

IRS Responds to ASA Meeting Request

IRS responded to a letter sent on Oct. 21 by ASA requesting a meeting to discuss appraiser penalty assessment letters sent under Section 6695(A) of the Pension Protection Act of 2006 (PPA). The IRS letter, called a Form 4477 penalty assessment letter, is sent to appraisers telling them that IRS is “proposing a penalty...based on our review of the appraisal.” The letters raise serious due process concerns and might require disclosure to national accrediting associations or state licensing boards. ASA was joined by the Appraisal Institute (AI), the Association of Farm Managers and Rural Appraisers (ASFMRA), and the National Association of Independent Fee Appraisers (NAIFA) on the Oct. 21 letter.

In its response, dated Nov. 13, IRS refers to SBSE Memorandum 04-0809-015 as the primary guidance for how it will implement the valuation misstatement provisions of the PPA. Specifically, IRS states that Form 4477 is not a penalty “assessment” letter despite the wording used, and is sent merely to provide appraisers with an opportunity to explain their valuation and assert the “more likely than not” safe harbor protection that Congress explicitly provided for in the PPA—despite IRS’s failure thus far to enumerate a means through which an appraiser could meet the safe harbor threshold. IRS instead states that each finding of safe harbor applicability will be left to each individual examiner to determine, providing no certainty for appraisers and leaving them vulnerable to differing outcomes.

ASA, AI, ASFMRA and NAIFA are disappointed with IRS’s decision not to directly address our collective concerns with the implementation of Section 6695(A) and the use of Form 4477 letters, and have renewed our request for a meeting to further discuss these important issues. In the interim, ASA has spoken with the author of IRS’s response, who has informally agreed with our position on the 4477 Letter and expressed a willingness to review it as a prelude to eliminating the language indicating that the Service has found a valuation misstatement.