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September 14, 2012

Mr. J. Carl Schultz, Jr., Chair  
Appraisal Standards Board  
The Appraisal Foundation  
1155 15<sup>th</sup> Street, NW, Suite 1111  
Washington, DC 20005  
[asbcomments@appraisalfoundation.org](mailto:asbcomments@appraisalfoundation.org)

RE: "Second Exposure Draft of Proposed Changes for the 2014-15 Edition of the *Uniform Standards of Professional Appraisal Practice*" dated August 28, 2012

Dear Mr. Schultz:

On behalf of the Appraisal Institute, the Appraisal Standards and Guidance Committee ("ASGC") submits these comments in response to the "Second Exposure Draft of Proposed Changes for the 2014-15 Edition of the *Uniform Standards of Professional Appraisal Practice*" dated August 28, 2012.

### **Section 1: Proposed Retirement of STANDARDS 4 and 5**

We continue to support the proposal to retire these Standards (not renumbering later Standards) since the concept is adequately addressed in the balance of USPAP.

We are pleased to see the ASB's proposed guidance addressing what is currently referred to as a real property appraisal consulting assignment in the form of additional illustrations in Advisory Opinion 21. However, we offer the following suggestions with regard to them:

Line 10: "Examples include appraisal, brokerage, auctioning, property management, advocate consulting, appraisal review consulting and collecting market data." We suggest this be edited to include "and non-advocate" between "advocate" and "consulting." As this is now written, it creates the impression that all consulting falls into advocacy, which is not so. A conforming edit is also needed on line 43.

Line 313: "That appraisal was prepared by another appraiser and reviewed by John" we suggest be edited to state "will be reviewed by John", because at this point John has not commenced the assignment. In other words, it needs to be clear that John's assignment WILL include an appraisal review, as opposed to having already been performed prior to this assignment.

Lines 322-326: It is not clear from the problem set-up just what Chris' assignment objective will be. The question cannot be answered without knowing this. We are told he is being asked to "advise a

corporation regarding a potential stock offering." Advise what? What kind of advice? This matters, because depending on what that objective is, the assignment may or may not involve an appraisal, and the use of the extraordinary assumption may or may not be appropriate.

Also, at line 331, please clarify that "Standards" means Standards 1-10, because among practitioners and others "Standards" is often used to mean USPAP in its entirety.

### **Section 2a: Proposed Revisions to the DEFINITION of "Assignment Results"**

We continue to believe that no specific changes should be made to the definition of "Assignment Results" as we believe the existing definition is clear and adequate. However, we are not opposed to the proposed revision as it does not alter the meaning of the term.

### **Section 2b: Proposed Revisions to the DEFINITION of "Report"**

We appreciate the ASB's efforts to clarify this term, and we support the general direction being proposed in this exposure draft with regard to the communication of "other than final" assignment results. However, we believe the proposed definition would create a giant loophole: An appraiser could disclaim responsibility for complying with USPAP simply by not signing the certification.

We understand that part of the reason the ASB is proposing the revision is to establish an answer to the question "When is the 'end of the assignment'?" The proposed revision rests upon the presumption that the assignment is completed when the certification is signed and the report is transmitted to the client. We find this line of reasoning to be flawed. First, the signing of the certification and the transmittal to the client do not necessarily coincide. (In the case of any oral report, they never do.) More importantly, if an "assignment" is an agreement between the appraiser and client regarding a service, the point of completion is determined by that agreement. "Completion" might be the transmittal of a report to the client, but could also be the client's review, the end of provision of testimony, or other events as agreed upon by the appraiser and client. We believe the determination should be left to appraisers and their clients, not dictated by USPAP.

We recognize that part of the problem is that many appraisers and their clients do not use formal, documented assignment agreements (contract, engagement letters) and therefore "the end of the assignment" is never established, never documented, or at best is left vague. However, we do not believe it is appropriate to adjust USPAP in an attempt to rectify what is a business practice matter, not a Standards matter. We are all the more concerned when such proposed revision would create a loophole, as described above.

Further, we are disappointed that the ASB is continuing to propose the addition of "or any other intended user" in the definition. This is troublesome as it implies that an appraiser might communicate assignment results to an intended user other than the client without also communicating with the client at the same time, and this would be in conflict with the Confidentiality section of the ETHICS RULE.

