

**Being “Qualified”:  
The New Appraiser/Appraisal Rules of IRC Section 170(f)(11)(E)**

**Spring Symposia, 2009  
Section of Real Property, Trust & Estate Law  
American Bar Association  
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**1. Background.**

**2. Sources of Authority.**

*IRC Sec. 170(f)(11)(E), generally effective with respect to appraisals with respect to returns or submissions filed after 8/17/06. [7-8]*

*Notice 2006-96, 2007-46 IRB, published 11/13/2006, effective until final regulations are published in the Federal Register. [9-12]*

*Prop. Treas. Reg. Sec. 1.170A-17, proposed 8/7/2008, to be effective when published as final regulations in the Federal Register. [13-16]*

**3. Key statutory terms.**

**a. When determining what is a “qualified appraisal.”**

“qualified appraiser”

“generally accepted appraisal standards”

**b. When determining who is a “qualified appraiser.”**

“appraisal designation”

“recognized professional appraiser organization”

“minimum education and experience requirements”

**c. When determining who is a qualified appraiser with respect to a specific appraisal.**

“verifiable education and experience”

“type of property subject to the appraisal”

#### 4. “Qualified appraiser.”

a. Notice 2006-96. Does not separately define.

b. Prop. Treas. Reg. Sec. 1.170A-17(b)(1). Defines to mean “an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed.” [15]

(i) “Verifiable.” Prop. Reg. Sec. 1.170A-17(b)(4). Education and experience are verifiable only if

(A) “the appraiser specifies in the appraisal the appraiser’s education and experience in valuing the relevant type of property” **and**

(B) “the appraiser makes a declaration in the appraisal that, because of the appraiser’s education and experience . . . the appraiser is qualified to make appraisals of the relevant type of property being valued.”  
*Emphasis added.* [16]

(ii) “Education and experience.” Treas. Reg. Sec. 1.170A-17(b)(2). As of the date the individual signs the appraisal, the individual must have either

“(A) Successfully completed . . . professional or college-level coursework . . . in valuing the relevant type of property and has two or more years experience in valuing the relevant type of property” or

“(B) Earned a recognized appraisal designation for the relevant type of property.” [15]

(iii) “Relevant type of property.” Treas. Reg. Sec. 1.170A-17(b)(3). Defined to mean “the category of property customary in the appraisal field for an appraiser to value.” [15-16]

5. “Generally accepted appraisal standards.”

a. **Notice 2006-96, Section 3.02(2)**. “An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards . . . if, *for example*, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice (‘USPAP’), as developed by the Appraisal Standards Board of the Appraisal Foundation.”

*Emphasis added.* [10]

b. **Prop. Treas. Reg. Sec 1.170A-17(a)(2)**. “Generally accepted appraisal standards” is defined to mean “the substance and principles of USPAP.” [13]

6. “Recognized appraisal designation.”

a. **Notice 2006-96, Section 3.03(1)**. “Appraisal designation from a recognized professional appraiser organization” is defined to mean “an appraisal designation . . . awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.” The Notice gives no examples. [10]

b. **Prop. Treas. Reg. Sec. 1.170A-17(b)(2)(iii)**. “Recognized appraisal designation” is defined to mean “a designation awarded by a recognized professional appraiser organization on the basis of demonstrated competency.” The proposed regulation gives four examples of recognized appraisal designations: MAI, SRA, SREA and SRPA. [15]

7. “Minimum education and experience requirements.”

a. **Notice 2006-96, Section 3.03(3)**. The notice distinguishes between “minimum education and experience” (i) with respect to real property and (ii) with respect to property other than real property. [11]

(i) Real property. *For returns filed after 10/19/06*, a real estate appraiser meets the minimum education and experience requirement if “licensed or certified for the type of property being appraised in the

state in which the appraised real property is located.” *For returns filed on or before 10/19/06, meeting the requirements of Treas. Reg. Sec. 1.170A-13(c)(5) is sufficient.*

(ii) Property other than real property. *For returns filed after 2/16/07, an appraiser of property other than real property meets the minimum education and experience requirements if he/she has “(A) successfully completed college or professional-level coursework that is relevant to the property being valued, (B) obtained at least two years of experience in the trade or business of buying, selling or valuing the type of property being valued, and (C) fully described in the appraisal the education and experience that qualify [him/her] to value the type of property being valued.” For returns filed on or before 2/16/07, meeting the requirements of Treas. Reg. Sec. 1.170A-13(c)(5) is sufficient.*

(b) **Prop. Treas. Reg. Sec. 1.170A-17(b)(2)(i)(A)**. As of the date the individual signs the appraisal, he/she has “[s]uccessfully completed . . . professional or college-level coursework . . . in valuing the relevant type of property and has two or more years experience in valuing the relevant type of property.” [15]

8. ***“Professional or college level coursework.”***

a. **Notice 2006-96**. Not defined.

b. **Prop. Treas. Reg. Sec. 1.170A-13(b)(2)(ii)**. Defined as coursework obtained from:

(i) “a professional or college-level educational organization described in section 170(b)(1)(A)(ii)”;

(ii) “A generally recognized professional appraisal organization that regularly offers educational programs in the principles of valuation”;

or

(iii) “An employer as part of an employee apprenticeship or educational program substantially similar to the educational programs described . . . [in (i) or (ii)].” [15]

9. “Treated . . . as a qualified appraisal under regulations or other guidance . . .”

a. **Notice 2006-96, Section 3.02(1).** Appraisal must comply with all of the requirements of Reg. Sec. 1.170A-13(c). [10]

b. **Prop. Treas. Reg. Sec. 1.170A-17(a)(3) and (5).** *Note: Bolding below indicates change from Reg. Sec. 1.170A-13(c).* [13-14]

(i) Required contents.

(A) Description sufficient to identify, information about condition (with respect to *real* or tangible personal property); “*valuation effective date,*” and fair market value *on the valuation effective date.*

(B) Disclosure of any restrictions on use, sale or other disposition, as agreed to by donor and donee (*or as expected to be agreed to*).

(C) Date or expected date of contribution.

(D) Information about appraiser, including:

(I) Name, address and TIN.

(II) Qualifications, including education and experience.

(III If acting as partner of a partnership (or otherwise not in individual capacity), name, address and TIN of partnership or of person employing or engaging.

(D) Dated signature of the appraiser.

(E) *Declaration stated in the regulation (verbatim).* [13]

(F) A statement that the appraisal was prepared for income tax purposes.

(G) Method of valuation used to determine fair market value.

(H) Specific basis for the valuation, e.g. specific comparable sales.

