

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>NOV - 5 2021</p> <p>Independent Regulatory Review Commission</p>
<p>(1) Agency Department of State, Bureau of Corporations and Charitable Organizations</p>		<p>IRRC Number: 3320</p>
<p>(2) Agency Number: 16 Identification Number: 64</p>		
<p>(3) PA Code Cite: 19 Pa. Code §§ 101.1 – 101.3</p>		
<p>(4) Short Title: Representation in Charitable Organization Matters</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Martha H. Brown, Assistant Counsel, 401 North Street, Rm 306, Harrisburg, PA 17120 (phone 717-783-2804) (fax 717-214-9899) martbrown@pa.gov.</p> <p>Secondary Contact: Jacqueline A. Wolfgang, Regulatory Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 717-787-0251) jawolfgang@pa.gov.</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input checked="" type="checkbox"/> FINAL OMITTED REGULATION</p>		<p><input type="checkbox"/> Emergency Certification Regulation</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This final-omitted regulation relates to representation in charitable organization matters under the Solicitation of Funds for Charitable Purposes Act (Act) (10 P. S. §§ 162.1—162.24). The rulemaking adopts the General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 31.1—35.251) for the activities and proceedings before the Secretary of the Commonwealth and the Department of State, with one limited exception: it allows non-attorney representation in actions and proceedings under the Act for corporations, limited liability companies, trusts, partnerships and other associations, as well as for agencies and political subdivisions. This regulation is needed to allow for less-established charitable organizations, usually small and well-intended, but poorly funded, to have a cost-effective alternative for representation at agency hearings.</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 3 of the Administrative Code of 1929 (71 P.S. § 282) authorizes the Department of State (Department) to adopt rules and regulations pertaining to its powers and duties. Section 4(3) of the Solicitation of Funds for Charitable Purposes Act (Act) (10 P.S. § 162.4(3)) authorizes the Secretary to promulgate, adopt and enforce rules and regulations necessary to carry out the Act. In addition, under Section 204(1)(iii) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(1)(iii)), the Secretary is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. § 1201 and § 1202) if the administrative regulation or change therein relates to agency procedure or practice.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the regulation is not mandated by any federal or state law or court order, or federal regulations.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

In recognition of the financial constraints of many charitable organizations and other associations, the Secretary wishes to allow non-attorney representation in all proceedings under the Act. Like other agencies that have promulgated regulations that supersede GRAPP provisions governing representation of parties in administrative proceedings, the Secretary wishes to provide more flexibility to those parties who wish to avoid the costs of legal representation in administrative matters. Administrative hearings generally involve questions of fact that do not require complex legal analysis and may not require the legal expertise of an attorney. Hearings under the Act are designed to be brief and informal. Requiring attorney representation in all adversarial hearings undermines the informal, speedy and low-cost nature of administrative proceedings and may dissuade parties from defending matters against them.

It is estimated that formal administrative charges are filed against 100 charitable organizations annually. A handful of cases each year involve professional solicitors and professional fundraising counsels, both of which are for-profit businesses. Approximately 20% of all these matters go to formal hearing. While all of these organizations could benefit from this rulemaking, the smaller charitable organizations will benefit the most. Many charities are small and well-meaning but poorly funded start-ups. This rulemaking will provide them with a cost-effective alternative for representation at hearings. It is impossible to estimate the amount of savings associated with the regulation for these entities due to the number of variables involved – how long a hearing takes, the hourly rate of a particular attorney, travel to and from the hearing, etc.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no relevant federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Many states, including Florida, Washington, Colorado, and Arizona, allow for representation by non-attorneys in certain agency proceedings.

