

# California Society of CPAs Professional Responsibility

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IRS LARGE BUSINESS AND  
INTERNATIONAL DIVISION

# Important Definitions and Penalty

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Peter Crane, AVA, AI Associate Member

LB&I Senior Real Estate Appraiser

**Work Experience:** Peter S. Crane has been appraising real estate since 1986. He is in his 3rd year now as a Senior Appraiser with the IRS. He is an Associate Member of the Appraisal Institute, a member of NACVA, and has an AVA designation. He is responsible for the evaluation of submitted appraisals prepared by recognized experts and authorities in the industry, as well as the preparation of original valuation reports. His typical contacts include government officials and agencies at the federal, state, and local level, private sector professionals/experts in the fields of law, business, accounting, and the appraisal industry. In 1974 to 1975 he traveled from Detroit, Michigan to La Paz, Bolivia by bicycle over 8,000 miles.

- A – Qualified Appraisal
- B – Qualified Appraiser
- C – Education and Experience
- D – 6695A Penalty

# Qualified Appraisal IRC 170(f)(11)(C)

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- Required for noncash donations > \$5,000 (other than publicly traded stock).
- Special substantiation requirements. Treas. Reg. 1.170A-13(c)(3).
- Codified definitions of qualified appraisal and qualified appraiser (appraisals prepared for returns or submissions filed after August 17, 2006). IRC 170(f)(11)(E).
- Proposed Regulations-Notice 2006-96.

# Qualified Appraisal

## IRC 170(f)(11)(E) & Treas. Reg. 1.170A-13(c)

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- Must meet all of the requirements of Treas. Reg.
- Prepared, signed, and dated by a qualified appraiser.
- In accordance with generally accepted appraisal standards.
- No earlier than 60 days before and not later than return due date (including extensions).
- No prohibited appraisal fee.
- Must attach to return for donations > \$500,000. Special rule for post Pension Protection Act (PPA) easements on buildings in registered historic districts.

# Qualified Appraisal Regulations

## Treas. Reg. 1.170A-13(c)(3)(ii)

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- Description of the property
- Physical condition
- Date/expected date of contribution
- Agreement terms related to the property's use, sale or other disposition
- Appraiser's name, address and identification number
- Appraiser qualifications
- Statement prepared for tax purposes
- Appraisal date
- FMV of the contribution
- Valuation method
- Specific basis for valuation

# Qualified Appraiser 170(f)(11)(E)(ii)

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- Appraisal designation from a recognized professional appraiser organization OR met minimum education & experience requirements.
- Regularly performs appraisals for compensation.
- Meets such other requirements as prescribed by the Secretary in regulations or other guidance.
- Verifiable education and experience in valuing the type of property subject to the appraisal.
- Not been prohibited from practicing before the IRS any time in the 3-year period ending on the date of the appraisal. IRC 170(f)(11)(E)(iii).

# Qualified Appraiser Notice 2006-96

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- Appraisal designation awarded on demonstrated competency in valuing type of property being appraised.
- Appraiser self-qualification declaration in the appraisal.
- Minimum education and experience requirements.

# Minimum Education & Experience Real Property

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- For returns filed on or before October 19, 2006
  - ❖ Treas. Regs. 1.170A-13(c)(5)
- For returns filed after Oct. 19, 2006
  - ❖ licensed or certified
  - ❖ for type of property appraised
  - ❖ in the state property is located

# Minimum Education & Experience Other than Real Property

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- For returns filed on or before February 16, 2007
  - ❖ Treas. Regs. 1.170A-13(c)(5)
- For returns filed after February 16, 2007
  - ❖ College or relevant coursework
  - ❖ 2 years experience
  - ❖ Fully describe qualification in appraisal

# 6695A Appraiser Penalty

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- ✓ Prior to PPA penalties subject to IRC 6700 or IRC 6701
- ✓ IRC 6695A Originated with the Pension Protection Act of 2006
- ✓ Not intended for minor differences of opinion
- ✓ Treated as a separate case from originating tax case
- ✓ Practitioner has opportunity to support their work

# 6695A Appraiser Penalty

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6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.

6695A(a) Imposition of penalty. – if –

6695A(a)(1) a person prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or claim for refund, and

# 6695A Appraiser Penalty

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6695A(a)(2) the claimed value of the property on a return or a claim for refund which is based on such appraisal results in a substantial valuation misstatement under chapter 1, a substantial estate or gift tax valuation understatement, or a gross valuation misstatement , with respect to such property, then such person shall pay a penalty in the amount determined under section (b).

# 6695A Appraiser Penalty

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6695A(b) Amount of Penalty. – The amount of the penalty imposed under subsection (a) on any person with respect to an appraisal shall be equal to the LESSER of –

6695A(b)(1) the greater of –

6695A(b)(1)(A) 10 percent of the amount of the underpayment attributable to the misstatement described in subsection (a)(2), or

# 6695A Appraiser Penalty

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6695A(b)(1)(B) \$1,000, or

6695A(b)(2) 125 percent of the gross income received by the person described in subsection (a)(1) from the preparation of the appraisal.

6695A(c) Exception. -- No penalty shall be imposed under subsection (a) if the person establishes to the satisfaction of the Secretary that the value established in the appraisal was more likely than not the proper value.

# 6695A Penalty Summary

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- Should the practitioner be afraid or worried about performing work for the taxpayer or the IRS?
- At the end of the day, **no, if** the work performed is a reflection of the **market's perception** of value as of the date of valuation, analysis and conclusions are **well prepared, issues disclosed, and fully presented!**