

Assessment of Public Comment

A Notice of Revised Rule Making was published in the *New York State Register* on March 13, 2013. The New York State Division of Housing and Community Renewal (DHCR) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. DHCR's response is provided for each issue.

Definitions

Comment: One comment was received requesting exhaustive lists of what constitute “state funds” and “state-authorized payments”.

Response: The proposed regulations were previously modified to clarify what constitute “state funds” and “state-authorized payments”. However, additional guidance on this topic will be provided prior to the effective date.

Limits on administrative expenses

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: DHCR believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

Limits on executive compensation

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: DHCR believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized

any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

Waivers

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

Effective Date

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

Lack of Necessity

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: DHCR believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

Coordination

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the nonprofit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.