



OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

CHARITIES BUREAU

Issue date: April 2020

Guidance for Charitable Nonprofit Organizations Facing the Challenges of the COVID-19 Pandemic

This guidance has been drafted to assist charitable nonprofit organizations that are faced with the unprecedented challenges to and changes in their operations during the COVID-19 Pandemic. The nonprofit sector provides critical services to New Yorkers and, even in the best of times, its dedicated employees and volunteers work countless hours to ensure that they are there for the people they serve. Today, those same people are faced with extraordinary challenges and hurdles to maintain operations and meet increased demands. The Charities Bureau is issuing this Guidance to help organizations comply with New York law while responding to this crisis.

Charitable nonprofit organizations in New York will face significant financial and operational issues during the COVID-19 pandemic. These issues include continuing or expanding services while managing reductions in gifts, grants, fundraising and support. The Charities Bureau's approach to regulation during this period will be focused on providing useful information and guidance, while assuring appropriate protection for charitable missions and beneficiaries. Given the importance of the charitable sector in New York, not only for the provision of social, health, cultural, and community services, but also as a major employer, the Charities Bureau needs nonprofits' assistance in keeping policymakers informed about the sector's needs.

The leadership of charities, both executives and board members, has a special fiduciary responsibility to their organizations and their organizations' charitable mission and beneficiaries during times of crisis. This responsibility falls not only on paid employees and managers, but also on the volunteer board leadership charged with governance and policy-making decisions. As we saw in prior crises, we know that

charities and their leadership will rise to these challenges. However, it is important that charities and their boards move promptly to evaluate their commitments, their financial resources, and their financial challenges as they continue to address the needs of the communities they serve. The Charities Bureau's website, www.charitiesnys.com, continues to provide extensive guides, webinars and the records of its registry.

HOW THE CHARITIES BUREAU CAN HELP

The entire staff of the Charities Bureau is working remotely and will be available to assist the nonprofit community. Because of the volume of inquiries, and the need to have a central record of inquiries and responses while we are working remotely, we request that you contact us by email until further notice.

- Questions concerning registration and filing by charities should be sent to our **Customer Assistance Unit** by sending an email message to charities.bureau@ag.ny.gov – when necessary messages will be referred to an “Assistant Attorney General of the Day” for response.
- New registrations and amended registrations of charities are accepted exclusively online via our registration portal - <https://www.charitiesnys.com/checklist.html>.
- Questions about registration of and financial filing by fundraising professionals should be sent by email to charities.fundraising@ag.ny.gov
- If your organization is seeking approval of a transaction, such as the sale of property, a merger, dissolution, or amendment of a certificate of incorporation, applications and questions should be sent by email, with any documents attached as PDFs, to charities.transactions@ag.ny.gov
- Please send complaints about charities to charities.complaints@ag.ny.gov

REGISTRATION WITH THE ATTORNEY GENERAL'S CHARITIES BUREAU

Getting Registered

During the COVID-19 pandemic, many New Yorkers, and people in all parts of the United States, are faced with challenges and hardships never before experienced. Generous people have begun seeking ways to help their fellow citizens, often by forming charitable organizations or raising funds for charity. The Charities Bureau encourages such generosity and is available to ensure that such charitable initiatives are in compliance with New York law.

Charitable organizations conducting activities or soliciting donations in New York are required by New York law to register with the Charities Bureau. Our electronic registration process – launched in 2018 – streamlined and expedited the registration process, making it fast and simple. Our registration portal, posted at www.charitiesnys.com, contains step-by-step guidance for new registrants and is reviewed daily by our staff who are working at home.

Our Customer Service staff are available at charities.bureau@ag.ny.gov to answer questions about registration and other issues of concern to charities. Our guidance for nonprofits – also posted at www.charitiesnys.com – provides additional information for those engaged in charitable activities. Whether you are already helping during this unprecedented time, or plan to do so, please make sure your organization registers with the Charities Bureau.

Filing Annual Financial Reports

Registered organizations are also required to file annual financial reports with the Charities Bureau. Registration information and documents, and annual financial reports that have been processed are posted to our online registry at www.charitiesnys.com.

We do not yet know whether or how state and city agencies, in response to the COVID-19 pandemic, plan to modify their usual procedures for verifying that charities are in compliance with registration requirements. We will be able (consistent with the extension policy set forth below) to verify that any charity within the extension period is in compliance, if the filings that were due prior to the current fiscal year are complete. We will work with nonprofits to address these issues as they arise.

ADDITIONAL EXTENSION OF TIME TO FILE ANNUAL FINANCIAL REPORTS INCLUDING FORM CHAR 500, IRS FORM 990, AND, WHERE REQUIRED, AUDITED FINANCIAL STATEMENTS

The Charities Bureau currently grants to all registered charities an **automatic six-month extension** of the deadline for filing an annual financial report. Therefore, for example, organizations whose year-end was June 30, 2019 are required to file their annual financial reports by May 15, 2020. **However**, any organization whose filing deadline, including the automatic six-month extension, falls after February 15, 2020 will be given an **additional six-month extension** to file its annual financial reports.

Instructions for Registration, Forms and Instructions for Annual Financial Filing and Guides and Publications for Nonprofits are Posed by the Charities Bureau at www.charitiesnys.com

INTERNAL REVENUE SERVICE EXTENDED IRS FORM 990 FILING DATE

The IRS has extended until July 15, 2020, the time to file any IRS Form 990 due on or after April 1, 2020, and before July 15, 2020, is now automatically postponed to July 15, 2020,

<https://www.bdo.com/insights/tax/federal-tax/irs-expands-covid-19-postponement-relief-under-not>

RESERVES, RESTRICTED ASSETS, AND USE OF ENDOWMENT FUNDS

Some charities are in the fortunate position of having reserves, restricted assets, or endowment funds to support their missions.

We encourage boards to evaluate their priorities and commitments in light of changed circumstances and determine whether any of these charitable assets or gifts should be modified to permit continuance of the charitable mission.

Three specific kinds of assets are subject to legal restrictions on expenditures. Expenditures from these assets are subject to significant legal requirements and should not be considered as a first resort for financial shortfalls. However, where the donor consents, or the continuance of the charitable mission is a risk, these funds may be available with appropriate approvals.

First, **restricted assets** (assets designated by donors for special purposes, or assets received from a specific fundraising campaign for a specific purpose) must be used for the designated purpose unless the donor consents to a release of the funds for other purposes. If the donor is deceased, or declines to consent to the change, the New York Supreme Court can, under certain circumstances, allow an alternate use of those funds under the doctrine of *cy pres*. To meet the *cy pres* standard, the charity must show that it has become impossible or impracticable to continue to comply with the donor's restrictions. For example, if the funds were donated to support a particular program of the charity and the charity no longer offers that program, the charity might assert that it has become impossible or impracticable to comply with the restriction. The charity must also show that the donor had a "general charitable intent"; this requirement is usually satisfied when the gift makes no alternate "gift-over" provision when the original purpose can no longer be served. The related doctrine of equitable deviation allows the court to change or remove an administrative restriction, such as a restriction on how the charitable funds may be invested, if the restriction impedes the main charitable purpose of the gift. Courts in New York are generally very protective of donor intent; you should consult counsel with expertise in this area for advice on whether you can meet this "impossibility or impracticability" standard. The Charities Bureau's Trusts and Estates Section can give you general information about the requirements and advise your attorney whether the Bureau is likely to take a favorable or adverse position on the application.

Second, the New York Prudent Management of Institutional Funds Act (“NYPMIFA”) (Article 5-A of the Not-for-Profit Corporation Law) provides mandatory standards for the management, investment, and use of institutional funds, including **endowment funds**, funds with donor-imposed restrictions on expenditure. NYPMIFA allows expenditures, or “appropriations,” from an endowment based upon consideration of a number of factors, including “general economic conditions.” Appropriations from endowments require (1) careful analysis by the Board and counsel; and (2) a written record at or close to the time of making appropriation decisions. NYPMIFA also imposes a rebuttable presumption of imprudence under certain circumstances. NYPMIFA also permits charities to release or modify donor restrictions on “small, old” funds – funds that were established more than 20 years ago and have a current value less than \$100,000 – after giving 90 days’ written notice to the Attorney General. The notice must explain how the original restriction has become impossible or impracticable to achieve and set forth the proposed new use of the fund. Multiple “small, old” funds may be addressed in a single notice. The Charities Bureau Trusts and Estates Section can give you general information about the requirements. Also, the Charities Bureau has issued a guidance document “A Practical Guide to the New York Prudent Management of Institutional Funds Act” which is available at www.charitiesnys.com

