



501(c)(3) Status for Housing Cooperatives

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Carlson Black O'Callaghan & Battenberg LLP is a multidisciplinary legal team with extensive experience representing cooperatives and nonprofit organizations of varying sizes in formation, governance and ongoing compliance issues. In addition, Carlson Black has attorneys with decades of experience representing clients on commercial real estate, land use, construction contracting, business and tax law issues.

INTRODUCTION

This guide exists to help you determine whether 501(c)(3) status is appropriate for your housing cooperative and to spell out the steps in the 501(c)(3) application process.

This guide does not assume that a housing cooperative has been incorporated under a cooperative statute or any other corporate statute and uses the term “housing cooperative” to describe housing in which the legal, social, or cultural structure and commitments align with the Cooperative Principles. The Cooperative Principles are described in Appendix A.

In general, an organization’s tax treatment is controlled by two factors: incorporation status and federal tax status. Incorporation status is determined at the state level. Federal tax status is determined by the Internal Revenue Service (IRS) and controls the organization’s federal tax treatment. Because unincorporated cooperatives are not taxed at the state or federal level, they must incorporate before pursuing a 501(c)(3) status. See Appendix B for information on incorporating a housing cooperative.


501(c)(3) STATUS

Section 501(c)(3) of the Internal Revenue Code (IRC) describes entities organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. Though the IRC establishes several tax-exempt categories, 501(c)(3) status is particularly attractive because it is the only tax-exempt category to receive the benefit of tax-deductible donations. Additionally, many grants are set aside exclusively for 501(c)(3) organizations. Other benefits of 501(c)(3) status include federal income tax exemption, exemptions from state income, sales, opportunities for tax-exempt financing, and sometimes exemption from property taxes.

Is 501(c)(3) Status Right for Your Cooperative?

501(c)(3) status is not appropriate for all housing cooperatives. 501(c)(3) organizations are prohibited from having investors who are given a share of profits or dividends and are required upon dissolution to donate all assets remaining after paying bills to other non-profits. 501(c)(3) organizations must also be operated exclusively for an exempt purpose.^[1] This guide focuses on the exempt purpose of providing affordable housing to low and moderate income people and families, pursuant to a “safe harbor” rule created by the IRS. We focus upon this approach because this exempt purpose has the most well-defined requirements and the greatest instances of successful application. Appendix C covers other exempt purposes available to housing organizations. Appendix D includes a copy of the safe harbor rule known as Rev. Proc. 96-32.

[1] A list of exempt purposes can be found at <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3>.



Many housing cooperatives find that they meet the safe harbor requirements without even meaning to. However, operating exclusively for an exempt purpose requires a strong institutional commitment to the exempt purpose. Before filing for 501(c)(3) status it is therefore necessary to consider whether your cooperative truly exists to serve an exempt purpose. If not, your cooperative is likely not be a good fit for 501(c)(3) status. When considering the safe harbor requirements, an honest conversation about whether the cooperative's members wish to formally prioritize providing affordable housing for low-income residents is necessary. If the cooperative does not house low-income residents, seeking low-income residents for the purpose of receiving a tax-exemption will serve neither the low-income residents nor the cooperative in the long run.

Safe Harbor for Relief of the Poor

The IRS has specific criteria that must be satisfied for a housing organization to satisfy the exempt purpose of providing safe harbor for relief of the poor:

1. At least 75% of units must be occupied by people who qualify as low-income for the area. 25% of units may be occupied by residents of any income status.

AND

2. Either 20% of units must be occupied by people who qualify as very low-income for the area, or 40% of units will need to be occupied by people who do not exceed 120% the very low-income limit for the area.

The regional designations for low income and very-low income are determined by the Department of Housing and Urban Development (HUD) and can be found at the [HUD's Office of Policy and Research website](#). Housing organizations must be aware that the HUD adjusts these designations annually and must comply with the most recent HUD designation.[2]

Additionally, the housing must be affordable for the low income and very-low income residents. This requirement is satisfied by the adoption of a rental policy that complies with government imposed rental restrictions or that otherwise limits the tenant's portion of rent. A straightforward way to meet this requirement is to set rent at no more than 30% of the low-income income threshold as specified by the HUD's low-income designation for your area. It is not necessary for each resident to have a unique rental price. The cooperative should also keep a record demonstrating its rent restrictions. If the cooperative has multiple buildings that are not on shared grounds, each building must separately meet these requirements.

[2] If an organization that originally satisfied these income requirements subsequently violates them because a resident's income increases, the organization will not lose its 501(c)(3) designation so long as the resident's income does not exceed 140% of the applicable income limit. If the resident's income does exceed 140% of the applicable income limit, the organization will not lose its 501(c)(3) status as long as it rents the next comparable non-qualifying unit to a someone qualified as low or very low income.

The Publicly Supported Test

501(c)(3) status encompasses both private foundations and public charities. These two categories are subject to different tax treatment and reporting requirements. Most housing cooperatives prefer to operate as public charities because they receive preferable tax treatment and are subject to fewer reporting requirements than private foundations.

To be considered a public charity, a cooperative must receive more than one-third of its financial support from the public and no more than one-third of its financial support from private investment income.

