
CRA UPDATED GUIDANCE ON COMMUNITY ECONOMIC DEVELOPMENT

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A. INTRODUCTION

On July 26, 2012, Canada Revenue Agency (CRA) released Guidance CG-014, *Community Economic Development Activities and Charitable Registration* (the New Guidance).¹ The New Guidance replaces Guide RC4143, *Registered Charities: Community Economic Development Programs*, which had been available from CRA since December 23, 1999 (Former Guidance). The New Guidance provides parameters in which registered charities may conduct “community economic development” (CED) activities that “improv[e] economic opportunities and social conditions of an identified community.”

The New Guidance is a welcome improvement over the Former Guidance, expanding the types of CED activities that charities may engage in, especially in the area of program-related investments. This *Charity Law Bulletin* reviews key features of the New Guidance, noting the restraints placed on various forms of CED activities identified in the New Guidance, and how the new guidelines differ from the guidelines contained in the Former Guidance.

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¹ Canada Revenue Agency, Guidance CG-014, *Community Economic Development Activities and Charitable Registration*, online: <<http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/cmtycnmcdvpmt-eng.html>>.

B. WHAT IS CED?

CRA recognizes that CED refers to a wide variety of activities. For purposes of the New Guidance, CED activities are often also referred to by the following terms: “community capacity building”, “social enterprise”, and “social finance”. The New Guidance acknowledges that CRA does not have official definitions for these terms and CRA recognizes that there are no universally accepted definitions either.² Nevertheless, definitions for these terms are contained in Appendix A to the New Guidance, which states that these definitions “may be helpful to readers interested in considering the concepts further” and that they are “provided for reference only and will not be used as determining factors in any registration or auditing processes.” The New Guidance further states that “regardless of how an activity is labelled, it will only be charitable if it directly furthers a charitable purpose.” (see the next section of this Bulletin in relation to discussion on CED activities furthering a charitable purpose).³

There are a few issues that the charitable sector and practitioners will need to note in this regard: (a) The mere fact that an activity is for a social good and is referred to as a social enterprise or social finance, or benefits community capacity building, does not necessarily mean that the activity is charitable. (b) These definitions must be reviewed in light of the circumstances involved in each activity and therefore they are not definitive parameters when determining whether an activity is charitable. (c) Since CRA recognizes that these definitions are for reference purposes only and are not determinative criteria to be applied by CRA on an audit, a lack of clarity of what CED means may make it difficult for charities to determine what activities would or would not be acceptable by CRA.

CRA recognizes that, in general, “many” CED activities involve “improving economic opportunities and social conditions of an identified community. In this regard, CRA accepts that a community can be defined in two different manners: (1) geographically; or (2) an identified group of eligible beneficiaries who share a common characteristic that results in an economic disadvantage. The New Guidance indicates that it is also possible for a community to involve both factors (such as an identified group of eligible beneficiaries in a particular geographical area).⁴

² *Ibid.*, para. 7 and Appendix A.

³ *Ibid.*, para. 8.

⁴ *Ibid.*, para. 9.

C. BASIS AT LAW FOR CED ACTIVITIES

The New Guidance points out that the law in Canada does not recognize CED in and of itself to be a charitable purpose. Therefore, in order to be considered “charitable”, CED activities must directly further a charitable purpose.⁵ In this regard, the New Guidance states that CED activities may potentially further the following heads of charitable purposes, namely relief of poverty, advancement of education and benefit the community in other ways the law regards as charitable.⁶ It would therefore imply (although not explicitly stated in the New Guidance) a CED activity cannot be conducted for the advancement of religion. Therefore, for religious charities that want to engage in social programs, they would need to carefully review whether those programs are within the parameters of practical manifestation of their faith or whether the programs are within the ambit of CED activities. In the latter scenario, it would be important for religious charities to understand that if they want to engage in CED activities, those activities must be conducted to further one of the other three heads of charitable purposes. This would in turn mean that those religious charities may need to carefully review the objects/purposes in their constating documents by which they are established to determine whether they have the necessary objects/purposes to engage in CED activities.

