

REVISED REGULATORY IMPACT STATEMENT

1. **Statutory Authority.** Article 7-A of the Executive Law (hereinafter “Article 7-A”) and Article 8 of the Estates, Powers & Trusts Law (hereinafter “EPTL”) require certain organizations and trusts to file annual financial reports and other disclosures with the Attorney General, and require the Attorney General to establish and maintain a register of such disclosures. Section 177(1) of the Executive Law and section 8-1.4(h) of the EPTL empower the Attorney General to make rules and regulations necessary for the administration of these provisions.

2. **Legislative Objectives.** The rule requires certain organizations that are registered with the Attorney General and that may participate or intervene in political campaigns (hereinafter “covered organizations”) to disclose information concerning expenditures and donations related to such election related activity in annual financial reports that are submitted to the Attorney General. The rule does not apply to organizations exempt from taxation under section 501(c)(3) of the U.S. Internal Revenue Code. The rule aims to, among other things: enhance detection and deterrence of illegal conduct by covered organizations and related individuals; inform and protect prospective donors to such organizations; protect the integrity and reputation of nonprofit organizations that do not intervene in political campaigns; maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York elections; protect the public interest in transparent financing of state and local elections; shield donors to covered organizations that intervene in political campaigns from public disclosure if there is a substantial risk of undue harm, threats, harassment or reprisal; and ensure that there is clear guidance to covered organizations and related individuals concerning compliance.

3. **Needs and Benefits.** New York donors should know how nonprofit organizations that solicit donations from them are likely to use those funds. However, covered organizations, many of which enjoy tax-exempt status on the basis that they act to promote social welfare, may utilize funds solicited from the public to engage in direct and indirect election related activities. Donors to nonprofit organizations may be unaware that their donations to a charitable, social welfare or similar organization can be used to influence elections.

Furthermore, such organizations can solicit funds without disclosing critical information about the political

nature of their expenditures or sources of funding. There is substantial evidence in the public record that some nonprofit organizations are increasingly raising and spending funds to influence elections. The lack of transparency in this area creates the potential for covered organizations and related individuals to: mislead donors about the uses of their donations; violate tax and other laws without detection by regulators or law enforcement; and evade state and local campaign finance laws in a manner contrary to the public interest. The rule will, among other things:

(A) Better enable regulators to enforce tax and other laws and rules that restrict election related activities and other political activities by covered organizations, and deter illegal conduct;

(B) Protect donors from fraudulent, false or misleading solicitations by covered organizations;

(C) Protect the integrity and reputation of charities and other nonprofits that refrain from impermissible or excessive election related activity;

(D) Assist regulators in ensuring that charities, including organizations exempt from taxation pursuant to section 501(c)(3) of the U.S. Internal Revenue Code, do not illegally transfer assets to covered organizations to be used for election related activity, and deter such illegal conduct;

(E) Inform potential donors that contributions to covered organizations may be used to advance particular outcomes in elections, and provide relevant information to allow donors to take into account the political goals, interests, and activities of the organization and related individuals when contributing or responding to a solicitation;

(F) Protect the public interest in transparency in the electoral process by disclosing contributions that covered organizations transfer directly to candidates for elective office in New York, or are otherwise used to influence New York state and local elections;

(G) Maintain the anonymity of donors to covered organizations if their donations are restricted to purposes unrelated to influencing New York state and local elections;

(H) Protect donors to covered organizations from disclosure if there is a substantial risk that donors will be unduly harmed by such disclosure; and

(I) Provide clear guidance to covered organizations and related individuals concerning compliance.

4. Costs. Covered organizations that do not engage in election related activity will face de minimis costs associated with the rule. Covered organizations that choose to devote over \$10,000 of their expenditures in any fiscal year to influencing New York state and local elections by engaging in either express election advocacy or election targeted issue advocacy, and that are not otherwise required to disclose those activities to other state or local agencies, might bear small costs associated with the tracking and accounting of funds raised and spent for purposes related to such advocacy. Some covered organizations that engage in election advocacy may choose to deposit donations available for election related activities into a segregated bank account or establish a separate political action committee to avoid disclosure of donors whose funds are not used for New York election related purposes. Such measures are not required by the rule but could entail small costs if taken by covered organizations that engage in election related activity. The Department of Law will also incur de minimis costs associated with processing filings of the new disclosure schedule by covered organizations, and with reviewing and making determinations concerning any applications for exemption from disclosure, as provided in the rule.

5. Paperwork. As part of their existing annual filing obligations, covered organizations will have to indicate what portion of expenditures were spent on election related activities, and covered organizations that spend at least \$10,000 in a fiscal year to influence state or local elections in New York will be required to disclose itemized information concerning such election related expenditures and donations, unless they have disclosed this information to another government agency that makes the information publicly available.

