



Fast Track Proposed Regulation Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation | 22VAC40-470 |
| Regulation title | Exemptions Applicable to Public Assistance Programs |
| Action title | Amends Exemptions to Public Assistance. |
| Date this document prepared | April 18, 2013 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Public Law 103-286 requires that payments made to victims of Nazi persecution be disregarded when determining eligibility and amount of benefit for any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need. The federal law does not apply to the Auxiliary Grant (AG) Program because it is a state (80 percent) and locally (20 percent) funded public assistance program administered by the Virginia Department of Social Services.

Statement of final agency action

Please 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 approved the Fast Track action to amend 22VAC40-470, Exemptions Applicable to Public Assistance Programs, on April 18, 2013.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The Code of Virginia at 63.2-217 provides blanket authority to the SBSS for adopting regulations that may be necessary or desirable to carry out Title 63.2.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The provisions of federal law do not apply to the AG Program. While AG is included in the definition of public assistance programs as set forth in §63.2-100 of the Code of Virginia, it is a state and locally funded program and, as such, the federal law to exempt payments made to victims of Nazi persecution do not cover the AG program. This action will ensure that eligibility rules for AG are aligned with other federal means-tested public assistance programs administered by the VDSS and ensure that such payments continue to be disregarded in the determination of AG eligibility. There is no adverse impact on the health, safety or welfare of Virginia's citizens.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The AG Program currently disregards Nazi persecution payments as income and/or resources. Current eligibility practices will not be affected; therefore, controversy is not anticipated.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The substantive change is to replace the current exemption of Nazi persecution payments in all public assistance programs, and limit the exemption to AG. The other public assistance programs defined in §63.2-100 are federal means-tested programs covered by the federal statute, with the exception of the General Relief program, which only covers unattached children who would not qualify for such payments.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.*
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There are no disadvantages to the Commonwealth or the public, as these eligibility criteria are already incorporated into AG guidance.

Requirements more restrictive than federal

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are affected by this amendment to continue the income exemptions in the AG program. It will not change the current practices for determining eligibility at the 120 local social services agencies across the Commonwealth.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The amendment to the regulation will make the regulation consistent with the guidance already included for the AG Program. Current practice will not change, and there will be no impact on the health, safety, and welfare of citizens.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | No Cost |
| Projected cost of the new regulations or changes to existing regulations on localities. | No cost |
| Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations. | No affect on individuals, businesses or other entities. |
| Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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. | None |
| All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations. | No cost |
| Beneficial impact the regulation is designed to produce. | Aligns the regulation with guidance incorporated in the AG Program Manual. |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The amendment to the exemptions does not change eligibility criteria, is at no cost, and does not have a negative impact on citizens, businesses or other entities. The other alternative is to retain the current regulation which is broader in scope than needed.

Periodic review/small business impact review result

If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

No comments were received during the periodic review.

The regulation meets the criteria set out in EO 14 (2010). There is no impact on small businesses. Small businesses may benefit from this regulation as the disposable income of the individual receiving these payments will be increased, giving them more money to spend in their local economy. The regulation does not duplicate or overlap other regulations promulgated by the agency. It provides instructions for local eligibility staff relative to income to disregard in the determination of eligibility for the AG Program. There is no emerging technology that could alone determine if income should be counted or disregarded; the eligibility worker must enter the correct coding so the system will know if the income will be disregarded. The regulation was last reviewed in 2007.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on parental rights and authority, economic self-sufficiency, marital commitment or family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|---|---|
| 10 | | The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for all public assistance programs. | Strikethrough "all public assistance programs." Add "the Auxiliary Grant Program." Change Code of Virginia citation. |