

March 17, 2022

**Update on What to File with the New York CHAR 500,
Including When New Audit Thresholds Take Effect**

*****Organizations with revenue between \$750,000 and \$1 million have 3 months to seek a one-time waiver of audit requirement*****

On March 16, 2022, the New York Charities Bureau adopted final regulations regarding annual CHAR 500 filings by charities registered with the Bureau.¹ The regulations provide public charities with two options for reporting some of the information contained on the IRS Schedule B. They also clarify that the new \$1 million audit threshold applies to annual reports for a fiscal year that started on or after July 1, 2021, but provide a waiver option for groups that had not budgeted for an audit for the 2020 tax year.

Schedule B's and Other Donor Information

What has changed?

Many organizations that are registered with the Charities Bureau because they solicit or administer charitable funds in New York must file an annual financial report, using the CHAR500 form. Until July 2021, the Charities Bureau had required organizations filing an annual report to include an IRS 990 or 990-EZ and all applicable schedules, including the Schedule B list of major donors. In July 2021, the Charities Bureau suspended the requirement that public charities must file a Schedule B, while leaving the requirement in place for private foundations. The underlying requirement to file a CHAR 500 and to include an IRS 990 or 990-EZ including all applicable schedules other than the Schedule B remained in place for all filers.

The new regulations partially reinstate the Schedule B filing requirement for public charities, as described below.

What must public charities filing with the Charities Bureau do now?

A public charity required to file a CHAR 500 can either:

1) submit their Schedule B, taking care to redact donor names and street addresses but leaving in the amount of each donation and the state from which it was made, or

¹ N.Y. State Register, March 16, 2022, p. 19, available at <https://dos.ny.gov/system/files/documents/2022/03/031622.pdf>

2) instead of a redacted Schedule B, submit a statement of the gross amount of contributions received during the reporting period from individuals and entities residing or domiciled in the state of New York.²

How are the requirements different for private foundations?

A private foundation required to file a CHAR 500 must still file with the Charities Bureau the complete, unredacted Schedule B to the 990-PF.³

Effective Date of the \$1 Million Audit Threshold

Background on the Audit Threshold

Nonprofit organizations required to file an annual financial report with the Charities Bureau must submit one of three types: organizations with relatively small annual revenues file an unaudited financial report, larger ones file a review report prepared by an independent CPA,⁴ and the largest must submit an audit report prepared by an independent CPA.⁵ The New York Nonprofit Revitalization Act of 2013 (the “Act”) increased the thresholds that trigger a duty to file a review report or an audit report.⁶ For instance, when the Act was passed in 2013, the gross annual revenue and support⁷ that triggered the obligation to file an audit report was \$500,000. This amount increased to \$750,000 on July 1, 2017, and to \$1 million on July 1, 2021.⁸

In 2018, the Charities Bureau issued guidance stating that the new, \$1 million threshold would apply to an annual report “with an original or extended due date on or after July 1, 2021,” while the old \$750,000 threshold would apply to annual reports “with an original or extended due date between July 1, 2017

² 13 NYCRR sections 91.5(c)(1), (c)(3)(i)(b).

³ 13 NYCRR section 91.5(c)(3)(i)(a).

⁴ Nonprofit Revitalization Act §§ 3, 132, amending Exec. Law § 172-b

⁵ A review provides limited assurance on an organization’s financial statements. During a review, inquiries and analytical procedures present a reasonable basis for expressing limited assurance that no material modifications to the financial statements are necessary; they are in conformity with generally accepted accounting principles. See <https://www.nonprofitaccountingbasics.org/audit/audit-vs-review-vs-compilation>. While this review report meets the minimum requirement, many nonprofits nonetheless decide to obtain a full audit report as a best practice.

⁶ An audit provides the highest level of assurance on an organization’s financial statements. An audit provides assurance that an organization’s financial statements are free of material misstatement and are fairly presented based upon the application of generally accepted accounting principles. It includes confirmation with outside parties, testing selected transactions by examining supporting documents, completing physical inspections and observations, and considering and evaluating the internal control system of the organization. See <https://www.nonprofitaccountingbasics.org/audit/audit-vs-review-vs-compilation>

⁷ Gross revenue and support for purposes of determining if an audit is necessary consists of all revenue of the organization including revenue raised through fundraising. According to guidance issued by the New York Attorney General on April 15, 2014, all income received by the organization from any source, including contributions, grants, fees and other types of revenue, is included. See: https://lawyersalliance.org/userFiles/uploads/legal_alerts/Nonprofit_Revitalization_Act_FAQs.pdf at p. 7.

⁸ Nonprofit Revitalization Act §§ 3, 3-a, 3-b, 132, amending Exec. Law § 172-b. See also: <https://www.charitiesnys.com/pdfs/AuditCommittees.pdf> at p. 8.

and June 30, 2021.”⁹ However, as explained below, the new regulations postpone the effective date, making it applicable only to a report for a fiscal year beginning on or after July 1, 2021.¹⁰

What is the effect of the new regulations?

Do not use the due date of the annual CHAR 500 to determine which type of financial report to include. Instead, filers must use the start and end dates of the organization’s fiscal year to determine which types of financial report your organization must file, as follows:

Report for fiscal year that began on or after July 1, 2017, but before July 1, 2021	
<i>Gross Annual Revenue and Support</i>	<i>Must File</i>
\$250,000 or less	Unaudited financial report
More than \$250,000 but less than \$750,000 million	Independent CPA review report
More than \$750,000	Independent CPA audit

Report for fiscal year that began on or after July 1, 2021	
<i>Gross Annual Revenue and Support</i>	<i>Must File</i>
\$250,000 or less	Unaudited financial report
More than \$250,000 but less than \$1 million	Independent CPA review report
More than \$1 million	Independent CPA audit

What if my organization’s annual revenue is between \$750,000 and \$1 million, so we did not plan to do an audit this year?

An organization can seek a one-time waiver of the audit requirement for a 2020 annual filing under certain circumstances:

- Waiver requests must be filed by June 16, 2022.
- The waiver request must “describe, in detail, the circumstances under which, in reliance on the 2018 guidance issued by the Charities Bureau, a registrant budgeted and/or paid for a review report rather than an audit.”¹¹ The 2018 guidance had stated that the new, \$1 million threshold

⁹ See Charities Bureau, AUDIT COMMITTEE REQUIREMENTS AND RESPONSIBILITIES UNDER NEW YORK’S NOT-FOR-PROFIT CORPORATION LAW AS AMENDED THROUGH 2017 (Sep. 2018), available at <https://www.charitiesnys.com/pdfs/AuditCommittees.pdf>

¹⁰ Proposed amendment to 13 NYCRR sec. 91.5(c)(3)(ii).

¹¹ N.Y. State Register, March 16, 2022, pp. 19-20.

would apply to an annual report “with an original or extended due date on or after July 1, 2021.”¹²

- The waiver request should also confirm that the registrant understands that future annual reports must include an audit for any filing period during which the registrant’s revenue exceeds \$1 million.¹³
- The 2020 CHAR500 filing must be accompanied by a CPA’s review report.

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.

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¹² See Charities Bureau, AUDIT COMMITTEE REQUIREMENTS AND RESPONSIBILITIES UNDER NEW YORK’S NOT-FOR-PROFIT CORPORATION LAW AS AMENDED THROUGH 2017 (Sep. 2018), available at <https://www.charitiesnys.com/pdfs/AuditCommittees.pdf>

¹³ N.Y. State Register, March 16, 2022, pp. 19-20.