

MEMORANDUM

TO: Internal Revenue Service

FROM: Terry Dunkin, MAI, SRA, Appraisal Institute

DATE: January 23, 2009

SUBJECT: Outline of Topics to Be Discussed At Public Hearing on Reporting Requirements for Cash and Noncash Charitable Contributions, REG-140029-07, January 23, 2009

Pursuant to the Federal Register Notice of November 28, 2008, the following is an outline of topics we intend to cover and discuss at the hearing on Reporting Requirements for Cash and Noncash Charitable Contributions.

Our comments are on behalf of the largest professional organization of real estate appraisers in the United States, representing some 25,000 members.

General Topic to Be Discussed

IRS regulations proposed on August 6th implementing changes to substantiation and reporting requirements for charitable contributions made by the American Jobs Creation Act of 2004 (Pub. L. No. 108-357) and the Pension Protection Act of 2006 (Pub. L. No. 109-280). IRS said the proposed regulations implement recordkeeping requirements imposed by the PPA for all cash contributions and the new definitions of a qualified appraisal and a qualified appraiser, which pertain to all noncash contributions. Our testimony will discuss the impact of the proposed requirements on professional real estate appraisers performing appraisals for noncash charitable contributions (conservation easement, historic preservation easement donations, etc.) for IRS tax purposes.

Specific Topics to Be Addressed

I. Definition of a “Qualified Appraiser”

- 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.
- We believe these assignments to be “complex” appraisal assignments, deserving of performance by highly qualified real estate appraisers. For nearly twenty years, the Appraiser 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 believe the IRS should take proactive steps to ensure qualified and adequately trained appraisers perform appraisals for tax purposes.

- 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 requirements.
- We fully support the provision in the proposed rule that recognizes 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 proposed rule, a recognized appraisal designation means a designation awarded by a professional appraiser organization on the basis of demonstrated competency. Not all professional appraisal organizations 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
- We support the example provided in the proposed rule referencing designations similar to those conferred by the Appraisal Institute. Since this definition is nothing more than an example, we feel comfortable with its usage and urge its retention in the final regulations.

II. Uniform Appraisal Standards

- The IRS should give serious consideration to actual adoption of USPAP as the standard to be used with appraisals of noncash charitable contributions. Specifically, the definition of qualified appraisal could be enhanced if it defined such appraisals as being prepared “in accordance with the Uniform Standards of Professional Appraisal Practice,” rather than just its substance and principles. Many federal agencies have already done this either by statute or regulation.
- We are 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 is

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.

III: Traceability

- 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.

Witness:

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