



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-41
Regulation title	Neighborhood Assistance Tax Credit Program
Action title	Amend the NAP tax credit program regulation to make technical and substantive changes.
Date this document prepared	April 18, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The amendments are being proposed to ensure the availability of tax credits and their equitable distribution among approved organizations. Also, amendments are being proposed to ensure fairness in the valuation of certain donated items and to improve the process for determining eligibility of organizations applying to participate in the Neighborhood Assistance Program (NAP). In addition, the amendments will make several technical and clarifying changes including updating code citations and correcting inconsistencies in terminology.

Six changes were made since publication of the proposed regulation. Two changes are technical in nature: the definition of "professional services" was amended to add clarifying language that was inadvertently left out when published, and an unneeded term was stricken. Two changes clarify that certifications are submitted to the Department of Social Services. The fifth change was made as a result of public comment and pertains to additional allocations of tax credits. The last change requires that at least 50 percent of the population served by the applicant be impoverished and at least 50 percent of total expenditures be used to serve impoverished people. The proposed regulation imposed a 60 percent threshold amount.

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 took final action on 22 VAC 40-41, Neighborhood Assistance Tax Credit Program, on April 18, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Legal authority for promulgation of this regulation is in §§ 63.2-217 and 63.2-2002. While regulations are required for this program, § 63.2-2002 provides the Board the discretion to develop regulations for the equitable distribution of tax credits and the fair and efficient operation of the program.

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 it 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 changes and clarifications to this regulation will make the program more equitable and the language more consistent, benefiting both approved organizations, and their donors and the clients they serve. Improvements to this program will have a direct impact on the approved organizations and an indirect impact on families and individuals they serve. Ensuring that only viable organizations participate in the NAP helps protect the health, safety, and welfare of citizens who receive their services.

NAP is a state tax credit program that was established by the General Assembly in 1981. The program uses tax credits as an incentive for businesses and, with certain restrictions, individuals, to make donations to an approved organization. To be a participant, an organization must be a 501(c) (3) or (4) whose primary function is providing assistance to impoverished individuals and families.

The amendments make several technical and clarifying changes, including updating code citations and correcting inconsistencies in terminology. In addition, amendments are being proposed to ensure the availability of tax credits and their equitable distribution among approved organizations. Also, amendments are being proposed to ensure fairness in the valuation of certain donated items and to improve the process for determining eligibility of organizations applying to participate in NAP.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

22 VAC 40-41-10 - Two definitions were added and one definition was clarified.

22 VAC 40-41-20 - This section was revised to provide uniform and consistent terminology for approved organizations. A new section was added to consolidate all eligibility criteria. Also, an additional requirement was added.

22 VAC 40-41-30 - The language was simplified to more clearly describe the process used to allocate tax credits among approved organizations. In addition, a cap of \$500,000 was added.

22 VAC-40-41-40 - The language was simplified to more clearly describe the process used to determine the value of donations. In addition, a new rule was added for determining the value of donated items to be sold, auctioned or raffled.

22 VAC-40-41-50 - This section was revised to provide consistency and clarification.

22 VAC-40-41-55 - This section was revised to provide consistency and clarification.

22 VAC-40-41-60 - This section was revised to provide consistency and clarification. In addition, a definition for the date of certain donated items was added.

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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This regulation provides a new method for determining the value of items donated to be sold, auctioned, or raffled. Currently, these items are valued using IRS guidelines. The proposed regulations would establish the value as the lesser of the value using IRS guidelines or the proceeds received by the nonprofit organization at time of sale. In most cases, the nonprofit organization does not receive the value in relation to IRS guidelines for sold items. The adoption of this new rule could decrease the amount of tax credits received by the donating business which could reduce the incentive for a business to make a donation of this type. The new rule would ensure that tax credits issued would directly reflect the actual proceeds received by the nonprofit organization. This would also allow the nonprofit organization to receive the maximum benefit from their tax credit allocation.

The proposed regulation provides a maximum allocation of \$500,000 to an approved organization per program year. This cap will limit the amount of tax credits available to certain organizations to use as an incentive to receive donations. This could reduce the total amount of donations these approved

organizations would receive. This change will ensure that the program is not dominated by just a few organizations and will continue to allow a diverse group of organizations to participate in the program. It will also ensure that approved organizations will operate throughout the state.

