

REG-140029-07. Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance concerning substantiation and reporting requirements for cash and noncash charitable contributions under section 170 of the Internal Revenue Code (Code). The regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. The regulations provide guidance to individuals, partnerships, and corporations that make charitable contributions, and will affect any donor claiming a deduction for a charitable contribution after the date these regulations are published as final regulations in the **Federal Register**.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT**

IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140029-07), room 5203,

Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140029-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG- 140029-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan J. Kassell at (202) 622-5020; concerning submissions of comments and requests for a hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**,

Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue**

Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by **[INSERT**

DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL

REGISTER]. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 1.170A- 15(a) and (d)(2); 1.170A-16(a), (b), (c), (d), (e), and (f); 1.170A-17(a)(3) and (a)(7); and 1.170A-18(a)(2) and (b). These collections of information will help the IRS determine if a taxpayer is entitled to a claimed deduction for a charitable contribution. The collections of information are required to obtain a benefit. The likely respondents are individuals, partnerships, and corporations that claim a deduction for a charitable contribution.

The collections of information may vary depending on the item contributed, the amount of the deduction claimed for the contribution, and whether the taxpayer claiming the deduction is an individual, partnership, S corporation, C corporation that is a personal service corporation or closely held corporation, or other C corporation.

The following estimates are based on the information that is available to the IRS.

A respondent may require more or less time, depending on the circumstances.

The estimated total annual reporting burden is 226,419 hours.

The estimated annual burden per respondent varies from 5 minutes to 4 hours, with an estimated average annual burden of slightly more than 1 hour. The estimated number of respondents is 201,920.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and return information are confidential, as required by section 6103.

Background

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.

Section 170(f)(11)(E)(i) provides that the term qualified appraisal means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

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, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

Section 170(f)(11)(E)(iii) further provides that an individual will not be treated as a qualified appraiser unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the IRS by the Secretary under section 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

On October 19, 2006, the IRS and the Treasury Department released Notice 2006-96, 2006-46 IRB 902 (see §601.601(d)(2)(ii)(b) of this chapter), which provides transitional guidance relating to section 170(f)(11)(E) as amended by the PPA.

Specifically, Notice 2006-96 provides transitional safe harbor definitions for the terms "qualified appraisal" (section 3.02(1)), "generally accepted appraisal standards" (section 3.02(2)), "appraisal designation" (section 3.03(1)), "education and experience in valuing the type of property" (section 3.03(2)), and "minimum education and experience" (section 3.03(3)). These definitions apply to contributions of property for which a deduction of more than \$5,000 is claimed on returns filed after August 17, 2006. Notice 2006-96 solicited comments regarding the definitions of these terms. All comments received were considered in drafting these regulations.

Section 1216 of the PPA added section 170(f)(16), which provides that no deduction is allowed for a contribution of clothing or a household item unless the clothing or household item is in good used condition or better. Section 1217 of the PPA added section 170(f)(17), which imposes a recordkeeping requirement for all cash contributions, regardless of amount. Section 1219 of the PPA added section 6695A, which imposes penalties on appraisers in certain circumstances. Regulations implementing the penalty provisions of section 6695A will be published separately.

Section 170(f)(11)(H) authorizes the Secretary to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 170(f)(11), including regulations that may provide that some or all of the requirements of section 170(f)(11) do not apply in appropriate cases. Other statutory authority to issue regulations is in sections 170(f)(11)(B), (C), (E)(i)(I) and (II), and (E)(ii)(I) and (III).

Explanation of Provisions

I. In General

The proposed regulations generally implement the Jobs Act and PPA changes to the substantiation and reporting rules for charitable contributions. For example, the proposed regulations implement the recordkeeping requirements imposed by the PPA for all cash contributions and the new definitions of a qualified appraisal and qualified appraiser applicable to all noncash contributions. The proposed regulations also incorporate the substantiation requirements for noncash contributions imposed by the Jobs Act on (1) a C corporation (other than a closely held corporation or a personal service corporation) claiming a deduction of more than \$5,000, and (2) any taxpayer claiming a deduction in excess of \$500,000.

