Timothy J. Radelet

Home:
36 Fuller Court
Madison, Wisconsin 53704
(608) 245-1688
tradelet@charter.net

Work:
Foley & Lardner LLP
150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701-1497
(608) 258-4219; (608) 258-4258 (facsimile)
tradelet@foley.com

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Via Electronic Mail

Mary Matthias
Senior Staff Attorney
Joint Legislative Council
One East Main Street, Suite 401
Post Office Box 2536
Madison, Wisconsin 53701-2536

Re: Some Thoughts on Section 70.11

Dear Mary:

In preparation for our next meeting of the Special Committee, I thought it would be helpful to share some of my current thoughts about how *Wis. Stats.* Section 70.11 could be amended in light of the Supreme Court's *Columbus Park* decision.

First, however, I want to clarify to you and the committee members that I am serving on the committee as an individual, and not in any representative capacity. While I did provide related legal representation of a client following the *Columbus Park* decision through the time when Senate Bill 512 was adopted, I no longer do so with respect to such matters. I do bring to the discussion my experience of more than 24 years as a lawyer specializing in advising both nonprofit and profit-motivated clients in issues related to the development and finance of housing for residents with special needs, such as those of low-income and those who are older adults or handicapped.

1. New Exemptions. I suggest that at least three new exemptions be created as new subsections under § 70.11. The purpose is to make it clear and uniform throughout the state that certain properties which are widely held to be exempt under the current § 70.11(4) will continue to be exempt. The three different exemptions would track three separate methods that are available to nonprofit organizations as a basis for income tax exemption under § 501(c)(3) of the *Internal Revenue Code*.

a. General Principles. The following three principles would be applicable to all three new exemptions:

i. § 501(c)(3) Owner. The beneficial owner of the property would be an organization that the Internal Revenue Service has determined is described in § 501(c)(3) of the *Internal Revenue Code* (an "Exempt Organization"). By law, all assets of Exempt Organizations must be used only for charitable purposes or they must be distributed to other Exempt Organizations. No Exempt Organization that operates rental housing can evict a tenant just because the tenant cannot afford to pay the rent. It is appropriate public policy for our legislature to provide financial support for the work of Exempt Organizations.

Neither individuals nor other organizations ought to qualify, because: (A) ultimately they can personally profit from the property, generally through its appreciation over time or operating cash flow; (B) they can evict tenants for inability to pay rent; and (C) this has not been the history of § 70.11(4), and broadening the exemption to include them would likely be too expensive.

I recently came across some congressional legislative history that was entered into the record when congress was discussing the HOME Investment Partnerships Act, which established a widely used low-income housing grant program administered by the U.S. Department of Housing and Urban

Development. It speaks well of the importance of nonprofit organizations as owners of low-income housing. I have attached an excerpt for your information.

ii. No "Rent Use" Requirement. The second sentence of the introductory paragraph of § 70.11 would not be applicable to the new exemptions. This is the "rent use" requirement. Narrowly interpreted, the requirement makes no common sense and is impractical. Most rental housing is not financed with "construction debt," either because it has been refinanced or because the building was not newly constructed by the current owner. In addition to maintenance, the expenses of management, insurance premiums, capital replacements, utilities, services, administration, marketing, and the like must be paid from rental income.

iii. No Ten Acre Rule. The ten acre limitation found in § 70.11(4) would not be applicable to the new exemptions. If there is market demand for the housing, it makes little sense to limit an Exempt Organization to only ten acres. To the contrary, efficiencies in operations can be achieved by one organization that owns lots of housing. Forcing the community to bear the expense of supporting more than one organization to do the same work makes little sense. The real push in recent years from organizations that support Exempt Organizations, such as United Way, has been toward consolidation and away from multiple Exempt Organizations doing the same work.

b. Affordable Housing Exemption. The first new exemption would be for rental housing operated in compliance with IRS Revenue Procedure 96-32, a copy of which is attached. Generally this requires that:

i. at least 75% of the units must be occupied, or available for occupancy, by households at or below 80% of the area median income, adjusted for household size; and

ii. at least:

(1) 20% of the units must be occupied, or available for occupancy, by households at or below 50% or the area median income, adjusted for household size; or

(2) 40% of the units must be occupied, or available for occupancy, by households at or below 60% or the area median income, adjusted for household size.

