

updated May 4, 2021

New NY Department of State Reporting Requirements Effective January 1, 2021

The Department of State is preparing to implement a new requirement that will require many charities that file a CHAR 500 with the NY Charities Bureau to also file those same documents with the NY Department of State. There are also new filing requirements for 501(c)(3) charities that make donations to certain 501(c)(4) organizations, and for certain 501(c)(4) organizations.¹

I. The Executive Law 172-b requirement to file all CHAR 500 documents not only with the Charities Bureau but also with the Department of State

a) Which organizations will have to comply with the new, redundant filing requirement?

The new obligation applies if the organization meets all of the following criteria:

- is registered with the New York Charities Bureau because it solicits charitable contributions in New York,
- files an annual CHAR 500 report with the Charities Bureau, and
- along with the CHAR 500 the organization submits an independent Certified Public Accountant's Audit Report or Review Report because total revenue and support in the most recently completed tax year was \$250,000 or more.

b) What are the new filing obligations for these organizations?

These organizations must file their annual financial reports twice: once with the Charities Bureau and again with the Department of State. The Department of State has proposed regulations that would require charities to also include portions of their IRS 1023 application for tax exempt status along with their filing. The proposed regulations are available at <https://dos.ny.gov/financial-reports-be-filed-certain-charitable-organizations>.

ADVOCACY OPPORTUNITY

Lawyers Alliance is working to persuade the state legislature to remove the completely redundant new requirement that charities must file the same documents once with the Charities Bureau and again with the Department of State. More information about that effort, and a sign-on link, are available at <https://p2a.co/d3yvkvj>

¹ Exec. Law 172-e, 172-f.

c) *Do we have to give the Department of State the names and addresses of major donors as shown on the 990 Schedule B?*

The Charities Bureau requires CHAR 500 filers to attach their full IRS 990 or 990-EZ. As a result, if a CHAR 500 filer submits the names and addresses of their major donors to the IRS on the 990 Schedule B, that organization will also have to submit that information to the Department of State.

d) *Has the Department of State issued regulations or guidance with more details?*

The Department of State proposed regulations, information about how to make the required filings online, and a set of FAQs are available at <https://dos.ny.gov/financial-reports-be-filed-certain-charitable-organizations>.

e) *When will we have to file?*

According to the Department of State's website, filings are due by the 15th day of the 5th month after the end of the fiscal year. This would mean, for instance, that organizations with a fiscal year that ended December 31, 2020 would be required to file by May 15, 2021. However, the underlying law gives the Charities Bureau the authority to extend the deadline, and the Charities Bureau has granted a one-year extension during the COVID emergency.² Organizations should speak with their legal counsel about which deadline applies to their Department of State filings.

f) *Does the new law apply to organizations that are incorporated and based in other states?*

Yes. The law applies to any charity that files a CHAR 500 with the Charities Bureau because it solicits charitable contributions in New York, regardless of where the charity is incorporated or where it is based.

In 2019, a federal court ruled that former versions of Executive Law 172-e and 172-f violate the First Amendment. The court issued a permanent injunction against their enforcement. It is possible that this injunction will prohibit the state from enforcing the new versions of these laws, too.

II. The Executive Law 172-e Filing Obligation for 501(c)(3) Organizations That Make In-Kind Contributions to Certain 501(c)(4) Organizations

a) *Which 501(c)(3) organizations may have to make an additional Department of State filing?*

The new law imposes an additional filing requirement on certain 501(c)(3) organizations that make an in-kind donation worth \$10,000 or more to certain 501(c)(4) organizations. The in-kind donations will trigger this disclosure requirement only if: the recipient is a 501(c)(4) organization that spends \$15,000 or more in a 12-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.

b) *What will those 501(c)(3) organizations need to file?*

² Exec. Law 172-b(5).

Covered 501(c)(3) organizations will file a report disclosing the identity of the recipient 501(c)(4), the people who exert managerial control over the 501(c)(3), the date and amount of contributions to the 501(c)(4), and any restrictions that the 501(c)(3) has placed on the contributions. In addition, the 501(c)(3) organization must file an IRS 990 Schedule B with the Department of State even if it does not file one with the Charities Bureau.

III. The Executive Law 172-f Filing Obligation for 501(c)(4) organizations

a) Which 501(c)(4) organizations may have to make an additional Department of State filing?

A 501(c)(4) organization must file a report with the Department of State if it spends more than \$10,000 in a calendar year on one or more written communications, conveyed to 500 or more people, that:

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.³

There are exceptions for lobbying communications covered by New York State lobbying or elections laws; communications with professional journalists, or with certain of the 501(c)(4)'s members or donors; and communications in connection with certain candidate forums.

b) What do those 501(c)(4) organizations have to file?

Those 501(c)(4)'s will have to report the names of everyone exerting operational control over the organization, a description of the covered communications, the amount of money paid for the communication and who received the payment, and the identity of people or entities contributing funding to support the covered communication.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Senior Policy Counsel Laura Abel at label@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.

³ Exec. Law 172-f.