The proposed regulations also generally incorporate many of the requirements of §1.170A-13, except to the extent §1.170A-13 is inconsistent with the Jobs Act and PPA requirements. For example, many of the requirements of §1.170A-13(c)(3) for a qualified appraisal are incorporated in proposed §1.170A-17(a); many of the "appraisal summary" requirements of §1.170A-13(c)(4) are incorporated in the required entries for a completed Form 8283, "Noncash Charitable Contributions," in proposed §1.170A-16; and many of the requirements of §1.170A-13(c)(5) for a qualified appraiser are incorporated in proposed §1.170A-17(b).

The IRS and the Treasury Department may propose additional changes to the substantiation regulations in the future and hereby request comments concerning additional issues that should be addressed.

II. Cash, check or other monetary gifts

Proposed §1.170A-15 implements the requirements of section 170(f)(17), which was added by the PPA and provides that no deduction is allowed for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of the contribution a bank record or written communication from the donee. Compare The Check Clearing for the 21st Century Act, Public Law 108-100, 117 Stat. 1178-1180 (12

U.S.C. 5002(16) and 5003(b)), which provides guidance under the banking laws regarding substitute checks. The bank record or written communication must show the name of the donee, the date of the contribution, and the amount of the contribution.

After section 170(f)(17) was enacted, the IRS and the Treasury Department received questions and comments about the new requirements. One commenter suggested a “de minimis exception,” under which donors of small amounts would not be required to maintain bank records or written communications from the donee. This suggestion was not adopted in the proposed regulations because the exception would be contrary to the statute and the express language in the legislative history that the provision applies “regardless of the amount.” However, there is precedent for exempting from the substantiation requirements certain types of payments for which a charitable beneficiary cannot provide a receipt, either because the charitable beneficiary has not yet been identified or because the charitable beneficiary has no firsthand knowledge of the amount of the payment. For example, a taxpayer making a contribution in the form of a transfer to a charitable remainder trust is not required to obtain the contemporaneous written acknowledgment generally required under section 170(f)(8). A similar exception is contained in the proposed regulations for monetary contributions to a charitable remainder trust of less than \$250. The proposed regulations also provide an exception from the substantiation requirements for unreimbursed expenses of less than \$250 incurred incident to the rendition of services to a charitable organization. Taxpayers claiming deductions for monetary contributions to a charitable remainder trust or for out of pocket expenses incurred incident to the rendition of services are advised to maintain records of the gifts or expenses.

Some commenters asked how to comply with section 170(f)(17) if a bank statement does not include the name of the donee. In this situation, a monthly bank statement and a photocopy or image obtained from the bank of the front of the check indicating the name of the donee would satisfy the provision.

III. Revised noncash substantiation requirements As under current rules, the proposed regulations provide that donors who claim deductions for noncash contributions of less than \$250 are required to obtain a receipt from the donee or keep reliable records. The proposed regulations provide that donors who make contributions of \$250 or more but not more than \$500 are required to obtain only a contemporaneous written acknowledgment, as provided under section 170(f)(8) and §1.170A-13(f), and are not required to obtain any other written records. No revisions to §1.170A-13(f) are proposed in these proposed regulations. For claimed contributions of more than \$500 but not more than \$5,000, the donor must obtain a contemporaneous written acknowledgment and must file a completed Form 8283 (Section A) with the return on which the deduction is claimed. For claimed contributions of more than \$5,000, in addition to a contemporaneous written acknowledgment, a qualified appraisal generally is required, and either Section A or Section B of Form 8283 (depending on the type of property contributed) must be completed and filed with the return on which the deduction is claimed. For claimed contributions of more than \$500,000, the donor must attach a copy of the qualified appraisal to the return. The proposed regulations also provide that the requirements for substantiation that must be submitted with a return also apply to the return for any carryover year under section 170(d).

Section 1.170A-16(c) and §1.170A-16(d) of the proposed regulations generally apply to deductions claimed for contributions of motor vehicles. Section 1.170A-16(c)(4) and §1.170A-16(d)(2)(iii) explain the substantiation requirements for contributions of motor vehicles described in section 170(f)(12)(A)(ii) (vehicles that the donee organization sells without any significant intervening use or material improvement). These substantiation requirements are in addition to the requirements imposed in section 170(f)(12), as added by section 884 of the Jobs Act.