In each case, the rents, including utility allowances, must be affordable to households in the targeted income bracket.

The IRS currently requires that virtually all Exempt Organizations that own or operate affordable housing must do so in compliance with Rev. Proc. 96-32. Therefore this will not be burdensome for Exempt Organizations that are in the low-income housing business. I believe this exemption would pick up all low-income rental housing financed by Wisconsin Housing and Economic Development Authority, local housing authorities, the U.S. Department of Housing and Urban Development, the U.S. Department of Agriculture Division of Rural Development, the Federal Home Loan Bank, and many others that finance low-income housing. It would also align well with the requirements of Madison's new inclusionary zoning ordinance.

c. Special Needs. The second new exemption would be for housing serving those with certain special needs. Specifically, this would be any housing licensed by Wisconsin as a nursing home, community based residential facility, or residential care apartment complex. In addition, emergency shelters for victims of domestic violence, the homeless, and the like, providing housing generally for not more than thirty days, would be exempt. I suggest that these kinds of housing be exempt from property tax without regard to the income of the residents. This would seem to track the suggestion of the Supreme Court in *Columbus Park* that housing should be exempt when the primary reason residents live there is so that they can receive special services.

d. Elderly. The IRS recognizes as Exempt Organizations those that provide housing for the elderly, without regard to income, as long as the healthcare, financial and social needs of the elderly are addressed. This makes good sense. I do not think that property tax exemption for elderly housing should be dependent on the income of the elderly. It is complicated and intrusive to certify the income of a household, and many frail elderly who are in need of the housing Exempt Organizations provide would have difficulty providing the needed information and would be frightened to do so. Others, quite frankly, would be quick to give their assets to their children (who will informally

take care of them) if it will income qualify them for subsidized housing. The administrative expense of addressing these issues would be substantial.

There is, however, some legitimate concern about luxury housing for the elderly being exempt. Some elderly can afford to pay taxes. Current § 70.11(4) provides a greater benefit to organizations which own housing with a high market value than those which own less valuable housing, even if the residents of both have the same needs. The high value may be attributable to luxurious architectural finishes or generous square footage or common spaces. It may be due to location within a taxing district, on land which either was valuable when the housing was built or became valuable over time. Similarly, housing located in districts with high tax rates benefit more than those located in other districts.

I suggest limiting this exemption to housing that costs no more than a certain limit per unit to build or acquire. That limit would need to be indexed, to reflect changes in the economy. Perhaps, for example, it could be the median cost, at the time of construction or acquisition, of housing of a similar type. It should not be limited to low cost housing, because the architectural requirements for elderly housing, including common space requirements, are substantial and the elderly should not be made to feel they are being sent to the "poor house."

I do not think that the assessed value of the property should be the index. Over the years, housing that was once modest and in an undesirable location may become very valuable. Tax exemption should not be lost due to this. It is too upsetting to the people who live there and too unpredictable for the Exempt Organization that owns it.

It would also seem appropriate to limit the exemption to properties that are, for the most part, occupied by households that include at least one member who is at least age 62. This is in keeping with the general definition applied by the IRS. However, I believe that there should be some flexibility in order to keep housing projects economically viable. Therefore, I suggest that the law allow up to 20% of the units in each project to be occupied by households which include at least one member who is at least 55 years old, but not yet 62.

2. Retain § 70.11(4). I recommend that § 70.11(4), and the introductory paragraph to § 70.11, not be amended in a way that will make property that is currently exempt under it (applying a strict interpretation) taxable. Our committee is studying this issue in haste. I am concerned that our committee might overlook properties that are currently exempt, and that most would agree should continue to be exempt, that would lose exemption if we cut back the scope of current law without careful, detailed study.