Generally, most of a housing cooperative's income is rental income, which is categorized as public support unless it comes from "disqualified persons" as described in Section 4946 of the IRC. Members of a cooperative's board of directors are considered "disqualified persons," meaning rental income from board members cannot be used to satisfy the one-third public support requirement. The board of a 501(c)(3) housing cooperative must therefore be structured so that no more than two-thirds of all rental income comes from board members at any given time. This precludes a housing cooperative from having all residents sit on the board of directors concurrently, which is a common practice.

APPLYING FOR 501(c)(3) STATUS

Form 1023

Applying for 501(c)(3) status requires filing a Form 1023 with the IRS.^[3] When possible, the 1023 should be submitted within 27 months of the cooperative's incorporation. If filed within 27 months of incorporation, upon a successful application the cooperative will retroactively receive 501(c)(3) benefits from the date of incorporation onward. If filed after the 27-month deadline, the cooperative will only receive 501(c)(3) treatment retroactively starting on the date the Form 1023 was filed. As of 2021, filing a Form 1023 costs \$750. An annotated version of the relevant portions of a Form 1023 can be found in Appendix E.

The IRS also offers a simplified version of Form 1023 known as the Form 1023-EZ, but one basic requirement for using Form 1023-EZ is that the cooperative's annual income (all money coming in from every source) cannot exceed \$50,000. This requirement disqualifies most housing cooperatives from using the abbreviated form.

[3] The 1023 filing portal can be found at <https://www.pay.gov/public/form/start/704509645>.

Important Policies and Documents

Before submitting a Form 1023, the cooperative should integrate the following terms into its governing documents, adopt a conflict of interest policy for the board of directors, establish income verification procedures to ensure compliance with 501(c)(3) obligations and exempt purpose requirements, enter lease or membership agreements with its residents, and update its website.

Terms for Governing Documents

To document the cooperative's commitment to its obligations as a 501(c)(3) organization, the following terms should be added to the purpose and dissolution clauses of the cooperative's articles of incorporation and bylaws. In Wisconsin, articles of incorporation can be amended by filing a Form 204 with the WDFI.

Purpose Terms

1. No part of the earnings of this Corporation will inure to the benefit of private shareholders or individuals, except that the Corporation shall be authorized to pay reasonable compensation for services rendered.
2. No activities of the Corporation shall attempt to influence legislation except as may be permitted under provisions of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
3. This Corporation is dedicated to exclusively charitable, scientific, literary, and educational purposes, and, in the event of dissolution, any remaining assets shall be distributed to organizations which shall at that time qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
4. Notwithstanding any other provisions of these articles, the Corporation shall not carry on any activities not permitted to be carried on by:
 - a. A corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
 - b. A corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).
5. The Corporation shall not participate to any extent in a political campaign for or against any candidate for public office.
6. With respect to any taxable year or years of the Corporation during which it is a private foundation, as defined in Section 509 of the Code, it shall make distributions for such years at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code, and the Corporation shall not:
 - a. Engage in any act of self-dealing, as defined in Section 4941(d) of the Code.
 - b. Retain any excess business holdings, as defined in Section 4943(c) of the Code.
 - c. Make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code.
 - d. Make any taxable expenditures, as defined in Section 4945(d) of the Code.



Dissolution Terms

Upon dissolution of the Corporation, after all debts and obligations of the Corporation are paid, its assets, if any, shall be distributed, subject to any necessary judicial approval, to an organization or organizations then described in Section 501(c)(3) of the Code, except that no Member shall be eligible to receive assets from the Corporation upon dissolution.

Conflict of Interest Policy

The cooperative should adopt a conflict of interest policy for members of the board of directors. This policy should require members of the board of directors to disclose any existing or potential conflicts of interest and recuse themselves from voting on any issue in which they have a conflict.[4]

Income Verification Form

To ensure compliance with exempt purpose income requirements, it is best practice to have residents verify their income in writing upon becoming members of the cooperative and again each subsequent year. Having written records will be necessary if the IRS ever audits the cooperative and may also be necessary to qualify for state and local non-profit tax exemptions. A sample income verification form can be found in Appendix F.

Lease / Membership Agreement

The cooperative will also need to have a lease or membership agreement in place between the cooperative and the cooperative's residents before submitting the Form 1023. This document must include an agreement that the resident will honestly fill out the income verification form every year.

Online Presence

If the cooperative has a website, be sure to update the website before submitting the Form 1023. The IRS will likely review the cooperative's website and will look for a description that indicates that the cooperative is an affordable housing operation for low-income people.

[4] For more information on creating an appropriate policy, visit the National Council of Nonprofits conflict of interest page: <https://www.councilofnonprofits.org/tools-resources/conflicts-of-interest>.

APPENDICES

Appendix A: The Cooperative Principles

The following description of the cooperative principles was prepared by the University of Wisconsin Center for Cooperatives and is available at <https://uwcc.wisc.edu/about-co-ops/cooperative-principles/>.

One of the ways cooperatives differ from other business structures is their adherence to cooperative principles and values that reflect social, political, and business concerns. Cooperatives trace the roots of these principles to the Rochdale pioneers, who established the first modern cooperative in Rochdale, England in 1844. These principles have been refined, adapted, and reinterpreted over time. The seven principles used by the International Cooperative Alliance today are accepted by cooperatives worldwide.

Cooperatives are also based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. Cooperative members believe in the ethical values of honesty, openness, social responsibility, and caring for others.

1. Voluntary and Open Membership

Cooperatives are voluntary organizations, open to all people able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control

Cooperatives are democratic organizations controlled by their members – those who buy the goods or use the services of the cooperative – who actively participate in setting policies and making decisions.

