

PENNIES FOR CHARITY

WHERE YOUR MONEY GOES

Fundraising by Professional Fundraisers



NEW YORK STATE OFFICE

of the

**ATTORNEY
GENERAL**

CHARITIES BUREAU

November 2018

Introduction: Giving in New York State

New Yorkers give generously to charity. According to the New York State Department of Taxation and Finance, more than two million New Yorkers reported \$33.5 billion in charitable donations in 2015, the most recent year for which figures are available. That amount was up from \$32.9 billion in 2014.¹ The tens of thousands of charitable organizations operating in New York—over 82,000 of which are registered with the Attorney General’s Charities Bureau²—affect many aspects of our lives and the needs of our society. They educate New Yorkers, provide healthcare, run food pantries, operate housing for the homeless and preserve nature. They enrich cultural life, supporting the arts, museums and historic sites. New Yorkers’ generous charitable giving is evidence of strong civic engagement. New Yorkers’ support of charities makes our communities more vibrant and sustaining places.

Nonprofits have an impact on New Yorkers’ lives, communities and economy in significant ways. The nonprofit sector in New York is large and diverse. Statewide, nonprofit sector employment accounts for over 1.3 million jobs, or 17.7% of total private sector employment, one of the highest rates in the United States.³ Recent data released by Johns Hopkins University found that in Albany’s Capital District alone, the charitable nonprofit workforce numbers 86,366 people.⁴ The impact of these nonprofits on our communities and on our economy cannot be overstated.

As the regulator of charitable fundraising in New York, the Attorney General works diligently to monitor the nonprofit sector and protect donors, charities and the beneficiaries of those charities from fraudulent conduct. That oversight also applies to professional for-profit fundraisers hired by charities to further their fundraising efforts, publicize their causes, and increase financial returns. Fundraisers can play an important role in furthering a charity’s mission, and many belong to professional associations that require them to commit to a code of ethics.⁵ The campaigns that professional fundraisers conduct are the focus of this report.

While the expertise of many professional fundraisers assists charities to fulfill their missions, some fundraisers engage in dubious behavior that has a negative effect on charitable giving. Some fundraisers charge exorbitant fees that significantly reduce the funds left for the charity. Others provide potential donors with misleading information about a charity to spur giving. This past year, as part of its ongoing Operation Bottomfeeder initiative, the Attorney General’s Charities Bureau took action against some particularly egregious fundraisers and the charities that hire them (see more information about Operation Bottomfeeder p. 4). To avoid being misled by unscrupulous fundraisers, donors should research a charity before making a gift. This report can be a helpful tool.

¹ Email from NYS Dept. of Tax and Finance, July 25, 2018.

² Not all charities are required to register with the Charities Bureau. For example, religious organizations and many educational and cultural institutions are exempt from registration.

³ Available at <https://www.bls.gov/opub/ted/2018/nonprofits-account-for-12-3-million-jobs-10-2-percent-of-private-sector-employment-in-2016.htm>

⁴ Data available at: <http://ccss.jhu.edu/nonprofit-works/#>

⁵ See, e.g., Association of Fundraising Professionals at <https://www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=3261>.

Giving Wisely: How to Use This Report

The Attorney General’s annual Pennies for Charity report on www.CharitiesNYS.com and its accompanying database (<https://www.charitiesnys.com/pfcmap/index.jsp>) provide information about the results of campaigns conducted by professional fundraisers with respect to particular charities.⁶ Visit the Pennies database to find information about the dollar amount and percentage of total donations to a given charity that go towards the expense of the professional fundraiser. Enter the name of the charity and pull up its fundraising track record. If most of a charity’s campaigns yielded little for the charity, a donor likely should ask more questions before giving. Search the Charities Bureau’s registry (www.CharitiesNYS.com) to ensure that a charity you want to contribute to is properly registered in New York State. A charity soliciting in New York State is required to register with the Attorney General’s Charities Bureau and submit annual filings that include its Internal Revenue Service form (“IRS”) 990.⁷ Those reports contain descriptions of the organization’s programs and how much of the funds are devoted to those programs.

