

November 14, 2011

Via Email: comments@appraisalfoundation.org
Appraisal Standards Board
1155 15th Street, NW
Suite 1111
Washington, DC 20005

Gentlemen:

First, the purpose of this letter is to comment on the Appraisal Standards Board “discussion draft—communication and reporting in the Uniform Standards of Professional Appraisal Practice (USPAP)” (the “discussion draft”). We understand that comments to the discussion draft are due on November 14, 2011.

Second, the Forensic and Valuation Services Executive Committee (FVSEC) is a senior technical committee of the American Institute of Certified Public Accountants (AICPA). The FVSEC is authorized to issue professional standards and to speak on behalf of the AICPA on matters related to the valuation and forensic services disciplines. The AICPA is a professional organization of nearly 400,000 certified public accountants (CPAs), many of whom perform valuation services. In addition, the AICPA professional standards (including valuation standards) apply to non-member practicing CPAs, because the AICPA professional standards are incorporated into many states’ accountancy laws.

Third, CPAs primarily perform business and intangible asset valuations.. It would be more than rare for a CPA valuation analyst to appraise real estate or tangible personal property (TPP). However, CPA valuation analysts sometimes rely on real estate and TPP appraisals in the preparation of business valuations.

Fourth, we applaud the efforts of the Appraisal Standard Board, and we respect USPAP as a recognized appraisal standard. However, , CPA valuation analysts do not have to comply with USPAP in order to comply with AICPA professional standards. Nonetheless, a significant percentage of CPA valuation analysts do comply with USPAP either (1) voluntarily or (2) as a requirement of their membership in some other professional organization.

Fifth, USPAP application is only required by law, regulation, or agreement with the client. Therefore, it is rare that the application of USPAP is required for business valuations. This is because it is rare for USPAP to be required by law, regulation, or agreement of the client in the case of a business valuation. Again, when CPA valuation analysts apply USPAP in their work, for the most part, they are doing so voluntarily.

Sixth (and as the last point of introduction), CPA valuation analysts perform business and intangible asset valuations for many individual purposes. However, most of those individual purposes can be aggregated into three general categories of purposes: (1) fair value accounting and financial statement disclosure, (2) taxation planning and compliance, and (3) litigation support and dispute resolution.

Seventh), discussion draft lines 3 and 4 indicate that some draft reports are issued “as an opportunity for the client to attempt to influence the assignment results.” Under AICPA professional standards, that situation should never happen. That situation would violate AICPA independence, ethics, and a host of other professional standards. In such a case, the CPA would have to resign from the valuation engagement.

Alternatively, CPA valuation analysts often issue draft reports to have the client and/or the legal counsel verify facts, such as:

1. the number of shareholders or shares outstanding
2. the most recent description of the proposed complex transaction
3. information regarding historical sales of the subject security
4. the analysis incorporates the most recent set of management-prepared financial projections
5. certain company account balances (e.g., net working capital) on the valuation (e.g., stock charitable contribution) date

We believe such uses of draft reports (1) are unrelated to whether the client likes or dislikes the valuation conclusions and (2) should not be regulated by USPAP.

Eighth, on line 11, the discussion draft mentions that a report “is transmitted to a client upon completion of an assignment.” We agree with that definition. And, if a draft report is transmitted upon completion of an assignment, we can understand the Appraisal Standard Board’s position that USPAP rules should apply. However, CPA valuation analysts usually issue draft reports to verify factual information before the completion of the assignment. In fact, we could say that the assignment is absolutely not complete until this verification procedure is performed.

Ninth, line 21 defines “assignment results” to include “conclusions.” CPA valuation analysts would say that the draft report may include valuation analyses and value indications. However, the report does not present valuation “conclusions” until the final report is issued.

Tenth, we note that, of the list of assignment results listed on lines 25 to 33, only two items in this list would possibly relate to business valuations:

1. the selection of guideline public companies for business valuation
2. a discounted cash flow analysis

Eleventh, line 41 states “Business-related communications outside of those containing assignment results...” may not be included in the proposed USPAP rules. We would recommend that CPA valuation analyst draft reports do not contain “assignment results.” These draft reports may include value indications, but they are not presented as “assignment results.”