Of the surrounding states, Delaware has no state law requiring registration of charitable organizations, solicitations or fundraisers with the Department of Justice or another state agency. State laws applicable to fraud and fraudulent transactions are required to be observed and any violations will result in civil or criminal prosecution, but there are no administrative actions. While Ohio and West Virginia have a charitable registration statute, these laws are enforced by criminal and civil actions only, with no administrative agency proceedings. Maryland permits some representation before agencies by individuals who are not authorized to practice law, but not in charitable registration matters. Under its charitable registration statute and administrative agency law, New Jersey permits non-lawyers to apply for permission to represent a party at a contested case hearing if they are close corporation principals. New York's charitable registration regulations provide that any respondent who requests a hearing or is compelled to appear before the Attorney General has the right to be represented by counsel or a non-lawyer representative.

For this reason, the Secretary believes this regulation, which allows for a cost-effective option for charitable organizations in administrative hearings, will enhance Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, this regulation will not affect any other regulations of the Bureau of Corporations and Charitable Organizations or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Because the regulation is a change to agency procedures or practice, the Secretary did not seek input from the public or any particular group.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

All associations that fall under the purview of the Act would be affected by this regulation. This regulation would provide for additional options for associations relating to representation in agency proceedings and hearings. However, the vast majority of regulated associations under the Act are organized as not-for-profit and thus do not fall under the definition of business or small business under 71 P.S. § 745.3 and 13 C.F.R. § 121.105. A handful of cases annually involve professional solicitors and professional fundraising counsels registered with the Bureau of Charitable Organizations. Both counsel and solicitors are for-profit businesses. Both would be positively affected by being permitted to have a non-attorney represent the company in formal proceedings before the Department.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There is no requirement to comply with the regulation. The regulation is an expansion upon who may represent a charitable organization in an agency proceeding, namely a non-attorney. No number of persons, groups, or entities will be required to comply. However, formal administrative charges are filed against approximately 100 charitable organizations annually, with approximately five cases going to hearing annually.

By way of background, there are 13,000-14,000 charitable organizations, over 100 professional solicitors and 300-400 professional fundraising counsels registered with the Bureau of Charitable Organizations at any given time. In the 2019-2020 fiscal year, the Department completed 389 investigations of charitable organizations, professional solicitors or fundraising counsels suspected of violating the Act. In that year, 43 Cease and Desist Orders were issued, 52 Consent Agreements were finalized and four Adjudications were issued. Respondents in these 99 docketed matters were all advised of their right to obtain legal counsel. Approximately 60% of charitable organizations in these matters do not retain an attorney. These Respondents would be able to opt to represent themselves in proceedings before the Department, should this regulation be approved.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There are no adverse impacts associated with this regulation on individuals, small businesses, or any other entity. The positive impacts would be for smaller non-profit charitable organizations who have fewer funds to expend on legal representation in less complex administrative hearings.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation allows for non-attorney representation in agency proceedings for charitable organizations, professional solicitors and fundraising counsel. Since many charitable organizations do not have excess funds for attorney representation, this regulation provides for a cost-effective alternative.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to the regulated community associated with this rulemaking. There may be savings with regard to charitable organizations, fundraising counsel or professional solicitors that use non-attorney representation. It is impossible to accurately estimate the savings to these entities appearing before the Department due to the number of variables involved – the length of the hearing, the hourly fee of a particular attorney, travel to and from the hearing, etc.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs to state government associated with this regulation.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork is required for the implementation of this regulation. The regulation allows for non-attorney representation in the approximately 100 administrative matters filed annually concerning charitable organizations and the five regarding fundraising counsel or professional solicitors.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 19-20	FY +1 20-21	FY +2 21-22	FY +3 22-23	FY +4 23-24	FY +5 24-25
SAVINGS:						
Regulated Community	unknown	unknown	unknown	unknown	unknown	unknown
Local Government	unknown	unknown	unknown	unknown	unknown	unknown
State Government	unknown	unknown	unknown	unknown	unknown	unknown
Total Savings	unknown	unknown	unknown	unknown	unknown	unknown
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 FY 18-19	FY -2 FY 19-20	FY -1 FY 20-21	Current FY FY 21-22 (budgeted)

Bureau of Corporations and Charitable Organizations – Audits and Investigations	\$ 749,837	\$ 739,469	\$ 723,270	\$ 818,653
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(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Because the regulation has no adverse impact on small business, no economic impact statement was developed.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Secretary could discern no particular group which needs special provisions.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions have been considered. The Secretary believes that the rulemaking represents the least burdensome acceptable method of providing this flexibility to business entities (partnerships, corporations, limited liability companies, trusts, and other associations), as well as for agencies and political subdivisions, who may be required to participate in administrative hearings before the Department.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As this rulemaking has no adverse impact on small business, no regulatory flexibility analysis was conducted.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No data was the basis for this regulation.

(29) Include a schedule for review of the regulation including:

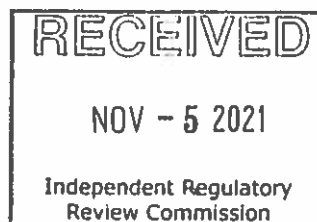
- | | |
|---|------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Fall 2021</u> |
| D. The expected effective date of the final-form regulation: | <u>Fall 2021</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Fall 2021</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Secretary intends to evaluate the continuing effectiveness of the regulation on an annual basis and any time there might be comprehensive amendments to the statutes or regulations that serve as a basis for administrative practices and procedures.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved Objections attached</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>_____ Department of State (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO <u>16-64</u></p> <p>DATE OF ADOPTION _____</p> <p>BY: <u>Veronica W. Degraffenreid</u> Veronica W. Degraffenreid</p> <p>TITLE: <u>Acting Secretary of the Commonwealth</u></p>	<p>Copy below is hereby approved as to form and legality Executive or Independent Agencies</p> <p>BY: _____ (Deputy General Counsel) (Chief Counsel Independent Agency) (Strike inapplicable title)</p> <p>October 28, 2021</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable No Attorney General approval or objection within 30 days after submission</p>
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FINAL RULEMAKING (WITH PROPOSED OMITTED)

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS**

19 Pa. Code §§101.1-101.3

REPRESENTATION IN CHARITABLE ORGANIZATION MATTERS

The Acting Secretary of the Commonwealth (Secretary) hereby amends 19 Pa. Code, Part I, Subpart B, to add Article VI (19 Pa. Code §§ 101.1—101.3), pertaining to representation in charitable organization matters, to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory authority

Section 3 of the Administrative Code of 1929 (71 P.S. § 282) authorizes the Department of State to adopt rules and regulations pertaining to its powers and duties. Section 4(3) of the Solicitation of Funds for Charitable Purposes Act (Act) (10 P.S. § 162.4(3)) authorizes the Secretary to promulgate, adopt and enforce rules and regulations necessary to carry out the Act.

Background and Purpose

The Administrative Agency Law permits but does not require a party to be represented when appearing before a Commonwealth agency. *See* 2 Pa.C.S. § 502, pertaining to representation. The General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 31.1—35.251) apply “when agencies hold a hearing, unless the agency adopted alternate procedures.” *KC Equities v. Dep’t of Publ. Welfare*, 95 A.3d 918, 932 (Pa. Cmwlth. 2014). Section 31.21 of GRAPP authorizes individuals to appear on their own behalf. It also provides that a member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to an agency. However, for adversarial proceedings, GRAPP requires all parties, except for individuals appearing on their own behalf, to be represented by an attorney unless otherwise permitted by the agency in a specific case. *See* 1 Pa. Code § 31.21—§ 31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

This rulemaking expressly adopts GRAPP for the activities and proceedings before the Secretary and the Department under the Act, with a limited exception. In recognition of financial constraints of many charitable organizations and other associations, the Secretary seeks to allow non-attorney representation in all formal proceedings for business organizations, such as partnerships, corporations, limited liability companies and trusts, as well as agencies and political subdivisions. Charitable organizations comprise the largest registration group under the Act. There are 13,000-14,000 registered charitable organizations and the vast majority are formed as non-profit corporations. Some are unincorporated non-profit associations. There are also over 100 professional solicitors and 300-400 professional fundraising counsels registered under the Act at any given time. These are for-profit companies. Professional solicitors engage in the direct or indirect request for contributions on behalf of the charities, while fundraising counsel plan, manage, advise, consult or prepare material for solicitations. The rulemaking is intended to apply to all of these entities, with the smallest charitable organizations benefiting the most.

Like other agencies that have promulgated regulations that supersede GRAPP provisions governing representation of parties in administrative proceedings, the Secretary is adopting this rulemaking to provide more flexibility to those entities who wish to avoid the costs of legal representation. Administrative hearings generally involve questions of fact that do not require complex legal analysis and may not require the legal expertise of an attorney. Hearings under the Solicitation of Funds for Charitable Purposes Act (Act) (10 P. S. §§ 162.1—162.24) are designed to be brief and informal. Requiring attorney representation in all adversarial hearings involving business entities, agencies or political subdivisions undermines the informal, speedy and low-cost nature of administrative proceedings and may dissuade parties from defending matters against them. The Secretary believes that allowing non-attorney representation would provide charitable organizations, many of which are small and well-meaning—but poorly funded—non-profits, with a cost-effective alternative for representation at hearings.

Through this rulemaking, the Secretary is joining other Commonwealth agencies that allow representation by non-attorneys in administrative proceedings. For example, the Department of Agriculture allows a partnership to be represented by any of its members and a corporation or association to be represented by any of its officers for adjudicatory proceedings relating to matters within its jurisdiction. *See*, 7 Pa. Code § 131.12 (relating to appearances). The Pennsylvania Labor Relations Board permits entry of appearances by attorneys or other representatives at 34 Pa. Code § 91.2 (relating to appearances); and the State Health Facility Hearing Board permits a member of a partnership to represent the partnership; a bona fide officer of a corporation, trust or association to represent a corporation, trust or association; and an officer or employee of another agency or political subdivision to represent the agency or political subdivision in an appeal or petition before the hearing board. *See* 37 Pa. Code § 197.9 (relating to appearances).

Omission of Proposed Rulemaking

Under section 204(1)(iii) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(1)(iii)), the Secretary is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the administrative regulation or change therein relates to agency procedure or practice. Publication of proposed rulemaking is unnecessary because the regulations are procedural regulations relating to representation by non-attorneys for partnerships, corporations, limited liability companies, trusts, other associations and agencies and political subdivisions in administrative proceedings before the Secretary and the Department under the Act.

Description of Amendments

Section 101.1 (relating to definitions)

Section 101.1(a) proposes to define the general terms that will be used throughout Chapter 101 of Article VI. These terms include “Act,” referring to the Solicitation of Funds for Charitable Purposes Act, at 10 P. S. §§ 162.1—162.24, and “Association,” as defined in Title 15 (relating to Corporations and Unincorporated Associations) at 15 Pa.C.S. § 102. Additionally, § 101.1(b) would incorporate definitions from section 3 of the Act. Section 101.1(b) would clarify that

definitions from section 3 of the Act are also incorporated under this section. Furthermore, § 101.1 (c) provides that the definitions in subsection (a) supplement the definitions in GRAPP at 1 Pa. Code § 31.3 (relating to definitions).

Section 101.2 (relating to the applicability of general rules of practice and procedure)

Section 101.2(a) expressly adopts GRAPP, which governs the practice and procedure before agencies of the Commonwealth, for the activities and proceedings before the Secretary and the Department under the Act, except where it is inconsistent with this chapter. Section 101.2(b) clarifies that subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).

Section 101.3 (relating to representation in formal proceedings)

Section 101.3(a) reiterates the GRAPP rule that an individual may appear on their own behalf or may be represented by an attorney in formal proceedings before the Secretary and the Department under the Act. Section 101.3(a) permits an association, agency or political subdivision to be represented by an attorney in formal proceedings before the Secretary and the Department under the Act. Section 101.3(a) also permits representation by a non-attorney as provided in § 101.3(b). The non-attorneys listed in paragraphs 1 through 5 of § 101.3(b) are the persons by or under whose authority the powers of an association are exercised and under whose direction the activities and affairs of the association are managed. Paragraph 6 provides that an officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow such representation. Section 101(c) makes clear that subsection (a) and (b) supersede GRAPP at 1 Pa. Code § 31.21 and § 31.23 (relating to appearance in person; and other representation prohibited at hearings).

Fiscal Impact and Paperwork Requirements

There is no fiscal impact and no paperwork requirements are associated with this regulation.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (RRA) (71 P.S. § 745.5a(c)), on November 5, 2021, the Secretary submitted copies of the regulation with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), the Senate State Government Committee (SSGC) and the House State Government Committee (HSGC). On the same date, the Secretary submitted a copy of the regulation to the Office of Attorney General under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 —732-506).

Under sections 5.1(e) and (j.2) of the RRA (71 P.S. § 745.5a(e) and (j.2)), the amendments were (deemed) approved by the SSGC and HSGC on _____, 2021 and approved by IRRC on _____, 2021.

Additional Information

For additional information about this rulemaking, submit inquires to the Department of State, Bureau of Corporations and Charitable Organizations, 401 North Street, Room 207, Harrisburg, PA 17120, ST-CHARITY@pa.gov.

Findings

The Secretary finds that:

(1) Public notice of the Secretary's intention to promulgate these regulations under the procedures in sections 201 and 202 of the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201 and 1202) has been omitted under section 204 of the CDL (45 P.S. § 1204) because publication of proposed rulemaking is unnecessary in that the amendments relate only to agency procedure or practice. The amendments are procedural regulations relating to representation by non-attorneys for corporations, limited liability companies, partnerships, trusts, other associations and agencies and political subdivisions in actions and proceedings under the Solicitation of Funds for Charitable Purposes Act (Act) (10 P. S. §§ 162.1—162.24).

(2) The promulgation of the regulations in the manner provided in this order is necessary and appropriate to effectuate alternative representation in formal proceedings before the Secretary and the Department under the Act.

Order

The Secretary, acting under the authority of Section 3 of the Administrative Code of 1929 (71 P.S. § 282) and Section 4(3) of Act (10 P.S. § 162.4), orders that:

(a) The regulations at Title 19, Part I, Subpart B are hereby amended to read as set forth in Annex A.

(b) The Secretary shall submit this final-omitted regulation to the Office of Chief Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall submit this final-omitted regulation to the Independent Regulatory Review Commission, the Senate State Government Committee and the House State Government Committee as required by law.

(d) The Secretary shall certify this final-omitted regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

Veronica W. Degraffenreid
Acting Secretary of the Commonwealth

ANNEX A

TITLE 19. CORPORATIONS AND BUSINESS ASSOCIATIONS

PART I. DEPARTMENT OF STATE

Subpart B. BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

ARTICLE VI. SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT

CHAPTER 101. GENERAL PROVISIONS

§ 101.1. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Solicitation of Funds for Charitable Purposes Act (10 P. S. §§ 162.1—162.24).

Association—An association as defined in 15 Pa.C.S. § 102 (relating to definitions).

(b) The definitions in section 3 of the act are incorporated by reference and have the same meaning when used in this chapter.

(c) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions).

§ 101.2. Applicability of general rules of practice and procedure.

(a) Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) is applicable to the activities of and formal proceedings before the Secretary and the Department under the act insofar as it is not inconsistent with this chapter.

(b) Subsection (a) supplements 1 Pa. Code § 31.1 (relating to scope of part).

§ 101.3. Representation in formal proceedings.