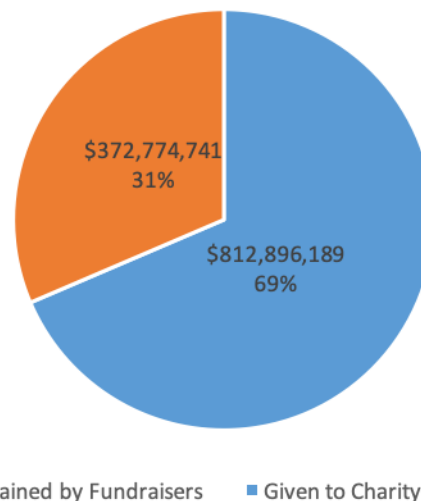
Potential donors should also consult Charity Navigator (www.charitynavigator.com) and other “watchdog” organizations that evaluate charities based on their annual IRS 990 filings and other materials. These sites weigh factors like administrative costs and program expenditures to arrive at ratings for charities’ effectiveness. All of this information will help in deciding whether a charity is well-run and effective in its mission and deserving of support.

Dollars to Charities

This year’s Pennies for Charity report includes data from the 964 fundraising campaigns conducted all or in part in 2017 by professional fundraisers in New York. The campaigns raised over \$1 billion. Key findings include:

- Over \$372 million (31%) of funds raised were paid to fundraisers to cover the costs of conducting the charitable campaigns. Charities received \$812+ million overall.
- In 313 campaigns (32%), charities retained less than 50% of funds raised.
- In 156 campaigns (16%), fundraising expenses exceeded charitable revenue. In 2017, this loss totaled over \$10 million dollars.

2017 Charities Summary
Total Gross Receipts for 2017 Fundraising Campaigns
\$1,185,670,931

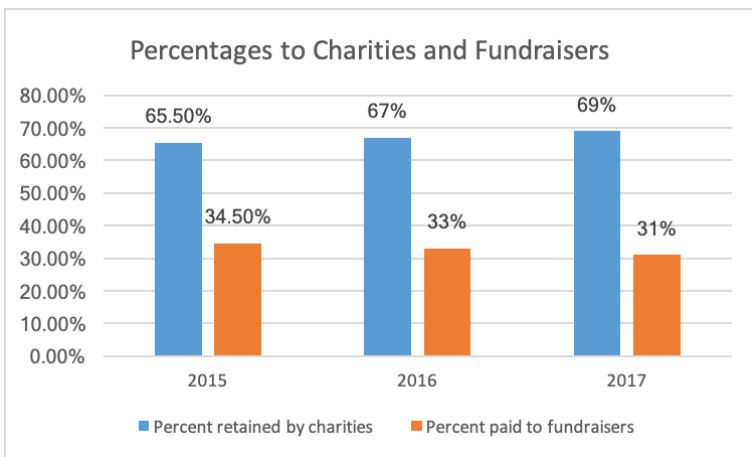


Due to New York State Charities Bureau and other enforcement efforts, outreach to charities, and donor education the percentage of dollars given to charities has improved over the last several years. In 2015, around 65% of funds raised by professional fundraisers went to charities. By 2017, that figure rose to 69%. Highlighting problematic fundraisers and charities through efforts like Operation Bottomfeeder has contributed to sector and public awareness of problem professional fundraisers.

⁶ The data is drawn from campaign interim and/or closing statements that have been filed with the Attorney General’s Charities Bureau and cover national or local campaigns conducted all or in part in 2017 in New York State.

⁷ NY Exec. Law § 172(1) and 172-b.

Increased enforcement by regulators, more transparency by charities, and greater consumer savvy gradually has improved the split of funds raised between charities and professional fundraisers so that charities fundraising in New York State now receive a larger share of the total donations collected. These factors have started to curtail the impact of sham charities and the problem fundraisers that enable them to mislead donors. However, making an informed decision to contribute by researching a charity before giving remains the best way to ensure that a contribution goes to the purpose that a donor intended.