This Committee submitted the following suggested alternative definitions to the ASB in July 2010. We continue to believe these definitions would be clearer than either the current one or the one being proposed in this Exposure Draft. We ask that the ASB give them consideration.

Report: An appraisal report or an appraisal review report.

(New definition) Appraisal report: Any communication, written or oral, of an opinion of value developed in an appraisal assignment.

(New definition) Appraisal review report: Any communication, written or oral, of an opinion of the quality of another appraiser's work developed in an appraisal review assignment.

In addition, we believe that there is an easier answer to the question of whether or not it is appropriate for an appraiser to transmit "other than final" opinions and/or conclusions to a client: That is, USPAP should require that when such "other than final" opinions and/or conclusions are transmitted to the client, they must be clearly and conspicuously be marked as such..

### **Section 3: Proposed Revisions to the RECORD KEEPING RULE**

This same revision was proposed in the First Exposure Draft, and our opposition to it remains the same. The proposed requirement shifts the presumption that an appraiser is an ethical professional as now defined in USPAP to a presumption that when an appraiser's opinion changes there must be something at best questionable, at worst unethical, at work and so a defense must be in place to prove otherwise. An appraiser would be presumed unethical from the start; this is not a characteristic of a profession. This does not enhance public trust and may, in fact, have the opposite effect.

Also, we are concerned that in litigation work such a requirement would open the door to an area of unnecessary questioning that would not serve any substantive or evidentiary purpose, but would only attempt to inappropriately discredit the appraiser.

Finally, we are very concerned that this requirement could cause appraisers to avoid making needed changes or issuing new reports<sup>1</sup> when warranted. This would be very damaging to public trust.

Other professions do not have similar requirements. Professionals decide to keep such information which is certainly within the scope of professional judgment. However, making it a requirement changes the characterization of the retention and creates a negative impression regarding the fact that the professional's opinion changed.

As an alternative, we suggest the ASB consider inserting "an appraiser must be prepared to present" in front of "the rationale for all changes..." on line 364 of this Exposure Draft.

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<sup>1</sup> We note that the proposed language, at line 364, references "revised report," which is not accurate. As "report" is defined in this Exposure Draft, there can be no revised reports, only subsequent reports.

#### **Section 4: Proposed Revisions to Scope of Work Acceptability section of the SCOPE OF WORK RULE**

We are pleased with the ASB's decision to withdraw the proposal to revise this section of USPAP.

#### **Section 5: Proposed Revisions to the DEFINITION of "Scope of Work" and the SCOPE OF WORK RULE**

We are pleased with the ASB's decision to withdraw the two alternatives proposed in the First Exposure Draft relating to these sections of USPAP.

However, we do not agree with the proposal to edit the definition of Scope of Work. First, the Scope of Work Rule is clear that its application is to appraisal and appraisal review assignments only. Second, while the Rule itself clearly does not apply to "other" assignments, the *concept* of scope of work can and should. By making this edit, the door would be shut on the notion that "other" assignments might involve scope of work identification and determination.

#### **Section 6: Report Options**

In our comment letters to you on the First Exposure Draft and prior to that, we had suggested a separate Scope of Reporting Rule be created. In this current Exposure Draft, the ASB is proposing to insert the phrase "The appraiser must determine the appropriate level of detail to be presented in the report based on the intended use and the informational needs of the intended user" into each of the reporting standards. The ASB is also proposing an Advisory Opinion on the level of detail in an appraisal report. We are satisfied that the insertion into the reporting standards serves the same purpose. So we support the insertion of this language and the concept of an advisory opinion.

However, while in principle we support the idea of a single report option, we are gravely concerned that the single report option proposed in the exposure draft eliminates the ability to provide what is currently referred to in USPAP as a Restricted Use Appraisal Report. This type of report is necessary in the market for appraisal services; it is appropriate in a variety of circumstances, notably in non-lending work. Not all clients need or require the detail about how the value conclusion was developed, and this report option allows appraisers to respond to that very real need.