(ii) *Valuation effective date.*

(A) *Defined as “date to which the value opinion applies.”*

(B) *If appraisal is dated before contribution date, valuation effective date must be no earlier than 60 days before the date of contribution and no later than the date of contribution.*

(C) *If appraisal is dated on or after the contribution date, valuation effective date must be date of contribution.*

10. Issues generating comment. [17-30]

- a. Failure to define “generally recognized appraisal organization.”
- b. Definition of “generally accepted appraisal standards.”
- c. Definition of “education and experience.”

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## IRC Section 170(f)(11)

### **11) Qualified appraisal and other documentation for certain contributions**

#### **(A) In general**

**(i) Denial of deduction** In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than \$500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

#### **(ii) Exceptions**

**(I) Readily valued property** Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section [1221 \(a\)\(1\)](#), publicly traded securities (as defined in section [6050L \(a\)\(2\)\(B\)](#)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

**(II) Reasonable cause** Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

#### **(B) Property description for contributions of more than \$500**

In the case of contributions of property for which a deduction of more than \$500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

#### **(C) Qualified appraisal for contributions of more than \$5,000**

In the case of contributions of property for which a deduction of more than \$5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

#### **(D) Substantiation for contributions of more than \$500,000**

In the case of contributions of property for which a deduction of more than \$500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

#### **(E) Qualified appraisal and appraiser**

For purposes of this paragraph—

**(i) Qualified appraisal** The term “qualified appraisal” means, with respect to any property, an appraisal of such property which—

**(I)** is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

**(II)** is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

**(ii) Qualified appraiser** Except as provided in clause (iii), the term “qualified appraiser” means an individual who—

**(I)** has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

**(II)** regularly performs appraisals for which the individual receives compensation, and

**(III)** meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

**(iii)** Specific appraisals An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

**(I)** the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

**(II)** the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section [330 \(c\)](#) of title [31](#), United States Code, at any time during the 3-year period ending on the date of the appraisal.

**(F) Aggregation of similar items of property**

For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

**(G) Special rule for pass-thru entities**

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

**(H) Regulations**

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

November 13, 2006

**Notice 2006-96**

***Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions***

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**SECTION 1. PURPOSE**

This notice provides transitional guidance relating to the new definitions of “qualified appraisal” and “qualified appraiser” in § 170(f)(11) of the Internal Revenue Code, and new § 6695A of the Code regarding substantial or gross valuation misstatements, as added by § 1219 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) (the “PPA”).

The Service and the Treasury Department expect to issue regulations under § 170(f)(11). Until those regulations are effective, taxpayers may rely on this notice to comply with the new provisions added by § 1219 of the PPA.

**SECTION 2. BACKGROUND**

A deduction for charitable contributions is generally permitted under § 170(a), subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organization. Section 170(f)(11), as added by § 883 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004), contains reporting and substantiation requirements relating to the allowance of deductions for noncash charitable contributions. In particular, under § 170(f)(11)(C), taxpayers are required to obtain a qualified appraisal for donated property for which a deduction of more than \$5,000 is claimed. Under § 170(f)(11)(D), in certain cases the qualified appraisal must be attached to the tax return. For appraisals prepared with respect to returns filed on or before August 17, 2006, existing Treasury Regulations provide a definition of the terms “qualified appraisal” and “qualified appraiser” for purposes of § 170(f)(11).

Section 1219 of the PPA amends § 170(f)(11)(E) and provides statutory definitions of a qualified appraisal and qualified appraiser for appraisals prepared with respect to returns filed after August 17, 2006.

Section 170(f)(11)(E)(i) provides that the term “qualified appraisal” means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Section 170(f)(11)(E)(ii) provides that the term “qualified appraiser” means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. Section 170(f)(11)(E)(iii) further provides that an individual will not be treated as a qualified appraiser unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

Section 1219 of the PPA also adds a new penalty provision. If the claimed value of property based on an appraisal results in a substantial or gross valuation misstatement under § 6662, a penalty is imposed by new § 6695A on any person who prepared the appraisal and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund.

### **SECTION 3. TRANSITIONAL GUIDANCE**

#### *.01 In general*

The Service and the Treasury Department expect to issue regulations under § 170(f)(11), as amended by the PPA. The terms in section 3 of this notice apply to contributions of property (other than readily valued property within the meaning of § 170(f)(11)(A)(ii)(I)) by individuals, partnerships, or corporations for which a deduction of more than \$5,000 is claimed on returns filed after August 17, 2006, and before the effective date of the regulations that the Service and the Treasury Department expect to issue. Until regulations are effective under § 170(f)(11), as amended by the PPA, an appraisal that meets the requirements of this notice shall be treated as a qualified appraisal for purposes of § 170(f)(11). The determination of whether an appraiser is qualified under section 3.03 of this notice must be based on the appraiser’s qualifications as of the date the appraisal is made.

#### *.02 Transitional terms-qualified appraisal*

(1) *Qualified appraisal.* An appraisal will be treated as a qualified appraisal within the meaning of § 170(f)(11)(E) if the appraisal complies with all of the requirements of § 1.170A-13(c) of the existing regulations (except to the extent the regulations are inconsistent with § 170(f)(11)), and is conducted by a qualified appraiser in accordance with generally accepted appraisal standards. See sections 3.02(2) and 3.03 of this notice.

(2) *Generally accepted appraisal standards.* An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards within the meaning of § 170(f)(11)(E)(i)(II) if, for example, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice (“USPAP”), as developed by the Appraisal Standards Board of the Appraisal Foundation. Additional information is available at <http://www.appraisalfoundation.org>.

#### *.03 Transitional terms-qualified appraiser*

(1) *Appraisal designation.* An appraiser will be treated as having earned an appraisal designation from a recognized professional appraiser organization within the meaning of § 170(f)(11)(E)(ii)(I) if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.

(2) *Education and experience in valuing the type of property.* An appraiser will be treated as having demonstrated verifiable education and experience in valuing the type of property subject to the appraisal within the meaning of § 170(f)(11)(E)(iii)(I) if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued. See also § 1.170A-13(c)(5).

(3) *Minimum education and experience.* An appraiser will be treated as having met minimum education and experience requirements within the meaning of § 170(f)(11)(E)(ii)(I) if —

(a) *For real property*

(i) For returns filed on or before October 19, 2006, the appraiser is qualified as a “qualified appraiser” within the meaning of § 1.170A-13(c)(5) to make appraisals of the type of property being valued.

(ii) For returns filed after October 19, 2006, the appraiser is licensed or certified for the type of property being appraised in the state in which the appraised real property is located.

(b) *For property other than real property —*

(i) For returns filed on or before February 16, 2007, the appraiser is qualified as a “qualified appraiser” within the meaning of § 1.170A-13(c)(5) to make appraisals of the type of property being valued.