3. Member Economic Participation


Members contribute equally to, and democratically control, the capital of the cooperative. This benefits members in proportion to the business they conduct with the cooperative rather than on the capital invested.

4. Autonomy and Independence

Cooperatives are autonomous, self-help organizations controlled by their members. If the co-op enters into agreement with other organizations or raises capital from external sources, it does so based on terms that ensure democratic control by the members and maintains the cooperative's autonomy.

5. Education, Training and Information

Cooperatives provide education and training for members, elected representatives, managers and employees so they can contribute effectively to the development of their cooperative. Members also inform the public about the nature and benefits of cooperatives.



6. Cooperation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

7. Concern for Community

While focusing on member needs, cooperatives work for the sustainable development of communities through policies and programs accepted by the members.

More recently, in response to changing market conditions, some cooperatives in the United States have experimented with modifying these principles. For example, some cooperatives have used closed membership to maximize efficiency, profitability and the return on member equity investments. New cooperative laws in some states have granted voting rights to non-user investors.

Appendix B: Incorporation

Incorporation is the process of creating a legal corporation. State statutes determine which types of legal corporations are available and define the legal characteristics of each type. Stock and non-stock corporations, limited liability companies (LLCs), and cooperatives are just a few common legal corporations. Not all states have a cooperative statute, so housing cooperatives in some states may have to incorporate under a different corporate form or incorporate in a different state.

Benefits of Incorporation

Many housing cooperatives have strong social and cultural norms that meet the needs of their residents, so incorporation may not be right for every housing cooperative. Incorporation does provide distinct benefits, however.

Though each corporate form is governed by a different state statute, they share basic benefits. For instance, they allow multiple people (or entities) to share ownership of a business or assets via shared ownership of the corporation. They also offer limited liability, which limits an owner's individual financial liability for the corporation's conduct. Additionally, corporations have founding documents known as bylaws or operating agreements that define the rights and responsibilities of owners and the structure of the corporation. These agreements can be amended over time but remain stable as owners come and go, giving the entity longevity that extends beyond the tenure of individual owners.

Additionally, corporations can enter binding contracts, own assets, employ employees, and be party to legal actions. When unincorporated, a cooperative's members must enter agreements in their own names, which creates personal financial risk. When the cooperative enters agreements on the members' behalf, the cooperative's limited liability shields the members from financial risk if the cooperative breaches a contract or defaults on a loan.

How to Incorporate

Filing Articles of Incorporation

Incorporating requires filing articles of incorporation with a state office. Articles of incorporation document the creation of the corporation and contain information such as the corporation's purpose, name, address, agent, and amounts and types of stock.

In Wisconsin, cooperative articles of incorporation can be filed by submitting a Form 202 to the Wisconsin Department of Financial Institutions (WDFI). Filing costs \$55 dollars: \$25 for a filing fee and \$30 for a recording fee with the county Register of Deeds. To file, you must mail two original notarized copies of the Form 202 to the Wisconsin Department of Financial Institutions along with checks for both fees.

If the cooperative will pursue 501(c)(3) status, make sure to include the terms listed in the section titled Terms for Governing Documents.

Adopting Bylaws

Bylaws are the rules that govern the internal affairs of the cooperative. Many unincorporated cooperatives have some version of bylaws that describe the cooperative's culture and the residents' rights and responsibilities. Incorporated cooperatives should have a more robust set of bylaws that defines the financial and fiduciary relationships between members, directors, and officers as well as the decision-making processes for general membership, the board of directors, and any semi-autonomous sub-groups. Bylaws should also establish a process for amending the bylaws. Bylaws do not need to be filed with a state office. However, they will need to be provided to the IRS as part of the tax exemption application.

Below is an outline of bylaw considerations for a housing cooperative interested in 501(c)(3) status. This outline is not meant to be exhaustive.[5]

1. Purpose
 - a. What is the cooperative's mission? The mission should involve providing affordable housing for low-income residents.
 - b. Make sure to include the Purpose Terms listed in the section titled Terms for Governing Documents.
2. Membership
 - a. Who is eligible for membership?
 - b. What is the acceptance process? Refer to the income disclosure form, covered below.
 - c. What rights and responsibilities come with membership?
 - d. What is the process for terminating membership?
3. Board of Directors
 - a. To be eligible for 501(c)(3) status, no more than two thirds of the cooperative's income can come from board members. This requirement must be factored into how the board is arranged and is covered in greater depth below.
 - b. What is the election process?
 - c. What are the terms of office?
 - d. What is the process for removing a director?
 - e. How are board meetings organized?
 - f. How frequent are meetings and who has the authority to call meetings?
 - g. How is notice of meetings given?
 - h. What are the quorum requirements and voting rules?
 - i. What restrictions on the board's powers exist?

[5] For more on cooperative bylaws, see UWCC's Cooperative Bylaws Guide: <https://resources.uwcc.wisc.edu/Legal/SampleBylaws.pdf>.



4. Officers

- a. What roles exist? Typically, there is at least a president, treasurer, and secretary.
In Wisconsin one person can be both the treasurer and secretary.
- b. What duties and powers does each role have?
- c. How do elections work?
- d. How long is each role's term of office?
- e. How can officers be removed?

5. Member Equity/Patronage

- a. To be eligible for 501(c)(3) status, the cooperative cannot receive financial investments from members other than basic membership fees that the cooperative returns some portion of when a member exits.
- b. What amount is required?
- c. Are there any allowances for increases or decreases?
- d. What is the process for a pay-out?

