designation. These items were removed, as they are more guidance than regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public is having a regulation that is uniform and aligned, and that does not include non-regulatory guidance. The primary advantage to the agency is also the uniformity and alignment, in evaluating requests for designation. There are no disadvantages to the action.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

None are more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected
None

Localities Particularly Affected
None

Other Entities Particularly Affected
None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>None</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>None</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefit is a better aligned and uniform regulation.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	The benefit is a better aligned and uniform regulation.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	The benefit is a better aligned and uniform regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The regulatory changes reflect current practice and should have no impact, relative to burden or intrusion. There is no cost impact for small businesses.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The regulatory changes reflect current practice and should have no impact on small businesses. businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day 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 agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Matt Fitzgerald, 801 E. Main Street 15th floor, Richmond, VA 23219, phone 804-726-7142, email: matt.fitzgerald@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	n/a	<p>“Low-income person” is not defined.</p> <p>“Department” definition is not consistent with the Code of Virginia.</p>	<p>Definition is added and matches § 2.2-5400.</p> <p>Definition is amended to match § 63.2-100.</p> <p>Recommended by OAG.</p>
50	n/a	<p>This section addresses expansion of community action agency service areas. It does not, however, align with the language in later sections that require the Department to evaluate and provide recommendations on designation to the Secretary of Health and Human Resources, for recommendation to the Governor.</p>	<p>The change in this section adds language that aligns with later sections that require the Department to evaluate and provide recommendation to the Secretary of Health and Human Resources, for recommendation to the Governor of designation of community action agencies that will serve designated localities. The change will result in uniformity with later sections.</p> <p>Recommended by OAG.</p>
60		<p>A community organization seeking to have community action designation must submit a written request. The organization is “strongly encouraged” to contact the agency for technical assistance.</p>	<p>The provision encouraging the organization to seek technical assistance is stricken, as it is guidance rather than regulation.</p> <p>A statement is added, clarifying that the request will be evaluated pursuant to 22VAC40-901-80 (Evaluation of requests for designation as a new community action agency). 22VAC40-901-80 includes the requirements that the Department submit recommendations for designation to the Secretary of Health and Human Resources and Governor.</p> <p>Recommended by OAG.</p>
70		<p>A locality or group of localities seeking to have community action</p>	<p>The provision encouraging the locality to seek technical assistance is stricken, as it is guidance rather than regulation.</p>

		designation is “strongly encouraged” to contact the department for technical assistance.	<p>A statement is added, clarifying that the request will be evaluated pursuant to 22VAC40-901-80 (Evaluation of requests for designation as a new community action agency). 22VAC40-901-80 includes the requirements that the Department submit recommendations for designation to the Secretary of Health and Human Resources and Governor.</p> <p>Recommended by OAG.</p>
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage