

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Executive Department
(DLS Control No. 16-049)**

Overview and Legal and Fiscal Impact

The regulation eases the annual filing requirements and costs for private foundations affiliated with a State agency that are required to register with the Office of the Secretary of State.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Executive Department:

Secretary of State: Charitable Organizations: Substantive Regulations:
COMAR 01.02.04.20-1

Legal Analysis

Summary of Regulation

The regulation eases the annual filing requirements and costs for private foundations affiliated with a State agency that are required to register with the Office of the Secretary of State. The regulation accomplishes this by raising the threshold at which a foundation is required to submit an audit with its registration statement and with its annual report. Under current law and the regulation, the private foundations that are required to submit an audit with their registration statement must have a gross income of at least \$500,000 from charitable contributions, rather than more than \$100,000 under the current regulations. If Senate Bill 10 of 2016 is enacted, the threshold will further increase to \$750,000.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Secretary of State cites § 6-204 of the Business Regulation Article as authority for the regulation. Section 6-204 requires the Secretary of State to adopt regulations to carry out the provisions of Title 6, which regulates charitable organizations and charitable representatives.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from staff with the Department of Legislative Services, staff for the office agreed to make the following changes to the regulation: (1) substituting § 6-204 of the Business Regulation Article as the statutory authority instead of § 6-204 of the State Government Article; and (2) in the cross reference to § 6-402(b) of the Business Regulation Article, substituting a reference to paragraph (7)(i) instead of paragraph (8)(i).

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation has minimal or no impact on State or local governments. The regulation applies to private foundations that are affiliated with State agencies that receive more than \$100,000 annually in contributions and are required to register with the Secretary of State. There are approximately 75 such private foundations registered with the Secretary State. Under the regulation, as part of their annual registration, these private foundations must file an audit, review, or neither based on their gross income from charitable contributions in the same manner as other charitable organizations. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services disagrees with this assessment. Private foundations affiliated with a State agency benefit from reduced operating costs if they are not required to submit an audit as part of their annual registration with the Secretary of State. These foundations may be small businesses. Under existing regulations, these private foundations that receive more than \$100,000 annually in contributions are required to file an audit with the Secretary of State. The regulation alters this requirement to conform to the general requirements for charitable organizations in current law. Thus, the savings for a particular private foundation depends on whether the foundation – rather than always having to file an audit – is required to file an audit, a review, or neither as a result of the regulation.

Under current law, charitable organizations with gross annual incomes of \$500,000 or more from charitable contributions must submit an audit performed by an independent certified public accountant when registering with the Secretary of State. Charitable organizations with gross incomes of at least \$200,000 but less than \$500,000 must submit a review by a certified public accountant. The department indicates that the cost of an audit for a smaller organization is approximately \$10,000, while the cost of a review is approximately \$5,000, which is a substantial cost relative to annual contributions – 10% at the minimum level of \$100,000.

However, Senate Bill 10 of 2016, which was passed by the General Assembly but has not been signed by the Governor as of April 14, 2016, would increase these income levels, effective July 1, 2016. Under the bill, charitable organizations with gross annual incomes of \$750,000 or more from charitable contributions would be required to submit an audit, while charitable organizations with gross incomes of at least \$300,000 but less than \$750,000 would be required to submit a review. Charitable organizations with less than \$300,000 in charitable contributions would generally not be required to file an audit or a review. According to the department, under these income thresholds, up to 8 private foundations would no longer be required to file an audit (or a review) and up to 10 would be required to file a review instead of an audit.

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