Third, the charity may consider a **sale or other disposition of all or substantially all of the organization’s assets** by petition pursuant to Sections 510/511 of the Not-For-Profit Corporation Law. The charity must be able to show: (1) the price is fair, (2) the terms are reasonable, (3) how it intends to use the proceeds of the sale, and (4) that the sale will promote the organization’s mission. The petition may be submitted administratively to the Attorney General or to the Supreme Court, on notice to the Attorney General. The Office of the Attorney General will use its discretion to determine if it is more appropriate for a Petition to receive administrative or Court approval. The Charities Bureau has issued two guidance documents on these sales: [“A Guide to Sales and Other Dispositions of Assets by Not-For-Profit Corporations”](#) and [“Religious Corporations: Sales and Other Dispositions of Assets”](#) - both found at www.charitiesnys.com. Courts in New York are generally very protective of these requirements; you should consult counsel with expertise in this area. The Charities Bureau Transactions Section can give you general information about the requirements.

The Charities Bureau has become aware of proposals from governments and third parties to use restricted assets or endowment funds as partial collateral for short term debt obligations, such as bonds, for organizations, such as museums, performing arts groups, and theatres, which have been prevented from operating and receiving most revenue because of “stay at home” or “shelter in place” restrictions imposed by governments pursuant to their public health law authorities. Given the magnitude of the present crisis, and the impact on the community of the loss of these organizations, we are prepared to discuss how these actions could be conducted consistent with governing law.

FILING A COMPLAINT WITH THE CHARITIES BUREAU

Unfortunately, as in other disasters, both natural and man-made, we will likely see some people who will take advantage of the pandemic for their personal gain. There may be “pop-up” new “charities” fraudulently seeking support for healthcare workers or families of victims of the pandemic or people claiming to raise funds for charity but keeping those funds for themselves. Such scams divert funds from legitimate organizations and honest individuals who are dedicating their time and resources to help all of us. The Charities Bureau urges anyone aware of such illegal activity to **submit a complaint to charities.complaint@ag.ny.gov**

We also recommend that anyone considering donating in response to an appeal for contributions review the Charities Bureau’s tips on charitable giving posted at <https://www.charitiesnys.com/tips-charitable-donors.html>.

RESOURCES FOR CHARITIES

Listed below are links to government agencies and nonprofit organizations that represent a small number of the agencies and organizations available to assist nonprofits. As does this guidance, many of them provide links to other agencies and organizations working to assist nonprofits. The list below is not exhaustive – countless other resources are currently available and new ones are coming forward daily. We urge nonprofits to seek out the resources that may best assist them.

AGENCIES AND ORGANIZATION PROVIDING GUIDANCE TO NONPROFITS

NOTE: The websites below is not an exhaustive list of all sites providing guidance during the COVID-19 pandemic. Also, they are up-dated regularly and should be consulted frequently.

GOVERNMENT AGENCIES

New York Attorney General - *Guidance on Coronavirus Resources and Warnings about Consumer Scams* - <https://ag.ny.gov/coronavirus>

New York State Department of Labor - *Paid Sick Leave for COVID-19 Impacted New Yorkers* - <https://www.governor.ny.gov/programs/paid-sick-leave-covid-19-impacted-new-yorkers>, <https://www.labor.ny.gov/home/>

New York State Department of Economic Development *Guidance on - Executive Order 202.6 - Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders* - <https://esd.ny.gov/guidance-executive-order-2026>

FAQs - https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_032220.pdf

New York State Department of Health - *Interim Guidance on Executive Orders Issued for Gatherings, Public Spaces, and Public and Private Sector Entities During the COVID-19 Outbreak* - https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_eoguidancegatheringspacesbusiness_031920.pdf

New York City – *Mayor’s Office of Contract Services – Letter to Human Services Providers* - <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-nonprofit-providers-human-service.pdf>. For program-specific guidance and aligning to existing program-questions about specific emergency plans nonprofits should contact their contracting agency directly or through c-19.hhsteam@mocs.nyc.gov.