As well, the New Guidance states that each charitable purpose has specific requirements in relation to “eligible beneficiaries”. To illustrate what this means, examples were given in the New Guidance, such as for a purpose that relieves poverty, eligible beneficiaries must be poor; for a purpose that relieves conditions associated with disability, eligible beneficiaries are individuals with conditions associated with the disability, etc.⁷ Also, to be charitable, the New Guidance states that CED activities must meet the “public benefit test”, which includes not providing any private benefit that is more than incidental. This means any private benefit must be necessary, reasonable, and not disproportionate to the public benefit.⁸ In addition, each form of CED has specific restrictions that a charity must adhere to in order to be charitable.⁹

⁵ *Ibid.*, paras. 6 and 8.

⁶ *Ibid.*, para. 11.

⁷ *Ibid.*, para. 12.

⁸ *Ibid.*, para. 10.

⁹ *Ibid.*, para. 15.

D. AREAS OF CED ACTIVITIES

The New Guidance states that CED activities “generally” fall into the following five categories: activities that relieve unemployment; grants and loans; program-related investments; social businesses for individuals with disabilities; and community land trusts.¹⁰ This means that it is possible for a CED activity to fall outside these enumerated areas, although this is not specifically stated in the New Guidance. As well, the New Guidance states that CED activities can be charitable when they promote commerce or industry as a whole for the public benefit, and not in advancing the interests of members of a particular industry.¹¹ The New Guidance also sets out parameters for CED activities that improve socio-economic conditions for the public benefit in an area of social and economic deprivation.¹² A brief commentary on each of these areas is set out below.

E. ACTIVITIES THAT RELIEVE UNEMPLOYMENT

In comparison with the Former Guidance, the New Guidance provides a much more streamlined and succinct set of guidelines on CED activities that relieve unemployment.

Neither “providing employment” nor “helping people find employment” are charitable activities if the beneficiary group is the general public according to the New Guidance.¹³ Activities that relieve unemployment or underemployment are only charitable if they directly further one or more of the three recognized charitable purposes (but not advancement of religion) as explained above.¹⁴ For example, providing career counseling to people who are unemployed and living in poverty is a charitable purpose.

As well, CED activities that relieve unemployment can be charitable only if the beneficiary group consists of individuals who are unemployed or facing a real prospect of imminent unemployment and are shown to need assistance (*i.e.*, unemployed persons who do not have the resources or skills to help themselves).¹⁵ In other words, the beneficiary group must contain exclusively persons who are eligible beneficiaries, and cannot potentially include those who are not.¹⁶ This general guideline is much more helpful than the

¹⁰ *Ibid.*, para. 14.

¹¹ *Ibid.*, para. 77.

¹² *Ibid.*, para. 84.

¹³ *Ibid.*, para. 13.

¹⁴ *Ibid.*, paras. 17 and 19.

¹⁵ *Ibid.*, paras. 11, 13 and 17 and footnote 2.

¹⁶ *Ibid.*, para. 12 and footnote 3.

position in the Former Guidance, which restricted CED employment programs to helping “hard-to-employ” individuals who meet a list of 9 criteria set out in the Former Guidance (including have been out of the labour force for over a year; have completed high school or post-secondary education and not found employment within a year; have not completed high school; are over age 45; or have a previous criminal conviction; etc.).

In order to pass the public benefit test, care must be taken to ensure that private benefits that are more than incidental are provided to others. For example, it is not charitable if the emphasis is on helping employers recruit employees rather than helping beneficiaries find employment.

A list of helpful examples of CED activities that relieve unemployment is set out in the New Guidance.¹⁷ The New Guidance also provides further guidelines in relation to one of the examples, i.e., employment-related training program. In general, employment related training, such as computer skills instruction, must not be limited to specific employers because this could offer an unacceptable private benefit to the employer. Exceptions are available for employment programs conducted in areas of “social economic deprivation” (see further commentary below).