6. Financial Restrictions

- a. To be eligible for 501(c)(3) status, there must be a prohibition on private gain to officers, board members, members, and employees.
- b. What rules are there regarding the purchasing of real property and taking on debt?

7. Dissolution

- a. Upon dissolution 501(c)(3)s must donate their assets to other charitable organizations. Make sure to include the Dissolution Terms listed in the section titled Terms for Governing Documents.

8. Amending the Bylaws

- a. Who can amend the bylaws?
- b. What is the process for proposing and deciding on amendments?

Appendix C: Other Exempt Purposes

Though the most common path for a housing organization to obtain 501(c)(3) status is by providing safe harbor for relief of the poor and distressed, low-income housing organizations that fail to meet the safe harbor requirements may still qualify if they accomplish one of the following purposes. This guide does not focus on these purposes because the IRS guidelines for qualifying under these purposes are not well defined compared to the safe harbor requirements. Still, cooperatives that provide low-income housing but for some reason fall short of the safe harbor requirements may still successfully file for 501(c)(3) status if their application makes a compelling case that the cooperative performs one of the following exempt purposes. Additional IRS rulings that shed light on these exempt purposes are listed in Section 6 of Rev. Proc. 96-32 in Appendix D.

1. Combating community deterioration.

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.

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.

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.

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.

An organization may further a charitable purpose by meeting the special needs of the elderly or physically handicapped.

Appendix D: Safe Harbor Ruling, Rev. Proc. 96-32

Rev. Proc. 96-32, 1996-1 C.B. 717, 1996-20 I.R.B. 14.

INTERNAL REVENUE SERVICE Revenue Procedure

LOW-INCOME HOUSING GUIDELINES

Released: May 1, 1996
Published: May 13, 1996

26 CFR 601.201: Rulings and determination letters.

Low-income housing guidelines. Guidance on qualification for tax-exemption under section 501(c)(3) is provided for organizations that provide low-income housing. The guidance includes a safe-harbor procedure to determine qualification.

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 described 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 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 [date of publication].

DRAFTING INFORMATION

The principal authors of this revenue procedure are Lynn Kawecki and Marvin Friedlander. For further information regarding this revenue procedure, contact Mr. Kawecki at (202) 622-7305 (not a toll free number).

Appendix E: Annotated Selections of Form 1023

Form 1023 (Rev. January 2020) Department of the Treasury Internal Revenue Service	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code Do not enter social security numbers on this form as it may be made public. Go to www.irs.gov/Form1023 for instructions and the latest information.	OMB No. 1545-0047 Note: If exempt status is approved, this application will be open for public inspection.
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Use the "T" buttons throughout this form for help in completing this application. For additional help, call IRS Exempt Organizations Customer Account Services toll-free at 1-877-829-5500.

If you cannot complete required responses within the textbox limits throughout this form, upload your additional narratives with the other required documents.

Part I Identification of Applicant

1 a Full Name of Organization (exactly as it appears in your organizing document)		b Care of Name (if applicable)	
c Mailing Address (Number, street and room/suite)		d City	e Country
f State	g Zip Code + 4	h Foreign Province (or State)	i Foreign Postal Code
2 Employer Identification Number Issued online by the IRS	3 Month Tax Year Ends	4 Person to Contact if More Information is Needed (officer, director, trustee, or authorized representative)	
5 Contact Telephone Number	6 Fax Number (optional)	7 User Fee Submitted	

8 Organization's Website (if available):

9 List the names, titles, and mailing addresses of your officers, directors, and/or trustees.

First Name:	Last Name:	Title:
Mailing Address:		City:
State (or Province):		Zip Code (or Foreign Postal Code):
First Name:	Last Name:	Title:
Mailing Address:		City:
State (or Province):		Zip Code (or Foreign Postal Code):
First Name:	Last Name:	Title:
Mailing Address:		City:
State (or Province):		Zip Code (or Foreign Postal Code):
First Name:	Last Name:	Title:
Mailing Address:		City:
State (or Province):		Zip Code (or Foreign Postal Code):
First Name:	Last Name:	Title:
Mailing Address:		City:
State (or Province):		Zip Code (or Foreign Postal Code):

Check here to add more officers, directors, and/or trustees.

Remember to consider the ratio of residents on the board of directors to the number of residents not on the board of directors. At least 1/3 of the cooperative's income must come from residents who are not on the board of directors.

Part II Organizational Structure

1 You must be a corporation, limited liability company (LLC), unincorporated association, or trust to be tax exempt.

Select your type of organization.

Corporation

At the end of this form, you must upload a copy of your articles of incorporation (and any amendments) that shows proof of filing with the appropriate state agency.

Limited Liability Company (LLC)

At the end of this form, you must upload a copy of your articles of organization (and any amendments) that shows proof of filing with the appropriate state agency. Also, if you adopted an operating agreement, upload a copy, along with any amendments.

Unincorporated Association

At the end of this form, you must upload a copy of your articles of association, constitution, or other similar organizing document that is dated and includes at least two signatures. Include signed and dated copies of any amendments.

Trust

At the end of this form, you must upload a signed and dated copy of your trust agreement. Include signed and dated copies of any amendments.

2 Enter the date you formed. (MM/DD/YYYY)

3 Select your state (or U.S. territory) of incorporation or other formation. If you were formed under the laws of a foreign country, select Foreign Country.