(a) General rule. In formal proceedings before the Secretary and the Department under the act, an individual may appear on their own behalf or may be represented by an attorney as provided by 1 Pa. Code § 31.22 (relating to appearance by attorney). An association, agency or political subdivision may be represented in formal proceedings by an attorney as provided by 1 Pa. Code § 31.22 or may be represented in formal proceedings by a non-attorney as provided in subsection (b).

(b) Non-attorney representation authorized. Non-attorney representation of an association, agency or political subdivision in formal proceedings before the Secretary and Department under the act is permitted as follows:

(1) A general partner of a partnership may represent the partnership.

(2) A bona fide officer or director of a corporation (for profit or not-for-profit) may represent the corporation.

(3) A manager of a manager-managed limited liability company or a member of a member-managed limited liability company may represent the limited liability company.

(4) A trustee of a trust may represent the trust.

(5) A member or other authorized representative of any other type of association may represent the association.

(6) An officer or employee of an agency or political subdivision may represent the agency or political subdivision, provided the rules and policies of that agency or subdivision allow such representation.

(c) Applicability of the General Rules of Administrative Practice and Procedure. Subsection (a) and (b) supersede 1 Pa. Code § 31.21 and 31.23 (relating to appearance in person; and other representation prohibited at hearings) regarding representation of associations, agencies or

political subdivisions in formal proceedings before the Secretary and the Department under the

act.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF CORPORATIONS AND CHARITABLE ORGANIZATIONS

November 5, 2021

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation with Notice of Proposed Rulemaking Omitted
Bureau of Corporations and Charitable Organizations
16-64: Representation in Charitable Organization Matters

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the Bureau of Corporations and Charitable Organizations pertaining to Representation in Charitable Organization Matters.

The Bureau will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Veronica W. Degraffenreid".

Veronica W. Degraffenreid
Acting Secretary of the Commonwealth

VWD/jaw:bmz
Enclosure

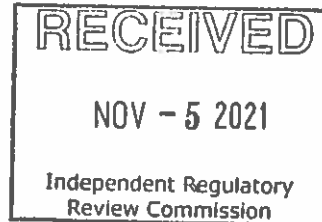
cc: Veronica W. Degraffenreid, Acting Secretary of the Commonwealth
Pamela Iovino, Deputy Secretary of Regulatory Programs
Jessica Myers, Policy Director, Department of State
Jacqueline A. Wolfgang, Senior Regulatory Counsel, Department of State
Martha H. Brown, Assistant Counsel, Bureau of Corporations and Charitable Organizations

AG

From: Elliott, Amy M.
To: Rizzi, Alicia (GC); Trotter, Carolyn
Cc: Abelson, Addie
Subject: RE: [EXTERNAL] DOS Final-Omitted Regulation #16-64
Date: Friday, November 5, 2021 1:58:11 PM

Receipt acknowledged.

Amy M. Elliott
Chief Deputy Attorney General
Legal Review Section
717-783-6316
aelliott@attorneygeneral.gov



From: Rizzi, Alicia (GC) <arizzi@pa.gov>
Sent: Friday, November 5, 2021 11:00 AM
To: Elliott, Amy M. <aelliott@attorneygeneral.gov>; Trotter, Carolyn <trotter@attorneygeneral.gov>
Cc: Abelson, Addie <adabelson@pa.gov>
Subject: [EXTERNAL] DOS Final-Omitted Regulation #16-64

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Attached please find the Department of State's final-omitted regulation #16-64 for your review.

Please respond to this email with an acknowledgement of receipt so that the Department of State can provide IRRC with proof of delivery.

Thank you,

Alicia C. Rizzi | Legal Office Administrator
Governor's Office of General Counsel
Commonwealth of Pennsylvania
333 Market Street Tower, 17th Floor | Harrisburg, PA 17101
Phone: 717.787.9344 | Fax: 717.787-1788
arizzi@pa.gov | www.ogc.pa.gov

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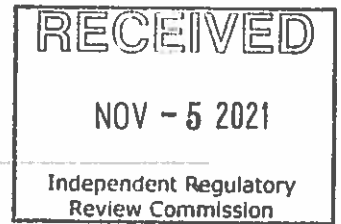
This message has been scanned for malware by Websense. www.websense.com

Sen.

