



Economic Impact Analysis Virginia Department of Planning and Budget

2 VAC 5-610 – Rules Governing the Solicitation of Contributions Department of Agriculture and Consumer Services June 16, 2001

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The Board of Agricultural and Consumer Services (board) proposes to make several amendments to the regulations governing the solicitation of contributions. Changes include: 1) acceptance of the Unified Registration Statement in lieu of the Virginia Registration Statement, 2) additional types of organizations exempted from annual registration, 3) consolidation of 12 registration exemption forms to one form, 4) requirement that charitable or civic organizations shall include in all solicitations their primary name, 5) new format requirements for preprinted return addresses, 6) requirement that subcontracting professional solicitors file consent to solicit form, 7) requirement that subcontractors of subcontractors register, 8) requirement that the professional solicitor state that he is a "paid solicitor" in oral solicitations, and 9) requirement that in written solicitations the professional solicitor state that they file financial reports with the Virginia Office of Consumer Affairs (VOCA), and include VOCA's address.

Estimated Economic Impact

When members of the public are asked to contribute donations to charitable and civic organizations either via telephone or mail, there often exists some uncertainty as toward the identity of the donation solicitor, whether the solicitor himself or herself works for a charitable or civic organization, how much of the donation will reach the charitable or civic organization versus payments to the solicitor, how much of the charitable or civic organization's receipts go toward the actual charitable purpose described versus other expenses and purposes, etc. This uncertainty may lead potential donors to donate less often and to give fewer dollars per donation than they would if they had more confidence that the donation would be largely used as they are led to believe. Also, the lack of information may lead donors to make donations that they would not make if they had more detailed and accurate information concerning the recipients of their donation and how the donation would likely be used.

Financial information for registered charitable organizations, professional solicitors, and professional fund-raising counsel¹ is available to the public by calling VOCA's toll free phone number. Available information includes, but is not limited to, the percentage of receipts kept by the professional solicitor in their contract with a charitable or civic organization on specific campaigns, and how much of the charitable or civic organization's receipts are expended on program services versus other categories. Public citizens may use this information in their decision on whether to contribute to a charitable organization via a professional solicitor. Increased access to clear detailed information about the recipients of potential donations could potentially increase donations to recipients that donors find most deserving while reducing donations to recipients considered less deserving.

The board proposes several changes to these regulations that affect potential donors, charitable and civic organizations, professional solicitors, and professional fund-raising counsel. First, the board proposes to allow charitable and civic organizations to register using the Unified Registration Statement in lieu of the Virginia Registration Statement. The Unified Registration Statement contains all the information required in the Virginia registration. Some organizations that do business in other states may find it easier to send the Unified Registration Statement rather than to fill out a Virginia registration form. Since the Unified Registration Statement

contains all the information required in the Virginia registration, VOCA gets all the information it requires and the organization saves on some time and administrative costs. Thus this proposed change creates a net benefit.

Unless statutorily exempt, charitable and civic organizations must register with VOCA annually. Pursuant to Section 57-60 of the Code of Virginia, nonprofit debt counseling agencies, area agencies on aging, trade associations, and labor unions have been added to the list of organizations exempt from registering. In addition, the definition of “health care institution,” an exempt category, has been expanded. Medical facilities that are 1) designated by the U.S. Health Care Financing Administration (HCFA) as a federally qualified health center, 2) certified by HCFA as a rural health clinic, or 3) wholly organized for the delivery of health care services without charge (free clinic) are newly exempt by virtue of being added to the “health care institution” definition. The newly exempt organizations will save on registration and administrative costs. Annual registration fees vary between \$30 and \$325, depending on gross contributions received in the previous year. Organizations with no prior financial history filing an initial registration pay a \$100 registration fee. When applying for an exemption to registration, the organizations provide financial information. But in subsequent years that information becomes out-of-date. VOCA is not able to provide up-to-date financial information to the inquiring public concerning exempt organizations. Whether the costs to the public of reduced information concerning the newly exempt organizations that could be used in decisions about donations exceeds the benefits to the newly exempt organizations of reduced registration and administrative costs depends on how valuable the information is to the public. Since little or no data is available that estimates the dollar value of this information to the public, it is not possible to draw any reliable conclusions about the net economic impact of the proposed additions to the list of exempt organizations.