(ii) For returns filed after February 16, 2007, the appraiser has (A) successfully completed college or professional-level coursework that is relevant to the property being valued, (B) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (C) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the type of property being valued.

*.04 Applicability of reporting and substantiation regulations*

(1) *In general*

The requirements of § 1.170A-13(c) of the existing regulations concerning qualified appraisals and qualified appraisers continue to apply to all taxpayers, including those to whom the transitional guidance in this section may apply, except to the extent the regulations are inconsistent with the provisions of § 170(f)(11). In particular, all taxpayers are required to comply with §§ 1.170A-13(c)(3), (c)(5), (c)(6) and (c)(7).

(2) *Revision to appraiser declaration*

For returns filed after February 16, 2007, the declaration required under § 1.170A-13(c)(5)(i) must include an additional statement that the appraiser understands that a substantial or gross valuation misstatement resulting from an appraisal of the value of property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil penalty under § 6695A. See also § 1.170A-13(c)(3)(iii).

**SECTION 4. REQUEST FOR COMMENTS**

The Service and the Treasury Department invite comments containing suggestions for future guidance under § 170(f)(11), including regulations. In particular, comments are requested concerning the definition of the following terms: (1) “generally accepted appraisal standards” in § 170(f)(11)(E)(i)(II); (2) “appraisal designation from a recognized professional appraisal organization” in § 170(f)(11)(E)(ii)(I); (3) “minimum education and experience requirements” in § 170(f)(11)(E)(ii)(I); and (4) “verifiable education and experience in valuing the type of property subject to the appraisal” in § 170(f)(11)(E)(iii)(I). Comments also are requested on the potential impact any guidance under § 170(f)(11) may have on small businesses. Comments should refer to Notice 2006-96 and be submitted by January 17, 2007, to:

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044  
Attn: CC:PA:LPD:PR  
Room 5203

Alternatively, comments may be submitted electronically via e-mail to the following address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). All comments will be available for public inspection and copying.

## **SECTION 5. PAPERWORK REDUCTION ACT**

The collections of information in this notice have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1953.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 3 of this notice. The collections of information are required from donors to satisfy the substantiation requirements of § 170(f)(11). The collections of information are required from donors to obtain a benefit. The likely respondents are individuals, partnerships, and corporations.

The estimated total annual reporting burden is 161,571 hours.

The estimated annual burden per respondent varies from 5 minutes to 5 hours, with an estimated average of approximately 3.5 hours. The estimated number of respondents is 46,285.

The estimated annual frequency of responses (used for reporting requirements only) is once per year.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

## **SECTION 6. DRAFTING INFORMATION**

The principal author of this notice is Susan J. Kassell of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Susan J. Kassell at (202) 622-5020 (not a toll-free call).

### **170A-17 Qualified appraisal and qualified appraiser.**

(a) *Qualified appraisal*—(1) *Definition.* For purposes of section 170(f)(11) and §§1.170A-16(d)(1)(ii) and 1.170A-16(e)(1)(ii), the term *qualified appraisal* means an appraisal document that is prepared by a qualified appraiser (as defined in paragraph (b)(1) of this section) in accordance with generally accepted appraisal standards (as defined in paragraph (a)(2) of this section) and otherwise complies with the requirements of this paragraph (a).

(2) *Generally accepted appraisal standards defined.* For purposes of paragraph (a)(1) of this section, *generally accepted appraisal standards* means the substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation.

(3) *Contents of qualified appraisal.* A qualified appraisal must include—

(i) The following information about the contributed property:

(A) A description in sufficient detail under the circumstances (taking into account the value of the property) for a person who is not generally familiar with the type of property to ascertain that the appraised property is the contributed property.

(B) In the case of real or personal tangible property, the condition of the property.

(C) The valuation effective date (as defined in paragraph (a)(5)(i) of this section).

(D) The fair market value (within the meaning of §1.170A-1(c)(2)) of the contributed property on the valuation effective date;

(ii) The terms of any agreement or understanding by or on behalf of the donor and donee that relates to the use, sale, or other disposition of the contributed property, including, for example, the terms of any agreement or understanding that—

(A) Restricts temporarily or permanently a donee's right to use or dispose of the contributed property;

(B) Reserves to, or confers upon, anyone (other than a donee or an organization participating with a donee in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote contributed securities, to acquire the property by purchase or otherwise, or to designate the person having income, possession, or right to acquire; or

(C) Earmarks contributed property for a particular use;

(iii) The date (or expected date) of the contribution to the donee;

(iv) The following information about the appraiser:

(A) Name, address, and taxpayer identification number.

(B) Qualifications to value the type of property being valued, including the appraiser's education and experience.

(C) If the appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnership), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser;

(v) The signature of the appraiser and the date signed by the appraiser (appraisal report date);

(vi) The following declaration by the appraiser: "I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund results from my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. section 330(c);"

(vii) A statement that the appraisal was prepared for income tax purposes;

(viii) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, or the replacement-cost-less-depreciation approach; and

(ix) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(4) *Timely appraisal report.* A qualified appraisal must be signed and dated by the qualified appraiser no earlier than 60 days before the date of the contribution and no later than—

(i) The due date (including extensions) of the return on which the deduction for the contribution is first claimed;

(ii) In the case of a donor that is a partnership or S corporation, the due date (including extensions) of the return on which the deduction for the contribution is first reported; or

(iii) In the case of a deduction first claimed on an amended return, the date on which the amended return is filed.

(5) *Valuation effective date*—(i) *Definition.* The *valuation effective date* is the date to which the value opinion applies.

(ii) *Timely valuation effective date.* For an appraisal report dated before the date of the contribution (as described in §1.170A-1(b)), the valuation effective date must be no earlier than 60 days before the date of the contribution and no later than the date of the contribution. For an appraisal report dated on or after the date of the contribution, the valuation effective date must be the date of the contribution.

(6) *Exclusion for donor knowledge of falsity.* An appraisal is not a qualified appraisal for a particular contribution, even if the requirements of this paragraph (a) are met, if a reasonable person would conclude that the donor failed to disclose or misrepresented facts that would cause the appraiser to overstate the value of the contributed property.

(7) *Number of appraisals required.* A donor must obtain a separate qualified appraisal for each item of property for which an appraisal is required under paragraphs (c), (d), or (e) of this section and that is not included in a group of similar items of property (as defined in §1.170A-13(c)(7)(iii)). For rules regarding the number of appraisals required if similar items of property are contributed, see §1.170A-13(c)(3)(iv)(A).

(8) *Prohibited appraisal fees.* The fee for a qualified appraisal cannot be based to any extent on the appraised value of the property. For example, a fee for an appraisal will be treated as based on the appraised value of the property if any part of the fee depends on the amount of the appraised value that is allowed by the IRS after an examination.