Tips on Giving in the Aftermath of a Disaster

This past year, hurricanes devastated North Carolina, South Carolina, Georgia, and Florida, while a limousine crash in upstate New York claimed the lives of twenty people. In 2017, Puerto Rico was devastated by a hurricane from which the island has not yet recovered. Many people are moved to give after a disaster, eager to help those in distress. However, fraudulent organizations can also spring up to exploit donors' generosity. Here are some guidelines that New Yorkers should keep in mind before donating to disaster relief efforts.

- Give to organizations you know, or that have experience assisting in disaster relief.
- Ask specifically how the charity plans to use your donation, including the services and organizations in the disaster area that your donation will support.
- Ask if the charity has already worked in the affected area or has relationships with any local relief organizations.
- Ask what the charity plans to do with any excess donations.

The following websites have lists of organizations working in affected communities.¹

The Center for Disaster Philanthropy
www.disasterphilanthropy.org
 National Volunteer Organizations Active in Disasters
www.nvoad.org
 Interaction
www.interaction.org

The following websites provide information that helps evaluate charities' performance:

Charity Navigator – www.charitynavigator.org
 CharityWatch – www.charitywatch.org
 Better Business Bureau Wise Giving Alliance - www.bbb.org
 GuideStar – www.guidestar.org

If you believe an organization is misrepresenting its work, or that a scam is taking place, please contact the Attorney General's Charities Bureau at charities.complaints@ag.ny.gov, or file a complaint at www.charitiesnys.com/complaints_new.html or call 212-416-8401.

¹ Center for Disaster Philanthropy. Available at <https://disasterphilanthropy.org/resources-2/basic-tips-for-disaster-giving/>.

Operation Bottom Feeder Expands to Expose Sham Charities' Enablers

The Charities Bureau's Operation Bottomfeeder is an ongoing initiative that targets sham charities operating in New York State which exploit popular causes like breast cancer prevention, veterans in need, and aid for injured or fallen law enforcement professionals to enrich professional fundraisers. In the past year, Operation Bottomfeeder has broadened its scope to target businesses that enable those charities to solicit from the public. These include the professional fundraisers who collect donations through misleading pitches about the charities' programs and the accountants who aid the charities to create a plausible public face.

This year, Operation Bottomfeeder investigated and shut down Menacola Marketing Inc., a professional fundraiser that partnered with several sham charities. It also closed down the Reserve Police Officers Association, a sham charity that worked in tandem with Menacola purporting to raise money for fallen or injured auxiliary police officers and their families. Through Operation Bottomfeeder the Charities Bureau also sued and obtained a judgment against an accounting firm, McEnerney, Brady & Co., and its principal, Edmond Brady for their involvement in providing Breast Cancer Survivors Foundation, a sham charity, with unqualified audit reports for filing with the Charities Bureau.

Operating from its call center in Brooklyn, New York, Menacola Marketing pitched sham charities like Breast Cancer Survivors Foundation to unsuspecting donors. The appeals often claimed that the client charities had provided aid—such as free mammograms or help to families of injured reserve police officers—which they had not. Typically, Menacola's contracts with charities provided for fees to the company of 85% of all the donations it collected. Menacola made no attempt to verify the representations made in its solicitations for charities. The company's owners, Katherine and Joseph DeGregorio, signed an agreement with the Office of the Attorney General this past February to cease operating as fundraisers in New York State.

One of Menacola's client charities, the Reserve Police Officers Association, raised more than \$15.6 million nationwide in over a decade of telemarketing campaigns, more than \$14 million of which went to Menacola for its fundraising work. Without verifying the validity of the claims, Menacola's telemarketing pitches claimed that contributions would "assist families of members that become disabled or killed in the line of duty." However, rarely was any sizable amount of money actually

Checklist for Assessing a Direct Mail Appeal:

If you receive a charitable solicitation in the mail, take a close look at what you have been sent.