Section 170(f)(11)(A)(ii)(II), as added by the PPA, provides that the requirements of sections 170(f)(11)(B), (C), and (D) do not apply if the donor shows that the failure to

meet these requirements is due to reasonable cause and not to willful neglect. Section 170(f)(11)(H) provides that the Secretary may provide that some or all of the requirements of section 170(f)(11) do not apply in appropriate cases. The proposed regulations provide that, to satisfy the "reasonable cause" exception under section 170(f)(11)(A)(ii)(II), the donor must submit with the return a detailed explanation of why the failure to comply was due to reasonable cause and not to willful neglect, and must have timely obtained a contemporaneous written acknowledgment and a qualified appraisal, if applicable. The proposed regulations supersede §1.170A-13(c)(4)(H), which provides that a taxpayer who fails to file an appraisal summary (Form 8283) with the return is permitted to provide it within 90 days of a request from the IRS, and the deduction will be allowed if the donor's original failure to file the appraisal summary is a "good faith omission." Consistent with the Congressional purpose for enacting section 170(f)(11) of reducing valuation abuses, the IRS and the Treasury Department anticipate that the "reasonable cause" exception will be strictly construed to apply only when the donor meets the requirements for the exception as specified in the regulations.

IV. New 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.

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 faade 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).

Proposed Effective/Applicability Date

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 of the existing regulations to the extent those provisions are not superseded by the Jobs Act or the PPA.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. This certification is based on the belief of the IRS and the Treasury Department that these regulations reduce the burden on taxpayers by clarifying and simplifying the existing substantiation and reporting requirements for charitable contributions. Furthermore, to the extent these regulations contain requirements that may impact small entities that are not contained in the current substantiation and reporting rules, those additional requirements are based on statutory changes to the rules that are being incorporated into the regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Susan J. Kassell of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, §1.170A-13 of the notice of proposed rulemaking (LR-83-87) that was published in the **Federal Register** on Thursday May 5, 1988 (53 FR 16156) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 ***

§1.170A-15 also issued under 26 U.S.C. 170(a)(1).

§1.170A-16 also issued under 26 U.S.C. 170(a)(1) and 170(f)(11).

§1.170A-17 also issued under 26 U.S.C. 170(a)(1) and 170(f)(11).

§1.170A-18 also issued under 26 U.S.C. 170(a)(1).

Par. 2. Sections 1.170-0 and 1.170-2 are removed.

Proposed Amendment 1.170-0.

§§1.170-0 and 1.170-2 [Removed]

Par. 2. Sections 1.170-0 and 1.170-2 are removed.

Proposed Amendment 1.170-2.

§§1.170-0 and 1.170-2 [Removed]

Par. 3. In § 1.170A-13, paragraphs (a)(3), (b)(3)(i)(B), (b)(4), and (d) are removed.

Proposed Amendment 1.170A-13.

§1.170A-13 [Amended]

Par. 4. Section 1.170A-15 is added to read as follows:

Proposed Amendment 1.170A-15.

§1.170A-15 Substantiation requirements for charitable contribution of a cash, check, or other monetary gift.

(a) In general—(1) Bank record or written communication required. No deduction is allowed under section 170(a) for a charitable contribution in the form of a cash, check, or other monetary gift (as described in paragraph (b)(1) of this section) unless the donor substantiates the deduction with a bank record (as described in paragraph (b)(2) of this section) or a written communication (as described in paragraph (b)(3) of this section) from the donee showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) Additional substantiation required for contributions of \$250 or more. No deduction is allowed under section 170(a) for any contribution of \$250 or more unless the donor substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f)) from the donee.

(3) Single document may be used. The requirements of paragraphs (a)(1) and (a)(2) of this section may be met by a single document that contains all the information required by paragraphs (a)(1) and (a)(2) of this section, if the single document is obtained by the donor no later than the date prescribed by paragraph (c) of this section.

(b) Terms—(1) Monetary gift includes a transfer of a gift card redeemable for cash, and a payment made by credit card, electronic fund transfer (as described in section 5061(e)(2)), an online payment service, or payroll deduction.

(2) Bank record includes a statement from a financial institution, an electronic fund transfer receipt, a canceled check, a scanned image of both sides of a canceled check obtained from a bank website, or a credit card statement.

(3) Written communication includes electronic mail correspondence.

