



November 5, 2008

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

To Whom It May Concern:

On behalf of the largest professional association of real estate appraisers in the United States, we are writing to express our strong support for the goals and intent of the Advanced Notice of Proposed Rulemaking (ANPR) issued by the Internal Revenue Service regarding *Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions*. The ANPR implements provisions found in the Pension Protection Act, which are broadly intended to provide consistent application of appraisal standards and elevate appraiser qualifications requirements to practice before the IRS. Specifically, the ANPR proposes definitions for the terms “qualified appraisal” and “qualified appraiser.” We have reviewed the ANPR and believe the IRS has done an exemplary job of exploring the issues involved and laying out a sound foundation for implementation. We encourage the IRS to retain the substance of the proposed regulations in the final regulations, giving consideration to the concerns and recommendations below.

We are particularly pleased to see the IRS has elevated recognition of the Uniform Standards of Professional Appraisal Practice (USPAP) in its definition of “qualified appraisal.” USPAP sets standards for all property types including real property, personal property and businesses, and we believe the substance of principles of USPAP will help bring clarity and consistency to appraisal development in this area of appraisal practice. Further, we support the agency’s decision not reference other appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) in the proposed definition of qualified appraisal. While the Yellow Book and USPAP are complimentary, the Yellow Book was specifically developed for the valuation of federal land acquisitions. We believe it is important to avoid confusion in this area, and the best way to accomplish this is to reference a single set of standards that generally recognized by the appraisal profession. Furthermore, recognizing a common standard will also assist the IRS in providing oversight and enforcement by providing a common standard for review. We strongly urge the IRS to retain this provision in the final regulations, and even expand USPAP’s application, as we explain below.

We also stand in support of the proposed treatment of the “Valuation Effective Date” under the proposed regulations. We agree that 60 days is a reasonable period of time - barring changes in the market- for maintaining the shelf life of the appraisal. Appraisals prepared beyond the 60 day time period would simply require an appraisal update to satisfy the rule as referenced in USPAP Advisory Opinion-3.

We recognize the proposed regulations are specific to donations of cash and noncash charitable contributions, however, we believe these definitions are applicable in all valuation assignments before the IRS. We believe it is important for the IRS to develop consistent rules that apply across program areas, including estate, gift, and income tax. In fact, doing otherwise would seem to add to an overly complex and oftentimes confusing tax regime. This concern could be avoided if the IRS chose to establish a single set of clear and consistent rules for all fair market valuations of property. Fortunately, we believe the IRS has existing regulatory authority to accomplish this, particularly when considering provisions found in the Pension Protection Act that already do so in the area of valuation misstatements and appraiser penalties. For this reason, we urge the IRS to commence a process to

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extend the definitions of “qualified appraiser” and “qualified appraisal” to all appraisal assignments prepared for IRS tax purposes.

Before outlining several concerns and recommendations that we encourage the IRS to consider and accept, we want to reiterate that we stand committed to working with the IRS to improve the overall quality of appraisals prepared for noncash charitable contributions. We believe the appraisal profession has made significant strides in this area since concerns about the valuation of conservation and historic preservation easement donations were expressed in some media outlets and in Congress several years ago. In fact, our organization and others have risen to the challenge by creating substantive education programs specifically relating to the valuation of conservation and historic preservation easements.

Specifically, the Appraisal Institute and two other professional appraisal organizations worked diligently with the land trust and historic preservation communities to develop a certificate program on the Valuation of Conservation Easements. This four day course is the most robust education program on conservation easement valuation, requiring passage of an exam to earn the certificate. To date, approximately seven hundred and fifty professional real estate appraisers have earned the certificate since the program was debuted one year ago. The Appraisal Institute has also developed a two day certificate program on the Valuation of Historic Preservation Easements, which is debuting this fall with several program offerings. Like the Valuation of Conservation Easements course, the Valuation of Historic Preservation Easements is the most comprehensive education program on the market today on this important issue. We believe these programs are the best available tools to educate professional real estate appraisers of their responsibilities when preparing appraisals for conservation easement donations, and significantly contribute to the appraisal community’s ability to satisfy the verifiable education requirements in the proposed regulations.

As the IRS moves into its final rulemaking stage, we offer the assistance of our organization on this important endeavor.

Provided below are several concerns and suggestions that we urge be retained in the final regulations.

Definition of Qualified Appraiser

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. The ANPR proposes that individuals who have successfully completed professional or college-level coursework in valuing the relevant type of property and have two or more years experience in valuing the type of property meet the definition of verifiable education and experience.

First, we strongly support the IRS’ decision to require minimum education and experience requirements, as opposed to one or the other. Education and experience are critically important to the development of competent real estate appraisers, and we are pleased to see the IRS agrees.