Twelfth (and in response to the specific discussion draft questions), in response to question 1 on lines 51 to 53, we strongly recommend “no.” There should not be any minimum reporting requirements for draft reports.

Thirteenth, we strongly recommend “no” to question 2 on lines 54 to 56.

Fourteenth, we strongly recommend “no” to question 3 on lines 57 to 58.

Fifteenth, we strongly recommend “no” to question 4 on lines 59 to 61.

Sixteenth, questions 5 and 6 appear to relate principally to real estate appraisers. To the extent that these questions apply to business valuations, we strongly recommend the answer of “no.”

Seventeenth, with regard to questions 7 and 8, we recommend that “assignment results” only include the analyst’s final opinion of value (and not any of the value indications that are included in a draft report—and that may be subject to change). We strongly believe that “assignment results” are only included in final (signed and on letterhead) business valuation reports. And, we strongly believe that the “completion of the assignment” only occurs when the final business valuation report is issued.

Eighteenth, we do recommend a new definition for “internal communications” or “draft report” to include the type of data verification procedure reports that are described above. Given that definition (which is consistent with CPA valuation analyst draft reports), “draft reports” then would not be covered by USPAP reporting and record keeping requirements.

Nineteenth, with regard to all questions 1 through 9, we reiterate that a significant percentage of CPA valuation analyses and valuation reports are prepared for litigation purposes. In many cases, these reports are prepared in compliance with the Federal Rules of Evidence (FRE) or the state equivalent of the FRE. Under the FRE (Rule 26), valuation analysts do not need to keep copies of draft reports or to disclose copies of draft reports to opposing litigants or opposing counsel.

And, under the FRE, there is a significant distinction between (1) the draft report (that need not be maintained in valuation files and disclosed) and (2) the final report (that must be maintained in valuation files and disclosed). To comply with the FRE, client legal counsel routinely instructs the valuation analyst to (1) not keep draft reports on file and (2) not disclose draft reports to anyone but the client’s legal counsel.

If the Appraisal Standard Board’s proposed draft report rules are implemented, then valuation analysts would have significant difficulty (1) in complying with the FRE in litigation-related valuations and (2) (de facto) in being retained to perform litigation-related valuations.

Twentieth, we do not have a comment with regard to most of the scope of work rule questions. Our overall comment to lines 96 to 125 is that these current (or proposed) requirements (1) should only apply to final reports (and not to draft reports) or (2) should only apply to real estate and TPP appraisal reports (but not to business valuation reports).

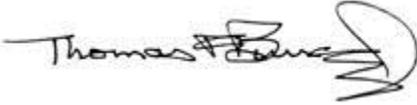
Also, we should note that we have no comment related to the (1) reporting options, (2) standards 4 and 5, (3) advisory opinions, and (4) appraiser independence discussions on pages 7 and 8.

In summary, for the reasons mentioned above, we strongly recommend that the Appraisal Standard Board not adopt additional rules related to draft reports. Alternatively, given the Appraisal Standard Board’s concerns mentioned in the discussion draft, we strongly recommend that the Appraisal Standard Board not adopt additional rules related to business valuation draft reports.

In particular, if the APPRAISAL STANARD BOARD adopts the proposed rules, valuation analysts who comply with USPAP will be at an extreme competitive disadvantage to non-USPAP-compliant valuation analysts with regard to litigation assignments. This is because non-USPAP analysts would be able to comply with the FRE (Rule 26). In contrast, USPAP-compliant analysts would have difficulty complying with the FRE. This competitive disadvantage would encourage many valuation analysts who voluntarily comply with USPAP to terminate their membership in any professional organizations that require USPAP compliance.

In conclusion, thank you for your interest in this comment letter. We hope these comments are helpful to the APPRAISAL STANARD BOARD.

Very truly yours,

A handwritten signature in black ink that reads "Thomas Burrage". The signature is written in a cursive style with a large, stylized flourish at the end.

Thomas Burrage
Chair
Forensic and Valuation Services Executive Committee