(c) Deadline for receipt of substantiation. The substantiation described in paragraph (a) of this section must be received by the donor on or before the earlier of—

(1) The date the donor files the original return for the taxable year in which the contribution was made; or

(2) The due date (including extensions) for filing the donor's original return for that year.

(d) Distributing organizations as donees—(1) In general. The following organizations are treated as donees for purposes of section 170(f)(17) and paragraph (a) of this section, even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c):

(i) An organization described in section 170(c).

(ii) An organization described in 5 C.F.R. 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity.

(2) Contributions made by payroll deduction. In the case of a charitable contribution made by payroll deduction, a donor is treated as meeting the requirements of section 170(f)(17) and paragraph (a) of this section if, no later than the date described in paragraph (c) of this section, the donor obtains—

(i) A pay stub, Form W-2, "Wage and Tax Statement," or other employerfurnished document that sets forth the amount withheld during the taxable year for payment to a donee; and

(ii) A pledge card or other document prepared by or at the direction of the donee that shows the name of the donee.

(e) Substantiation of out-of-pocket expenses. Paragraph (a)(1) of this section does not apply to a donor who incurs unreimbursed expenses of less than \$250 incident to the rendition of services, within the meaning of §1.170A-1(g). For substantiation of unreimbursed out-of-pocket expenses of \$250 or more, see §1.170A-13(f)(10).

(f) Charitable contributions made by partnership or S corporation. If a partnership or an S corporation makes a charitable contribution, the partnership or S corporation is treated as the donor for purposes of section 170(f)(17) and paragraph (a) of this section.

(g) Transfers to certain trusts. The requirements of section 170(f)(17) and paragraph (a)(1) of this section do not apply to a transfer of a cash, check, or other monetary gift to a trust described in section 170(f)(2)(B), a charitable remainder annuity trust (as defined in section 664(d)(1)), or a charitable remainder unitrust (as defined in section 664(d)(2) or (d)(3) or §1.664-3(a)(1)(i)(b)). The requirements of section 170(f)(17) and paragraphs (a)(1) and (a)(2) of this section do apply, however, to a transfer to a pooled income fund (as defined in section 642(c)(5)). For contributions of \$250 or more, see section 170(f)(8) and §1.170A-13(f)(13).

(h) Effective/applicability date. This section applies to contributions made after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. . Section 1.170A-16 is added to read as follows:

Proposed Amendment 1.170A-16.

§1.170A-16 Substantiation and reporting requirements for noncash charitable contributions.

(a) Substantiation of charitable contributions of less than \$250—(1) Individuals, partnerships, and certain corporations required to obtain receipt. Except as provided in paragraph (a)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of less than \$250 by an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation unless the donor maintains for each contribution a receipt from the donee showing the following information:

(i) The name and address of the donee;

(ii) The date of the contribution;

(iii) A description of the property 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 described property is the contributed property; and

(iv) In the case of securities, the name of the issuer, the type of security, and whether the securities are publicly traded securities within the meaning of §1.170A-13(c)(7)(xi).

(2) Substitution of reliable written records—(i) In general. If it is impractical to obtain a receipt (for example, a donor deposits canned food at a donee's unattended drop site), the donor may satisfy the recordkeeping rules of this paragraph (a)(2)(i) by maintaining reliable written records (as described in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section) for the contributed property.

(ii) Reliable written records. The reliability of written records is to be determined on the basis of all of the facts and circumstances of a particular case, including the contemporaneous nature of the writing evidencing the contribution.

(iii) Contents of reliable written records. Reliable written records must include—

(A) The information required by paragraph (a)(1) of this section;

(B) The fair market value of the property on the date the contribution was made;

(C) The method used in determining the fair market value; and

(D) In the case of a contribution of clothing or a household item as defined in §1.170A-18(c), the condition of the item.

(3) Additional substantiation rules may apply. For additional substantiation rules, see paragraph (f) of this section.

(b) Substantiation of charitable contributions of \$250 or more but not more than \$500. No deduction is allowed under section 170(a) for a noncash charitable contribution of \$250 or more but not more than \$500 unless the donor substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f)).

(c) Substantiation of charitable contributions of more than \$500 but not more than \$5,000—(1) In general. No deduction is allowed under section 170(a) for a noncash charitable contribution of more than \$500 but not more than \$5,000 unless the donor substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f)) and meets the applicable requirements of this section.