Examples of employment-related training include (1) employability training: developing the skills necessary to prepare for employment (such as English or French as a second language), as well as life skills (such as time management and interpersonal relations); (2) entrepreneurial training: providing instruction on preparing a business plan, obtaining financing, bookkeeping, preparing financial statements, marketing, and government regulations; and (3) on-the-job training: providing on-the-job training in vocational or work skills that enhance an individual’s employability.¹⁸ The description and requirements for all three types of programs are generally the same as CRA’s Former Guidance. The third type of activity is referred to as “training businesses” in the Former Guidance. As well, the New Guidance states that the focus of on-the-job training programs must be providing training to the eligible beneficiaries employed by the charity, not jobs. The New Guidance also sets out a number of characteristics that are expected for this type of program.¹⁹ Although it is possible for a charity to generate incidental profits from the program, it cannot be the focus of

¹⁷ *Ibid.*, para. 18.

¹⁸ *Ibid.*, para. 22.

¹⁹ *Ibid.*

the program. An activity that does not meet the above requirements may be recognized by CRA to be an unrelated business, an activity that charities are prohibited from conducting.

F. GRANTS TO BENEFICIARIES - INDIVIDUAL DEVELOPMENT ACCOUNTS

There are two types of CED activities in relation to making grants and loans to eligible beneficiaries, and the first type is individual development accounts (IDAs). IDAs are also permitted under the Former Guidance, except that expanded parameters are permitted under the New Guidance.

An IDA is a savings account that is intended to help an eligible beneficiary to save funds for a specific goal. For every dollar saved by the eligible beneficiary, the charity may make a matching grant at a pre-determined ratio over a specific period of time. For example, a charity and a disabled beneficiary may agree that the charity will deposit two dollars for every dollar that the beneficiary deposits until they have enough money to convert the beneficiary's basement into a home office. Under the Former Guidance, the charity is restricted to making contributions over two to three years, which appears to be expanded under the New Guidance to "a specific period of time", meaning that it could potentially be longer than three years. While under the New Guidance, CRA recognizes that not only can IDAs be used to relieve poverty (such as by relieving unemployment of the poor), IDAs may also be used for other charitable purposes (such as advancing education by providing employment-related training, or furthering a fourth category purpose (such as helping a disabled individual modify his or her home in order to operate a home-based business)).²⁰ This is a welcome expansion of what charities can use IDAs for, because under the Former Guidance, charities could use IDAs only for the purpose of helping low-income beneficiaries.

The New Guidance imposes a new requirement that a charity engaging in an IDA must be able to provide a "policy" showing the criteria used to determine eligibility of an eligible beneficiary, how the amount of an IDA is determined, the acceptable uses of the IDA, and when the eligibility of the beneficiary ceases. In order to pass the public benefit test, the charity must be able to show that it only grants the amount necessary to achieve the charitable purpose. As well, CRA also requires the charity to limit the grants to what is needed to achieve this purpose.²¹ Although not explicitly stated in the New Guidance, it would go

²⁰ *Ibid.*, paras. 25 and 27.

²¹ *Ibid.*, para. 28-29.

without saying that the charity would also need to ensure that the policy is implemented and provide supporting books and records to evidence the implementation.

G. LOANS AND LOAN GUARANTEES TO BENEFICIARIES

The second type of CED activities in relation to making grants and loans is the giving of loans and loan guarantees to eligible beneficiary.

The ability of charities to provide loans, micro-loans and loan guarantees is expanded under the New Guidance, as compared to the restrictions under the Former Guidance. Under the Former Guidance, charities can provide loans and loan guarantees only for the purposes of relieving poverty, whereas under the New Guidance it is possible to operate these programs to advance education or other purposes that benefit the community. For example, the New Guidance states that a loan guarantee to an eligible beneficiary to help him or her attend courses to enhance their employment-related skills can be charitable.²²

It should be noted that the Former Guidance indicated that a charity conducting such CED activities should be able to provide a policy concerning when the charity considers that a recipient of support services or loans is a viable business and is no longer in need of such support. While the New Guidance reiterates this requirement, it also requires that the policy include criteria for determining who the eligible beneficiaries are for such start up loans²³ and to provide a rationale and justification to show that its loans or guarantees do not exceed the amount needed to achieve its charitable purpose.²⁴

The New Guidance explains when start-up loans and loan guarantees are acceptable and when they are not. It states that providing start-up loans and loan guarantees to establish businesses (including sole proprietorships or collective enterprises such as worker cooperatives) can be charitable if they directly further a charitable purpose. This type of activity also typically involves entrepreneurial training. On the other hand, the New Guidance specifically points out that providing loans, start-up loans, and loan guarantees to promote entrepreneurship (such as to help entrepreneurs bring new and innovative ideas to the

²² *Ibid.*, para. 30.

