

IV. New IRS requirements for qualified appraisals and qualified appraisers

New definitions of qualified appraisal and qualified appraiser, taking into account the PPA definitions of these terms in section 170(f)(11)(E), are provided in proposed §1.170A-17. Some new terms to implement these new definitions are also included.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) for substantiating and reporting deductions for charitable contributions under section 170 of the Internal Revenue Code. Section 170(f)(11), as added by section 883 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) (Jobs Act), contains reporting and substantiation requirements relating to deductions for noncash charitable contributions. Under section 170(f)(11)(C), for contributions of property for which a deduction of more than \$5,000 is claimed, taxpayers are required to obtain a qualified appraisal of the property. Under section 170(f)(11)(D), for contributions of property for which a deduction of more than \$500,000 is claimed, taxpayers must attach a qualified appraisal of the property to the tax return on which the deduction is claimed.

For appraisals prepared with respect to returns filed on or before August 17, 2006, §1.170A-13(c) of the current regulations provides definitions of the terms “qualified appraisal” and “qualified appraiser”. For appraisals prepared with respect to returns filed after August 17, 2006, section 170(f)(11)(E), as added by the Jobs Act and amended by section 1219 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA), provides statutory definitions of the terms qualified appraisal and qualified appraiser.

A. Qualified appraisal

In proposed §1.170A-17(a), the proposed regulations provide that a *qualified appraisal* means an appraisal document that is prepared by a qualified appraiser in accordance with generally accepted appraisal standards. Generally accepted appraisal standards are defined in the proposed regulations as the substance and principles of the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation. See Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 183 (12 U.S.C. 3331-3351). The proposed regulations are similar to section 3.02(2) of Notice 2006-96, except that the proposed regulations require compliance with the substance and principles of USPAP.

Commenters suggested requiring that appraisal documents be “in accordance with published appraisal standards of national professional appraisal credentialing organizations,” including references to certain other specific standards such as the Uniform Appraisal Standards for Federal Land Acquisitions, and requiring appraisers to include specific items in an appraisal, such as all sales of the contributed property within 18 months of the appraisal date. The IRS and the Treasury Department believe the “substance and principles of USPAP” is broad enough to include these suggestions. One commenter suggested that generally accepted appraisal standards are satisfied by an appraisal issued by a corporation or company that is regularly engaged in the business of producing appraisals, relies on the services of specialist departments, is affiliated with an auction house, dealer or association of dealers that conducts at least 100 auctions or sales per year, and regularly conducts appraisals for estate, income and/or charitable donation purposes. This suggestion was not incorporated in the proposed regulations because it does not contain any “appraisal standards.”

Application of the “substance and principles of USPAP” rule provided in the proposed regulations may be illustrated by the following situation. The IRS is aware that some appraisers of historic conservation easements have stated that local ordinances restricting modifications of a façade should be disregarded because local governments do not enforce these ordinances. Under applicable substance and principles of USPAP, an appraiser must identify and analyze any known restrictions, ordinances, or similar items, and the likelihood of any modification to those restrictions, in formulating a value opinion. For example, see USPAP Standards Rules 1-2(e)(iv), 1-3(a), and 2-2(vi). An appraisal that does not take into account a local ordinance is not consistent with the substance and principles of USPAP. See also §1.170A-14(h)(3)(ii).

In addition, some commenters requested a specific reference to highest and best use in the proposed regulations. This suggestion was not incorporated in the proposed regulations because USPAP Standards Rule 1-3(b) requires an appraiser to “develop an opinion of the highest and best use of the real estate” when

it is “necessary for credible assignment results in developing a market value opinion.” An appraisal that does not include a development of highest and best use when required by USPAP is not consistent with the substance and principles of USPAP.

The proposed regulations also clarify the current rules. For example, the current regulations require an appraisal to be made no earlier than 60 days before the contribution date. Under the proposed regulations, the valuation effective date, which is the date to which the value opinion applies, generally must be the date of the contribution. In cases where the appraisal is prepared before the date of the contribution, 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. The date the appraiser signs the appraisal report (appraisal report date) must be no earlier than 60 days before the date of the contribution and no later than the due date (including extensions) of the return on which the deduction is claimed or reported. As under current regulations, if the deduction is claimed for the first time on an amended return, the appraisal report date must be no later than the date the amended return is filed.