(9) *Retention of qualified appraisal.* The donor must retain the qualified appraisal for so long as it may be relevant in the administration of any internal revenue law.

(10) *Appraisal disregarded pursuant to 31 U.S.C. 330(c)*. If an appraisal is disregarded pursuant to 31 U.S.C. 330(c), it has no probative effect as to the value of the appraised property and does not satisfy the appraisal requirements of paragraphs (d) and (e) of this section, unless the appraisal and Form 8283 include the appraiser signature, the date signed by the appraiser, and the appraiser declaration described in paragraphs (a)(3)(v) and (a)(3)(vi) of this section and §§1.170A-16(d)(3)(iii) and (d)(4), and the donor had no knowledge that the signature, date, or declaration was false when the appraisal and Form 8283 were signed by the appraiser.

(11) *Partial interest*. If the contributed property is a partial interest, the appraisal must be of the partial interest.

(b) *Qualified appraiser*—(1) *Definition*. For purposes of section 170(f)(11) and §§1.170A-16(d)(1)(ii) and 1.170A-16(e)(1)(ii), the term *qualified appraiser* means an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed (as described in paragraphs (b)(2) through (b)(4) of this section).

(2) *Education and experience in valuing relevant type of property*. (i) *In general*. An individual is treated as having education and experience in valuing the relevant type of property within the meaning of paragraph (b)(1) of this section if, as of the date the individual signs the appraisal, the individual has—

(A) Successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework (as described in paragraph (b)(2)(ii) of this section) in valuing the relevant type of property (as described in paragraph (b)(3) of this section), and has two or more years of experience in valuing the relevant type of property (as described in paragraph (b)(3) of this section); or

(B) Earned a recognized appraisal designation (as described in paragraph (b)(2)(iii) of this section) for the relevant type of property (as described in paragraph (b)(3) of this section).

(ii) *Coursework must be obtained from professional or college-level educational institution, appraisal organization, or employer educational program*. For purposes of paragraph (b)(2)(i)(A) of this section, the coursework must be obtained from—

(A) A professional or college-level educational organization described in section 170(b)(1)(A)(ii);

(B) A generally recognized professional appraisal organization that regularly offers educational programs in the principles of valuation; or

(C) An employer as part of an employee apprenticeship or educational program substantially similar to the educational programs described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Recognized appraisal designation defined*. A *recognized appraisal designation* means a designation awarded by a recognized professional appraiser organization on the basis of demonstrated competency. For example, an appraiser who has earned a designation similar to the Member of the Appraisal Institute (MAI), Senior Residential Appraiser (SRA), Senior Real Estate Appraiser (SREA), or Senior Real Property Appraiser (SRPA) membership designation has earned a recognized appraisal designation.

(3) *Relevant type of property defined*—(i) *In general*. The relevant type of property means the category of property customary in the appraisal field for an appraiser to value.

(ii) *Examples*. The following examples illustrate the rule of paragraph (b)(3)(i) of this section:

*Example (1). Coursework in valuing relevant type of property*. There are very few professional-level courses offered in widget appraising, and it is customary in the appraisal field for personal property appraisers to appraise widgets. Appraiser A has successfully completed professional-level coursework in valuing personal property generally but has completed no coursework in valuing widgets. The coursework completed by Appraiser A is for the relevant type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

*Example (2). Experience in valuing relevant type of property.* It is customary for professional antique appraisers to appraise antique widgets. Appraiser A has 2 years of experience in valuing antiques generally and is asked to appraise an antique widget. Appraiser A has obtained experience in valuing the relevant type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

*Example (3). No experience in valuing relevant type of property.* It is not customary for professional antique appraisers to appraise new widgets. Appraiser A has experience in appraising antiques generally but no experience in appraising new widgets. Appraiser A is asked to appraise a new widget. Appraiser A does not have experience in valuing the relevant type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

(4) *Verifiable.* For purposes of paragraph (b)(1) of this section, education and experience in valuing the relevant type of property are verifiable if the appraiser specifies in the appraisal the appraiser's education and experience in valuing the relevant type of property (as described in paragraphs (b)(2) and (b)(3) of this section), and the appraiser makes a declaration in the appraisal that, because of the appraiser's education and experience described in this paragraph (b)(4), the appraiser is qualified to make appraisals of the relevant type of property being valued.

(5) *Individuals who are not qualified appraisers.* The following individuals cannot be qualified appraisers for the appraised property:

(i) An individual who receives a fee prohibited by paragraph (a)(8) of this section.

(ii) The donor of the property.

(iii) A party to the transaction in which the donor acquired the property (for example, the individual who sold, exchanged, or gave the property to the donor, or any individual who acted as an agent for the transferor or for the donor for the sale, exchange, or gift), unless the property is contributed within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(iv) The donee of the property.

(v) Any individual who is either—

(A) Related (within the meaning of section 267(b)) to, or an employee of, any of the individuals described in paragraphs (b)(5)(ii), (b)(5)(iii), or (b)(5)(iv) of this section, or married to an individual who is in a relationship described in section 267(b) with any of the foregoing individuals; or

(B) An independent contractor who is regularly used as an appraiser by any of the individuals described in paragraphs (b)(5)(ii), (b)(5)(iii), or (b)(5)(iv) of this section, and who does not perform a majority of his or her appraisals for others during the taxable year.

(vi) An individual who is prohibited from practicing before the Internal Revenue Service by the Secretary under 31 U.S.C. section 330(c) at any time during the 3-year period ending on the date the appraisal is signed by the individual.

(c) *Effective/applicability date.* This section applies to contributions made after the date these regulations are published as final regulations in the **Federal Register**.

REG-140029-07

November 5, 2008

Susan J. Kassell, Esquire  
Internal Revenue Service  
Office of the Associate Chief Counsel  
1111 Constitution Avenue, NW, Room 4045  
Washington, D.C. 20224

**Re: Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions (REG-140029-07)**

Dear Ms. Kassell:

The American Institute of Certified Public Accountants (AICPA) has prepared the attached comments on the proposed regulations relative to “Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions” (REG-140029-07), as published in the Federal Register on August 7, 2008. These comments were prepared by the Business Valuation Committee and approved by the Forensic & Valuation Services Executive Committee (FVS EC) and the Tax Executive Committee (TEC).

The AICPA is the national professional association of CPAs with more than 350,000 members, including CPAs in business and industry, public practice, government, and education; student affiliates; and international associates. Our members provide audit, tax, retirement consulting, plan administration, and financial planning services. It is from this diverse perspective that we offer our comments.