- Does the organization have a name that sounds like a well-known charity? Double-check the organization online—is it the one you think?
- Does the mailing claim to follow up on a pledge that you do not remember making? Keep records of your pledges so you will not be scammed.
- Does the mailing state that a copy of the charity's most recent financial report can be requested from the Attorney General's Charities Bureau or viewed on its website (www.CharitiesNYS.com) or obtained directly from the charity? It should also include both the charity's and the Attorney General's address in the same size type as other text on the mailing.
- Does it clearly describe the programs or activities that the charity plans to fund with your donation, or include a statement that a detailed description of those activities is available upon request?

put to this use. In some years the charity donated as little as \$300 to assist reserve officers' families. In April 2018, the Attorney General permanently barred the Reserve Police Officers Association from New York State, and the charity's president and its board of directors agreed never to serve again as officers, directors or trustees of a charitable organization.

In its action against the accounting firm of McEnerney Brady, the Charities Bureau sought to hold accountable those contractors who enable dubious charities to continue their predatory business model. The complaint filed against the accounting firm highlights the impropriety by the firm in repeatedly issuing a clean audit report to the Breast Cancer Survivors Foundation, notwithstanding the evidence of fraudulent activity such as the failure of the board to meet and the evidence showing that the organization had no physical office. McEnerney Brady also signed off on an accounting treatment that the charity used to falsely inflate the value of its program services. The Charities Bureau won a judgment against the firm.

Donors also can play an important role in combatting sham charities. Donors should be on the lookout for charities that sound like well known or high-profile organizations and promote "warm-glow" causes. Before giving, donors should always research a charity carefully on the Pennies for Charity database or Charity Navigator (www.charitynavigator.org), keeping an eye out for those that use high-cost fundraisers that yield little revenue for the organization. Savvy giving can make sure that the support goes to the cause rather than the fundraiser.

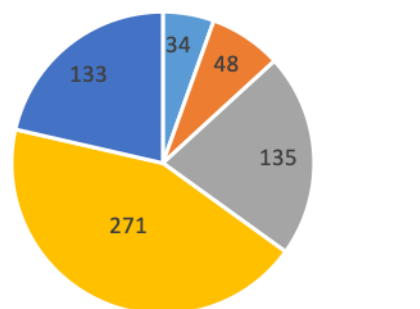
Telemarketers Explore Using PACs In Soliciting Donations

Telemarketing and direct mail are key fundraising tools for sham charities. While the number of telemarketing campaigns in New York has continued to decline, many organizations still use telemarketing to reach certain donor groups. Telemarketers are required to disclose certain information when they solicit donors, including the name of the person soliciting, that the telemarketer is being paid to solicit, and the name of the professional fundraiser conducting the campaign.⁸ Donors can and should ask how much of their donation will be applied to charitable programs (see "Tips on Handling a Telemarketing Solicitation," p. 6).

The percentage of telemarketing campaign funds going to charities rather than fundraisers has ticked up. In 2017, fewer fundraisers retained over 50% percent of funds raised in campaigns compared to the previous year: 271 versus 299. The number of telemarketing campaigns overall in New York also declined slightly, from 628 to 621. Direct mail campaigns continue to slide, falling from 511 to 454.

However, some telemarketers that solicit for charities have branched out to work with Political Action Committees (PACs) with similar-sounding missions. These new organizations have names that reference popular causes such as curing breast cancer or assisting veterans that typically are supported by charities. Political action committees are formed under Internal Revenue Code Section 527 to further candidates and political parties' campaigns. The Federal Election Commission oversees political campaigns and fundraising, including PACs. Contributions to PACs are not tax deductible. Social welfare organizations, which are tax-exempt entities under Section 501(c)(4) of the Internal Revenue

Telemarketing Funds Retained by Fundraisers



- Campaigns with no funds collected
- Campaigns with less than 20% retained
- Campaigns with between 20% and 50% retained
- Campaigns with between 50% and 100% retained
- Campaigns with more than 100% retained

