



January 17, 2007

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

Re: Notice 2006-96: Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions

As preeminent professional appraisal organizations in the United States, thank you for the opportunity to comment on Notice 2006-96 regarding Appraisal Requirements for Noncash Charitable Contributions.

As it relates to the transitional guidance, the IRS sought specific comments in the following definitions: (1) "generally accepted appraisal standards"; (2) "appraisal designation from a recognized professional appraisal organization"; (3) "minimum education and experience requirements"; and (4) "verifiable education and experience in valuing the type of property subject to the appraisal". Below, you will find comments on these, in addition to comments in the following areas: 1) the applicability of the appraisal requirements to estate and gift tax appraisals; and 2) appraiser penalties.

***Generally accepted appraisal standards***

The transitional guidance defines a "qualified appraisal" as one that is conducted in accordance with generally accepted appraisal standards. It cites, as an example, an appraisal that 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.

We wholeheartedly support specific reference to USPAP in the final guidance promulgated by the IRS. However, as it is currently worded, the transitional guidance simply identifies USPAP as one example of acceptable appraisal standards. We believe greater consistency could be achieved by eliminating the potential ambiguity created by implying that other standards may be acceptable. There are no other recognized appraisal standards in the United States and the International Standards are not specific to the U.S. market conditions. Therefore, we suggest eliminating the phrase "for example" in the final guidance. The resulting language would then read as follows (deletion shown in strikethrough):

*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>.

*Additional concern*

Outside of the actual definition of generally accepted appraisal standards, we believe the IRS should also adopt USPAP as the standard in which it reviews appraisals and makes determinations of “correct value.” Without this standard, and the development of a clear, understandable, and fair process for determining “correct value,” the potential for appraisers to be wrongfully sanctioned increases, which may force otherwise qualified appraisers to avoid such assignments altogether.

As background, as a result of the PPA, the IRS now has the ability to suspend or disbar an appraiser from practicing before the IRS without the previous “aiding and abetting” standard. Additionally, the IRS now has the ability to enact civil money penalties against appraisers based on substantial or gross misvaluations, and the substantial and gross misvaluation thresholds have been lowered and also apply to estate and gift tax appraisals.

With regard to Circular 230 proceedings, we are fully supportive of efforts to censure, suspend, or disbar *incompetent* or *disreputable* appraisers. It is our expectation that appraisers will be given the same rights and due process as other practitioners practicing before the IRS through the Circular 230 disciplinary processes. Representatives of our organizations look forward to discussing how Circular 230 will be applied to appraiser situations further with the IRS Office of Professional Responsibility.

However, we do want to point out the unique relationship appraisers have with taxpayers and tax preparers, and how this may differ from other practitioners. For one, appraisers are to remain independent and objective, as opposed to advocating for their client like an accountant or lawyer would. Additionally, appraisals are performed, to some degree, on information that is provided by their clients and other experts. At times, the appraiser is required to make certain assumptions regarding unknown factors about the property based on input from the taxpayer and their experts. If these assumptions are reasonable the appraiser may have no choice but to adopt them in order to complete the appraisal assignment. It is our hope that as Circular 230 becomes more applicable to appraisers that nuances such as this will be accounted for in a hearing to censure, suspend, or debar an appraiser.

Our greater concern is with how the IRS plans to access civil money penalties for gross or substantial misvaluations. While the IRS has been equipped to enforce gross and substantial misvaluations for some time, the notion of “correct value” has never been consistent with longstanding appraisal theory. An appraisal is an opinion, and an acceptable appraisal is a

"credible" opinion consistent with USPAP.<sup>1</sup> Nevertheless, the PPA imposes a nearly automatic penalty on appraisers, for whom the determination is made by the IRS that the appraised value is not the correct value, with no court involved. With this, the issue of how the IRS determines the "correct value" becomes critical to the fairness and integrity of the appraisal review and appraiser sanctioning system.

While we anticipate any attempt by the IRS to sanction an appraiser will involve a separate examination or case involving the appraiser, this is not stipulated in the transitional guidance. Additionally, unless the IRS adopts USPAP and requires its staff appraisers to abide by the same standards as appraisers working before the agency, we believe the potential for innocent appraisers to be wrongfully sanctioned by the IRS is greatly expanded. Already, our members tell us that this issue is dissuading them from accepting IRS related appraisal assignments. We believe there is justification for their concern that their work will be judged unfairly by a non-appraisal professional using differing "generally accepted appraisal standards."