We commend the Internal Revenue Service for drafting regulations to provide guidance on the new statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals. While we are generally in favor of introducing requirements pertaining to appraisers' education and experience, as well as the introduction of appraisal standards, we feel that there are specific terms within these regulations that require further clarification. Specifically, the terms “generally accepted appraisal standards” and “qualified appraiser.”

We appreciate the opportunity to comment and urge you to clarify these issues. If we can be of further assistance please contact me at (205) 212-5347 or [rtaylor@dixon-hughes.com](mailto:rtaylor@dixon-hughes.com); Thomas Hilton at (314) 655-5515 or [thilton@amdcpa.com](mailto:thilton@amdcpa.com); Teighlor S. March, FVS Senior Technical Manager at (919) 402-4804 or [tmarch@aicpa.org](mailto:tmarch@aicpa.org); or Lisa A. Winton, Taxation Technical Manager at (202) 434-9234.

Sincerely,  
Robin E. Taylor  
Chair, Business Valuation Committee

Thomas E. Hilton  
Chair, FVS Executive Committee

Alan Einhorn  
Chair, Tax Executive Committee  
Encl.

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
Comments on Proposed Regulations Providing Guidance Concerning  
Substantiation and Reporting Requirements for Cash and Noncash Charitable  
Contributions November 5, 2008**

We commend the Internal Revenue Service for drafting regulations to provide guidance on the new statutory terms that were introduced by Title XII of the Pension Protection Act of 2006 pertaining to appraisals and individuals performing these appraisals. While we are generally in favor of introducing requirements pertaining to appraisers' education and experience, as well as the introduction of appraisal standards, we feel that there are specific terms within these regulations that require further clarification.

**1. Clarity surrounding the term “generally accepted appraisal standards”**

Proposed regulation section 1.170A-17(a) defines the term “*qualified appraisal*” as an appraisal document that is prepared by a qualified appraiser [as defined in section (b)] in accordance with generally accepted appraisal standards [as defined in paragraph (a)(2)]. “*Generally accepted appraisal standards*” are defined in (a)(2) to mean the substance and principles of Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation. This definition is similar to the transitional guidance of Notice 2006-96, except the proposed regulations require compliance with the substance and principles of USPAP whereas Notice 2006-96 refers to USPAP as an *example* of generally accepted appraisal standards.

Explanatory language in the Federal Register's Notice mentions that many commenters to Notice 2006-96 suggested requiring that appraisal documents be “in accordance with published appraisal standards of national professional appraisal organizations” and include references to certain other specific standards. According to the IRS and Treasury Department, the term “substance and principles of USPAP” is believed to be broad enough to include these suggestions.

We recommend that “generally accepted appraisal standards” be left as is, with no further definition since the term covers more than just one appraisal standard. Our concern is that reference to USPAP may result in undue focus on that particular standard to the exclusion of other appraisal standards of similar rigor and quality. For example, since January 1,

2008, all CPAs who are members of the AICPA <sup>1</sup> are required to follow the AICPA valuation standard, Statement on Standards for Valuation Services No. 1 (SSVS1), *Valuation of a Business, Business Ownership Interest, Security or Intangible Asset*. This standard was the culmination of a six-year process by the AICPA. Additionally, in comparing the standards of various appraisal organizations, a reader will find broad consensus as to what constitutes a competent appraisal process and the elements of the related appraisal report. Members of these various groups are bound by the standards of their respective organizations, except when there are overriding jurisdictional issues such as those that arise in litigation.

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<sup>1</sup>Non-AICPA member CPAs may also be required to adhere to SSVS1 if the standard has been adopted by their governing state board of accountancy.

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Alternatively, if the IRS and Treasury choose to retain reference to USPAP in the final regulations, we recommend that the operative language be revised to state that USPAP is one example of generally accepted appraisal standards. This could be accomplished in a manner similar to the language used in section (b)(iii) of the proposed regulation, which defines “recognized appraisal designation”. <sup>2</sup> and provides examples of those that qualify.

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<sup>2</sup>“Recognized appraisal designation” is defined on page 45918 of the Federal Register Notice as follows: “ ...Means a designation awarded by a recognized professional appraiser organization on the basis of demonstrated competency. For example, an appraiser who has earned a designation similar to the Member of the Appraisal Institute (MAI), Senior Residential Appraiser (SRA), Senior Real Estate Appraiser (SREA), or Senior Real Property Appraiser (SRPA) membership designation has earned a recognized appraisal designation.”

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## **2. Clarity regarding the term “qualified appraiser”**

Proposed regulation section 1.170A-17(b) defines a “*qualified appraiser*” as an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed. Section (b)(2)(i) provides that an individual is treated as having the requisite education and experience in valuing the relevant property if, as of the date the individual signs the appraisal, the individual has— (A) Successfully completed professional or college-level coursework in valuing the relevant type of property (as described in (b)(3) <sup>3</sup>) and has two or more years of experience in valuing the relevant type of property; or

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<sup>3</sup>“Relevant type of property” is defined to mean the category of property customary in the appraisal field for an appraiser to value. (See Proposed regulation section 1.170A-17 (b)(3)).

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(B) Earned a recognized appraisal designation (as described in (b)(2)(iii)) for the relevant type of property.

**a. Qualified appraiser meeting the requirement of (b)(2)(i)(A)**

The three examples in (3)(ii) detail situations in which an appraiser will be deemed to have successfully completed professional coursework in valuing the relevant type of property being valued. These illustrations indicate that, if it is customary in the appraisal field for personal property appraisers to appraise widgets, coursework in valuing personal property generally will suffice rather than specific coursework in valuing widgets.

We propose that the final regulations introduce an illustration specific to the valuation of a business or intangible asset. These types of valuations—both in nature and the professional course materials—are distinct from those of personal property, yet all are subject to the same requirement. We believe that the valuation community would benefit from the addition of this type of illustration with language broad enough to encompass various types of business ownership interests and further, address instances in which industry-specific experience is a pre-requisite.

We recommend that clarification be made as to whether successful completion of professional or college-level coursework (i.e., training) should be obtained *prior* to the experience requirement, or whether both components can be obtained contemporaneously. We also recommend that further definition and clarity be provided on the “professional or college-level coursework” and “two or more years” of experience requirements. How much coursework—one college semester or forty full-time equivalent hours? In terms of the “two or more years of experience” requirement, does it mean that the appraiser has simply been involved in the related area for two years? Or, does this mean “full-time equivalent” years? For example, the American Society of Appraisers has defined “years of experience” to mean “full-time appraisal experience” for purposes of qualifying for certain credentials. Thus, there could be confusion on the level of training and experience required without further clarity.

**b. Qualified appraiser meeting the requirement of (b)(2)(i)(B)**

We are concerned that the credentials cited in the proposal are specific to real property/tangible property valuations and do not include any designations related to the appraisal of business interests. We believe the topic of credentials should be broadly addressed in a way that does not create a perception to the end-user of a valuation that they are all-inclusive and/or preferred by the IRS/Treasury.

