

# EXEMPT ORGANIZATIONS

## INFORMATION MEMO

NOVEMBER 19, 2021

## New York Not-for-Profit Corporation Legislative Update

The nonprofit sector received welcome news last week as Governor Hochul signed two pieces of important legislation: (i) [S4817a/A1141a](#) which repeals recently-enacted and redundant state filing requirements, which could have led to public disclosure of sensitive donor information; and (ii) [A10237](#) which makes permanent certain emergency changes allowing more efficient and accessible member meetings through electronic attendance and participation.

### Department of State Filings

[S4817a/A1141a](#) repeals the requirement for certain nonprofits to file their annual CHAR 500 reports and annual Internal Revenue Service Form 990 information returns (along with the required schedules, including Schedule B - Schedule of Contributors) with both the Charities Bureau of the Office of the Attorney General and the Department of State. The now-repealed requirements were set to take effect after the Supreme Court of the United States constricted the ability of state governments to request such donor information in its July 2021 decision of *Americans for Prosperity Foundation v. Bonta*.

Notwithstanding the repeal, certain nonprofit corporations currently required to register with the Charities Bureau continue to be subject to additional filing requirements with the Department of State:

- **Funding Disclosure Reports under Executive Law Section 172-e.** Charitable organizations classified as Internal Revenue Code (IRC) Section 501(c)(3) tax-exempt organizations which make in-kind donations of more than \$10,000 to IRC Section 504(c)(4) tax-exempt social welfare organizations which engage in certain lobbying activities will need to file funding disclosure reports with the Department of State. “In-kind” donations include donations of staff, staff time, personnel or any other human resources, offices or office supplies, and generally exclude any in-kind donations which are substantially related to accomplishing the organization’s tax-exempt purposes. The funding disclosure report should be filed with the Department of State within 30 days of the close of a reporting period (January 1 – June 30 or July 1 – December 31). There is a \$25 filing fee for this report.
- **Financial Disclosure Reports under Executive Law Section 172-f.** Charitable organizations classified as IRC Section 501(c)(4) tax-exempt social welfare organizations which make expenditures on “covered communications” involving issue-based advocacy spending exceeding \$10,000 in a calendar year will be required to file a financial disclosure report with the Department of State. The financial disclosure report should be filed with the Department of State within 30 days of the close of a reporting period (January 1 – June 30 or July 1 – December 31). There is a \$25 filing fee for this report.

## **Member Meetings Conducted Electronically**

Section 603 of the New York Not-for-Profit Corporation Law was recently amended to allow members to participate in in-person meetings by electronic means, and to allow meetings of members to be held entirely by means of electronic communication (unless otherwise restricted by the certificate of incorporation or bylaws). Previously, these meetings were authorized only during the state disaster emergency due to COVID-19. To allow members to take advantage of these new provisions, boards must (1) verify that each person participating electronically is a member (or a proxy of a member); (2) provide each member participating electronically with a reasonable opportunity to participate in the meeting (including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read or hear the proceedings of the meeting substantially concurrently with those proceedings); and (3) record and maintain a record of any votes or other actions taken by electronic communication at the meeting.

If you have any questions or concerns related to issues involving 501(c)(3) tax-exempt organizations, please contact [Thomas W. Simcoe](#), [Delaney M. R. Knapp](#) or the attorney at the firm with whom you are regularly in contact.