Currently there are 12 separate registration exemption forms. The applicant for registration exemption must determine which of the 12 forms is most appropriate for their circumstance. According to VOCA, there has often been confusion on the part of the applicant as to which form is appropriate. The board proposes to consolidate the 12 registration exemption forms to one form. No additional information would be required. This will eliminate the

¹ Professional fund-raising counsel are firms or individuals who, under contract, provide logistical fund-raising

occurrences where applicants submit the wrong form. Also, the change potentially saves time for the applicant and VOCA staff in discussions on the correct form to use. Since no additional information is required, this proposed change appears to produce a net benefit.

The board also proposes to require that a charitable or civic organization include in all solicitations the primary name under which it is registered. According to VOCA, occasionally a registered charitable or civic organization will solicit donations by using a name other than their primary name in order to mislead the public as toward their organization's purpose. The organization could register under multiple names in order to circumvent the intent of this proposed restriction, but that would be costly for the organization. This proposed change may provide some clarifying information for the public that may be useful for donation decisions without introducing significant new costs for charitable and civic organizations that do not intend to mislead the public. Thus, this change will likely produce a net benefit.

Pursuant to Section 57-57.C of the Code of Virginia, the board proposes to require new format requirements for preprinted return addresses for charitable and civic organizations, professional solicitors, and professional fund-raising counsel. Specifically, the preprinted address on any return envelope that is not addressed to the charitable or civic organization's own primary address shall include the name of the business located at the address on the return envelope in the following format:

ABC Charity
c/o XYZ Company
111 Main Street (#)
City, ST Zip Code

According to VOCA, it has been common for out-of-state organizations to use an address that implies that the direct recipient of the donation is physically located in the Commonwealth. The proposed addressing requirement is intended to make clear to potential donors that the organization that they are sending their donation to is not located at the mailing address. Again, this proposed change may provide some clarifying information for the public that may be useful for donation decisions without introducing significant new costs for charitable and civic

organizations, professional solicitors, and professional fund-raising counsel. Thus, this change will likely produce a net benefit.

Under the current regulations, professional solicitors are required to file a consent to solicit form signed by two officers of the charitable or civic organization with which they have a contract. Professional solicitors commonly subcontract their work; subcontractors are not required to file a consent to solicit form under the current regulations. According to VOCA, charitable and civic organizations are often not aware of who is using their name for solicitations beyond the professional solicitor with whom they have a contract, particularly when multiple levels of subcontractors are used. The board proposes to require that subcontracting professional solicitors file a consent to solicit form. This requirement will help insure that the charitable and civic organizations know who is soliciting using their name, and if there are complaints, the charitable and civic organizations and VOCA will be able to better determine whether the organization using their name is doing so properly. The form is two pages long and has no associated fee. The costs appear to be limited to the time involved in filing out the form and obtaining the signatures of the two officers of the charitable or civic organization, plus perhaps postage. The benefit of the information garnered by requiring the consent to solicit appears to be significant, while the cost of filing is not negligible, it does appear to be small. Thus, this proposed change most likely produces a net benefit.

One might expect the problem described above concerning subcontracting could be solved through the initial contracting process between the charitable or civic organization and the professional solicitor; the charitable or civic organization could require in their contract with their professional solicitor that they be notified in writing of subcontractors hired, require prior approval of any subcontractors, or perhaps prohibit subcontracting all together. But, according to VOCA, many charitable and civic organizations are run by part-time volunteers, and have new officers each year without substantial experience or knowledge of the potential problem with subcontractors.