4 Have you adopted bylaws? If "Yes," at the end of this form, upload a current copy showing the date of adoption. If "No," explain how you select your officers, directors, or trustees.

Yes No

5 Are you a successor to another organization?

Yes No

Answer "Yes" if you have taken or will take over the activities of another organization, you took over 25% or more of the fair market value of the net assets of another organization, or you were established upon the conversion of an organization from for-profit to nonprofit status. If "Yes," complete Schedule G.

Part III Required Provisions in Your Organizing Document

Part III helps ensure that, when you submit this application, your organizing document contains the required provisions to meet the organizational test under section 501(c)(3).

If you cannot check "Yes" in both Lines 1 and 2, your organizing document does not meet the organizational test. DO NOT file this application until you have amended your organizing document. Remember to upload your original and amended organizing documents at the end of this form.

- 1** Section 501(c)(3) requires that your organizing document limit your purposes to one or more exempt purposes within section 501(c)(3), such as charitable, religious, educational, and/or scientific purposes.

The following is an example of an acceptable purpose clause: The organization is organized exclusively for charitable, religious, educational, and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Does your organizing document meet this requirement?

Yes No

- 1a** State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph):

- 2** Section 501(c)(3) requires that your organizing document provide that upon dissolution, your remaining assets be used exclusively for section 501(c)(3) exempt purposes, such as charitable, religious, educational, and/or scientific purposes. Depending on your entity type and the state in which you are formed, this requirement may be satisfied by operation of state law.

The following is an example of an acceptable dissolution clause: Upon the dissolution of this organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

Does your organizing document meet this requirement?

Yes No

- 2a** State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph) or indicate that you rely on state law.

Part IV **Your Activities** (continued)

2 Enter the 3-character NTEE Code that best describes your activities.

L21 (Low Income Housing)

Or check here if you want the IRS to select the NTEE Code that best describes your activities.

3 Do any of your programs limit the provision of goods, services, or funds to a specific individual or group of specific individuals? For example, answer "Yes" if goods, services, or funds are provided only for a particular individual, your members, individuals who work for a particular employer, or graduates of a particular school. If "Yes," explain the limitation and how recipients are selected for each program.

Yes No

Limits as per Rev. Proc. 96-32

4 Do any individuals who receive goods, services, or funds through your programs have a family or business relationship with any officer, director, trustee, or with any of your highest compensated employees or highest compensated independent contractors? If "Yes," explain how these related individuals are eligible for goods, services, or funds.

Yes No

[Empty text box for question 4]

5 Do you or will you support or oppose candidates in political campaigns in any way? If "Yes," explain.

Yes No

[Empty text box for question 5]

6 Do you or will you attempt to influence legislation? If "Yes," explain how you attempt to influence legislation.

Yes No

[Empty text box for question 6]

Part IV Your Activities (continued)

- 11** Are you a sponsoring organization that maintains one or more donor advised funds? If yes, please provide a complete description of your program, including the specific advice that such donors may provide. Describe in detail the control you maintain (or will maintain) over the use of the funds. Yes No

- 12** Do you or will you operate a school? Yes No
If "Yes," complete Schedule B.

- 13** Is your principal purpose or function to provide hospital or medical care? Yes No
If "Yes," complete Schedule C.

- 14** Do you or will you provide low-income housing? Yes No
If "Yes," complete Schedule F.

- 15** Do you or will you provide scholarships, fellowships, educational loans, or other educational grants to individuals, including grants for travel, study, or other similar purposes? Yes No
If "Yes," complete Schedule H - Section I.

- 16** Check any of the following fundraising activities that you will undertake (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Website, mail, email, personal, and/or phone solicitations | <input type="checkbox"/> Foundation grant solicitations |
| <input type="checkbox"/> Receive donations from another organization's website | <input type="checkbox"/> Government grant solicitations |
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Other (non-bingo) gaming activities |
| <input type="checkbox"/> Other (describe) | |

- We will not engage in fundraising activities.

- 17** Do you or will you engage in fundraising activities for other organizations? If "Yes," describe these arrangements, including the names or descriptions of the organizations for which you raise funds. Yes No

Part V Compensation and Other Financial Arrangements

- 1** Do you or will you compensate officers, directors, or trustees, or do or will you have highest compensated employees, or highest compensated independent contractors? If "No," continue to Line 2. Yes No
"highest compensated" = earning at least \$100K/year

In establishing compensation for your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors:

- 1a** Do or will the individuals that approve compensation arrangements follow a conflict of interest policy? Yes No
- 1b** Do or will you approve compensation arrangements in advance of paying compensation? Yes No
- 1c** Do or will you document in writing the date and terms of approved compensation arrangements? Yes No
- 1d** Do or will you record in writing the decision made by each individual who decided or voted on compensation arrangements? Yes No
- 1e** Do or will you approve compensation arrangements based on information about compensation paid by similarly situated taxable or tax-exempt organizations for similar services, current compensation surveys compiled by independent firms, or actual written offers from similarly situated organizations? Yes No
- 1f** Do or will you record in writing both the information on which you relied to base your decision and its source? Yes No
- 1g** Do or will you have any other practices you use to set reasonable compensation? If "Yes," describe these practices. Yes No