Several commenters requested clarification of when a contribution is “made” for purposes of determining the proper year of the deduction and the timeliness of the appraisal. Under §1.170A-1(b) of the current regulations, generally a contribution is made at the time delivery is effected. The IRS and the Treasury Department invite comments about when the contribution should be treated as “made” for section 170 purposes if a donor contributes a conservation easement to a qualified organization in a jurisdiction where a completed transfer requires execution, delivery, and recording of the transfer documents in the local governmental office, and the parties deliver the fully executed easement documents to the appropriate governmental office for recording in one year, but the documents are not recorded until the following year.

One commenter asked the IRS to state that an appraisal prepared by an insurance or real estate broker is not a qualified appraisal. This recommendation was not adopted in the proposed regulations because an insurance or real estate broker’s appraisal, like any other appraisal, is a qualified appraisal if it meets all of the requirements for a qualified appraisal by a qualified appraiser.

B. Qualified appraiser

Section 1.170A-17(b) of the proposed regulations incorporates many of the requirements from the current regulations, but certain other provisions were modified. For example, the appraiser declarations required in the appraisal and on Form 8283 have been modified. In addition, the proposed regulations contain several new terms implementing the PPA requirements of a qualified appraiser under section 170(f)(11)(E)(ii) and (iii). In general, under the proposed regulations, a “qualified appraiser” must be an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed.

The PPA refers to two types of education and experience: Minimum education and experience in section 170(f)(11)(E)(ii)(I) to establish qualification as an appraiser generally, and verifiable education and experience in valuing the type of property subject to the appraisal in section 170(f)(11)(E)(iii)(I) to establish qualification as an appraiser for a particular appraisal. The IRS and the Treasury Department believe that it is sufficient for an appraiser to satisfy the more stringent requirement of verifiable education and experience in valuing the type of property subject to the appraisal. Satisfaction of that requirement will also satisfy the minimum education and experience requirement of section 170(f)(11)(E)(ii)(I). The proposed regulations provide that an individual has verifiable education and experience if the individual has successfully completed professional or college-level coursework in valuing the relevant type of property and has two or more years experience in valuing that type of property.

Furthermore, because significant education and experience are required to obtain a designation from a recognized professional appraiser organization, under the proposed regulations appraisers with these designations are deemed to have demonstrated sufficient verifiable education and experience. One commenter asked about the qualifications of organizations that award designations and suggested that a recognized professional appraisal organization should be one that, among other things, offers comprehensive educational programs in USPAP and principles of valuation, and requires qualification to be demonstrated through written exams and peer reviews. The proposed regulations incorporate some of these principles in the definition of education and experience in valuing the relevant type of property.

A number of comments focused on education and experience. Several commenters suggested that an appraiser's evidence of education and experience should be required to be verifiable as provided in section 170(f)(11)(E)(iii)(I). The proposed regulations incorporate this suggestion by requiring a statement in the appraisal of the appraiser's specified education and experience in valuing the relevant type of property. The proposed regulations also require the appraiser to complete coursework in valuing the category of property that is customary in the appraisal field for an appraiser to value.

One commenter indicated that some of its appraiser employees may have significant experience but lack formal education, and suggested that "education and experience" be interpreted as "education or experience." The commenter also asked that the "education and experience" requirement be applied to a group of appraisers rather than individually. The proposed regulations do not adopt these suggestions because they are contrary to the section 170(f)(11)(E) requirement that the person who signs the appraisal report be an individual with the requisite education and experience in valuing the relevant type of property. However, the proposed regulations define education broadly to include coursework obtained in an employment context, provided it is similar to an educational program of an educational institution or a generally recognized professional appraisal organization.

Section 3.03(3)(a)(ii) of Notice 2006-96 provides that, for real estate appraisers, education and experience are sufficient if the appraiser holds a license or certificate to value the relevant type of property in the state in which the property is located. This provision was not incorporated in the proposed regulations, which set forth more specific requirements applicable to all appraisers.