(2) Individuals, partnerships, and certain corporations also required to file Form 8283 (Section A). No deduction is allowed under section 170(a) for a noncash charitable contribution of more than \$500 but not more than \$5,000 by an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation unless the donor—

(i) Substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f)); and

(ii) Completes Form 8283 (Section A), "Noncash Charitable Contributions" (as provided in paragraph (c)(3) of this section), or a successor form, and files it with the return on which the deduction is claimed.

(3) Completion of Form 8283 (Section A). A completed Form 8283 (Section A) includes—

(i) The donor's name and taxpayer identification number (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(ii) The name and address of the donee;

(iii) The date of the contribution;

(iv) The following information about the contributed property:

(A) A description of the property 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 described property is the contributed property;

(B) In the case of real or personal property, the condition of the property;

(C) In the case of securities, the name of the issuer, the type of security, and whether the securities are publicly traded securities within the meaning of §1.170A-13(c)(7)(xi); and

(D) The fair market value of the property on the date the contribution was made and the method used in determining the fair market value;

(v) The manner of acquisition (for example, by purchase, gift, bequest, inheritance, or exchange), and the approximate date of acquisition of the property by the donor (except that in the case of a contribution of publicly traded securities as defined in §1.170A-13(c)(7)(xi), a representation that the donor held the securities for more than one year is sufficient) or, if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed;

(vi) The cost or other basis, adjusted as provided by section 1016, of the property (except that the cost or basis is not required for contributions of publicly traded securities (as defined in §1.170A-13(c)(7)(xi)) that if sold on the contribution date would have resulted in long term capital gain);

(vii) In the case of tangible personal property, whether the donee has certified it for a use related to the purpose or function constituting the donee's basis for exemption under section 501 (or in the case of a governmental unit, an exclusively public purpose); and

(viii) Any other information required by Form 8283 (Section A) or the instructions to Form 8283 (Section A).

(4) Additional requirement for certain motor vehicle contributions. In the case of a contribution of a qualified vehicle described in section 170(f)(12)(A)(ii) for which an acknowledgment under section 170(f)(12)(B)(iii) is provided to the IRS by the donee organization, the donor must attach a copy of the acknowledgment to the Form 8283 (Section A) for the return on which the deduction is claimed.

(5) Additional substantiation rules may apply. For additional substantiation rules, see paragraph (f) of this section.

(d) Substantiation of charitable contributions of more than \$5,000—(1) In general. Except as provided in paragraph (d)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of more than \$5,000 unless the donor—

(i) Substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f));

(ii) Obtains a qualified appraisal (as defined in §1.170A-17(a)(1)) prepared by a qualified appraiser (as defined in §1.170A-17(b)(1)); and

(iii) Completes Form 8283 (Section B) (as provided in paragraph (d)(3) of this section), or a successor form, and files it with the return on which the deduction is claimed.

(2) Exception for certain noncash contributions. A qualified appraisal is not required, and a completed Form 8283 (Section A) (containing the information required in paragraph (c)(3) of this section) meets the requirements of paragraph (d)(1)(iii) of this section for contributions of—

(i) Publicly traded securities as defined in §1.170A-13(c)(7)(xi);

(ii) Property described in section 170(e)(1)(B)(iii)(certain intellectual property);

(iii) A qualified vehicle described in section 170(f)(12)(A)(ii) for which an acknowledgment under section 170(f)(12)(B)(iii) is provided to the IRS by the donee organization and attached to the Form 8283 (Section A) by the donor; and

(v) Property described in section 1221(a)(1)(inventory and property held by the donor primarily for sale to customers in the ordinary course of the donor's trade or business).

(3) Completed Form 8283 (Section B). A completed Form 8283 (Section B) includes—

(i) The donor's name and taxpayer identification number (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(ii) The donee's name, address, taxpayer identification number, and signature, the date signed by the donee, and the date the donee received the property;

(iii) The appraiser's name, address, taxpayer identification number, appraiser declaration (as described in paragraph (d)(4) of this section), signature, and the date signed by the appraiser;

(iv) The following information about the contributed property:

(A) The fair market value on the valuation effective date (as defined in §1.170A-17(a)(5)(i)).

(B) 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 described property is the contributed property.