- 2** Have you adopted a conflict of interest policy consistent with the sample conflict of interest policy in Appendix A to the instructions? If you are a hospital, answer "Yes" if your conflict of interest policy includes provisions consistent with the additional healthcare related provisions in the sample document. If "No," describe the procedures you will follow to ensure that persons who have a conflict of interest will not have influence over setting their own compensation or regarding business deals with themselves. Yes No

- 3** Do you or will you compensate any of your officers, directors, trustees, highest compensated employees, and highest compensated independent contractors through non-fixed payments, such as discretionary bonuses or revenue-based payments? If "Yes," describe all non-fixed compensation arrangements, including how the amounts are determined, who is eligible for such arrangements, whether you place a limitation on total compensation, and how you determine or will determine that you pay no more than reasonable compensation for services. Yes No

Part V Compensation and Other Financial Arrangements (continued)

- 4 Do you or will you purchase or sell any goods, services, or assets from or to: (i) any of your officers, directors, or trustees; (ii) any family of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any such transactions that you made or intend to make, with whom you make or will make such transactions, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value. Yes No

- 5 Do you or will you have any leases, contracts, loans, or other agreements with: (i) your officers, directors, or trustees; (ii) any family of any of your officers, directors, or trustees; (iii) any organizations in which any of your officers, directors, or trustees are also officers, directors, or trustees, or in which any individual officer, director, or trustee owns more than a 35% interest; (iv) your highest compensated employees; or (v) your highest compensated independent contractors? If "Yes," describe any written or oral arrangements that you made or intend to make, with whom you have or will have such arrangements, how the terms are or will be negotiated at arm's length, and how you determine you pay no more than fair market value or you are paid at least fair market value. Yes No

Describe how the cooperative will lease to members of the board of directors and how rental prices are set. Board members should not receive preferential treatment in their lease terms beyond that received by other residents.

- 6 Do you or will you contract with another organization to develop, build, market, or finance your facilities? If "Yes," describe each facility, the role of the other organization, and any business or family relationship between the organization and your officers, directors, or trustees. Explain how that entity is selected, how the terms of any contract(s) are negotiated at arm's length, and how you determine you will pay no more than fair market value for services. Yes No

Part VI Financial Data (continued)

A. Statement of Revenues and Expenses					
Type of revenue	Current tax year	4 prior tax years or 2 succeeding tax years			
	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____
1 Gifts, grants, and contributions received (do not include unusual grants)					
2 Membership fees received	Rental income				
3 Gross investment income					
4 Net unrelated business income					
5 Taxes levied for your benefit					
6 Value of services or facilities furnished by a governmental unit without charge (not including the value of services generally furnished to the public without charge)					
7 Any revenue not otherwise listed above or in lines 9-12 below (provide an itemized list below)					
8 Total of lines 1 through 7					
9 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to your exempt purposes (provide an itemized list below)					
10 Total of lines 8 and 9					
11 Net gain or loss on sale of capital assets (provide an itemized list below)					
12 Unusual grants (provide an itemized list below)					
13 Total Revenue (add lines 10 through 12)					
Type of expense	Current tax year	4 prior tax years or 2 succeeding tax years			
14 Fundraising expenses					
15 Contributions, gifts, grants, and similar amounts paid out (provide an itemized list below)					
16 Disbursements to or for the benefit of members (provide an itemized list below)					
17 Compensation of officers, directors, and trustees					
18 Other salaries and wages					
19 Interest expense					
20 Occupancy (rent, utilities, etc.)					
21 Depreciation and depletion					
22 Professional fees					
23 Any expense not otherwise classified, such as program services (provide an itemized list below)					
24 Total Expenses (add lines 14 through 23)					

25 Itemized financial data

Part VII Foundation Classification

Part VII is designed to classify you as an organization that is either a private foundation or a public charity. Public charity classification is a more favorable tax status than private foundation classification. If you are a private foundation, this part will further determine whether you are a private operating foundation.

1 Select the foundation classification you are requesting from the list below.

- You are described in 509(a)(1) and 170(b)(1)(A)(vi) as an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public.
- You are described in 509(a)(2) as an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions).
- You are described in 509(a)(1) and 170(b)(1)(A)(i) as a church or a convention or association of churches. Complete Schedule A.
- You are described in 509(a)(1) and 170(b)(1)(A)(ii) as a school. Complete Schedule B.
- You are described in 509(a)(1) and 170(b)(1)(A)(iii) as a hospital, a cooperative hospital service organization, or a medical research organization operated in conjunction with a hospital. Complete Schedule C.
- You are described in 509(a)(1) and 170(b)(1)(A)(iv) as an organization operated for the benefit of a college or university that is owned or operated by a governmental unit.
- You are described in 509(a)(1) and 170(b)(1)(A)(ix) as an agricultural research organization directly engaged in the continuous active conduct of agricultural research in conjunction with a college or university.
- You are described in 509(a)(3) as an organization supporting either one or more organizations described in 509(a)(1) or 509(a)(2) or a publicly supported section 501(c)(4), (5), or (6) organization. Complete Schedule D.
- You are described in 509(a)(4) as an organization organized and operated exclusively for testing for public safety.
- You are a publicly supported organization and would like the IRS to decide your correct classification.
- You are a private foundation.

- 1a** As a private foundation, section 508(e) requires special provisions in your organizing document in addition to those that apply to all organizations described in section 501(c)(3). Check this box to confirm that your organizing document includes these provisions or you rely on state law.