3. State Reimbursement. Property tax exemption under the current § 70.11(4) imposes on the taxpayers of the taxing districts in which the property is located the entire burden of the exemption. Those who pay taxes only in districts in which no exempt housing is located share no part of the burden. A system of state reimbursement would spread the burden equitably across all Wisconsin taxpayers.

My thought is that all property which is exempt under § 70.11(4), or any of the three new exemptions I have proposed, be assessed each year in the same manner that taxable property is assessed. The assessor would present an invoice for the amount of tax that would have been collectible, had the property been taxable, each year to the state. The state would pay the invoice. Thus, the matter of statewide concern that moved to legislature to exempt property from the tax rolls would be shared equitable by all Wisconsin taxpayers.

It would be important, if this procedure is implemented, to limit the ability of taxing districts to withhold services from, or charge separate fees for services provided to, exempt property owners. Such services might be trash collection, fire protection, recycling and the like; expenses which are paid from property taxes in most taxing districts.

I hope you find these thoughts helpful. I look forward to our committee's work. Thank you for your consideration.

Very truly yours,

Timothy J. Radelet

Enclosures

LEGISLATIVE HISTORY

Senate Report No. 101-316 Pages 72 - 74

Set-aside for community housing development organizations: The Committee recognizes and seeks to encourage the outstanding work of nonprofit community-based housing development organizations (CHDOs). CHDOs are housing developers that are accountable to the low-income communities they serve. CHDOs have emerged over the past decade to be among the most active developers of low-income housing.

The Committee heard substantial testimony regarding the increased importance of community based housing development organizations in providing and preserving housing opportunities for those in need. The National Housing Task Force report highlighted this sector as one deserving special attention in any new federal housing legislation, and numerous witnesses attested to its vitality and unique contributions.

According to research by the National Congress for Community Economic Development, CHDOs are active in every state, and almost 2,000 CHDOs have completed projects. Among the most important contributions of CHDOs are (1) their knowledge of and responsiveness to the housing needs of low-income community residents, (2) their ability to involve community residents in the planning, development, and operation of low-income housing, to mobilize community support for low-income housing, and to build indigenous community leadership, (3) their willingness to undertake housing in the distressed inner-city and rural areas where many low-income people live, and to do so as part of a concerted and comprehensive community stabilization strategy, (4) their commitment to serving households with acute housing needs, including large families with children, single-parent headed families, racial and ethnic minorities, the homeless, and the disabled, (5) their willingness to link housing with social services, (6) their commitment to preserving low-income housing opportunities on a long-term basis, and (7) their ability to forge lasting and effective partnerships with government at all levels, financial institutions, the business community, private foundations, and nonprofit community development intermediary organizations. For these reasons the Committee bill encourages participating states and localities to use and build the capacity of CHDOs in the implementation of housing strategies.

The Committee notes that well-established CHDOs offer many advantages. First, the housing agendas of these groups usually emerge from constitutent [sic] -based efforts to improve their neighborhoods. Second, these groups are motivated by a history of service and accountability to their communities. Their goal is to create and maintain resources in the community. Their perspective is long-term and service oriented. Third, these groups are willing to take on small-scale, difficult development efforts that preserve the scale and character of their communities. Their orientation disposes them to "work small" where that is appropriate. Nonprofit community-based enterprises have emerged all over the country in the last 10 years. While their achievements are impressive, their capacities are still growing and in many parts of the country their growth must be nurtured or stimulated. New federal housing policies must emphasize the development and use of this sector. While such initiatives cannot yet be relied on to provide all housing resources for low income people, they must be highlighted as one of the most promising vehicles for delivering affordable housing.