We take issue with the claim that "having a Restricted Use Appraisal Report format option that does not summarize the information analyzed and the reasoning that supports the analyses, opinions and conclusions may not protect public trust and the appraisal profession." There are numerous instances in which such a report is appropriate, necessary and not misleading. Such instances include valuation for financial reporting, alternative dispute resolution and mediation, and countless situations in which the client "needs the number today" with the 'full' report to follow. Provided the assignment results have been developed in compliance with USPAP, there is no harm to public trust in this.

In the case of dispute resolution especially, many times the report MUST NOT include that level of detail; the whole point is that the parties have agreed the statement of value will settle the dispute without further discussion; presenting the rationale for the value conclusion may only give those parties something more to continue the dispute.

In the case of valuation for financial reporting, again, the level of detail needed in the report is minimal. We have been told repeatedly by those requesting valuations for financial reporting that generally they do not want or need to know the details of the data and analyses used by the professional valuer to arrive at the value conclusion. They are not misled by such reports. Why should USPAP dictate they must have more than they need?

Also, our members regularly encounter situations in which the assignment calls for a lengthy, detailed report that might take days if not weeks to write, but the client needs to make a decision based on the value sooner than that. As long as the value opinion is properly developed according to Standard 1 and the support for it is in the workfile, what is wrong with the provision of a report that does not include the detail about the data and the analysis?

Therefore, we prefer two reporting options: one "with detail" about how the valuation process was conducted – i.e., showing the data and the analyses used to arrive at the value conclusion, and the other a "value-only" communication for those clients/intended users (however many) who do not need the detail. The "with detail" option should have certain minimum requirements as you propose on lines 423-519 of the exposure draft. The "value only" option would be the same with the exception of item (h) ("summarize the information analyzed, the appraisal methods and techniques employed....")

On another note, we have a concern about the language proposed at lines 497-498 of the Exposure Draft, "(a)n Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of Standard 1." We anticipate that this would be wrongly interpreted to mean the appraisal report must address everything mentioned in Standard 1 even if not relevant to the assignment. For example, an appraisal report that did not mention personal property – which is addressed in Standards Rule 1-2(e) – would be deemed deficient even if no personal property were involved. We also fear that this line might induce appraisers, reviewers and regulators to use Standard 1 as a checklist for reporting requirements, rather than using Standard 1 as a guide for the development process.

With regard to the proposed Advisory Opinion of the level of detail in an appraisal report, we offer the following suggestions:

End of Line 744: All existing Advisory Opinions conclude "The Issue" section with a question. This draft does not include a question.

Line 822: The statement is made "The appraisal report can only be utilized for the specific intended use." This statement is patently untrue and encapsulates a common misconception about the concepts of "intended use" and "intended user." An appraiser cannot control who uses a report, or how it is used. Stating an intended user in a report does not prohibit another party from using it. Stating the intended user is simply the appraiser's acknowledgement of the named party as the user and recognition of the appraiser's obligation to meet the needs of that party. Likewise, stating an intended use in a report does not prohibit it from being used in a different manner. Stating the intended use is simply the appraiser's acknowledgement of the stated use and

recognition of the appraiser's obligation to apply a scope of work that is appropriate for that use. We suggest this sentence be stricken.

**Section 7: Proposed Revision to COMPETENCY RULE**

The ASGC does not believe this proposed change is necessary as it creates a redundancy which is not in the best interest of clarity. However, it is an improvement over what was proposed in the First Exposure Draft.

**Section 8: Proposed Revisions to the PREAMBLE – When Do USPAP Rules and Standards Apply?**

We do not believe these proposed revisions to be necessary, but we do not oppose them.

**Section 9: Proposed Revisions to Standards Rule 3-5**

We do not oppose this proposed additional requirement to state the date of the appraisal review report, but we do not believe it is necessary.

While stating both the date of the report and the date of the opinion are important in the case of an appraisal report, the same is not true for an appraisal review report. That is because in an appraisal the two dates can differ. The value opinion can be current (more or less the same as the date of the report), prospective (future relative to the date of the report), or retrospective (in the past relative to the date of the report.) In an appraisal review, however, the date of the opinion is always concurrent with the date the opinion is transmitted to the client. One cannot form an opinion of the quality of the work as of a date in the past or in the future; one can only form it as of the present.

In practice, we find that appraisal review reports are dated anyway. So we believe it is a moot point.

We trust that you will find our comments helpful. Please do not hesitate to contact me if you have any questions regarding these comments.

Sincerely,



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