State specifically where your organizing document meets this requirement, such as a reference to a particular article or section in your organizing document (Page/Article/Paragraph) or state that you rely on state law.

- 1b** Do you or will you provide scholarships, fellowships, educational loans, or other educational grants to individuals, including grants for travel, study, or other similar purposes? Yes No
If "Yes," complete Schedule H - Section II.

- 1c** Are you a private operating foundation? Yes No

To be a private operating foundation you must engage directly in the active conduct of charitable, religious, educational, and similar activities, as opposed to indirectly carrying out these activities by providing grants to individuals or other organizations.

Part VII Foundation Classification (continued)

- 1d** Describe how you meet the requirements for private operating foundation status, including how you meet the income test and either the assets test, the endowment test, or the support test. If you've been in existence for less than one year, describe how you are likely to satisfy the requirements for private operating foundation status.

- 2** If you have been in existence more than 5 years, you must confirm your public support status. To confirm your qualification as a public charity described in 509(a)(1) and 170(b)(1)(A)(vi) in existence for five or more tax years, you must have received one-third or more of your total support from governmental agencies, contributions from the general public, and contributions or grants from other public charities; or 10% or more of your total support from governmental agencies, contributions from the general public, and contributions or grants from other public charities and the facts and circumstances indicate you are a publicly supported organization. Calculate whether you meet this support test for your most recent five-year period.

- i.** Did you receive contributions from any person, company, or organization whose gifts totaled more than the 2% amount of line 8 in Part VI-A? Yes No

If "Yes," identify each person, company, or organization by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

- ii.** Based on your calculations, did you receive at least one-third of your support from public sources or did you normally receive at least 10 percent of your support from public sources and you have other characteristics of a publicly supported organization? Yes No

- 2a** If you have been in existence more than 5 years, you must confirm your public support status. To confirm your qualification as a public charity described in 509(a)(2) in existence for five or more tax years, you must have normally received more than one-third of your support from contributions, membership fees, and gross receipts from activities related to your exempt functions, or a combination of these sources, and not more than one-third of your support from gross investment income and net unrelated business income. Calculate whether you meet this support test for your most recent five-year period.

- i.** Did you receive amounts from any disqualified persons? Yes No

If "Yes," identify each disqualified person by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

Rental Income from Board Members

- ii.** Did you receive amounts from individuals or organizations other than disqualified persons that exceeded the greater of \$5,000 or 1% of the amount on line 10 of Part VI-A Statement of Revenues and Expenses? Yes No

If "Yes," identify each individual or organization by letter (A, B, C, etc.) and indicate the amount contributed by each. Keep a list showing the name of and amount contributed by each of these donors for your records.

- iii.** Based on your calculations, did you normally receive more than one-third of your support from a combination of gifts, grants, contributions, membership fees, and gross receipts (from permitted sources) from activities related to your exempt functions and normally receive not more than one-third of your support from investment income and unrelated business taxable income? Yes No

Part VIII Effective Date

In general, a determination letter recognizing exemption of an organization described in section 501(c)(3) is effective as of the date of formation of an organization if: (1) its purposes and activities prior to the date of the determination letter have been consistent with the requirements for exemption; and (2) it has filed an application for recognition of exemption within 27 months from the end of the month in which it was organized.

- 1 Are you submitting this application within 27 months of the end of the month in which you were legally formed? Yes No

If "No," complete Schedule E.

Part IX Annual Filing Requirements

If you fail to file a required information return or notice for three consecutive years, your exempt status will be automatically revoked.

- 1 Certain organizations are not required to file annual information returns or notices (Form 990, Form 990-EZ, or Form 990-N, e-Postcard). If you are granted tax-exemption, are you claiming to be excused from filing Form 990, Form 990-EZ, or Form 990-N? Yes No

If "Yes," are you claiming you are excused from filing because you are:

- A church or association of churches
- An integrated auxiliary (such as a men's or women's organization, religious school, mission society, or religious group)
- A church-affiliated organization (other than a section 509(a)(3) organization) that is exclusively engaged in managing funds or maintaining retirement programs and is described in Revenue Procedure 96-10, 1996-1 C.B. 577
- A school below college level affiliated with a church or operated by a religious order
- A mission society (other than a section 509(a)(3) supporting organization) sponsored by, or affiliated with, one or more churches or church denominations, if more than half of the society's activities are conducted in, or directed at, persons in foreign countries
- An affiliate of a governmental unit that meets the requirements of Revenue Procedure 95-48, 1995-2 C.B. 418 (other than a section 509(a)(3) supporting organization)
- Other (describe)

Part X Signature

- I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, and to the best of my knowledge it is true, correct, and complete.

(Type name of signer)

(Type title or authority of signer)

(Date)

Schedule E. Effective Date

- 1** Are you applying for reinstatement of exemption after being automatically revoked for failure to file required returns or notices for three consecutive years? If "No," continue to Line 2. Yes No

- 1a** Revenue Procedure 2014-11, 2014-1 C.B. 411, provides procedures for reinstating your tax-exempt status. Select the section of Revenue Procedure 2014-11 under which you want us to consider your reinstatement request.

- Section 4. You are seeking retroactive reinstatement under section 4 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 4, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future. Do not complete the rest of Schedule E.

- Section 5. You are seeking retroactive reinstatement under section 5 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 5, that you have filed required annual returns, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future.