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REG-140029-07

November 5, 2008

CC:PA:LPD:PR (REG-140029-07)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

Dear Sir or Madam:

The undersigned professional appraisal organizations appreciate the opportunity to comment on proposed final regulations governing “Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions” (REG-140029-07). Our comments focus on proposed requirements governing “Qualified Appraisers” and, “Qualified Appraisals” and other provisions relating to the valuation of noncash contributions. In tax year 2005, 6.5 million taxpayers made noncash charitable donations and took deductions totaling \$41 billion. Each year, approximately 100,000 taxpayers donate noncash property with claimed values of more than \$5,000 (the average amount per donation being in excess of \$100,000). Noncash donations typically include stock in public and closely held companies; real estate or interests in real estate, such as conservation easements; art, antiques and collectibles; machinery and equipment; and, intellectual property.

#### I. Preamble To Comments

Our organizations recognize that the proposed regulations on “Qualified Appraiser” and “Qualified Appraisal” are intended to apply only to section 170 of the Internal Revenue Code relating to charitable contributions and gifts; and not to the hundreds of provisions in other Code sections which require fair market valuations of property for a variety of Income, Estate and Gift tax purposes. On a number of previous occasions, we have argued—thus far unsuccessfully—that effective tax administration will be severely impeded and taxpayer confusion sowed if the Service operates with two separate—and unequal—sets of valuation requirements: one which greatly improves the competency of appraisers and the reliability of appraisals by redefining the terms “Qualified Appraiser” and “Qualified Appraisal”—but which governs only valuations of noncash contributions; and, a second set which relies on an old and discredited qualifications regime for all other valuations required by the Tax Code.

We believe the Service has the authority (without new legislation) to extend its “Qualified Appraiser” and “Qualified Appraisal” reforms to all tax-related valuations; and, we respectfully urge it to begin that process. Adding to the logic of extending the proposed regulations to valuations required by all Tax Code sections is that the provisions of the Pension Protection Act which address valuation misstatements and appraiser penalties already do so (as will IRS regulations when the Service implements

those provisions). Absent a single set of agency-wide valuation requirements, consider that the same item of taxpayer property will or will not require a Qualified Appraisal by a Qualified Appraiser based only on whether that property is being donated to a charity (“yes” a Qualified Appraisal is required) or valued as an asset in an estate (“no” a Qualified Appraisal is not required).

## II. Executive Summary Of Comments

- Our organizations strongly support the general manner in which the proposed, rules redefine the terms “Qualified Appraiser” and “Qualified Appraisal”. We congratulate IRS for proposing final regulations which we believe will lead to significant improvements in the competency of those preparing appraisals of donated noncash property and in the reliability of the valuations themselves. Notwithstanding our support for the basic direction of the proposals, we do have some serious concerns and several recommendations for changes to the proposed rules which we hope will be addressed in the final version;
- IRS should define the term, “Recognized Professional Appraisal Organization,” in the final regulations by establishing the specific organizational characteristics IRS expects such organizations to possess. Our organizations have proposed specific criteria which we believe will serve the public interest and the interests of fair and effective tax administration;
- Under the proposed regulations, individuals who have not earned an “appraisal designation” from a “Recognized Professional Appraisal Organization” must meet verifiable education and experience requirements to be considered a “Qualified Appraiser”. We believe this is an appropriate alternative to qualifying an individual to value noncash charitable contributions, so long as there is an equivalency in the valuation skills necessary to become Qualified under the two approaches. We are concerned, however, that as presently written, the education and experience requirements specified in the proposed regulations are substantially less rigorous than those required to earn a designation from the Recognized Professional Appraisal Organizations. Without a greater degree of “education and experience” comparability, we believe that under qualified and even unqualified individuals will be permitted to classify themselves as “Qualified Appraisers”;
- We believe an extensive re-write of the “Declaration of appraiser” text in Part III of Form 8283, is necessary to accomplish the purposes of the “Qualified Appraiser/Qualified Appraisal” reforms. This re-write would require an individual who signs a Form 8283 (or an attached appraisal report) to declare, first, that he or she is a “Qualified Appraiser” under the new qualification requirements; and, second, that he or she has performed a “Qualified Appraisal” by adhering to generally accepted appraisal standards, as established in the new section.

We believe these modifications to the “appraiser's declaration” would provide taxpayers with general assurance that their noncash charitable contribution have been valued in

accordance with Service requirements; and, it would serve as a form of “verification” that an individual who signs the Declaration either has either earned a designation from a Recognized Professional Appraisal Organization or has met IRS’ “verifiable education and experience” requirements;

- IRS also needs to amend Form 8283 and the Instructions to that Form in order to help prevent ID thefts of the social security numbers of appraisers. Surprisingly (and notwithstanding all the attention to ID theft issues), the Instructions for Form 8283 actually foster the use of the social security numbers of appraisers by citing such numbers as an appropriate form of an appraiser's Tax Identity number.

### III. Discussion

#### (A) A Definition Of “Recognized Professional Appraisal Organization”Is Required

ISSUE: In accordance with the provisions of the Pension Protection Act, the proposed regulations provide that the term “Qualified appraiser” includes individuals who have earned an appraisal designation from a recognized professional appraisal organization. In their current form, the regulations do not define the term, “recognized professional appraiser organization.” Instead, they provide an example of such an organization by referencing the designations of a single professional appraisal organization. While the problems inherent in citing the designations of only one organization could readily be overcome by also citing the designations of other widely-recognized professional appraisal organizations (including our own), we do not believe that would be the most appropriate public policy approach.

Instead, we strongly recommend that IRS define a Recognized Professional Appraisal Organization by setting out in the final regulations the organizational characteristics IRS expects such organizations to possess. Essentially, these characteristics would reflect the approaches any legitimate professional organization would follow in awarding professional designations based on merit. In the case of organizations like ours which award valuation credentials, this would include criteria requiring that an applicant be able to demonstrate a high level of basic valuation competency, as well as competency in valuing specific categories of property, when appropriate. Typical, as well, would be requirements pertaining to education, continuing education, a regimen of coursework, experience, testing, peer reviews and ethics. We believe that establishing a set of such criteria would be straightforward and relatively easy; and, is a far more appropriate approach than leaving to chance or subjective judgment what characteristics an organization must possess—now or in the future—to be considered a Recognized Professional Appraisal Organization.