Several commenters asked for a definition of "types of property" for purposes of identifying the required education and experience. More education and experience may be necessary and available for some types of property than for others. Therefore, the proposed regulations provide that the relevant type of property is determined by what is customary in the appraisal profession. The IRS and the Treasury Department request suggestions for categorizing types of property that would be helpful in determining the qualification of appraisers, for purposes of both the education and experience requirements.

The IRS and the Treasury Department believe that the term "regularly performs appraisals for which the individual receives compensation" under section 170(f)(11)(E)(ii)(II) is generally encompassed by the experience requirement of section 170(f)(11)(E)(iii)(I) and does not need to be separately met. One corporate commenter was concerned that its individual employees could never be qualified appraisers, because the corporation receives the compensation, not the individual employees. Similar comments were received from otherwise qualified individual appraisers who do not regularly receive compensation. The proposed regulations address both of these concerns by not separately stating a compensation requirement.

Expressing concerns about identity theft, some commenters requested elimination of the requirements of supplying the appraiser's taxpayer identification number on Form 8283 and in the appraisal, as currently required under §§1.170A-13(c)(3)(ii)(E) and 1.170A-13(c)(4)(ii)(I). The concern arises from appraisers who do not have a taxpayer identification number other than a social security number. The proposed regulations continue to require this information because, pursuant to §301.6109-1(a)(1)(ii)(D) of the Procedure and Administration Regulations, an appraiser may obtain an employer identification number even if the appraiser does not have employees. This number may be obtained by completing Form SS-4, "Application for Employer Identification Number." See Pub. 1635, "Understanding Your Employer Identification Number." If an appraiser is employed by a firm, the firm's employer identification number should be used.

Taxpayers are reminded that the IRS may challenge the amount of a claimed deduction, even if the donor substantiates the amount of the deduction with a qualified appraisal prepared by a qualified appraiser.

C. Clothing and household items

Section 1.170A-18 of the proposed regulations implements section 170(f)(16), which provides that no deduction is allowed for any contribution of clothing or a household item unless it is in good used condition or better. The purpose of this provision relates to ensuring that donated clothing and household items are "of meaningful use to charitable organizations." Joint Committee on Taxation, Technical Explanation of H.R. 4, the "Pension Protection Act of 2006" (Aug. 3, 2006). The IRS and the Treasury Department are aware that a number of charities publish donation guidelines listing items the charity will and will not accept, and believe

that the guidelines are helpful in ensuring that charities receive donations of items that are of meaningful use to the charity. The IRS and the Treasury Department request comments regarding how donation guidelines published by a charity may relate to the "good used condition" requirement in section 170(f)(16).

Under the proposed regulations, no deduction is allowed unless the clothing or household item is in good used condition or better at the time of the contribution. The proposed regulations also provide that this rule does not apply to a contribution of a single item of clothing or a household item for which a donor claims a deduction of more than \$500 if the donor submits a qualified appraisal with the return on which the deduction is claimed. Several commenters questioned whether a qualified appraisal is required for any contribution of an item of clothing or a household item with a claimed value over \$500. If the item is not in good used condition or better and a deduction in excess of \$500 is claimed, the taxpayer must obtain a qualified appraisal and file a completed Form 8283 (Section B) with the return on which the deduction is claimed. If the item is in good used condition or better and a deduction in excess of \$500 is claimed, the taxpayer must file a completed Form 8283 (Section A or B depending on the type of contribution and claimed amount), but a qualified appraisal is required only if the claimed contribution amount exceeds \$5,000.

If the donor claims a deduction of less than \$250, §1.170A-16(a) of the proposed regulations requires that the donor obtain a receipt from the donee or maintain reliable written records of the contribution. A reliable written record for a contribution of clothing or a household item must include a description of the condition of the item. If the donor claims a deduction of \$250 or more, the donor must obtain from the donee a receipt that meets the requirements of section 170(f)(8) (contemporaneous written acknowledgment).