Internal Revenue Service - *Treasury, IRS and Labor announce plan to implement Coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing Coronavirus-related leave* <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

Centers for Disease Control and Prevention

- *Ready for Coronavirus Disease 2019* <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>
- *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)* <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

Federal Government - *Government Response to Coronavirus, COVID-19* - <https://www.usa.gov/coronavirus>

RESOURCES/UMBRELLA ORGANIZATIONS

Human Services Council - COVID-19 Resources for Human Services Providers (information about City contracting and funding for nonprofits and private grantor assistance and policies)

<https://humanservicescouncil.org/><https://humanservicescouncil.org/>

Lawyers Alliance for New York - Coronavirus Information

<https://lawyersalliance.org/coronavirus-information>

National Council of Nonprofits - Nonprofits and Coronavirus, COVID-19 (current information about new federal legislation and proposals to assist nonprofits)

<https://www.councilofnonprofits.org/nonprofits-and-coronavirus-covid-19>

Nonprofit New York - COVID-19 Updates- <https://www.nonprofitnewyork.org/covid-19-updates/> (includes review of city, state and federal developments and includes sources of funding for nonprofits)

Philanthropy New York - COVID-19 - <https://philanthropynewyork.org/resources/covid-19-updates-resources>

New York Council on NonProfits - *COVID-19 Resources for Nonprofits* -

<https://www.nycon.org/resources/covid-19-resources-for-nonprofits>

New York State Health Foundation - *COVID-19 Resources for Nonprofits and Community-Based Organizations - National, State and Local Resources*

https://nyshealthfoundation.org/resource/covid-19-resources-for-grantees/?utm_source=COVID-19+Resource+March+2020&utm_campaign=COVID-19+Resource+Page+March+2020&utm_medium=email#

The New York Community Trust – The NYC COVID-19 Response & Impact Fund -

<https://www.nycommunitytrust.org/covid19/> “*The NYC COVID-19 Response & Impact Fund was created to aid nonprofit service providers struggling with the health and economic*

effects of the coronavirus. It will give grants and loans to NYC-based nonprofits that are trying to meet the new and urgent needs that are hitting the city.”

Urban Institute, Inc. - *COVID-19: Policies to Protect People and Communities*
<https://www.urban.org/covid19>

United States Chamber of Commerce Foundation - *Coronavirus Response & Resources* -
<https://www.uschamberfoundation.org/reports/coronavirus-response-resources>

The Community Foundation for the Greater Capital Region - *COVID-19 Resource Hub* -
<https://www.cfgr.org/covid-19-resource-hub/>

Rochester Area Community Foundation – RACF has posted a resources page with links to sources of assistance for nonprofits and others - <https://www.racf.org/about/covid-19-resource-page/>

SOURCES OF FINANCIAL ASSISTANCE

New York City Small Business Services - *Financial Assistance for Businesses Impacted by COVID* (applies to small businesses and nonprofits with fewer than five employees) <https://www1.nyc.gov/site/sbs/businesses/covid19-business-outreach.page>

New York State Department of Labor – *Relief for Workers Affected by coronavirus act – what you need to know and do about the federal cares act* -
<https://labor.ny.gov/ui/pdfs/cares-act-need-to-know.pdf>,
<https://labor.ny.gov/ui/cares-act.shtm>

Small Business Administration - *Coronavirus (COVID-19): Small Business Guidance & Loan Resources* (applies to some nonprofits) - <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

Occupational Safety and Health Administration - “This webpage provides information for workers and employers about the evolving coronavirus outbreak” -
<https://www.osha.gov/SLTC/covid-19/> - *Guidance on Preparing Workplaces for Covid-19* - <https://www.osha.gov/https://www.osha.gov/Publications/OSHA3990.pdf>

Robin Hood Fund – *COVID-19 Relief Fund Application* -
<https://www.robinhood.org/relief-fund-application/>