

NEW NONPROFIT FILING REQUIREMENTS WITH NYS DEPARTMENT OF STATE

Hodgson Russ Tax-Exempt Organizations Alert
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As of January 1, 2021, new Subsection (9) of Section 172-b of the New York Executive Law (the “New Rule”) imposes additional reporting requirements for certain nonprofit organizations that solicit charitable contributions in New York State.

While certain organizations were already required to register and file Form CHAR500 Annual Financial Filings with the New York State Attorney General’s Charities Bureau (“Charities Bureau”), the New Rule effectively creates a dual filing requirement. Going forward, certain nonprofit organizations that solicit charitable contributions in New York must file Form CHAR500 with both the Charities Bureau and the New York State Department of State (“Department of State”).

Under the New Rule, an organization is subject to the new requirement to file its CHAR500 annual report with the Department of State if it:

1. Is registered with the Charities Bureau under Article 7-A of the New York Executive Law to solicit charitable contributions in New York State;
2. Annually files Form CHAR500 with the Charities Bureau; and
3. Has more than \$250,000 of total annual revenue and support.

Along with the Form CHAR500, a nonprofit organization must also submit copies of its Internal Revenue Service (“IRS”) Form 990 (and all required schedules) and applicable financial statements for the most recent tax year.

Organizations must file on or before the 15th day of the 5th month after the organization’s year-end, which is generally May 15 for calendar year entities. The filing must be completed online. After filing, organizations must remit the required \$25 filing fee via mail.

Of note, the Department of State clarified that any publicly-posted copies of an organization’s filings will not include the organization’s IRS Form 990 Schedule B (which contains donor information).

Additional information regarding these new filing requirements can be found [HERE](#).

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Tax-Exempt Organizations

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Changes Affecting Organizations Subject to New York Executive Laws 172-e and 172-f

The New Rule also imposes the new CHAR500 filing requirement on organizations subject to Executive Laws 172-e and 172-f. Under Executive Laws 172-e and 172-f, certain 501(c)(3) and 501(c)(4) organizations are required to annually file Funding Disclosure Reports and Financial Disclosure Reports, respectively.

501(c)(3) Funding Disclosure Report

Executive Law 172-e applies to 501(c)(3) charitable organizations that make an in-kind donation of \$10,000 or more to 501(c)(4) social welfare organizations that spend \$15,000 or more in a twelve-month period on lobbying New York State or county or local governments within the state and the lobbying expenditures constitute at least 3% of the 501(c)(4)'s total revenues. If required, the new 501(c)(3) Funding Disclosure Report must include the name and address of the 501(c)(3) and (c)(4) organizations, the name of at least one person who exerts managerial control over the 501(c)(3), the donation date, and a description of the donation, including any restrictions on use of the donation. The report must also be accompanied by a mission statement.

501(c)(4) Financial Disclosure Report

Executive Law 172-f applies to certain 501(c)(4) social welfare organizations that spend \$10,000 or more in a twelve-month period on "covered communications." A "covered communication" is conveyed to 500 or more members of the general public, and "refers to and advocates for or against a clearly identified elected official, executive or administrative body or legislative body relating to the sponsorship, support, opposition, or outcome of any proposed legislation, pending legislation, rule, regulation, hearing or decision, or advocates for or against action by any elected official, executive or administrative body or legislative body." If required, the new 501(c)(4) Financial Disclosure Report must disclose expenditures incurred for any covered communications during the reporting period and must include the names and addresses of any donors whose donation was received by the 501(c)(4) in whole or in part for the support of the covered communication. The report must also be accompanied by a mission statement.

These reports must be filed with the Department of State within thirty days of the close of each semiannual reporting period. More specifically, reports are due before July 31 (covering January 1 – June 30) and January 31 (covering July 1 – December 31). The filing must be completed online. After filing, organizations must remit the required \$25 filing fee via mail.

Additional information on organizations subject to Executive Laws 172-e and 172-f can be found [HERE](#) and [HERE](#).

As noted above, under the New Rule, nonprofit organizations that file Funding Disclosure Reports or Financial Disclosure Reports pursuant to Executive Laws 172-e and 172-f must also file with the Department of State the CHAR500 Annual Financial Filing required by Executive Law 172-b(9).

New Thresholds for Registering Organizations Filing Executive Law 172-b Financial Statements

Under Executive Law 172-b(1) and b(2), a registered organization is required to submit financial statements along with its Form CHAR500. Depending on the organization's total annual revenue and support, the type of financial statement required differs.

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Effective beginning July 1, 2021, the thresholds for filing these financial statements will change. Specifically, organizations with total annual revenue and support between \$250,000 and \$1 million (increased from \$750,000) will be required to file reviewed financial statements. Organizations with total annual revenue and support over \$1 million (increased from \$750,000) will be required to file audited financial statements. Organizations with revenue less than \$250,000 will still be required to provide unaudited financial statements to the Charities Bureau.

This new threshold is the last of a series of incremental increases in the thresholds triggering financial statement requirements thereunder, and is a result of an incremental scale imposed by the New York Non-profit Revitalization Act of 2013, the intent of which was actually to decrease burden on smaller nonprofits over time.

Implications, Generally

These additional reporting obligations imposed by the New Rule and Sections 172-e and 172-f of the Executive Law all impose additional compliance burdens on nonprofit entities, and indicate an increased interest by NYS to scrutinize certain activities (particularly political messaging activities) of, and to impose greater disclosure demands on, nonprofit charitable and social welfare organizations.

The professionals at Hodgson Russ LLP will continue to monitor these changes and publish updates as information becomes available. Please contact [Marla Waiss](mailto:Marla.Waiss@hodgsonruss.com) (716.848.1203) or [Patricia Sandison](mailto:Patricia.Sandison@hodgsonruss.com) (518.433.2427) with any questions you may have regarding how these changes may impact your organization.