Second, we believe these assignments to be “complex” appraisal assignments, deserving of performance by highly qualified real estate appraisers¹. For nearly twenty years, the Appraiser

¹ The terms “complex” and “non-complex” are used in the Appraiser Qualifications Board 2008 Real Property Appraiser Qualification Criteria, first on p. 11. It states: “Complex one- to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical.”¹ The footnote references Bank Holding Company Supervision Manual, 1999, page 10, section 2231.0.9.3, which says: “2231.0.9.3 Appraisals Performed by Certified or Licensed Appraisers. In summary, a banking organization is required to use a certified appraiser for (1) all federally related transactions over \$1 million, (2) nonresidential federally related transactions of more than \$250,000, and (3) complex residential federally related transactions of more than \$250,000”

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Qualifications Board of The Appraisal Foundation has established minimum qualifications criteria for real property appraisers, and those criteria restrict Licensed Real Property Appraisers from performing complex appraisal assignments greater than \$250,000 in transaction value. Too often, this requirement is ignored today, and we fear that barring a more robust minimum education and experience requirement established by the IRS, that appraisal quality may not improve as a result of the use of untrained or unqualified appraisers. We already hear reports today indicating serious qualifications deficiencies in this area of appraisal practice, including reports of appraisers utilizing single family appraisal forms for mortgage lending purposes for appraisals for noncash charitable contributions to the IRS. We believe the IRS should take proactive steps to ensure qualified and adequately trained appraisers perform appraisals for tax purposes.

To avoid this problem, as it relates to real property contributions, we urge the IRS to consider referencing the criteria for *Certified Residential Real Property Appraiser* classification at a minimum, or *Certified General Real Property* classification preferably, for its minimum education and experience requirements². We do not believe it is appropriate (and in fact, it is likely illegal under many state laws) for appraisers that meet the Licensed Residential Real Property Appraiser to perform appraisals of noncash charitable contributions before the IRS. Further, even the Certified Residential Appraiser classification limits acceptable appraisal assignments to those with a highest and best use is for one-to-four family purposes. It does not include the appraisal of subdivisions for which a development analysis/appraisal is required, which is oftentimes required for appraisals of noncash charitable contributions. For these reasons, we urge the IRS to require, at a minimum, appraisers meet the education and experience requirements for *Certified Residential Real Property* appraisal, and preferably, the education and experience requirements for *Certified General Real Property* appraisal.

Third, the ANPR proposes to recognize designations earned by appraisers as meeting the definition of qualified appraiser, given the significant education and experience are required to obtain designations such as those conferred by the Appraisal Institute. Under the ANPR, a recognized appraisal designation means a designation awarded by a professional appraiser organization on the basis of demonstrated competency. There are many appraisal organizations in existence today, but not all grant their designations by requiring demonstration of competency through robust education and experience requirements, comprehensive exams, and peer review, as does our organization. We do not believe it would be appropriate for the IRS to accept designations from organizations that might grant a designation based simply on payment of membership dues. The appraisal assignments require the use of competent appraisers, and as such, we fully support the intent of this definition, and we urge its retention in the final regulations.

Fourth, we support the example provided in the ANPR referencing designations similar to those conferred by the Appraisal Institute. We note – approvingly – that the reference in the ANPR only provides an example of an acceptable appraisal designation, where one is certainly needed to help illustrate compliance with this section of the regulations. Since this definition is nothing more than an example, we feel comfortable with its usage and urge its retention in the final regulations

Uniform Appraisal Standards

As we stated earlier, we appreciate the IRS elevating recognition of USPAP within the definition of “qualified appraisal” in the proposed regulations. We believe this will be much needed clarity to the valuation process and help improve the overall quality of appraisals prepared for tax purposes.

Still, we believe the IRS should go one step further and give serious consideration to actual adoption of USPAP as the standard to be used with appraisals of noncash charitable contributions. Specifically, we believe the definition of qualified appraisal could be enhanced if it defined such appraisals as being

² The Appraiser Qualifications Board of the Appraisal Foundation publishes minimum appraiser qualifications requirements for certification and licensure of real property appraisers.

http://www.appraisalfoundation.org/s_appraisal/bin.asp?CID=117&DID=287&DOC=FILE.PDF

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prepared “in accordance with the Uniform Standards of Professional Appraisal Practice,” rather than just its substance and principles. We note that a host of federal agencies have already done this either by statute or regulation, and we urge the IRS to do so to help improve consistency, reliability, and enforceability of appraisals.

Further, we remain concerned that a potential double standard exists within IRS tax rules, whereby appraisers preparing appraisal reports for tax purposes must adhere to the substance and principles of one set of standards (USPAP), while IRS engineers and appraisers may adhere to another set of standards. This concern may even be exacerbated if the IRS relies only on the substance and principles of USPAP, or something short of full adoption. We recognize IRS has expanded their appraisal staff in recent years, in part, to ensure fair review of appraisals. We strongly support this effort. However, we believe the IRS valuation rules could avoid the double-standard altogether if it simply adopted USPAP as its own internal standard, or at least, committed to conducting reviews of appraisals in accordance with Standard 3 of USPAP. We urge the IRS to adopt this recommendation.

Traceability

Finally, we support the IRS wanting to trace those involved in the preparation of appraisals utilized in contributions by listing the employer identification number (EIN) of the appraiser. We are cognizant of concerns about privacy and identity theft regarding social security numbers. We believe these can be effectively addressed by acquiring an EIN. The IRS may consider revising the “Instructions for Form 8283” to remove all references to the use of Social Security Numbers.

Thank you advance for the opportunity to comment on this important rulemaking. Should you have any questions or need additional information, please contact Bill Garber, Director of Government and External Relations, Appraisal Institute, at 202-298-5586 or bgarber@appraisalinstitute.org.

Sincerely,

Appraisal Institute