

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

1 VAC 42-30 Fraud and Abuse Whistle Blower Reward Fund Regulation
Office of the State Inspector General
Town Hall Action/Stage: 4264 / 7857
May 1, 2018

Summary of the Proposed Amendments to Regulation

Pursuant to Virginia Code § 2.2-3014, the Office of the State Inspector General (OSIG) proposes to promulgate this regulation in order to set out administrative procedures and rules for the Fraud and Abuse Whistle Blower Reward Fund (Fund).

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The Fraud and Abuse Whistle Blower Protection Act (Act)¹ was enacted in 2009 in order to protect executive branch state employee whistle blowers from discrimination or retaliation by their employing agency, other state agencies, or independent contractors of state agencies. The Act also established the Fund in order to provide monetary rewards to whistle blowers who have disclosed information of wrongdoing or abuse described under the Act. Chapter 403 of the 2014 Acts of Assembly² expanded the protections of the Fraud and Abuse Whistle Blower Protection Act to all Virginia citizens, and made Virginian whistle blowers not employed by the

¹ See <http://lis.virginia.gov/cgi-bin/legp604.exe?091+ful+CHAP0340>

² See <http://leg1.state.va.us/cgi-bin/legp504.exe?141+ful+CHAP0403>

Commonwealth eligible for an award from the Fund. Chapter 316 of the 2015 Acts of Assembly³ added independent state agencies as agencies covered by the Act. Finally, Chapter 292 of the 2016 Acts of Assembly⁴ made the Act applicable to local government and public school divisions as well.

The promulgation of this regulation is beneficial in that it makes procedures and requirements more transparent for potential whistle blowers and employers. The regulation does not introduce new costs. Thus, the proposed regulation will create a net benefit.

If the primary purpose of the Fund is to increase the likelihood that instances of fraud, abuse, or other wrongdoing is reported, then it may be advisable to eliminate the residency requirement. Individuals may be reluctant to report their superiors within an agency while working there, but be more willing to report once they leave that job for one perhaps out of state. Additionally, employees of an out-of-state firm that has a contract with a Virginia agency could potentially be encouraged to report fraud if they were eligible for a reward. The 2014 legislation does limit fund awards to Commonwealth residents. Therefore, OSIG does not have discretion to change that in this regulation.

Businesses and Entities Affected

The proposed regulation potentially affects all executive branch and independent state agencies, local governments, public school divisions, and independent contractors of these entities.

Localities Particularly Affected

The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment

The proposed regulation is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed regulation is unlikely to significantly affect the use and value of private property.

³ See <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0316>

⁴ See <http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0292>

Real Estate Development Costs

The proposed regulation is unlikely to affect real estate development costs.

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 is unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed regulation does not adversely affect businesses.

Localities:

The proposed regulation does not adversely affect localities.

Other Entities:

The proposed regulation does not adversely affect 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.