This regulation includes an eligibility requirement that at least 50 percent of clients served must be impoverished and that at least 75 percent of an organization’s revenue is used in support of their program services. Organizations that do not meet the 50 percent requirement will not be eligible for the program. The 75 percent requirement is an effort to ensure that an organization uses their revenue to provide services to the impoverished population each year.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
22 VAC 40-41-10	This section defines words and terms used in the regulation.	Definition for “Professional services” was corrected.	Language was inadvertently dropped when published.
22 VAC 40-41-20.C	This section lists the criteria applicants must meet to participate in the program.	Eligible organizations must demonstrate that at least 50% of the people they served and at least 50% of their total expenditures were for impoverished people.	This change is based on public comment.
22 VAC 40-41-30.B	This provision allowed available tax credits to be reallocated on a first come first serve basis.	The approved organization must demonstrate their ability to actually use the additional allocation of tax credits.	This change is based on public comment. The original proposed language could result in tax credits being reallocated to organizations that were unable to use them.
22 VAC 40-41-50 H	Certifications were to be submitted within 4 years of donation.	Certifications are to be submitted to the Department of Social Services within 4 years of donation.	This change specifies to where certifications are to be submitted.
22 VAC 40-41-55.D	Certifications were to be submitted within 4 years of donation.	Certifications are to be submitted to the Department of Social Services within 4 years of donation.	This change specifies to where certifications are to be submitted.
22 VAC 40-41-55.E	This section authorizes the commissioner to issue tax credit certificates.	Deleted unnecessary language.	The term commissioner is defined in the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
<p>Ms. Chris Bridge PWHD Consulting</p>	<p>Amend definition for “Education” to include Foundations providing scholarships to impoverished individuals.</p> <p>Allow an exception to the requirement that organizations must have been a viable entity for at least 12 months if the applicant is affiliated with a local government.</p> <p>Add the words “or obligated” to eligibility criteria requiring at least 75% of total revenue received is expended to support their ongoing programs each year.</p> <p>Raise the maximum cap of \$500,000 to \$750,000 for each qualifying group including affiliate organizations.</p> <p>Establish a certain deadline date during the fiscal year when all tax credits must be either used or obligated so unallocated credits can be pulled and reallocated to organizations that can and will utilize them.</p> <p>Values of new cars or boats should be based on the donor’s inventory value or book cost.</p>	<p>“Education” is defined in the Code.</p> <p>The Code requires an annual audit as a prerequisite for approval.</p> <p>The Board believes using actual expenditures is more appropriate, as pledges for donations may not be realized.</p> <p>The Board believes that \$500,000 is an appropriate cap to ensure the program is not dominated by just a few organizations. No other comments were received requesting the cap be raised.</p> <p>The regulation was amended to address this concern.</p> <p>The Board believes the proposed guidelines are more appropriate and will ensure the deduction taken by the donor does not exceed the proceeds received by the nonprofit organization.</p>
<p>Martin A. Donlan, Jr. of Williams Mullen</p>	<p>Expand the definition of impoverished people to include “medically indigent Medicare beneficiaries”.</p> <p>Adopt a greater than 50% primary function standard based solely on the component that qualifies rather than the entire operation of the organization.</p> <p>Change the allocation process and</p>	<p>The Code requires the Board to develop a definition based on generally recognized low-income criteria used by federal and state agencies. The Board feels using the 150 percent of poverty criteria more appropriately reflects the intent of the program.</p> <p>The regulation was amended to address this concern.</p> <p>The current allocation method more accurately</p>