(C) In the case of real or tangible personal property, the condition of the property;

(v) The manner of acquisition (for example, by purchase, gift, bequest, inheritance, or exchange), and the approximate date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed;

(vi) The cost or other basis, adjusted as provided by section 1016;

(vii) A statement explaining whether the charitable contribution was made by means of a bargain sale and, if so, the amount of any consideration received from the donee for the contribution; and

(viii) Any other information required by Form 8283 (Section B) or the instructions to Form 8283 (Section B).

(4) Appraiser declaration. The appraiser declaration referred to in paragraph (d)(3)(iii) of this section must include the following statement: "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)."

(5) Donee signature—(i) Person authorized to sign. The person who signs Form 8283 for the donee must be either an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign Forms 8283 by that official. In the case of a donee that is a governmental unit, the person who signs Form 8283 for the donee must be an official of the governmental unit.

(ii) Effect of donee signature. The signature of the donee on Form 8283 does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in Form 8283 on the date specified in Form 8283 and that the donee understands the information reporting requirements imposed by section 6050L and §1.6050L-1.

(iii) Certain information not required on Form 8283 before donee signs. Before Form 8283 is signed by the donee, Form 8283 must be completed (as described in paragraph (d)(3) of this section), except that it is not required to contain the following:

(A) Information about the qualified appraiser or the appraiser declaration.

(B) The manner or date of acquisition.

(C) The cost or other basis of the property.

(D) The appraised fair market value of the contributed property.

(E) The amount claimed as a charitable contribution.

(6) Additional substantiation rules may apply. For additional substantiation rules, see paragraph (f) of this section.

(e) Substantiation of noncash charitable contributions of more than \$500,000—

(1) In general. Except as provided in paragraph (e)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of more than \$500,000 unless the donor—

(i) Substantiates the contribution with a contemporaneous written acknowledgment (as described in section 170(f)(8) and §1.170A-13(f));

(ii) Obtains a qualified appraisal (as defined in §1.170A-17(a)(1)) prepared by a qualified appraiser (as defined in §1.170A-17(b)(1));

(iii) Completes (as described in paragraph (d)(3) of this section) Form 8283 (Section B) and files it with the return on which the deduction is claimed; and

(iv) Attaches the qualified appraisal of the property to the return on which the deduction is claimed.

(2) Exception for certain noncash contributions. For contributions of property described in paragraph (d)(2) of this section, a qualified appraisal is not required, and a completed Form 8283 (Section A) (containing the information required in paragraph (c)(3) of this section) meets the requirements of paragraph (e)(1)(iii) of this section.

(3) Additional substantiation rules may apply. For additional substantiation rules, see paragraph (f) of this section.

(f) Additional substantiation requirements that may be applicable to any noncash contribution—(1) Signed Form 8283 furnished by donor to donee. A donor who presents a Form 8283 to a donee for signature must furnish to the donee a copy of Form 8283 as signed by the donee.

(2) Number of Forms 8283—(i) In general. For each item of contributed property for which a Form 8283 is required under paragraphs (c), (d), or (e) of this section, a donor must attach a separate Form 8283 to the return on which the deduction for the item is claimed.

(ii) Exception for similar items. The donor may attach a single Form 8283 for all similar items of property (as defined in §1.170A-13(c)(7)(iii)) contributed to the same donee during the donor's taxable year, if the donor includes on Form 8283 the information required by paragraph (c)(3) or (d)(3) of this section for each item of property.

(3) Substantiation requirements for carryovers of noncash contribution deductions. The rules in paragraphs (c)(2)(ii), (d)(1)(iii), (d)(2), (e)(1)(iii) and (e)(1)(iv) of this section (regarding substantiation that must be submitted with a return) apply to the return for any carryover year under section 170(d).

(4) Partners and S corporation shareholders—(i) Form 8283 must be provided to partners and S corporation shareholders. If the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation of a charitable contribution deduction under section 170 for the property described in Form 8283.

(ii) Partners and S corporation shareholders must attach Form 8283 to return. A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which paragraphs (c), (d), or (e) of this section applies must attach a copy of the partnership's or S corporation's completed Form 8283 to the return on which the deduction is claimed.