⁸ NY Exec. Law § 174-b(3)

Code, are not charitable, and can raise money for political causes. Contributions to 501(c)(4) organizations are not tax deductible. A potential donor who seeks to make a charitable, tax deductible contribution should verify whether the organization is a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code. The New York State Attorney General's Registry on www.CharitiesNYS.com and websites like Charity Navigator (www.charitynavigator.org) are good resources to check. While donors may wish to support PACs, they should be aware of a PAC's mission and purpose before making that decision. The Federal Election Commission maintains a database of PACs which includes their most recent mission statement and funding. It can be found at www.fec.gov/data/advanced/?tab=committees.

Digital Giving Expands As Platforms Review Policies

Online giving has become increasingly popular with donors, due to its convenience and its accessibility through social media use. There are benefits to charities as well from online giving. Online platforms that host charitable campaigns generally retain only a small percentage of each donation as a fee. GoFundMe, a leader in online fundraising, changed its policy this past August and now charges no fee for charitable campaigns, though it does solicit tips and donations still are subject to a payment processing charge.⁹

In 2017, charitable solicitation via online and mobile devices, including email, continued to rise. According to The Blackbaud Institute, a nonprofit that researches trends in philanthropy, online giving grew nearly 12.1% in 2017 compared to the previous year, which saw an 8% growth.¹⁰ The more than 5700 charities that the organization tracks reported raising a total of \$3.1 billion online in 2017.¹¹ Online platforms like Facebook received more than 2 million donations on Giving Tuesday (typically the Tuesday after Thanksgiving), totaling an estimated \$274 million, which was a 50% increase over the previous year. In the last several years, Giving Tuesday, which is promoted by the hashtag #GivingTuesday, has become the highest single day of online giving annually.¹²

⁹ <https://support.gofundme.com/hc/en-us/articles/203604424-Fees-on-GoFundMe>

¹⁰ http://institute.blackbaud.com/wp-content/uploads/2018/02/BlackbaudInstitute_2017CGR.pdf.

¹¹ Id.

¹² <https://philanthropynewsdigest.org/news/2017-givingtuesday-raises-estimated-274-million-for-nonprofits>

Tips on Handling a Telemarketing Solicitation

Telemarketers must adhere to laws that address the scope and content of their solicitations. Charitable organizations and their for-profit fundraisers are prohibited from making false, misleading, or deceptive statements to potential donors in connection with fundraising activities. The New York State Attorney General has the authority to investigate and prosecute such statements. Further, New York and other states require telemarketers to disclose (a) the name of the individual telemarketer, (b) that the solicitation is being conducted by a professional fundraising company, (c) the name of that company, and (d) that the telemarketer is being paid to make the call.¹

Donors can ask to be placed on that charity's "Do Not Call" list. Putting your name on the Federal Communications Commission's "Do Not Call" list will not bar calls on behalf of tax-exempt non-profit organizations. However, if a professional telemarketer is calling on behalf of a charity, a consumer may ask to be removed from that particular charity's calling list. If the telemarketer calls again on behalf of that charity, the telemarketer may be subject to a fine of up to \$41,484.²

If you get a call...

Do not feel pressured to give over the phone. If you choose to consider the caller's request, you should ask:

- What programs are conducted by the charity? Ask for specifics.
- How much of your donation will be used for charitable programs?
- Is the caller a paid telemarketer?
- How much is the telemarketer being paid and what percentage of your donation is the charity guaranteed?

¹ NY Exec. Law § 174-b(3).

² Federal Trade Commission, Q&A for Telemarketers & Sellers About DNC Provisions in TSR. Available at: <https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr>

While giving online may be fast and convenient, donors should be aware of online platforms' policies and fees. Disclosures are sometimes difficult to locate or provided only in fine print or click-through pop-up windows. Usually a platform's Frequently Asked Questions and/or its terms and conditions pages will describe pricing and fees. Donors should review a platform's policies. If the platform makes few or vague disclosures about how it handles charitable contributions, donors may want to seek another way to give.