We recommend the IRS work with the impacted parties, including our organizations, to develop a clear, understandable, and fair policy regarding appraisal reviews, the determination of "correct value" and the appraiser sanctioning process. We believe such guidance should address the following issues, at a minimum:

- Clarify that the IRS appraisal will also be conducted under the terms of USPAP;
- Define the rights of the appraiser in the event of an appraiser rendering a value estimate outside the limits of the transitional rule, providing that a copy of the IRS appraisal will be made available to the appraiser and his/her counsel;
- Consider the establishment of an independent panel of experts in front of which the accused appraiser may provide verbal and written testimony, and establish a process in which the costs of defense shall be reimbursed to the appraiser if vindicated;
- Apply the same standards and penalties to the IRS appraiser as the independent appraiser.

Further, our organizations would like to explore other areas in which we can work together to improve the quality of appraisal services offered to taxpayers and before the IRS. For instance, the IRS issues CAF numbers to accountants, attorneys, enrolled agents, and others from whom taxpayers request assistance on tax inquiries submitted to the IRS. We believe it would be valuable to include appraisers in future announcements and opportunities about obtaining CAF numbers and other supporting materials that increase information exchange and improve efficiency.

Given the complexity of this issue, we support further discussion with industry groups and impacted individuals, including the development of public hearings by the IRS. We urge this be done as soon as possible to avoid disruption in the marketplace. Our organizations stand committed to assisting in this regard.

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<sup>1</sup> The 2006 version of the *Uniform Standards of Professional Appraisal Practice* defines "credible" as follows: "Worthy of belief. Comment: Credible assignment results require support, by relevant evidence and logic, to the degree necessary for the intended use." p. 3, lines 79-81.

***Appraisal designation from a recognized professional appraisal organization***

The PPA specifies that such appraisals are to be performed by a “qualified appraiser,” which is defined in the Act to mean a person who has earned an appraisal designation from a recognized professional organization or has met minimum educational and experience requirements established by the Treasury Secretary through regulations. The transitional guidance states that the IRS accepts designations awarded on the basis of “demonstrated competency” in valuing the type of property for which the appraisal is performed. We believe this an acceptable definition of qualified appraiser.

We view the overriding intent of the PPA was for complex appraisals to be prepared by *highly qualified* appraisers -- not *minimally qualified* ones. Complex appraisals, such as those of conservation and historic preservation easements require higher levels of expertise. Our organizations strongly believe highly qualified appraisers tend to be those who are designated members of professional appraisal organizations and we encourage the Revenue Service to look to these more qualified professionals for the more complex assignments. Our designated members are required to have met stringent education and experience prior to receiving their respective designations and we encourage you to recognize this education in determining qualifications for other complex properties.

However not all appraisal organizations require education, experience, peer review, or comprehensive examinations. In fact, it is possible to obtain a credential from some appraisal organizations simply by paying a membership fee and presenting evidence of a state license or certification. The IRS should not equate these with designations that are truly earned; therefore, we support the definition within the transitional guidance.

***Minimum education and experience requirements***

The transitional guidance further requires the appraiser to make a declaration that, because of background, experience, education and membership in professional associations, the appraiser is qualified to handle the type of property being valued. The transition guidance says this declaration should be contained within the appraisal report. Alternatively, with respect to real property only, appraisers licensed or certified to appraise the type of property being appraised in the state in which the real property is located meet the minimum education and experience requirements under the transitional guidance, and are thus also eligible to perform appraisals of charitable contributions of real property.

We caution against establishing the minimum education and experience requirements to be based on those established for “licensed” appraisers, as this category of licensure is generally not adequate for fulfilling minimum education and experience requirements to perform appraisals of many complex properties. Specifically, the “Licensed Real Property Appraiser Classification” promulgated by Appraiser Qualifications Board of The Appraisal Foundation applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000. Currently, an appraiser can obtain a License by completely only 90 hours of classroom education and 2,000 hour of experience.

Appraisals of conservation easements and historic preservation easements are complicated assignments, and generally outside of the scope of an appraiser who only carries such a License.

Additionally, many state appraiser regulatory agencies confer appraiser classifications with even fewer requirements than the Licensed Real Property Appraiser Classification requirements promulgated by the AQB. Such appraiser classifications are called by different names throughout the country – associate, registered, provisional, licensed-trainee – but we believe none of them are suitable for meeting the minimum education and experience requirements for appraisals of complex properties.

To rectify this, we recommend the IRS strike references to the term “licensed” from its transitional guidance on minimum education and experience, and recognize only those appraisers who have earned a General Certification in accordance with the Real Property Appraiser Classification Criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation. General Certified appraisers can appraise all types of real property and have met a higher level of education and experience requirements than merely Licensed appraisers.