Describe how you exercised ordinary business care and prudence in determining and attempting to comply with your filing requirements in at least one of the three years of revocation and the steps you have taken or will take to avoid or mitigate future failures to file timely returns or notices. Do not complete the rest of Schedule E.

- Section 6. You are seeking retroactive reinstatement under section 6 of Revenue Procedure 2014-11. By selecting this line, you attest that you meet the specified requirements of section 6, that you have filed required annual returns, that your failure to file was not intentional, and that you have put in place procedures to file required returns or notices in the future.

Describe how you exercised ordinary business care and prudence in determining and attempting to comply with your filing requirements in each of the three years of revocation and the steps you have taken or will take to avoid or mitigate future failures to file timely returns or notices. Do not complete the rest of Schedule E.

- Section 7. You are seeking reinstatement under section 7 of Revenue Procedure 2014-11, effective the date you are filing this application. Do not complete the rest of Schedule E.

- 2** Generally, if you did not file Form 1023 within 27 months of formation, the effective date of your exempt status will be the date you filed Form 1023 (submission date). Requests for an earlier effective date may be granted when there is evidence to establish you acted reasonably and in good faith and the grant of relief will not prejudice the interests of the government. Select option 1 if you are submitting your Form 1023 within 27 months of forming the organization. Otherwise select option 2 and fill out 2a.

- Check this box if you accept the submission date as the effective date of your exempt status. Do not complete the rest of Schedule E.
- Check this box if you are requesting an earlier effective date than the submission date.

- 2a** Explain why you did not file Form 1023 within 27 months of formation, how you acted reasonably and in good faith, and how granting an earlier effective date will not prejudice the interests of the Government.

You may want to include the events that led to the failure to timely file Form 1023 and to the discovery of the failure, any reliance on the advice of a qualified tax professional and a description of the engagement and responsibilities of the professional as well as the extent to which you relied on the professional, a comparison of (1) what your aggregate tax liability would be if you had filed this application within the 27-month period with (2) what your aggregate liability would be if you were exempt as of your formation date, or any other information you believe will support your request for relief.

Schedule F. Low-Income Housing

1 Describe each facility including the type of facility, whether you own or lease the facility, how many residents it can accommodate, the current number of residents, and whether the residents purchase or rent housing from you.

2 Describe who qualifies for your housing in terms of income levels or other criteria and explain how you select residents.

Reference the Rev. Rul. 96-32 Safe Harbor income categories and requirements, describe the cooperative's compliance with those requirements, and explain the cooperative's use of the annual income disclosure form.

3 Do you meet the safe harbor requirements outlined in Revenue Procedure 96-32, 1996-1 C.B. 717, which provides guidelines for providing low-income housing that will be treated as charitable, including for each project that (a) at least 75 percent of the units are occupied by 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, and less than 25 percent of the units are provided at market rates to persons who have incomes in excess of the low-income limit? Yes No

4 Is your housing affordable to low-income residents? If "Yes," describe how your housing is made affordable to low-income residents. Yes No

5 Do you impose any restrictions to make sure that your housing remains affordable to low-income residents? If "Yes," describe these restrictions. Yes No

Appendix F: Sample Income Verification Form

Note that though income amounts have been filled in, each geographic area has its own set of HUD income thresholds which are updated each year. These income numbers will therefore need to be adjusted to according to your location and updated annually.

2021 Income Verification Form

X Cooperative is a 501(c)(3) nonprofit organization that does not pay federal or state income taxes, nor property taxes within the City of Z.

Our mission statement says: “[Coop] strives to improve the [City name] community by providing low-cost, not-for-profit cooperative housing for very low- to moderate income people and to be inclusive of underrepresented and marginalized groups.” We work toward its mission by not only providing affordable housing, but also by reducing food costs for members, providing cooperative education resources, services, and administrative support to its members and member houses, and offering a child subsidy for resident members with families. Additionally, [Coop] has internal processes for resolving financial and interpersonal difficulties before pursuing eviction.

As a condition of your lease you agreed that, when asked by [Coop] in the course of your tenancy, you would disclose the range of your annual income. Your answer will remain **strictly confidential**. This information is necessary for [Coop]’s obligation to file an annual report with the City of [City name] about the number of residents in each house who are in the below income categories. This is required to be filed each and every year so as to maintain our exemption from Property Tax. It may also be used for the purposes of satisfying an audit by the IRS or the City of [City name] to confirm [Coop]’s eligibility for tax-exempt status. Please fill out the information below to the best of your knowledge.

YOUR LEGAL NAME: _____

HOUSE: _____ ROOM #: _____

ESTIMATED 2021 GROSS ANNUAL INCOME

Please estimate your reported, taxable income before any taxes, 401(k) contributions, or insurance is taken from your paycheck. This does not include parent/guarding income, school financial aid, gifts or dividends.

Please check only one box below.

If you are a single person with no dependents, your income is:

- | | |
|--|--|
| <input type="checkbox"/> \$0 - \$21,050 | <input type="checkbox"/> \$35,051 - \$54,950 |
| <input type="checkbox"/> \$21,051 - \$35,050 | <input type="checkbox"/> \$54,951 or more |

If you are part of a two-person household, your combined income is:

- | | |
|--|--|
| <input type="checkbox"/> \$0 - \$24,050 | <input type="checkbox"/> \$40,051 - \$62,800 |
| <input type="checkbox"/> \$24,051 - \$40,050 | <input type="checkbox"/> \$62,801 or more |

Signature: _____ Date: _____