Increasingly, online platforms have revised or changed their charitable giving disclosures to ensure that users understand their policies. See "Tips for Giving in a Digital World" at right for guidance on vetting online campaigns. However, donors should bear in mind that contributions made directly to a charity, via its website or another method, generally go in their entirety to the charity, barring transaction fees.

The Attorney General actively investigates suspect charities and fundraisers. If you believe that an organization is engaged in questionable conduct or a solicitation is misleading, please contact the Charities Bureau at 212-416-8401, email charities.fundraising@ag.ny.gov or file a complaint at www.charitiesnys.com/complaints_new.html or email charities.complaints@ag.ny.gov

Tips for Giving in a Digital World

Many charities now fundraise online. When a campaign that involves a third party, whether an individual or an online platform, donors should find out whether the charity has authorized the campaign and if their contribution is tax deductible. Online platforms can be reached through their "Contact Us" buttons and usually will respond promptly to queries. Individuals who claim their online charitable campaigns have been approved by a charity should be able to produce some documentation.

Crowdfunding: Online platforms that host groups and individuals soliciting for causes generally do not vet those who use their service. Donors should only give to campaigns mounted by people whom they know. If an online platform is featuring a charity, donors should take a close look at the platform's FAQs and Terms and Conditions to see how fees work. Also, make sure that the charity has given permission for the site to use its name or logo. The site or the charity should confirm that the charity has approved the campaign.

Text donations: Before hitting "Send," check the charity's website or call the charity to make sure contributions by text message are authorized. Some text solicitations are scams. Ask what percentage of the donation is being paid to the fundraiser. Also, remember that donating by text means the organization may not receive the funds until after a phone bill is paid. Contributions made directly to a charity can reach it faster.

Secure web addresses: When donating online, make sure the website is secure: the web address should start with "https." Unless the charity uses a separate payment site, the web address should match that of the organization that will receive the donation.

Spam email: Be wary of email solicitations that ask you to click a link or open attachments. These could be phishing scams to get your credit card number, or other confidential information. Further, a link could contain malware, software that is intended to disable your computer, or even viruses designed to access information on your computer.

Tips for Charities Hiring Fundraisers and Auditors

The officers and/or directors of a charity have an obligation to oversee its professional fundraisers. A charitable organization's reputation is one of its most valuable assets. A professional fundraiser and its staff may be a charity's primary connection to the public. The officers and directors should make sure that a fundraiser represents the charity well and fulfills all regulatory requirements. Before hiring a professional fundraiser, a charity should:

- **Research a fundraiser's track record using the Pennies for Charity database on the Charities Bureau's website at <https://www.charitiesnys.com/pfcmap/index.jsp>.** The database shows how much fundraisers have been paid from campaigns they have conducted for charities. If a fundraiser's campaigns yielded little for charities, it may be a red flag.
- **Find out if any legal action has been taken against a fundraiser.** State disciplinary records of many fundraisers can be searched on an online public database created by the Tampa Bay Times as part of its reporting on "America's Worst Charities" at <http://charitysearch.apps.cironline.org>. (Please note that this database is not being updated, so it may not include all relevant records, but provides some useful information.) If a fundraiser has been disciplined or paid a fine for making misrepresentations or harassing techniques, this is a red flag.
- **Ensure that the fundraiser is properly registered.** Fundraising professionals must register annually with the NYS Attorney General's Charities Bureau to fundraise in New York State¹³. To find out if a fundraiser is registered, email charities.fundraising@ag.ny.gov or call 518-776-2160.
- **Charities must have a written contract with a fundraiser that includes certain terms.** New York law requires that specific financial terms and fee and cancellation language be included in fundraiser contracts.¹⁴ It also requires that, within five days of receipt, all contributions must be placed in an account controlled by the charity.¹⁵ If a board agrees to a contract that allows the fundraiser to keep a percentage of the funds raised, be aware that there is no "industry standard" for such contracts, so ensure that the terms maximize the returns to the charity.
- **Retain control of the contributors' list.** Make sure that a fundraising contract makes the organization the list owner. Otherwise, the fundraiser may have the right to use the list when raising money for other charities or to sell or rent the list for other campaigns.
- **If the charity raises funds by telemarketing, make sure that the fundraiser makes the required disclosures.** New York law requires that fundraising professionals and their representatives ("professional solicitors") disclose to a potential donor the professional solicitor's name and that of the fundraising professional in charge of the campaign and that the solicitor is being paid to raise funds.¹⁶
- **Monitor the campaign.** A charity must ensure that its fundraisers properly describe the charity's mission and programs. It is essential that a charity review and approve all solicitations and scripts for accuracy. Keep track of any complaints about the fundraising campaign, whether received by your organization or the fundraiser, and make sure they are resolved.
- **Once the campaign has ended, closely review the fundraiser's financial report prior to signing.** Fundraisers must file a financial report with the Charities Bureau disclosing a campaign's results (Form CHAR037). New York law requires that both a charity and its fundraiser certify, under penalty of perjury, the accuracy of the report. Charities have an obligation to review a campaign's accounts and costs prior to