The revised guidance would thus read:

“(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 **classified as a “Certified General Real Property Appraiser in accordance with the Real Property Appraiser Classification Criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation and has completed appraisal education specific to the type property which is the subject of the assignment.** ~~is licensed or certified for the type of property being appraised in the state in which the appraised real property is located.~~

***Verifiable education and experience in valuing the type of property subject to the appraisal***

In addition to being an appraiser who has earned a designation from a professional appraisal organization, someone who regularly performs appraisals for compensation, or meets such other requirements established by the IRS, the PPA also requires qualified appraisers to demonstrate verifiable education and experience in valuing the type of property subject to the appraisal. Over the past year, our organizations have embarked on the development of education and certificate programs in the areas of conservation easement appraisal and historic preservation easement appraisal. Scheduled for release later this year, these programs are under development in cooperation with the Land Trust Alliance and the National Trust for Historic Preservation. Your staff has been very helpful and cooperative in our development efforts, having agreed to review our education materials. We hope the program will help improve the quality of appraisals for IRS

tax purposes, and we also encourage the IRS and its Valuation staff to take advantage of the education programs, where possible and appropriate.

In order to qualify to take the certificate and education courses under development, an appraiser must be Generally Certified or a designated member of one of our organizations. After completing the course and having successfully passed a comprehensive examination, we believe an appraiser would be able to present this certificate as evidence of verifiable education and experience for the type of property subject to the appraisal.

### ***Additional comments***

#### ***1. Applicability to estate and gift tax appraisals***

Although the definitions of "qualified appraisal" and "qualified appraiser" appear in the section of the tax code relating to charitable contributions, we believe the IRS has the authority, and should, broaden the application to other tax code sections, including estate and gift tax appraisals. Without this, two definitions of "qualified appraisal" and "qualified appraiser" will exist (one for noncash charitable contributions and one for estate and gift tax purposes). This has the potential to further dissuade appraisers from accepting assignments for estate and gift tax appraisals, again, because of uncertainty over the process employed by the IRS to determine the correct value.

#### ***2. Appraiser penalties***

The PPA established new penalties on appraisers -- the greater of 10 percent of the amount of the underpayment or \$1,000, up to a maximum of 125 percent of the gross income received by the appraiser for preparing the appraisal. We understand this is established in statute, but we wanted to raise concern about the impact this will have on appraisers in this area, with the hope that it can be addressed in a dialogue with the IRS.

We think a couple of unfortunate circumstances may result from the penalty provisions. For one, appraisers may feel coerced to "back off" during an audit in order to avoid the penalty, even if they sincerely believe that their appraisal accurately reflects value. The automatic penalty clause afforded to the IRS, coupled with an unclear appraisal review and sanctioning processes, has effectively stacked the deck against appraisers in IRS appraisal proceedings. Honest appraisers who may have performed competent and reliable work may be forced to accept undeserving penalties simply to avoid the full force of the IRS' expanded sanctioning authority.

Additionally, there seems to be a disparity between which appraisers the new penalties apply to, as only appraisers hired by taxpayers -- and not appraisers hired by the IRS -- may face sanction. Whether that distinction was intentional or not, we believe it is unfair and creates the opportunity for appraisers hired by the government to understate, with impunity, the value of property for which a deduction is claimed for income tax purposes and overstate it if it is taxable for estate and gift tax purposes. As a result, many appraisers may avoid this work, or raise fees to account for the increased liability. But there again, the appraisers are stuck, as the penalty is tagged to fee

received by the appraiser. Appraisers will therefore not be able to develop fees based on the appropriate amount of risk involved, which is contrary to most fee development situations.

Overall, we wanted to raise concerns about the impact the new penalties section may have on appraisers in the hopes that we can extend the dialogue with the IRS to make the process as clear, understandable, and fair as possible. Our organizations are prepared to work with the IRS to resolve these concerns.

Should you like to arrange a follow up meeting to discuss these, or other, issues, please contact Don Kelly, Chief External Relations Officer, at 202-298-5583 or [dkelly@appraisalinstitute.org](mailto:dkelly@appraisalinstitute.org).

Thank you again for the opportunity to comment on the transitional guidance. We look forward to working with you to implement fair and effective final rules on appraisals performed for income and estate and gift tax purposes.

Sincerely,

Appraisal Institute  
American Society of Farm Managers and Rural Appraisers  
National Association of Independent Fee Appraisers