	use a two year look back period for those organizations utilizing their full allocation of credits for the previous two years. Expand how unallocated and released credits are reallocated.	reflects an organizations ability to consistently utilize tax credits. Organizations can request additional tax credits after exhausting their initial allocation. The Board revised the final regulation to address this concern.
Judy Mason of Fauquier Community Action Committee	Supports the proposed \$500,000 cap and the valuation methodology for donated items. Suggests a JLARC study be conducted to ensure the organizations receiving NAP credits meet the mission of the program.	No response is needed.
Lee Clark of Rescue Mission	Proposes changing the allocation methodology to be based on a percentage of the qualifying nonprofit organizations expenses.	The Board believes the current allocation method is appropriate.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-41-10	N/A	The term "Approved Organization" and "Commissioner" were not previously defined.	A definition for the term "Approved Organization" and "Commissioner" was added. Throughout the regulation, the term "Approved Organization" replaces "neighborhood assistance project" and "qualified programs". Throughout the regulation, the term "Commissioner" replaces reference to the Commissioner and his designee or authorized representative. Under the definition for "Audit", language was added to clarify that the audit must be prepared by an outside independent certified public accountant.
22 VAC 40-41-20	N/A	N/A	Title was changed to reflect a new section addressing eligibility criteria.
22 VAC 40-41-20.B	N/A	N/A	The word "proposal" was changed to "application". The language change was for clarification purpose and to reflect current practice.
22 VAC 40-41-20.B.1	N/A	N/A	The words "to be" were changed to "being". The previous language may have given the impression that organizations could apply for

			the program prior to being operational.
22 VAC 40-41-20.B.3	N/A	N/A	The words “most recent” were changed to “current”. The previous language could have resulted in outdated information being provided and not present an accurate representation of the organization’s status. The requirement for a brochure was added to be consistent with current practice.
N/A	22 VAC 40-41-20.C	N/A	This section was added to describe the eligibility criteria for participation in NAP. Most of the provisions in this section have been addressed in policy and in the application process.
N/A	22 VAC 40-41-20.C.1	N/A	Regulations specify the organization must have been in operation providing assistance for at least 12 months. This is current practice.
N/A	22 VAC 40-41-20.C.2	N/A	The applicant must be able to demonstrate that at least 50 percent of total people served and 50 percent of total expenditures were for impoverished people. This requirement is consistent with program legislation. This is current practice.
N/A	22 VAC 40-41-20.C.3	N/A	The applicant’s audit must not contain any significant findings or areas of concern for the ongoing operation of their organization. An audit is required under NAP legislation.
N/A	22 VAC 40-41-20.C.4	N/A	The requirement was added that an approved organization must be spending at least 75 percent of their total revenue to support their ongoing programs each year. This was added to ensure that approved organizations use NAP tax credits to obtain donations to support the ongoing operation of their existing programs and not build up reserve funds to be used for some future program.
22 VAC 40-41-20.C	22 VAC 40-41-20.D	N/A	The date was changed from “March 1” to “March 15” to be consistent with current practice. The word “working” was changed to “business” to be consistent with the current NAP application. Language was removed as a housekeeping measure.
22 VAC 40-41-20.D	22 VAC 40-41-20.E	N/A	The word “organizations” was changed to “applicants” to be consistent with the eligibility criteria section. The word “and” was added as a housekeeping measure. Other language was removed as a housekeeping measure.
22 VAC 40-41-20.F	22 VAC 40-41-20.G	N/A	Language was added to clarify that appeals of the Department decisions must be in writing.
22 VAC 40-41-30.A.2	N/A	N/A	The word “requested” was added for clarification purpose.
22 VAC 40-	N/A	N/A	Language was changed to better describe

41-30.A.3-4			the sequence of the allocation process.
22 VAC 40-41-30.A.5	N/A	N/A	Language was removed as a housekeeping measure since this is no longer necessary.
22 VAC 40-41-30.B	N/A	N/A	Language was added to address the request for additional tax credits and limits as described in 22 VAC 40-41-30. Language was added requiring organizations to use at least 75 percent of their initial allocation prior to requesting additional tax credits. An exception was added for organizations receiving real estate. The word “funds” was changed to “tax credits” as a housekeeping measure. Language was removed to reflect current practice.
N/A	22 VAC 40-41-30.C	N/A	This section was added to set a maximum allocation of tax credits. Currently there is no maximum allocation.
N/A	22 VAC 40-41-30.C.1	N/A	This established a maximum allocation of \$500,000 in tax credits that may be allocated to an approved organization during a program year. The purpose of the cap is to prevent larger organizations from monopolizing a majority of the tax credits and ensure a more equitable distribution among all approved organizations. Using \$500,000 in tax credits would allow an organization to receive over \$1,000,000 in donations. Six other states with similar tax credit programs have a limit on the amount of credits that can be allocated to any participating organization.
N/A	22 VAC 40-41-30.C.2	N/A	This section was added to apply the maximum allocation to a parent organization that establishes an affiliate organization. These organizations normally serve the same client base and generally support and benefit each other.
22 VAC 40-41-30.C	22 VAC 40-41-30.D	N/A	This language was added as a housekeeping measure and to reflect current practice.
22 VAC 40-41-40.A	N/A	N/A	The words “acceptable to” were changed to “as required by”. The words “and establishing” were changed to “to verify”. These changes were made as a housekeeping measure.
22 VAC 40-41-40.B	N/A	N/A	The words “bonds, or other negotiable items” were removed to reflect current policy. The words “to be used by the approved organization” were added to distinguish them from items donated to be sold, auctioned or raffled which are addressed in 22 VAC 40-41-40.C.
N/A	22 VAC 40-41-40.C	N/A	This section was added for items donated to be sold, auctioned, or raffled and will ensure that businesses receive a tax credit that reflects the value received by the approved organization. Currently, businesses may