RECOMMENDED ACTION: Final Regulations Should Establish Specific Criteria For Organizations To Be Considered By IRS AS “A Recognized Professional Appraisal Organization”—We specifically recommend that the Service define a Recognized Professional Appraisal Organization as one which: (1) Is organized as a non-profit and recognized by the Internal Revenue Service as tax exempt; (2) Has adopted generally

accepted appraisal standards as defined in this section (i.e., the substance and principles of USPAP), has an effective educational curriculum for teaching the standards and requires its designated members to comply with them; (3) Awards valuation designations based on merit, including a requirement that its applicants for such designations pass a meaningful examination and possess requisite experience; (4) Requires its designated members to meet appraiser qualification criteria in the areas of education, continuing education, experience and examination that are substantially comparable to the criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation for the corresponding appraisal discipline in effect at the time the designation was awarded. Where no minimum qualification criteria have been adopted by the AQB, the organization shall be able to demonstrate that it has meaningful qualification requirements for these designations in the areas of education, continuing education, experience and examination; and (5) Maintains and enforces a Code of Ethics for its designated members.

(B) The Provisions Defining The Nature & Extent of Education Required Of Non-Designated Individuals To Value Property, Need Strengthening

ISSUE: We are concerned that the provisions establishing education requirements for individuals to become Qualified Appraisers are far less rigorous than comparable requirements established by Recognized Professional Appraisal Organizations for their designated members. For example, Section 1.170A-17(b)(2)(i)(A) [“Successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework...in valuing the relevant type of property”] lacks clarity on the range and depth of coursework that must be successfully completed to be considered a Qualified Appraiser. Appraisal designations are typically earned from Recognized Professional Appraisal Organizations only after the applicant has completed not a handful of courses but a wide range of coursework culminating in passing a comprehensive final exam. As presently written, it is unclear what the “education” provisions of the proposed regulations contemplate in terms of the successful completion of coursework. Do they require successful completion of one or two courses; a handful of courses; or a range of courses relating to basic principles of valuation, as well as the valuation of particular types of property? We do not know.

RECOMMENDED ACTION: The regulations Should Be Revised To Establish Meaningful Educational Equivalency Between the Requirements of the Recognized Professional Appraisal Organizations And Those IRS Requires For Individuals Who Seek to Become Qualified Appraisers Outside of Such Organizations—Except for those appraisers who have earned a designation from a Recognized Professional Appraisal Organization, the only other way to meet the Qualified Appraiser test is to comply with the proposed education and experience requirements. Many individuals are likely to become Qualified Appraisers through this route.

We do not believe IRS intended to grant Qualified Appraiser status to individuals who have successfully completed only a handful of valuation courses. But in order to avoid the perception that a few week-ends of study and passing one or two exams will qualify

an individual as a Qualified appraiser, we believe the proposed regulations should be modified to specify that the educational achievement necessary to qualify as a Qualified Appraiser must be “substantially similar” to the education required by a Recognized Professional Appraisal Organization for its designated members. Our organizations, and others like ours, require a syllabus of coursework (i.e., range and depth)—and continuing education—to satisfy our educational requirements. The “substantially similar” phrase which we are recommending as to the educational coursework requirement, already appears in (b)(2)(ii)(C), in relation to an employer-sponsored educational program; but, it does not appear to apply to the actual coursework component of an educational program.

#### (C) Proposed Test For Verifying The Adequacy Of An Individual’s Valuation Education and Experience Could Be Made More Effective

ISSUE: A lynchpin of the proposal's education and experience requirements necessary for an individual to be recognized by IRS as a “Qualified Appraiser,” is their “verifiability”. The regulation proposes a “verifiability” test based on disclosure, in the appraisal report, of an individual's education and experience and a declaration, also in the report, that “because of the appraiser's education and experience...the appraiser is qualified to make appraisals of the relevant [property type].” While we support these information disclosure and declaration requirements, we do not believe they constitute effective “verification” that the individual performing the appraisal is in compliance with IRS’ “Qualified Appraiser” requirements.

RECOMMENDED ACTION: Revise the “Declaration of Appraiser” Section of Form 8283 To Include A Specific Statement That The Appraiser Is A “Qualified Appraiser”: We believe the “Declaration of Appraiser” section of Form 8283 should be revised to include a “verification” component. We recommend that the Declaration be revised to incorporate the term, “Qualified Appraiser” and state: “I declare that I meet Internal Revenue Service requirements pertaining to who is a ‘Qualified Appraiser’”. We believe that requiring such an attestation through the Declaration, would be an effective “verification” for the taxpayer that the appraiser meets the applicable tests necessary to be a “Qualified Appraiser,” including not only the requisite education and experience; but also compliance with generally accepted appraisal standards.

#### (D) Form 8283 and the Instructions to the Form Need to Be Changed To Prevent The Theft Of Appraisers’ Identities

ISSUE: In response to expressions of concern from appraisers over ID theft resulting from the use (and possible disclosure) of their social security numbers as their taxpayer identity number on appraisal reports, the proposed regulations clarify that appraisers—whether in business for themselves or as employees of firms providing valuation services—are not required to use their social security numbers for tax ID purposes on any appraisal report (including Form 8283). Specifically, the proposed regulations state that an appraiser in private practice may obtain an employer identification number (EIN) even if he or she does not have any employees; and, if employed by a valuation firm, only needs to use the employer-firm's tax ID number on any appraisal report the appraiser

must sign. While this clarification is extremely welcome, ID theft concerns continue. They continue, in large part, because the current “Instructions for Form 8283” state, in the appraiser declaration section: “Identifying number. The appraiser's taxpayer identification number (social security number or employer identification number) must be entered in Part III.” (emphasis added)

**RECOMMENDED ACTION:** Revise Form 8283 and Instructions—IRS should eliminate any references to an appraiser's social security number in the section of the “Instructions for Form 8283” which addresses tax ID number issues; and, make clear, that use of a social security number is not required or advisable. Additionally, we recommend that IRS revise Part III (Declaration of Appraiser) of Form 8283 itself by inserting in the box which now states “Identifying number” a subtext which would read: “Do Not Use Your Social Security Number” or words to that effect. Our organizations—and others—have a responsibility to communicate to appraisers that they do not need to use, and should not use, their social security numbers to satisfy IRS’ tax identification requirements. We will gladly do that. But, a rewrite of the Instructions to Form 8283 and changes to the form itself, are of paramount importance.

#### (E) Some Reasonable Flexibility. May Be Required With Respect To The Valuation Effective Date

Under the proposed regulations, the valuation effective date (i.e., the date to which the value opinion applies) generally must be the date on which the noncash property is contributed. In situations where the appraisal is prepared before the contribution date, the Valuation Effective Date must be no earlier than 60 days before the date of the noncash contribution and no later than the contribution date. The proposed regulations also require that in order for an appraisal report to be considered a “Qualified Appraisal” it must be “made no earlier than 60 days before the contribution date.” There is no definition provided as to the meaning of the word “made”.

