

New York Imposes New Filing Requirements on Nonprofits

May 14, 2021

Effective January 1, 2021, New York requires 501(c)(3) and 501(c)(4) organizations to file certain additional disclosures with the New York Department of State. These new requirements are largely duplicative of filings already required to be submitted by nonprofits to the New York Charities Bureau, but nevertheless signal heightened scrutiny of nonprofit political activity by New York regulators.

These new requirements also mandate the disclosure of certain donors to the Department of State, and are set to take effect as the Supreme Court of the United States weighs the ability of state governments to request such donor information in [Americans for Prosperity Foundation v. Bonta](#).

Who has to file?

The new filing requirements apply to:

- 501(c)(3) and 501(c)(4) organizations that are required to file annual disclosures with the New York Charities Bureau; and
- 501(c)(4) organizations that fund or disseminate communications related to New York government officials or governmental actions

What has to be filed and by when?

New York law now mandates the submission of the following filings with the Department of State:

- **Annual Financial Disclosure Report (501(c)(3)s and 501(c)(4)s).** If a 501(c)(3) or 501(c)(4) organization is required to file an Annual Financial Disclosure Report (CHAR 500) with the New York Charities Bureau under subdivision 1 or 2 of New York Executive Law § 172-B, or is required to file the new Funding Disclosure Report or Financial Disclosure Report described below, then now it must also file an Annual Financial Disclosure Report, including all required forms and attachments, with the Department of State. This filing is due by the fifteenth day of the fifth month following the close of the organization's fiscal year, but an extension is available for up to 180 days. For organizations whose fiscal year mirrors the calendar year, this deadline will fall on May 15th unless extended. According to the Department of State, the 180 day extension is automatically granted as with the CHAR 500 filed with the Charities Bureau.
- **Funding Disclosure Report (501(c)(3)s).** If a 501(c)(3) organization that is required to file reports with the New York Charities Bureau – such as the CHAR 500 – makes in-kind donations of “staff, staff time, personnel or any other human resources, offices or office supplies” totaling more than \$10,000 during a six-month reporting period (1/1-6/30 and 7/1-12/31) to a 501(c)(4) organization that is in turn required to file a [Source of Funding](#) report with the New York Joint Commission on Public Ethics

("JCOPE"), the 501(c)(3) must file a Funding Disclosure Report with the Department of State. The Funding Disclosure Report is due no later than July 30th and January 30th, covering the preceding six-month period.

Generally speaking, a 501(c)(4) is required to file a Source of Funding report with JCOPE on a semi-annual basis if its New York state and local lobbying expenditures exceed \$15,000 and comprise at least 3% of the organization's total expenditures during either the calendar year or during the 12-month period preceding the close of the six-month reporting period. Among other requirements, the Source of Funding report is required to disclose the receipt of in-kind contributions totaling more than \$2,500 during the reporting period received from any 501(c)(3) organization, and the 501(c)(4) is also required to provide any 501(c)(3) that will be disclosed on the filing with notice of its potential obligation to in turn file a Funding Disclosure Report. 501(c)(3) organizations should not, however, rely on 501(c)(4) organizations to provide this notice as many 501(c)(4) organizations are unaware of this requirement.

If required, this new Funding Disclosure Report must include information regarding in-kind donations to 501(c)(4) organizations that were made during the six-month reporting period, including the specific 501(c)(3) charitable purpose advanced by each such donation. The Funding Disclosure Report must also be accompanied by a Mission Statement (described below). Funding Disclosure Reports will not automatically be made public by the Department of State, but may be published if the Department believes that the activities are inconsistent with the 501(c)(3) organization's charitable purposes. The Department can choose to withhold all or a portion of the in-kind donations from the publicly-released version of the Report if the filer asserts and the Department agrees that such disclosure may result in harm, threats, harassment, or reprisals.

- **Financial Disclosure Report (501(c)(4)s).** If a 501(c)(4) organization spends more than \$10,000 in total (or in fair market value) in a calendar year on "covered communications," including by making one or more direct or in-kind donations to another organization for the purpose of supporting or engaging in covered communications, it must file a Financial Disclosure Report with the Department of State. The Financial Disclosure Report is due no later than July 30th and January 30th, covering the preceding six-month period.