²³ *Ibid.*, paras. 33- 34.

²⁴ *Ibid.*, para. 36.

marketplace, or to promote business development) is generally *not* a charitable activity because the private benefit conferred is not incidental.²⁵

Specifically, CRA took the position under the Former Guidance that loans that exceeded \$25,000 or were consistently larger than \$10,000 suggested crossing the threshold between a charitable activity and a private benefit. The New Guidance appears to relax this rule somewhat by stating that while loans less than \$10,000 will generally be considered to be a sufficient amount needed to achieve a charitable purpose, it also notes that the determination will be fact-based in each case, suggesting a higher loan amount may be permitted if it is necessary to achieve the charitable purpose.²⁶

The New Guidance states that interest rates are generally expected to be at or below fair market value to allow greater charitable benefit to be delivered. However, CRA also accepts there may be circumstances when a higher rate is justified, such as where the terms allow the borrower to delay repayment and therefore flexibility may be as important a factor to some borrowers as the interest rate. As well, CRA accepts that a charity may generally justify charging an interest rate that covers, but does not exceed, its own borrowing rate and administrative costs, plus a loan-loss provision that is supported by the charity's actual loan-loss experience. As well, new charities can rely on the loan-loss experience of charities that operate similar programs.²⁷ Under the Former Guidance, an interest rate that yields a surplus may call into question whether or not the charitable purpose of the charity is being achieved by having a higher interest. CRA's expanded policy in the New Guidance is a welcome change.

Interestingly, there is no mention about community loan funds in the New Guidance, whereas there are a few paragraphs in the Former Guidance on this type of programs. The Former Guidance provides that community loan funds, themselves operating a micro-enterprise program or lending money to charities operating such a program, was charitable. As well, the Former Guidance states that community loan funds lending money to non-qualified donees must qualify either as "straight investments" or the recipient non-qualified donee must be under contract to conduct a charitable program on behalf of the lending charity. The lack of any mention of this type of program in the New Guidance leaves the CRA's position on this matter unclear. As well, the previous requirement that community loan funds that were involved in lending money

²⁵ *Ibid.*, paras. 31, 32 and 83.

²⁶ *Ibid.*, para. 35.

²⁷ *Ibid.*, footnote 8.

to non-qualified donees must qualify as “straight investments” would presumably no longer apply in light of the new parameters that charities may engage in program-related investments (see next section below).

H. PROGRAM-RELATED INVESTMENTS

One of the most significant expansions of CRA’s policy set out in the New Guidance is the broader context in which registered charities may engage in program-related investments (PRIs). Under the Former Guidance, charities were only permitted to engage in PRIs if made to qualified donees. However, under the New Guidance, CRA now accepts that charities can engage in PRIs that involve loans, loan guarantees, share purchase and leases of land or buildings involving non-qualified donees as well, as long as they operate within the parameters set out in the New Guidance. This shift in CRA’s policy is a welcome change.

A PRI is not an investment in the conventional financial sense because while PRIs may generate a financial return, they are not made for that reason. As such, a PRI is not required to generate a return, or potential return, of capital (funds or property) for the charity, or to yield additional revenue (such as interest) for the charity at or above market rate.²⁸

The New Guidance stipulates that, when making a PRI in a non-qualified donee the PRI must be used for a program over which the investor charity maintains ongoing direction and control, so that the program is the investor charity’s own activity (*i.e.*, this is the same as the “own activity” test that must be met when charities conduct activities through third party intermediaries); and the investor charity must show that any private benefit resulting from the PRI is incidental (necessary, reasonable, and not disproportionate to the resulting public benefit).²⁹ This would mean that on the flip side, if a charity cannot maintain direction and control over the activity carried out by a non-qualified donee, it could invest in, or provide resources to, the non-qualified donee at market rates (as a form of conventional financial investment) provided the investment meets the investor charity’s conventional investment requirements.³⁰

In general, a PRI is an activity that furthers its charitable purpose and the New Guidance identifies four common types of PRIs: loans, loan guarantees, share purchases, and leases of land or buildings.

