



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 48-70 Common Interest Community Ombudsman Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 6283 / 10481
November 1, 2024

The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The Common Interest Community Board (Board) proposes to amend the *Common Interest Community Ombudsman Regulations* to update and clarify the provisions of the regulation and ensure that it conforms to statute. This action proposes changes to (i) requirements for an association complaint procedure, (ii) requirements for filing a notice of final adverse decision, and (iii) provisions regarding the waiver of filing fees.

Background

This regulation addresses common interest communities (CICs), which are defined in statute as, “real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses.”² Examples of CICs include

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

² See <https://law.lis.virginia.gov/vacode/title54.1/chapter23.3/section54.1-2345/>.

condominiums, cooperatives, retirement communities, and some townhomes. Each CIC has an association that represents its property owners.

This regulation, which was originally promulgated in July 2012, requires associations to “...have a written process for resolving association complaints from members and citizens.”³ It outlines the minimum requirements for an association complaint procedure, to include the process for consideration of a complaint by the association, and notification to the complainant of the association’s final determination on the complaint. To the extent that a final determination of the association does not result in the cure or corrective action sought by the complainant, it is considered an “adverse decision” or “final adverse decision” as defined in the regulation. Section 90 of the regulation allows complainants who are dissatisfied with the adverse decision to file a notice of final adverse decision in writing on forms provided by the Office of the CIC Ombudsman at the Department of Professional and Occupational Regulation (DPOR). As part of their submission, they must submit a \$25 filing fee.

The CIC Board proposes to increase the time the association has to provide written acknowledgement of its receipt of a complaint (to 14 days from 7 days) and add that notice of the meeting where a complaint will be considered must be provided at least 14 days before it is held, unless otherwise agreed to in writing. Currently, the regulation just requires notice of the meeting “within a reasonable time” before it is held. Lastly, the Health and Human Services Poverty Guidelines would be used to determine whether the \$25 filing fee for the notice of final adverse decision can be waived by the Board.⁴ The Board also seeks to make a number of clarifying edits.

Estimated Benefits and Costs

The proposed amendments largely serve to clarify and update the regulation and are not expected to create new costs. CIC associations could benefit from having 14 rather than seven days to provide written acknowledgement of a complaint, and complainants would likely benefit from the requirement that they be notified of a meeting at least 14 days before it is held. While the Board is currently authorized to waive the \$25 filing fee if it would cause undue financial

³ See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2956>.

⁴ See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

hardship to the complainant, specifying that such determinations would be based on the federal poverty guidelines would enhance clarity and transparency.

Businesses and Other Entities Affected

The proposed amendments would affect the 6,983 registered CIC associations and 152 licensed CIC management companies and could indirectly affect all the residents of CICs to the extent that they need to go through the complaint procedure.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ As the proposed amendments neither increase net costs nor reduce net benefits, no adverse impact is indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments do not adversely affect small businesses.

Localities⁹ Affected¹⁰

The proposed amendments do not affect costs for local governments.

⁵ Pursuant to Code § 2.2-4007.04(D): 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.

⁶ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ 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.”

⁸ 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.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposed amendments do not affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments neither affect the use and value of private property nor real estate development costs.