The Committee carefully considered provisions in major legislation pending before Congress, such as the Community Housing Partnership Act, that would allocate funds exclusively for use by such community-based nonprofits. The Committee bill incorporates key elements of that legislation, but, rather than creating a separate program for community-based development organizations, the Committee believed the best policy would be to make provision for CHDO housing within one comprehensive program, such as HOP.

Each participating jurisdiction would be required to reserve not less than 10 percent of any HOP funds made available by allocation or reallocation for a period of 18 months for investment in housing to be developed, sponsored, or owned by CHDOs. The required set-aside would be increased to 15 percent after the third year following the jurisdictions designation as a participating jurisdiction, unless the jurisdiction annually demonstrates to the satisfaction of the Secretary that CHDOs cannot effectively use such amounts. Each participating jurisdiction would be required to make reasonable efforts to reach out to CHDOs and encourage them to participate in the implementation of the housing strategy.

If a participating jurisdiction demonstrates that it has tried and failed to invest the funds reserved for CHDOs during the 18 month period, the jurisdiction would be free to invest up to 50 percent of the reserved funds in housing not provided by CHDOs. The remaining funds would be distributed by incentive allocation (1) among CHDOs in that and other jurisdictions, and (2) among competent nonprofit organizations to carry out capacity development of CHDOs, with preference to CHDOs serving the jurisdiction.

If at the end of the 18-month period a participating jurisdiction has not invested the funds reserved for CHDOs and cannot demonstrate that it has made good faith efforts to do so, the Secretary would recapture the funds and make them available by incentive allocation among applications submitted by CHDOs, giving preference to affordable housing within the boundaries of the participating jurisdiction.

The Committee intends that, as it applies to this title, the definition of the term "community housing development organization" shall include subsidiary organizations owned or controlled by a CHDO for purposes consistent with the purposes of this title. Thus, housing would be considered to be developed by a CHDO if a CHDO is the managing general partner of a limited partnership that develops and owns the housing.

scribed in § 501(c)(3). It also clarifies that housing organizations may rely on other charitable purposes to qualify for recognition of exemption from federal income tax as organizations described in § 501(c)(3). These other charitable purposes are described in § 1.501(c)-(3)-1(d)(2). This revenue procedure supersedes the application referral described in Notice 93-1, 1993-1 C.B. 290.

.02 This revenue procedure does not alter the standards that have long been applied to determine whether low-income housing organizations qualify for tax-exempt status under § 501(c)-(3). Rather, it is intended to expedite the consideration of applications for tax-exempt status filed by such organizations by providing a safe harbor and by accumulating relevant information on the existing standards for exemption in a single document. Low-income housing organizations that have ruling or determination letters and have not materially changed their organizations or operations from how they were described in their applications can continue to rely on those letters.

SEC. 2. BACKGROUND OF SAFE HARBOR

.01 Rev. Rul. 67-138, 1967-1 C.B. 129, Rev. Rul. 70-585, 1970-2 C.B. 115, and Rev. Rul. 76-408, 1976-2 C.B. 145, hold that the provision of housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed. The Service has long held that poor and distressed beneficiaries must be needy in the sense that they cannot afford the necessities of life. Rev. Ruls. 67-138, 70-585, and 76-408 refer to the needs of housing recipients and to their inability to secure adequate housing under all the facts and circumstances to determine whether they are poor and distressed.

.02 The existence of a national housing policy to maintain a commitment to provide decent, safe, and sanitary housing for every American family is reflected in several federal housing acts. See, for example, § 2 of the United States Housing Act of 1937, 42 U.S.C. § 1437; § 2 of the Housing Act of 1949, 42 U.S.C. § 1441; § 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701t; and §§ 101, 102, and 202 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. §§ 12701, 12702, and 12721. Not all beneficiaries of these housing acts, however, are necessarily poor and distressed within the meaning of § 1.501(c)(3)-1(d)(2).