6. Local Government Mandates. None.

7. Duplications. The rule has been drafted to coordinate with existing state and federal laws concerning disclosure of expenditures and contributions related to election related activities. Accordingly, the rule does not require a covered organization to disclose itemized information related to donations and expenditures that is disclosed to other government agencies and made publicly available.

8. Alternatives. (A) \$10,000 Expenditure Threshold. The Department of Law considered thresholds both lower and higher than \$10,000 in a year on election related expenditures to trigger additional disclosure under the rule. While establishing a threshold lower than \$10,000 would provide benefits with respect to protecting

donors from fraudulent solicitations, law enforcement functions, and transparency in New York state and local elections, the Department of Law determined that the added costs to organizations that engage in this level of election related activity outweighed these benefits. The Department of Law rejected establishing a threshold higher than \$10,000, because this could reduce benefits the rule is designed to promote with respect to, among other things, law enforcement, fraud reduction, integrity of nonprofits, and transparency. (B) \$1,000 Contribution Threshold. The Department of Law considered and rejected alternatives to the \$1,000 contribution threshold at or above which a covered organization might have to disclose information concerning a specific donor. The Department of Law, in response to public comments, rejected a \$100 threshold in the revised rule as unduly burdensome relative to the benefits to be achieved by this rule. A \$1,000 threshold is less burdensome on covered organizations and donors while still advancing the goals of the rule. Additionally, the \$1,000 amount is consistent with the contribution disclosure threshold required by the New York City Campaign Finance Board's Independent Expenditure Regulations, and with certain pre-election reports required to be filed with the Federal Election Commission in connection with federal elections. (C) Application to federal elections. The Department of Law considered applying the rule's itemized disclosure requirements to expenditures and donations in connection with federal campaigns but chose not to address this issue. (D) Disclosure of election targeted issue advocacy by a covered organizations to its members. The prior proposed rule did not exclude communications by a covered organization to its members from the definition of "election targeted issue advocacy." The Department of Law determined in response to comments that this would have imposed burdens on covered organizations unnecessary to achieve the goals of the rule. (E) Granting extensions to file the Electioneering Disclosure Schedule. The granting of extensions otherwise available in connection with the filing of other portions of annual reports would reduce the benefits sought to be achieved by the rule.

9. Federal Standards. Federal tax law requires tax-exempt nonprofit organizations to report certain information concerning expenses, donations and donors to the Internal Revenue Service, and federal campaign law requires disclosures of certain federal election related expenditures and donors to the Federal Election Commission. EPTL article 8, Executive Law article 7-A, and existing regulations require nonprofit

organizations, regardless of tax exempt status, that solicit \$25,000 or use a professional fundraiser in New York to register with the Attorney General and file annual financial reports. For such organizations that are allowed under federal and state tax law to influence elections, the proposed rule requires their annual reports to indicate the amount and percentage of the organization's revenue spent on influencing elections. For such organizations that spend \$10,000 or more in a fiscal year to influence New York state and local elections, the proposed rule requires their annual financial reports to include information concerning certain expenditures and donations relating to these elections. However, in order to avoid burdensome and unnecessary duplication and multiple filings, the rule does not require the annual financial reports to include specific information related to New York state or local elections that is disclosed to any other agency and made available to the public. The rule requires these additional disclosures, because, while federal law requires such organizations to publicly disclose certain types of expenditures and donations relating to federal elections, it does not require a statement of the percentage of expenses used to influence elections, or any disclosures relating to New York state or local elections. And to the extent federal law requires tax-exempt organizations to disclose the total amount of certain election related expenditures, it defines election related expenditures in a manner that leaves donors and regulators in the dark about nonprofit activity that could run afoul of New York state tax or charities law, or federal tax law, or that could otherwise constitute deceptive solicitations or practices. The rule accordingly requires these additional disclosures in order to, among other things: help regulators identify when a covered organization might be primarily engaged in influencing elections and thus in violation of federal tax law, state tax law, and other New York state laws; inform donors about election related activities of covered organizations; deter and detect fraudulent solicitations of funds by covered organizations; and support the public's interest in transparency in regard to nonprofits and elections.

10. Compliance Schedule. Prior to filing annual financial reports with the Attorney General pursuant to Article 7-A and/or the EPTL for the fiscal year beginning on or after the effective date of the rule, covered organizations that made election related expenditures in excess of \$10,000 during that year must compile the information necessary to make the required disclosures. Covered organizations shall annually file the Electioneering Disclosure Schedule by the fifteenth day of the fifth month after the organization's accounting

period ends. No covered organization may obtain any extension to file an Electioneering Disclosure Schedule, including any extension otherwise available under section 91.5(f)(3) of this chapter. Covered organizations wishing to identify and deposit covered donations into a segregated bank account to prevent disclosure of donors who prohibit their donations from being used for election related expenditures will need to open and begin utilizing such segregated accounts if they do not use them already.