²⁸ *Ibid.*, para. 40.

²⁹ *Ibid.*, paras. 45-49.

³⁰ *Ibid.*, para. 50.

(a) A charity may make a PRI in the form of a loan or loan guarantee similar to the policy regarding charities making loans as explained above. PRIs that are loans are expected to be at or below fair market interest rates so that greater charitable benefits can be delivered, although there may be circumstances under which a higher interest rate may be justified (such as by including other terms that would allow the borrower to delay repayment). A charity may also make a PRI in the form of a loan guarantee to help another organization to obtain a loan. The guarantee must be for a loan that will further the investor charity's charitable purposes.³¹

(b) A charitable organization may make a PRI in the form of share purchases. A public or private charitable foundation can also make a PRI in this form, but neither can acquire a controlling interest in a company. Also, if a private foundation acquires more than 20% of any class of shares in a company, it might trigger divestment obligations and sanctions, including revocation of its charitable status. Other legal limitations may apply to all charities because of the provisions in provincial and territorial legislation.

(c) A charity can also engage in PRIs in the form of leasing land and buildings. The New Guidance does not provide much guidelines in relation to this form of PRI. To illustrate what it means, the New Guidance does give the following example:³²

A charity that has a purpose to advance education leases a building to an arm's length organization (a non-qualified donee) at less than fair market value. The arm's length organization teaches English or French as a second language to help students develop the skills necessary to prepare for employment. The lease agreement between the charity and the arm's length organization states that all students have to meet the investor charity's appropriate eligibility criteria. The terms of the agreement include ongoing monitoring and reporting provisions to ensure the charity maintains the necessary direction and control over its activity, which is to teach eligible beneficiaries the language skills necessary to prepare them for employment.

The New Guidance points out that there are limitations in how a private foundation may be restricted in engaging some forms of PRIs. For example, private foundations cannot engage in any business activities, and therefore any PRIs that result in the generation of business income may put the charity off-side with the

³¹ *Ibid.*, paras. 55-56.

³² *Ibid.*, para. 42, example C.

rules. As well, any private foundation that engages in PRIs in the form of a share purchase must ensure compliance with the reporting and divestiture requirements of the excess business holding rules.³³

The New Guidance requires charities that conduct PRIs to have appropriate exit mechanisms in place to withdraw from a PRI or convert it to a regular investment. The charity should also have a written policy or other documentation that explains how each PRI furthers its charitable purpose and stipulates the criteria it applies to PRI decisions. If the charity makes a PRI to a non-qualified donee, the charity should maintain books and records evidencing direction and control over the activities. Also, the charity must ensure that its PRIs meet all applicable trust, corporate, or other legal or regulatory requirements.³⁴

It is also important to note that the New Guidance recognizes that a specialized intermediary, *i.e.*, a non-qualified donee, may potentially qualify for registration as a charity on the basis that it is promoting the efficiency and effectiveness of charities. For example, a property management organization may be a specialized intermediary qualifying for registration as a registered charity on the basis that it manages only low-income housing properties which are owned by registered charities.³⁵

I. ACCOUNTING FOR LOANS AND PRIs

Charities that engage in loan, loan guarantees and PRIs must be careful to ensure that the assets utilized in these programs are properly accounted for in their financial statements and annual T3010 information returns. In this regard, the assets that have been loaned or used in making PRIs (*i.e.*, loans, loan guarantees, share purchase and leases) must be included in a charity's T3010 return, either as part of its total assets or accounts receivable.³⁶ Similarly, all interests and other income generated from a charity's loan or PRI activities must also be reported in the T3010.³⁷

The assets of a charity used in making a loan or PRIs would not be included in the assets base for the purpose of calculating the charity's 3.5% disbursement quota obligations requirements. This would make sense because these assets are used in achieving their charitable purposes and therefore the assets are used

³³ *Ibid.*, footnotes 10 and 11.