(5) Determination of deduction amount for purposes of substantiation rules—(i)

In general. In determining whether the amount of a donor's deduction exceeds the amounts set forth in section 170(f)(11)(B) (noncash contributions exceeding \$500), 170(f)(11)(C) (noncash contributions exceeding \$5,000), or 170(f)(11)(D) (noncash contributions exceeding \$500,000), the rules of paragraphs (f)(5)(ii) and (f)(5)(iii) of this section apply.

(ii) Similar items of property must be aggregated. Under section 170(f)(11)(F), the donor must aggregate the amount claimed as a deduction for all similar items of property (as defined in §1.170A-13(c)(7)(iii)) contributed during the taxable year. For rules regarding the number of qualified appraisals and Forms 8283 required if similar items of property are contributed, see §§1.170A-13(c)(3)(iv)(A) and 1.170A-13(c)(4)(iv)(B).

(iii) For contributions of certain inventory and scientific property, excess of amount claimed over cost of goods sold taken into account. (A) In general. In determining the amount of a donor's contribution of property to which section 170(e)(3) or (4) applies, the donor must take into account only the excess of the amount claimed as a deduction over the amount that would have been treated as the cost of goods sold if the donor had sold the contributed property to the donee.

(B) Example. The following example illustrates the rule of this paragraph (f)(5)(iii):

Example. X Corporation makes a contribution to which section 170(e)(3) applies of clothing for the care of the needy. The cost of the property to X Corporation is \$5,000, and, pursuant to section 170(e)(3)(B), X Corporation claims a charitable contribution deduction of \$8,000. The amount taken into account for purposes of determining the \$5,000 threshold of paragraph (d) of this section is \$3,000 (\$8,000- \$5,000).

(6) Failure due to reasonable cause. If a donor fails to meet the requirements of paragraphs (c), (d), or (e) of this section, the donor's deduction will be disallowed unless the donor establishes that the failure was due to reasonable cause and not to willful neglect. The donor may establish that the failure was due to reasonable cause and not to willful neglect only if the donor—

(i) Submits with the return a detailed explanation that the failure to meet the requirements of this section was due to reasonable cause and not to willful neglect;

(ii) Obtained a contemporaneous written acknowledgment (as required by section 170(f)(8) and §1.170A-13(f)(3)); and

(iii) Obtained a qualified appraisal (as defined by section 170(f)(11)(E)(i) and §1.170A-17(a)(1)) prepared by a qualified appraiser (as defined by section 170(f)(11)(E)(ii) and §1.170A-17(b)(1)) within the dates specified in §1.170A-17(a)(4), if required.

(7) Additional requirement for returns claiming conservation easements for buildings in registered historic districts. [Reserved]

(g) Effective/applicability date. This section applies to contributions made after the date these regulations are published as final regulations in the **Federal Register**.

Par. 6. Section 1.170A-17 is added to read as follows:

Proposed Amendment 1.170A-17.

§1.170A-17 Qualified appraisal and qualified appraiser.

(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**.

Par. 7. Section 1.170A-18 is added to read as follows:

Proposed Amendment 1.170A-18.

§1.170A-18 Contributions of clothing and household items—(a) In general. Except as provided in paragraph (b) of this section, no deduction is allowed under section 170(a) for a contribution of clothing or a household item (as described in paragraph (c) of this section) unless—

- (1) The item is in good used condition or better at the time of the contribution; and
- (2) The donor meets the substantiation requirements of §1.170A-16.

(b) Certain contributions of clothing or household items with claimed value of more than \$500. The rule described in paragraph (a)(1) of this section does not apply to a contribution of a single item of clothing or a household item for which a deduction of more than \$500 is claimed, if the donor submits with the return on which the deduction is claimed a qualified appraisal (as defined in §1.170A-17(a)(1)) of the property prepared by a qualified appraiser (as defined in §1.170A-17(b)(1)) and a completed Form 8283 (Section B) (as described in §1.170A-16(d)(3)).

(c) Definition of household items. For purposes of section 170(f)(16) and this section, the term household items includes furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry, gems, and collections are not household items.

(d) Effective/applicability date. This section applies to contributions made after the date these regulations are published as final regulations in the **Federal Register**.

Acting Deputy Commissioner for Services and Enforcement.

Sherri L. Brown

[FR Doc. 2008-17953 Filed 08/06/2008 at 8:45 am; Publication Date: 08/07/2008]

© 2008 Thomson/RIA. All rights reserved.