			<p>donate items that will be sold, auctioned or raffled and claim a value much higher than is received for the item. This results in the business receiving a disproportionately higher tax credit in relation to the benefit received by the approved organization.</p> <p>Current regulations use IRS guidelines. This change is intended to be similar to recent changes the IRS has made to the federal regulations relating to donations made by individuals.</p>
22 VAC 40-41-40.C	22 VAC 40-41-40.D	N/A	The word “property” was changed to “the approved organization’s facility” for clarification purpose. This is current practice.
22 VAC 40-41-40.D.1	22 VAC 40-41-40.E.1	N/A	The word “contribution” was changed to “value” for clarification purpose.
22 VAC 40-41-40.D.3	N/A	N/A	This section was removed as it relates to health care professionals which is addressed in 22VAC 40-41-50.C.
22 VAC 40-41-50.A	N/A	N/A	The words “and contracting services” were added to align the regulations with the Code of Virginia.
22 VAC 40-41-50.C	N/A	N/A	This is changed to reflect all health care professionals and the eligibility conditions as sited in the Code of Virginia. This requirement is addressed in the Code of Virginia.
22 VAC 40-41-50 E	N/A	N/A	The Code of Virginia citation was updated.
22 VAC 40-41-50.G	N/A	N/A	Reference to submitting the certification form to the commissioner or designee was deleted. Submission of the form is referenced subsection H of this section.
22 VAC 40-41-50 H	N/A	N/A	This change specifies to where certification forms are submitted.
22 VAC 40-41-55 A	N/A	N/A	The Code of Virginia citation was updated.
22 VAC 40-41-55 B	N/A	N/A	The Code of Virginia citation was updated.
22 VAC 40-41-55 C	N/A	N/A	Reference to submitting the certification form to the commissioner or designee was deleted. Submission of the form is referenced subsection D of this section.
22 VAC 40-41-55 D	N/A	N/A	This change specifies to where certification forms are submitted.
N/A	22 VAC 40-41-55.D	N/A	The language was added to be consistent with section 22VAC-40-41-50.H of the regulation.
22 VAC 40-41-60.A	N/A	N/A	The words “bonds, or other negotiable items” were removed to reflect current policy. The words “to be used by the approved organization” were added to be consistent with section 22 VAC 40-41-40.B.

N/A	22 VAC 40-41-60.B	N/A	This section was added for clarification of the date for donated items to be sold, auctioned, or raffled as referred to in section 22 VAC 40-41-40.C.
22 VAC 40-41-60 FORMS	N/A	N/A	References to obsolete forms were deleted.

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 changes and clarification to this regulation will make the program more equitable and the language more consistent, benefiting both approved organizations, and their donors (many of whom are small businesses) and the clients they serve. Improvements to this program will have a direct impact on the approved organizations and an indirect impact on families and individuals they serve. Ensuring that only viable organizations participate in the NAP helps protect the health, safety, and welfare of citizens who receive their services. These regulations would not increase costs for neighborhood organizations, businesses or individuals. It could reduce the amount of tax credits a business or individual may receive.

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.

The NAP does not have a direct impact on families and family stability. This regulation impacts nonprofit organizations and their donors. The services provided by these nonprofits organizations have a positive impact on the institution of the family and family stability.