.03 In order to support national housing policy, the safe harbor contained in this revenue procedure identifies those low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed. The safe harbor permits a limited number of units occupied by residents with incomes above the low-income limits in order to assist in the social and economic integration of the poorer residents and, thereby, further the organization's charitable purposes. To avoid giving undue assistance to those who can otherwise afford safe, decent, and sanitary housing, the safe harbor requires occupancy by significant levels of both very low-income and low-income families.

.04 Low-income housing organizations that fall outside the safe harbor may still be considered organizations that offer relief to the poor and distressed based on all the surrounding facts and circumstances. Some of the facts and circumstances that will be taken into consideration in determining whether a low-income housing organization will be so considered are set forth in section 4.

.05 Low-income housing organizations may also qualify for tax-exempt status because they serve a charitable purpose described in § 501(c)(3) other than relief of the poor and distressed. Exempt purposes other than relief of the poor and distressed are discussed in section 6.

.06 To be recognized as exempt from income tax under § 501(c)(3), a low-income housing organization must not only serve a charitable purpose but also meet the other requirements of that section, including the prohibitions against inurement and private benefit. Specific concerns with respect to these prohibitions are set forth in section 7.

SEC. 3. SAFE HARBOR FOR RELIEVING THE POOR AND DISTRESSED

.01 An organization will be considered charitable as described in § 501(c)(3) if it satisfies the following requirements:

(1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 501(c)(3); 1.501(c)(3)-1.)

Rev. Proc. 96-32

SECTION 1. PURPOSE

.01 This revenue procedure sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in § 501(c)(3) of the Internal Revenue Code because they relieve the poor and distressed as described in § 1.501(c)(3)-1(d)(2) of the Income Tax Regulations. This revenue procedure also describes the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations de-

residents that qualify as low-income; and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.

(2) The project is actually occupied by poor and distressed residents. For projects requiring construction or rehabilitation, a reasonable transition period is allowed for an organization to place the project in service. Whether an organization's transition period is reasonable is determined by reference to all relevant facts and circumstances. For projects that do not require substantial construction or substantial rehabilitation, a one-year transition period to satisfy the actual occupancy requirement will generally be considered to be reasonable. If a project operates under a government program that allows a longer transition period, this longer period will be used to determine reasonableness.

(3) The housing is affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents. In the case of homeownership programs, this requirement will ordinarily be satisfied by the adoption of a mortgage policy that complies with government-imposed mortgage limitations or otherwise makes the initial and continuing costs of purchasing a home affordable to low and very low-income residents.

(4) If a project consists of multiple buildings and each building does not separately meet the requirements of sections 3.01(1), (2), and (3), then the buildings must share the same grounds. This requirement does not apply to organizations that provide individual homes or individual apartment units located at scattered sites in the community exclusively to families with incomes at or below 80 percent of the area's median income.

.02 In applying this safe harbor, the Service will follow the provisions listed below:

(1) Low-income families and very low-income families will be identified in accordance with the income limits computed and published by the Department of Housing and Urban Development ("HUD") in *Income Limits for Low and Very Low-Income Families Under the Housing Act of 1937*. The term "very low-income" is defined by the relevant housing statute as 50 percent of an area's median income. The term "low-income" is defined by the same statute as 80 percent of an area's median income. However, these income limits may be adjusted by HUD to reflect economic differences, such as high housing costs, in each area. The income limits are then tailored to reflect different family sizes. If HUD's program terminates, the Service will use income limits computed under such program as is in effect immediately before such termination. Copies of all or part of HUD's publication may be obtained by calling HUD at (800) 245-2691 (HUD charges a small fee to cover costs of reproduction).

(2) The retention of the right to evict tenants for failure to pay rent or other misconduct, or the right to foreclose on homeowners for defaulting on loans will not, in and of itself, cause the organization to fail to meet the safe harbor.