³⁴ *Ibid.*, paras. 53-54.

³⁵ *Ibid.*, paras. 59-60.

³⁶ *Ibid.*, para. 61.

³⁷ *Ibid.*, paras. 63-64.

in the course of the charities' charitable activities.³⁸ However, if a portion of any loan is held by the loan recipient for future use, that portion has to be reported as "property not used in charitable activities", and therefore would be included in the asset base when calculating the 3.5% disbursement quota obligation.³⁹

If an investor charity is unable to recover part or all of the principal of a loan, the unrecovered amount is a charitable or other expenditure of the investor charity, depending on the purpose of the loan. In this scenario, this part of the loan can be used to meet its disbursement quota.⁴⁰

A PRI in the form of a loan guarantee is cost-neutral. It is not a debt at the time the loan is guaranteed. If the borrower defaults on the loan, and the charity has to honour the guarantee, the charity will be considered to have incurred a debt. Once the debt has been incurred, the charity has to report the debt as a liability. Any principal and interest paid can be reported as a charitable or other type of expenditure, as applicable.⁴¹

However, loans, loan guarantees and PRIs are not recognized as charitable disbursements and cannot be used in meeting the charity's 3.5% disbursement quota. If, and only if, a charity fails to meet its disbursement quota requirement and the charity has made a loan or a PRI (in the form of a loan, a share purchase, or a lease), then CRA *may* consider any opportunity cost resulting from these activities as equivalent to an expenditure. Specifically, the opportunity costs of PRIs are calculated as follows:⁴²

- Loans: the outstanding loan multiplied by the difference between the interest rate the investor charity could have earned if it invested the amount in T bills or GICs, and the interest rate the charity received.
- Share purchase: the difference between the return the investor charity could have realized had it invested in T bills or GICs and the actual return or loss from purchasing shares.
- Lease: the difference between the fair market value of the lease and the actual amount the investor charity received from the lease.

³⁸ *Ibid.*, para. 62.

³⁹ *Ibid.*, para. 65.

⁴⁰ *Ibid.*, para. 67.

⁴¹ *Ibid.*, para. 66.

⁴² *Ibid.*, para. 68.

It is difficult to understand the rationale for not permitting these expenditures as charitable disbursements for the purpose of meeting the disbursement quota obligation. This position would act as a deterrent for a charity to give loans or engage in PRIs and would encourage the charity to find an alternative way to fund the program (such as a direct charitable program). It appears that this position is premised on CRA's view (though not clear from the New Guidance) that they are not used "directly" on charitable work. If CRA accepts that a charity engaging in loans and PRIs must do so in furtherance of the charity's charitable purposes, then assets used as such should qualify to be included as charitable disbursements in meeting its disbursement quota. As well, if these expenditures are not charitable disbursements, it would be difficult to understand why lost opportunity costs associated with these disbursements may be considered to be counted towards meeting the charity's disbursement quota only if the charity has a problem meeting its disbursement quota.

J. SOCIAL BUSINESSES FOR INDIVIDUALS WITH DISABILITIES

Charities may operate social businesses that employ people with disabilities. The Former Guidance refers to this type of activities as "sheltered workshops". In this regard, "disability" means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug. Social businesses may provide services, sell goods, manufacture articles, or undertake other kinds of work. It may also operate a retail outlet or send products manufactured to be sold at stores. Unlike on-the-job training, social businesses may provide permanent employment.

A social business is required to have the following characteristics: (a) the workforce must consist entirely of individuals with disabilities, with the exception of employees who provide necessary training and supervision; and (b) the work is specifically chosen and structured to take into account the special needs of individuals with disabilities and to relieve conditions associated with those disabilities. As well, the following characteristics are generally expected but are not required: (a) provision of associated job-related training that enhances the general skills of the eligible beneficiaries; and (b) having significant involvement of eligible beneficiaries in managing and making decisions. As with on-the-job training, the CRA does not prohibit a social business from earning a profit, as long as the focus is on helping eligible beneficiaries.⁴³

⁴³ Ibid., paras. 69-74.

