

Prop. Reg. Section 1.170A-17(b)(2)(iii)

Qualified appraisal and qualified appraiser

Effective: These proposed regulations are proposed to apply to contributions occurring after the date these regulations are published as final regulations in the Federal Register. Taxpayers should continue to comply with the recordkeeping and return requirements in §1.170A-13§1.170A-13 of the existing regulations to the extent those provisions are not superseded by the Jobs Act or the PPA.

(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.

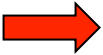
(3) Relevant type of property defined.

(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.