(3) An organization originally meeting the safe harbor will continue to satisfy the requirements of the safe harbor if a resident's income increases and causes the organization to fail the safe harbor, provided that the resident's income does not exceed 140 percent of the applicable income limit under the safe harbor. If the resident's income exceeds 140 percent of the qualifying income limit, the organization will not fail to meet the safe harbor if it rents the next comparable non-qualifying unit to someone under the income limits.

(4) To be considered charitable, an organization that provides assistance to the aged or physically handicapped who are not poor must satisfy the requirements set forth in Rev. Rul. 72124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194, and Rev. Rul. 79-19, 1979-1 C.B. 195. If an organization meets the safe harbor, then it does not need to meet the requirements of these rulings even if all of its residents are elderly or handicapped residents. However, an organization may not use a combination of elderly or handicapped persons and low-income persons to establish the 75-percent occupancy requirement of the safe harbor. An organization with a mix of elderly or handicapped residents and low-income residents may still qualify for tax-exempt status under the facts and circumstances test set forth in section 4.

SEC. 4. FACTS AND CIRCUMSTANCES TEST FOR RELIEVING THE POOR AND DISTRESSED

.01 If the safe harbor contained in section 3 is not satisfied, an organization may demonstrate that it relieves the poor and distressed by reference to all the surrounding facts and circumstances.

.02 Facts and circumstances that demonstrate relief of the poor may include, but are not limited to, the following:

(1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.

(2) Limited degree of deviation from the safe harbor percentages.

(3) Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.

(4) Participation in a government housing program designed to provide affordable housing.

(5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.

(6) The provision of additional social services affordable to the poor residents.

(7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.

(8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.

(9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.

(10) Existence of affordability covenants or restrictions running with the property.

SEC. 5. EXAMPLES

.01 Application of the safe harbor and the facts and circumstances test is illustrated by the following examples:

(1) Organization *N* operates pursuant to a government program to provide low and moderate income housing projects. Seventy percent of *N*'s residents have incomes that do not exceed the area's low-income limit. Fifty percent of *N*'s residents have incomes that are at or below the area's very low-income limit. Under the program, *N* restricts rents charged to residents below the income limits to no more than 30 percent of the applicable low or very low-income limits for *N*'s area. *N* is close to meeting the safe harbor. *N* has a substantially greater percentage of very low-income residents than required by the safe harbor; it participates in a federal housing program; and it restricts its rents pursuant to an established government program. Although *N* does not meet the safe harbor, the facts and circumstances demonstrate that *N* relieves the poor and distressed.

(2) Organization *O* will finance a housing project using tax-exempt bonds pursuant to § 145(d). *O* will meet the 20–50 test under § 142(d)(1)(A). Another 45 percent of the residents will have incomes at or below 80 percent of the area's median income. The final 35 percent of the residents will have incomes above 80 percent of the area's median income. *O* will restrict rents charged to residents below the income limits to no more than 30 percent of the residents' incomes. *O* will provide social services to project residents and to other low-income residents in the neighborhood. Also, *O* will purchase its project through a government program designed to retain low-income housing stock. *O* does not meet the safe harbor. However, the facts and circumstances demonstrate that *O* relieves the poor and distressed.

(3) Organization *R* provides affordable homeownership opportunities to purchasers determined to be low-income under a federal housing program. The homes are scattered throughout a section of *R*'s community. Beneficiaries under the program cannot afford to purchase housing without assistance. *R*'s program makes the initial and continuing costs of mortgages affordable to the home buyers by providing assistance with down payments and closing costs. Homeowners assisted by *R* will have the following composition: 40 percent will not exceed 140 percent of the very low-income limit for the area, 25 percent will not exceed the low-income limit, and 35 percent will exceed the low-income limit but will not exceed 115 percent of the area's median income. *R* does not satisfy the safe harbor. However, the facts and circumstances demonstrate that *R* relieves the poor and distressed.