K. COMMUNITY LAND TRUSTS

Community land trusts ensure that land will remain available for the benefit of a community. Typically, community land trusts operate by developing properties and leasing them to eligible beneficiaries. Operating a community land trust may be a charitable activity if it directly furthers a head of charity.

L. PROMOTION OF COMMERCE OR INDUSTRY

CED activities that promote commerce or industry can be charitable by benefiting the public or a sufficient section of the public and not a specific eligible beneficiary. The New Guidance states that these activities may promote a particular industry or trade, as long as they focus on benefiting the public, not the members of the industry. In this regard, the New Guidance includes examples of *purposes* that could enhance an industry while also potentially delivering a charitable public benefit, which were not included in the Former Guidance: “promote greater efficiencies within an industry, if those efficiencies benefit the general public”, or “promote and facilitate the achievement, preservation and maintenance of high standards of practice within an industry, if doing so benefits the general public.” Activities that could further these purposes and result in a tangible benefit were also given in both the Former Guidance and the New Guidance.⁴⁴

The New Guidance also indicates that for organizations conducting activities that promote commerce or industry wishing to apply for charitable status, non-expert opinion from the founders, directors, trustees, members or supporters of an organization are not relevant when determining whether a benefit to the public will result from promoting an industry. As well, an expression of non-expert opinion or belief, or merely stating that a public benefit will result from a purpose, is not enough. In this regard, it would be best to obtain independent and object expert opinions on the matter before applying for registration.⁴⁵

M. CED ACTIVITIES IN AREAS OF SOCIAL AND ECONOMIC DEPRIVATION

The New Guidance states that CED activities may be charitable if they improve socio-economic conditions for the public benefit in an area of social and economic deprivation (which are also known as deprived areas). In this regard, this type of activity is referred in the Former Guidance as “economically challenged communities”.

⁴⁴ *Ibid.*, paras. 77-80.

⁴⁵ *Ibid.*, para. 82.

The New Guidance provides that deprived areas are geographic communities that generally display high rates (at least 1.5 times the national average) of a number of characteristics for four consecutive years. The list of characteristics is very similar to the list in Former Guidance. In general, the characteristics include: unemployment for two or more consecutive years; crime (including family violence); health problems (including mental health issues, drug and alcohol addiction, and suicide); and children and youth at risk (taken into care or dropping out of school). As well, the deprived area must be large enough for the beneficiaries to form a sufficient segment of the public. If a deprived areas no longer display any of the characteristics set out above, it no longer qualifies as a deprived area and the charity will have two years to wind up its CED activities in the area.⁴⁶

N. CONCLUSION

The New Guidance takes a number of positive steps to facilitate charities engaging in CED programs. In particular, charities no longer have to ensure they do not make a profit from activities to relieve unemployment or social businesses, as long as this is not the focus or goal of the activities. As well, charities looking to make PRIs can now do so in non-qualified donees. However, it is unfortunate that the entire amount of a PRI still does not count towards meeting a charity's disbursement quota and the lost opportunity costs associated with these disbursements may only count towards meeting the charity's disbursement quota if the charity has a problem meeting its disbursement quota.

The New Guidance specifically requires charities engaging in CED activities to adopt and implement policies in support of the activities to ensure that they are charitable, and to keep sufficient books and records to evidence compliance of CRA's requirements. As well, it would be prudent for directors and trustees to be reviewing their governing documents to ensure that CED activities are achieving the charitable purposes of their organization. Since the New Guidance sets out a number of new requirements on CED activities and there is no grandfathering of activities that are currently undertaken under the Former Guidance, it is important for all charities are that engaging in CED activities to carefully review their programs and to make necessary changes in order to ensure compliance with these new requirements.

Lastly, although the New Guidance expands the parameters within which charities may engage in CED activities, the ability of private foundations to take advantage of these new expanded requirements are

⁴⁶ *Ibid.*, paras. 84-87, footnote 27.

limited because of the rules under the *Income Tax Act* that apply to private foundations (such as private foundations cannot engage in any business activities, and must comply with the excess business holdings rules). As such, private foundations that conduct CED activities would need to carefully review all of its CED programs to ensure that they are not off-side with these rules.