Subject to certain exceptions, "covered communications" include communications to the general public that refer to and advocate for or against an elected official or governmental body regarding any proposed or pending legislation, rule, regulation, hearing, decision, or governmental action. Importantly, "covered communications" do not include communications that are otherwise reported by a 501(c)(4) under the New York's broad lobbying and/or campaign finance laws, so many 501(c)(4) organizations that are registered and file comprehensive lobbying disclosures with JCOPE will not have to submit this additional filing.

If a Funding Disclosure Report is required, however, the 501(c)(4) organization must disclose "a detailed description" of each covered communication as well as the name, address, donation date, and donation amount of any donor whose "restricted donation" was received by the 501(c)(4) "in whole or in part

for the support of the covered communication.” The Financial Disclosure Report also must be accompanied by a Mission Statement (described below).

Financial Disclosure Reports will not automatically be made public by the Department of State in their entirety, although the law provides that information regarding covered communications “shall” be published on the Department of State’s website, suggesting that at least the portion of the report describing covered communications may automatically be published. Additionally, it appears that if the Department believes that the activity disclosed in a Financial Disclosure Report inconsistent with the filer’s charitable purposes then the report – including the names and addresses of non-individual donors (such as corporations, nonprofits, and associations) could be subject to public disclosure unless the filer asserts and the Department agrees that such disclosure may result in harm, threats, harassment, or reprisals.

- **Mission Statement.** Organizations that are required to file any of the above reports with the Department of State must also provide the Department with a statement of the organization’s mission that is consistent with the information that was provided or that would be provided to the IRS in any application for recognition of tax exemption. This mission statement must also include all charitable categories identified in such an application and any narrative description and supporting details of the organization’s activities provided with its application.
- **Complete IRS Form 990 Schedule B.** If a 501(c)(3) organization is required to file the new Funding Disclosure Report then it must also file a “complete” IRS Form 990 Schedule B, including the names and addresses of donors, with the Department of State regardless of whether Schedule B is required to be filed with the IRS. Similarly, if a 501(c)(4) organization receives in-kind donations from a 501(c)(3) that is required to file the new 501(c)(3) Funding Disclosure Report or if the 501(c)(4) is itself required to file the new Financial Disclosure Report then it must also file a “complete” Schedule B with the Department of State, again regardless of whether the Schedule B is required to be filed with the IRS. Form 990 Schedule Bs do not appear to be subject to public disclosure even if the filer’s activity is deemed to be inconsistent with its charitable purposes.

How do you file?

Reports must be filed online through the Department of State’s Charitable Organization Financial Reporting System. Filers may need to first create a NY.Gov account at <https://my.ny.gov/>. An organization that already has a NY.Gov ID [can file here](#). The fee for filing each report is \$25, which must be paid by check as credit card payments are not currently accepted (see page 2 of [the FAQ](#)).

How can you find out more?

The Department of State has posted limited information about these new filing requirements [here](#).

Please contact a member of [Caplin & Drysdale's Political Law Group](#) or [Exempt Organizations Group](#) if you

have questions concerning this alert or for more information.

[Meghan R. Biss](mailto:mbiss@capdale.com)
mbiss@capdale.com
202.862.7866

[William D. Fournier](mailto:wfourrier@capdale.com)
wfourrier@capdale.com
202.862.5079

[Bryson B. Morgan](mailto:bmorgan@capdale.com)
bmorgan@capdale.com
202.862.7836

[Sharon P. Want](mailto:swant@capdale.com)
swant@capdale.com
202.862.7849

[Olivia N. Marshall](mailto:omarshall@capdale.com)
omarshall@capdale.com
202.862.5076



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For more information, please visit us at www.caplindrysdale.com.

Washington, DC Office:
One Thomas Circle NW
Suite 1100
Washington, DC 20005
202.862.5000

New York, NY Office:
600 Lexington Avenue
21st Floor
New York, NY 10022
212.379.6000

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