AICPA® Forensic and Valuation Services Section

American Institute of CPAs
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Appraisal Standards Board
The Appraisal Foundation
1155 15th Street, NW, Suite 1111
Washington, D.C. 20005

ASBComments@appraisalfoundation.org

Dear Board Members:

This letter is in response to the exposure draft of the proposed changes to the 2014-15 edition of USPAP. We apologize for our delay post-deadline in responding to the exposure draft. However, we conducted a meeting of our entire committee last week, and we wanted this comment letter to present a consensus of all of our committee members.

As you know from our previous comment letters, the American Institute of Certified Public Accountants (AICPA) is a professional organization of approximately 380,000 certified public accountants (CPA) members. Our constituency actually exceeds that number. That is because, under various state accountancy laws, AICPA professional standards also encompass practicing CPAs who are not AICPA members.

The forensic and valuation services executive committee (FVSEC) is a senior technical committee of the AICPA. The FVSEC is empowered to issue valuation standards for our members and to comment on valuation-related topics (including USPAP) on behalf of the AICPA.

This letter presents our comments with regard to the May 24, 2012, first exposure draft of the proposed changes to the 2014-15 edition of USPAP.

First, with respect to Section 2a: "proposed revisions to the definition of assignment results," we strongly support the adoption of alternative 1.

As stated on page 8 of the proposed changes: "Under alternative 1, assignment results are only the final opinions relative to a particular assignment."

As we have explained in previous comment letters, many of our members perform business valuation and intangible asset valuation (collectively referred to as "BV") services. And, those BV services are often performed for litigation-related purposes.

Particularly in a litigation matter, the valuation analyst may communicate partial or preliminary assignment results to a client (or the client's legal counsel) in order to (1) confirm the factual data (e.g., historical financial statements) used in the analysis, (2) present the results of one valuation method within one valuation approach in order to initiate a discussion with the client (or legal counsel), as the discovery (i.e., legal data gathering) process continues, or (3) to confirm the scope of the assignment with the client's legal counsel.

During the litigation process, the selected valuation variables often change because new data become available during discovery (i.e., depositions, requests for production, interrogatories, etc.). And, the valuation analyst's assignment may change (including a change in such a fundamental factor as the valuation date) as the lawyer's legal theory of the case evolves.

In litigation, little (or none) of the preliminary valuation work may ultimately be used in the final valuation. In fact, the entire valuation analysis may change due to (1) a change in the legal theory of the case as the litigation evolves or (2) an entirely new set of financial and operational data that are now available to the valuation analyst.

On page 4 of the proposed changes, the retirement of Standards 4 and 5 is explained as concern for "confusion and misapplication."

We strongly recommend that the adoption of the Section 2a alternative 2 (i.e., the broader definition of assignment results) will lead directly to such confusion and misapplication, particularly in BV assignments performed for litigation purposes.

We are concerned that litigation attorneys will simply not want to retain valuation analysts who have to retain partial and preliminary analyses in their permanent workpaper files. Under the Federal Rules of Evidence, draft expert reports in federal litigation are typically not subject to discovery. However, this federal evidentiary rule does not apply to most litigation filed within the state and local courts. In addition, that federal evidentiary rule may not apply to the production of the expert's workpaper files.

And, legal counsel will not want to disclose the partial or preliminary analyses of USPAP-compliant valuation analysts to opposing legal counsel. Accordingly, if the alternative 2 assignment results definition is adopted, we predict that litigation attorneys will simply hire experts who do not comply with USPAP (e.g., economists, financial analysts, etc.). And, that result will not benefit the public.

Therefore, we urge the adoption of the Section 2a assignment results definition alternative 1.

Second, we would like to comment on the definition of "report." The exposure draft page 10 proposed definition of a report includes "any communication of an opinion of value…". As explained above, we believe this definition of a report is too broad, at least within the context of a litigation assignment.

Within a litigation context, such an all-inclusive definition of a report will tend to discourage—and not encourage—communication between the valuation analyst and the client/legal counsel. And, such a lack of communication cannot be beneficial to any client in particular or to the public in general.

Accordingly, we recommend a less expansive definition of the term report. Alternatively, we recommend that the Board allow a litigation assignment exception to the "any communication" definition of the term report. That is, for litigation purposes, we recommend that an appraisal report can be defined as the term expert report would otherwise be defined under the applicable federal or state law.

Third, we would like to comment on the addition to the record keeping rule (exposure draft page 8):

> The work file must include:
> "the rationale for all changes to assignment results when a revised report has been communicated to the client or other intended users."

This language is not troublesome if the term report is defined as the valuation engagement's final report. However, if a report is defined as "any communication," then this language is troublesome for the reasons described above.

To avoid confusion and misapplication, we strongly recommend that this "rationale for all changes to assignment results" language be deleted. As an alternative, we strongly recommend that the Board adopt a litigation assignment exception to this work file rule.

Fourth, we would like to comment on the proposed revisions to the scope of work acceptability section of the scope of work rule (exposure draft pages 14 and 15).

In particular, we strongly object to the second paragraph of the comment section of the scope of work acceptability rule (on exposure draft page 15).

As you know, there is relatively little BV procedural guidance provided by The Appraisal Foundation. With regard to intangible asset valuation, there is very little procedural guidance provided by any valuation or appraisal organization.

We proudly remind the Board that the AICPA *Statement of Standards on Valuation Services* (SSVS) provides professional standards related to business and intangible asset valuation. However, not even SSVS is intended to provide detailed guidance on the application of individual valuation methods and techniques.

This "rationale for all changes" USPAP language is merely an open invitation for opposing legal counsel to cross-examine appraisers of all valuation disciplines with the question: "Which peer-reviewed text or coursework describes this particular application of this particular procedure within this particular method of this particular approach?" During cross-examination, few otherwise USPAP-compliant valuation analysts will be prepared to answer that peer-review citation question.

We recommend that this "recognized methods and techniques" language be eliminated from this scope of work acceptability comment.

Alternatively, we recommend that the Board consider a litigation assignment exception to this language.

In particular, we note that most courts already have rules for accepting expert witnesses and expert reports (including valuation experts). In most federal courts, the well-known *Daubert* rules apply before a federal judge will accept a valuation analyst's

methodology as trial evidence. Most state courts have corresponding judicial precedent "gatekeeper" rules that a state judge will consider before accepting a valuation analyst's proposed methodology.

We mention these judicial evidence rules because we ask the Board to allow the judiciary to perform its "gatekeeper" function of deciding the acceptability of valuation methodology within a litigation context. That is, we strongly recommend a litigation assignment exception to this scope of work acceptability rule. The courts already have rules in place to accomplish the objectives of this methodology acceptability rule.

Finally, we thank the Board for its consideration of our comments. And, we thank the Board for its continued service to the valuation profession.

Very truly yours,

Thomas Burrage, CPA
Chair
Forensic and Valuation Services Executive Committee