¹³ NY Exec Law §173

¹⁴ NY Exec. Law § 174-a(2),(4)

¹⁵ NYk Exec. Law §173-a(2)

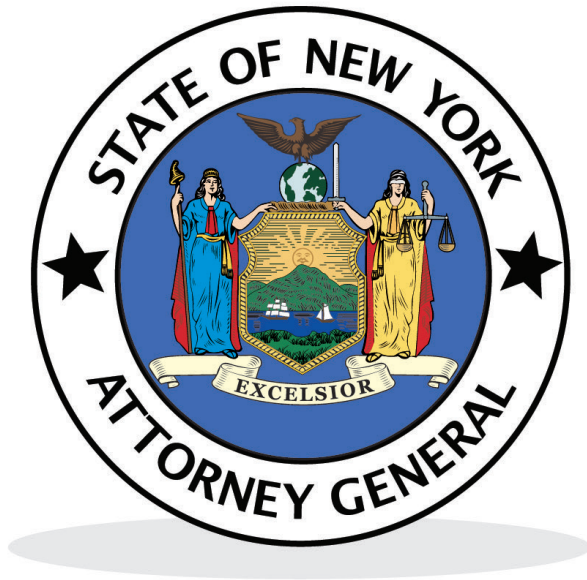
¹⁶ NY Exec. Law §174-b(3)

signing. Form CHAR037 must be submitted within 90 days after a fundraising campaign concludes.¹⁷

- **If the organization has an annual audit of its financial statements, the board should ensure that the auditor has suitable experience.** Executive Law Article 7-A requires many nonprofits to file annual audited financial statements with the Charities Bureau that should include fundraising campaigns receipts.¹⁸ If the board has an audit committee, it should seek at least three bids from independent Certified Public Accountants (“CPA”) with non-profit experience, particularly in the same service area as the organization. The audit committee should vet the bids, request and review the bidders’ most recent peer review report, and call references. If there is no independent audit committee, then this responsibility becomes the board’s.
- **Once an auditor has been engaged, the audit committee or independent directors should monitor the audit’s progress.** At the conclusion of the audit, they should discuss the audit findings, including risks uncovered, with the auditor, and detail how management plans to address each finding. The audit should include a review of the accounting on external fundraising campaigns and a risk assessment on external fundraising work, the charity’s contracts with fundraisers, and any outstanding pledges and the risk associated with collecting them. For more detailed guidance on charitable organizations’ audit requirements under New York State law, please see “Audit Committee Requirements and Responsibilities Under New York’s Not-for-Profit Corporation Law” on www.CharitiesNYS.com or click on <https://www.charitiesnys.com/pdfs/AuditCommittees.pdf>.

¹⁷ NY Exec. Law § 173-a(1)

¹⁸ NY Exec. Law § 172-b(2).



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