We understand and support the purpose of a policy which requires the date of the opinion of value to be in close time proximity to the date of the contribution. However, some of our members believe that these requirements are insufficiently flexible to accommodate the real world of noncash donations and the obligation of appraisers to factor into the appraisal report information and data that may not be available precisely within the time-frames established in the proposed regulations. We believe that some reasonable degree of flexibility may be required and would appreciate an opportunity to discuss this issue with the Service.

#### Conclusion

As stated earlier in this comment letter, our organizations support the basic direction of the proposed regulations and many of the specific provisions. We do have concerns, however, and believe the regulations would better serve their tax administration and public policy purposes if several changes were made, including: (1) Defining a Recognized Professional Appraisal Organization; (2) Revising the Declaration of

Appraiser to capture the new Qualified Appraiser and Qualified Appraisal requirements; (3) Requiring that the education and experience requirements for recognition as a Qualified Appraiser be made comparable to the education and experience requirements of the Recognized Professional Appraisal Organizations; and, (4) Modifying Form 8283 and the Instructions for Form 8283 to reduce the possibility of the theft of an appraiser's identity.

Treasury and IRS have asked for suggestions with respect to categorizing various types of property for the purpose of determining the qualifications of appraisers who value different types of properties, relating to both education and experience requirements. IRS believes that more education and experience may be necessary for valuing some types of property and interests in property than for others. We strongly agree; and, we intend to supplement this comment letter with information we believe will be useful to the Service in making determinations about the nature and extent of experience and education relative to various categories of property.

Sincerely,

Ronald M. Seaman, FASA  
International President  
American Society of Appraisers

Jerry A. Warner, AFM  
President  
American Society of Farm Managers and Rural Appraisers

Michael T. Orman, IFAS  
National President  
National Association of Independent Fee Appraisers

September 23, 2008  
Susan Kassell, Senior Counsel  
IRS Office of Chief Counsel  
Income Tax & Accounting Branch 1  
1111 Constitution Avenue, NW  
Washington, DC 20224  
Room 4045

Dear Ms Kassell:

We are writing to express our appreciation for your prompt and reassuring response to our September 3rd letter expressing concern over the Service's reference to the appraisal designations of a single professional appraisal organization in proposed regulations governing valuations of non-cash charitable contributions. The reference to this organization was cited, as an example, in the regulation's definition of "a recognized

professional appraiser organization.” Your response makes clear that the Internal Revenue Service “does not consider any particular organization's recognized appraisal designations to be superior to, or preferred over, those of any other organization.” As stated in our September 3rd letter to you, we are preparing detailed comments on the many important valuation provisions of the proposed regulation (REG-140029-07). Our comments will include a specific recommendation on how to define “a recognized professional appraiser organization” in a way which will avoid any misunderstanding or implication that the government has a preference for the designations of one professional appraisal organization over those awarded by the others.

Sincerely,

Ronald M. Seaman, FASA  
International President  
American Society of Appraisers

Steve Runyan, ARA  
President  
American Society of Farm Managers and Rural Appraisers

Michael T. Orman, IFAS  
National President  
National Association of Independent Fee Appraisers

INFO 2006-0016 - Section 170 - Charitable, etc., Contributions and Gifts  
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF CHIEF COUNSEL

September 15, 2008

Number: INFO2009-0016  
UIL: 170.00-00  
Release Date: 1/2/2008  
GENIN-139410-08

Dear [redacted data]:

We received your letter dated [redacted data], in which you expressed concern about a reference to a specific appraisal organization in recently-released proposed income tax regulations under § 170 of the Internal Revenue Code.

The proposed regulations are not effective until after they are published as final regulations. Section 1.170A-17(b)(1) of the proposed regulations provides that a qualified appraiser means an individual with verifiable education and experience in valuing the relevant type of property. Section 1.170A-17(b)(2)(i)(B) of the proposed regulations provides that an individual is treated as having education and experience in valuing the relevant type of property if the individual has either: (a) Successfully completed certain coursework and has certain experience; or (b) Earned a recognized appraisal designation for the relevant type of property. Section 1.170A-17(b)(2)(iii) of the proposed regulations provides that a recognized appraisal designation means a designation awarded by a recognized professional appraiser organization on the basis of demonstrated competency. The proposed regulations provide as examples of appraisers who would be considered to have earned recognized appraisal designations appraisers who have earned designations similar to an MAI, SRA, SREA or SRPA, which are designations provided by one particular organization. You indicate in your letter that this specific reference in §1.170A-17(b)(2)(iii) of the proposed regulations to designations awarded by one organization has caused confusion among some users of tax-related real property valuation services as to whether the Internal Revenue Service (Service) requires or prefers designations offered by this particular organization.

The Service does not consider any particular organization's recognized appraisal designations to be superior to, or preferred over, those of any other organization. The example was included in the proposed regulations merely as an illustration of the types of designations that would satisfy the education and experience requirement and was not intended to indicate any preference for designations offered by a particular organization. In addition, the proposed regulation refers to designations "similar to" those provided as

examples. The Service recognizes that there are other organizations awarding designations that also would be recognized professional appraiser organizations.

I hope that this addresses your concerns, and we look forward to receiving your additional written comments, which will be considered before any final regulations are issued. As indicated in the Notice of Proposed Rulemaking accompanying the proposed regulations, written comments and requests for a public hearing must be received by November 5, 2008.

If you have any further questions, please feel free to contact me at ([redacted data] )

Sincerely,

Susan J. Kassell

Senior Counsel, Branch 1

(Income Tax & Accounting)

[From Form 8283, rev. 12/06]

### **Declaration of Appraiser**

I declare that I am not the donor, the donee, a party to the transaction in which the donor acquired the property, employed by, or related to any of the foregoing persons, or married to any person who is related to any of the foregoing persons. And, if regularly used by the donor, donee, or party to the transaction, I performed the majority of my appraisals during my tax year for other persons.

Also, I declare that I hold myself out to the public as an appraiser or perform appraisals on a regular basis; and that because of my qualifications as described in the appraisal, I am qualified to make appraisals of the type of property being valued. I certify that the appraisal fees were not based on a percentage of the appraised property value. Furthermore, I understand that a false or fraudulent overstatement of the property value as described in the qualified appraisal or this Form 8283 may subject me to the penalty under section 6701(a) (aiding and abetting the understatement of tax liability). In addition, I understand that a substantial or gross valuation misstatement resulting from the appraisal of the value of the property that I know, or reasonably should know, would be used in connection with a return or claim for refund, may subject me to the penalty under section 6695A. I affirm that I have not been barred from presenting evidence or testimony by the Office of Professional Responsibility.