(4) Organization *U* will purchase existing residential rental housing financed using tax-exempt bonds issued in accordance with § 145(d). *U* will meet the minimum requirements of the 40–60 test of § 142(d)(1)(B). It will provide the balance of its units to residents with incomes at or above area median income levels. *U* has a community-based board of directors. *U* does not satisfy the safe harbor. Moreover, the facts and circumstances do not demonstrate that *U* relieves the poor and distressed.

(5) Organization *V* provides rental housing in a section of the city where income levels are well below the other parts of the city. All of *V*'s residents are below the very low-income limits for the area, yet they pay rents that are above 50 percent of the area's very low-income limits. *V* has not otherwise demonstrated that the housing is affordable to its residents. Although the residents are all considered poor and distressed under the safe harbor, *V* does not relieve the poverty of the residents.

(6) Organization *W* provides homeownership opportunities to purchasers with incomes up to 115 percent of the area's median income. *W* does not meet the income levels required under the safe harbor. *W*'s board of directors is representative of community interests, and *W* provides classes and counseling services for its residents. The facts and circumstances do not demonstrate that *W* relieves the poor and distressed.

SEC. 6. EXEMPT PURPOSES OTHER THAN RELIEVING THE POOR AND DISTRESSED

.01 Relief of the poor and distressed, whether demonstrated by satisfaction of the safe harbor described in section 3 of this Revenue Procedure or by reference to the facts and circumstances test described in section 4, does not constitute the only exempt purpose that a housing organization may have. Such organizations may qualify for exemption without having to satisfy the standards for relief of the poor and distressed by providing housing in a way that accomplishes any of the purposes set forth in § 501(c)(3) or § 1.501(c)(3)–1(d)(2). Those purposes include, but are not limited to, the following:

(1) Combatting community deterioration is an exempt purpose, as illustrated by Rev. Rul. 68–17, 1968–1 C.B. 247, Rev. Rul. 68–655, 1968–2 C.B. 213, Rev. Rul. 70–585, 1970–2 C.B. 115 (Situation 3), and Rev. Rul. 76–147, 1976–1 C.B. 151. An organization that combats community deterioration must (1) operate in an area with actual or potential deterioration, and (2) directly prevent or relieve that deterioration. Constructing or rehabilitating housing has the potential to combat community deterioration.

(2) Lessening the burdens of government is an exempt purpose, as illustrated by Rev. Ruls. 85–1 and 85–2, 1985–1 C.B. 178. An organization lessens the burdens of government if (a) there is an objective manifestation by the governmental unit that it considers the activities of the organization to be the government's burdens, and (b) the organization actually lessens the government's burdens.

(3) Elimination of discrimination and prejudice is an exempt purpose, as illustrated by Rev. Rul. 68–655, 1968–2 C.B. 213, and Rev. Rul. 70–585, 1970–2 C.B. 115 (Situation 2). These rulings describe organizations that further charitable purposes by assisting persons in specific racial groups to acquire housing for the purpose of stabilizing neighborhoods or reducing racial imbalances.

(4) Lessening neighborhood tensions is an exempt purpose, as illustrated by Rev. Rul. 68–655, 1968–2 C.B. 213, and Rev. Rul. 70–585, 1970–2 C.B. 115 (Situation 2). It is generally identified as an additional charitable purpose by organizations that fight poverty and community deterioration associated with overcrowding in lower income areas in which ethnic or racial tensions are high.

(5) Relief of the distress of the elderly or physically handicapped is an

exempt purpose, as illustrated by Rev. Rul. 72-124, 1972-1 C.B. 145, Rev. Rul. 79-18, 1979-1 C.B. 194, and Rev. Rul. 79-19, 1979-1 C.B. 195. An organization may further a charitable purpose by meeting the special needs of the elderly or physically handicapped.

SEC. 7. OTHER CONSIDERATIONS

If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

SEC. 8. EFFECT ON OTHER DOCUMENTS

Notice 93-1 is superseded.

SEC. 9. EFFECTIVE DATE

This revenue procedure is effective on May 13, 1996.
