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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** 
Assistant Attorney General

DATE: **March 13, 2017**

**SUBJECT: Exempt Final Regulation – Amend Neighborhood Assistance Program
Regulation to Comply with Statute Regarding Excess Tax Credits, 22 VAC
40-41-30. (4776/7859)**

I am in receipt of the attached regulation to amend the Neighborhood Assistance Program regulation 22 VAC 40-41-30. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2 and Virginia Code § 58.1-439.20(B) authorizes the State Board to adopt those regulations necessary for administration of certain portions of the Neighborhood Assistance Tax Credit Program. The proposed amendment to the regulation is necessary to reflect the changes to § 58.1-439.20 by the adoption of Chapter 147 of the 2017 Acts of Assembly (House Bill 1433).

Based on my review, it is my view that the State Board has the authority to promulgate the final regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 17 (2014), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action. Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.
Attachment

Project 5053 - Final

DEPARTMENT OF SOCIAL SERVICES

Amend NAP Regulation to Comply with Statute Regarding Excess Tax Credits

22VAC40-41-30. Allocation of tax credits.

A. The available tax credits will be allocated among all approved organizations as follows:

1. Any amounts legislatively set aside for special purposes will be allocated for these purposes.

2. In any year in which the available amount of tax credits exceeds the previous year's available amount, At at least 10% of the available excess amount of ~~tax credits~~ each year shall be allocated to approved organizations ~~not receiving~~ that did not receive any allocations in the preceding year; ~~however, if~~ If the amount of ~~requested~~ tax credits requested for approved organizations by organizations not receiving allocations in the preceding year is less than 10% of the available excess amount of ~~tax credits~~, the unallocated portion of such 10% shall be allocated to other approved organizations.

3. Approved organizations that received a tax credit allocation within the last four years will be given an allocation based on the average amount of tax credits actually used in prior years. The allocation process may include a determination of the reasonableness of requests, caps, and percentage reductions in order to stay within the total available funding.

B. During the program year, approved organizations that have used at least 75% of their allocation may request additional allocations of tax credits within the limits described in this section. Requests will be evaluated on reasonableness, and tax credits will be reallocated on a

first-come basis as they become available. An exception may be made for organizations that have received a written commitment for a donation of real estate.

C. Maximum allocation of tax credits.

1. An organization shall receive an allocation of tax credits as specified in § 58.1-439.20 C of the Code of Virginia.

2. For the process of determining the maximum allocation for an organization whose purpose is to support and benefit another approved organization, the combined allocation will not exceed the maximum cap set by § 58.1-439.20 of the Code of Virginia.

D. Organizations may release all or a portion of their unused tax credit allocation to be reallocated in accordance with subsection B of this section.