From: Morris, Dustin
To: Worthington, Amber; Mahjoubian, Micah; Richardson, Aissia
Subject: RE: DELIVERY 16-64
Date: Friday, November 5, 2021 11:03:48 AM

Received, thanks.

Dustin



From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 11:02 AM
To: Mahjoubian, Micah <Micah.Mahjoubian@pasenate.com>; Morris, Dustin <Dustin.morris@pasenate.com>; Richardson, Aissia <Aissia.richardson@pasenate.com>
Subject: DELIVERY 16-64

■ EXTERNAL EMAIL ■

The Secretary of Department of State is delivering the following final-omitted rulemaking today **Friday, November 5, 2021**:

- Secretary of Department of State: 16-64 Non-Attorney Representation

PLEASE provide a written (email) CONFIRMATION of receipt of delivery.

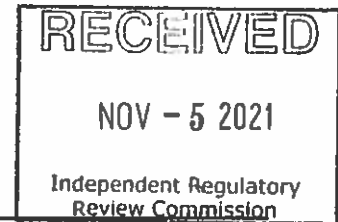
Amber A. Worthington, PLS | Legal Assistant Supervisor
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax: 717.787.0251
agontz@pa.gov | www.dos.pa.gov
(preferred pronouns: they, them, theirs)
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Sen

From: Davis, Chad
To: Worthington, Amber
Subject: RE: DELIVERY 16-64
Date: Friday, November 5, 2021 11:38:35 AM



Received.

Chad Davis

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 11:01 AM
To: Sembach, Fred <fsembach@pasen.gov>; Davis, Chad <cdavis@pasen.gov>
Subject: DELIVERY 16-64

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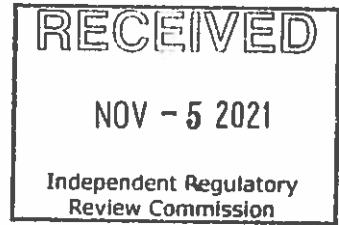
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Amber A. Worthington, PLS | Legal Assistant Supervisor
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
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H

From: [Himebaugh, Nicholas A.](#)
To: [Worthington, Amber](#)
Cc: [Conklin, Scott](#); [Brogan, David](#)
Subject: Fw: DELVIERY 16-64
Date: Friday, November 5, 2021 12:06:46 PM
Attachments: [Reg. 16-64 Conklin.pdf](#)



Amber,

Received. Thank you!

Nicholas A. Himebaugh
Committee Executive Director
House Democratic State Government Committee
C: 484-686-3281

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 11:03 AM
To: Himebaugh, Nicholas A. <NHimebaugh@pahouse.net>
Subject: DELVIERY 16-64

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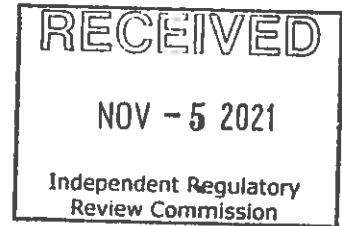
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Office of Chief Counsel | Department of State
Governor's Office of General Counsel
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H.

From: [Micheale Totino](#)
To: [Worthington, Amber](#)
Cc: [Sherry Eberly](#)
Subject: RE: DELIVERY 16-64
Date: Friday, November 5, 2021 11:10:28 AM



This email confirms receipt of delivery.

Thank you.

From: Worthington, Amber <agontz@pa.gov>
Sent: Friday, November 5, 2021 11:03 AM
To: Micheale Totino <Mtotino@pahousegop.com>
Subject: DELIVERY 16-64

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- Secretary of Department of State: 16-64 Non-Attorney Representation

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Governor's Office of General Counsel
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