Under the current and proposed regulations, subcontracting professional solicitors operating under a contract with a registered professional solicitor are treated as an agent of that professional solicitor and are not required to register. However, according to an opinion from the Office of the Attorney General, firms or individuals who become subcontractors to those

initial subcontractors are not agents of the professional solicitor directly hired by the charitable or civic organization.² Thus, the board proposes to require that subcontractors of the subcontractors register. An organization that registers as a professional solicitor must pay a \$500 annual fee and purchase a \$20,000 surety bond. Thus, an organization that is not already registered as a professional solicitor for direct work with a charitable or civic organization, but does work as a subcontractor to a subcontractor of a professional solicitor would have to newly pay the \$500 annual fee and purchase a \$20,000 surety bond. According to VOCA, the purpose of this proposed requirement is to ensure that if the subcontractor of the subcontractor commits fraud, say fails to pass on donation receipts, the charitable or civic organization and VOCA would have financial recourse through the surety bond. For a small subcontractor of a subcontractor, say a self-employed individual working part-time, the introduced cost of this proposed change may be prohibitively expensive; in other words he or she may decide to no longer work as a subcontractor of a subcontractor due to the introduced cost. The relative size and number of subcontractors of subcontractors are not known. Both the benefit for charitable and civic organizations of financial assurance through the surety bond and the cost to subcontractors of subcontractors of the annual fee and surety bond are significant. It is not clear, though, whether or not the benefits of financial assurance for the charitable and civic organizations exceed the costs of registering for subcontractors of subcontractors.

Similar to the situation concerning consent to solicit for subcontractors, one might expect that the potential problem described above could be solved through the initial contracting process between the charitable or civic organization and the professional solicitor; the charitable or civic organization could specify in their contract with their professional solicitor that the professional solicitor would accept subcontractors of their subcontractors also as their agents. But again, according to VOCA, many charitable and civic organizations are run by part-time volunteers, and have new officers each year without substantial experience or knowledge of the potential problem with subcontractors.

The board proposes to require that the professional solicitor state that he is a “paid solicitor” in oral solicitations. This requirement, if obeyed in practice, will help provide accurate information for the public with which to make their donation decisions. The requirement may

² Source: VOCA

add to the length of the solicitation by a small amount, particularly if it prompts questions by the potential donor, but that cost seems relatively small compared to the benefit of the clarifying information for the potential donor. Thus, this change will also likely produce a net benefit.

Pursuant to Section 57-55.2 of the Code of Virginia, the proposed regulations state that “each professional solicitor shall, in the course of a written solicitation, include the following statement ‘The professional solicitor conducting this campaign (primary name of professional solicitor), files a financial report for each campaign it conducts. Copies of these financial reports are available from the Virginia Office of Consumer Affairs, P.O. Box 1163, Richmond, VA 23218.’ This statement shall be in bold face typeface no smaller than 10-point with grammatically correct capitalization and lower case letters. The statement shall appear on the front side of the document on a portion that is retained by the potential donor.” The required inclusion of this language on written solicitations will be beneficial in that potential donors will be alerted to the existence of financial information concerning the professional solicitor that may affect the potential donor’s decision on whether to contribute, and where to obtain said information. It is likely that many potential donors would not be otherwise aware that this information is available. The requirement to include this language will produce some cost for professional solicitors in that it will occupy space on written solicitations that could have been used for other purposes. Whether the benefit to the public of being alerted to the availability of this information exceeds the cost to the professional solicitors depends on how valuable the information is to the public and how likely it is to be used. Since little or no data exist that estimate this value, it is not possible to draw any reliable conclusions about the net economic impact of the proposed requirement to include the proposed language on written solicitations. The proposed requirement could potentially be improved, though, by replacing or supplementing VOCA’s address with their toll free phone number. The public would be more likely to avail themselves of the information if they could quickly obtain it via phone rather than mail. Also, a phone number would take up less space on the written solicitation, which would be less costly to the professional solicitor.

Businesses and Entities Affected

Approximately 3,000 charitable organizations, professional solicitors, and professional fundraising councils that register annually, and the approximately 8,000 charitable organizations that are exempt from annual registration are affected by the proposed changes.

Localities Particularly Affected

The proposed changes affect localities throughout the Commonwealth.

Projected Impact on Employment

The proposed requirement for subcontractors of subcontractors to register may reduce the frequency that subcontracts of subcontracts are created. Thus, there will likely be fewer jobs through subcontracts of subcontracts of professional solicitors. However, it is not known whether this will have any net impact on employment in this industry.

Effects on the Use and Value of Private Property

The proposal to add new categories of organizations to the list of charitable and civic groups that are exempt from registering will increase the value of those organizations by a small amount. The value of being a subcontractor of a subcontractor will decrease due to the additional costs associated with registration.