



January 21, 2013

Appraisal Standards Board
The Appraisal Foundation
1155 15th Street NW, Suite 1111
Washington, DC 20005

Re: Third Exposure Draft of Proposed Changes for the 2014-15 Edition of the *Uniform Standards of Professional Appraisal Practice*

Dear Sir/Madam:

The following comments and observations are respectfully submitted by the National Association of Certified Valuers and Analysts (NACVA) in response to the release of the third exposure draft of proposed changes to the 2014-15 edition of the *Uniform Standards of Professional Appraisal Practice*. We greatly appreciate the work undertaken by the Appraisal Standards Board of the Appraisal Foundation in furthering the quality of professional standards within the profession, and we applaud your continuing efforts to promote and maintain a high level of public trust in appraisal practice. Without question, NACVA concurs that this should be the overriding goal of all members of the appraisal community.

The comments and observations submitted herein were developed after careful consideration and analysis of the proposed changes by the Standards Committee of NACVA with review by our organization's Executive Advisory Board. It is the intent of NACVA, through submission of these comments and observations, to assist any and all valuation and appraisal organizations to enhance those standards applicable to the profession in a manner which will allow for better understanding and uniformity among members of the profession and, as a result, enhance the public trust in appraisal practice, which is critical to the profession going forward.

With the above introduction, we thank you for the opportunity to provide the following comments and observations:

1. Section 1

We herein in offer no comment on Section 1, regarding the proposed retirement of Standards 4 and 5. We understand that these standards are currently applicable to real property appraisal consulting development and reporting. As such, it is not within the expertise of the NACVA membership; we respectfully decline comment.



Section 1 (*continued*)

a. Advisory Opinion 21 (AO-21)

We understand that this Advisory Opinion does NOT establish new standards, but is intended by the Appraisal Foundation to provide an illustration of the applicability of appraisal standards to specific situations and to offer advice from the Appraisal Standards Board (ASB) for the resolution of appraisal issues and problems.

Line 8

AO-21 references applicability of USPAP to **Intangible Property** on Line 6 of page 5. Consequently, it is our assumption that it will apply to business valuation generally. Given this understanding of the assumed breadth of applicability, we offer the following comment:

On lines 111 through 116, discussing USPAP compliance obligations for appraisal practice outside of appraisal and appraisal review, certain exceptions to required compliance with USPAP Standards 1 through 10 are provided by the ASB.

Among those examples cited in the text of these lines, there is no mention or notation of a calculation of value engagement. As the ASB and members of the Foundation understand, the use of a calculation engagement is permitted to business valuation professionals under the NACVA Professional Standards under section III., B., 2.

Under this provision of the NACVA Professional Standards, a calculation engagement “*occurs when the client and member agree to specific valuation approaches, methods, and the extent of selected procedures and results in a Calculated Value.*”

Statement on Standards for Valuation Services No. 1 (SSVS), promulgated by the American Institute of Certified Public Accountants also provides for a calculation engagement. Under Paragraph 21.b, a calculation engagement is defined under those professional standards as when “*(1) the valuation analyst and the client agree on the valuation approaches and methods the valuation analyst will use and the extent of procedures the valuation analyst will perform in the process of calculating the value of a subject interest (these procedures will be more limited than those of a valuation engagement) and (2) the valuation analyst calculates the value in compliance with the agreement.*”

Given the specific need for such engagements in the user marketplace and the desire by valuers to offer a service to accommodate client needs when an appraisal is not required by the circumstances and both valuation analyst and client agree, calculation engagements have proven to be very useful.



No valuation analyst would suggest that a calculation engagement rises to the level of an appraisal, as that term is defined under USPAP. As such the limitations imposed by virtue of the agreed-upon approaches, methodologies and procedures are likely to fall short of meeting the professional standards promulgated by any organization, including USPAP. However, a calculation still falls within the professional standards of other “well-recognized” appraisal and business valuation organizations. For this reason, NACVA suggests and recommends that the words, “calculation assignment” or “calculated value assignment” be added to the listing of excepted services offered on Line 112 through 114 of the document.

Section 1 (*continued*)

b. Lines 296-298

Lines 296 through 298 imposes a limitation on the ability of an appraiser to act in a capacity as an appraiser and as an advocate for the client’s cause “in the same case.”

It is common for members of the legal community to address matters related to value in any pending legal dispute in separate steps. In such circumstances, it is not uncommon for an appraiser to be contacted and engaged by the attorney to provide certain appraisal consulting services as an advisor to legal counsel in preparing possible legal strategies for potential resolution of the dispute. In these instances, the attorney, of course, serves as the client advocate. If the appraiser continues in the assignment as an “undisclosed consultant or advisor to legal counsel,” his or her work product is generally protected by client/attorney privilege. In these cases, the work product of the appraiser is not subject to discovery and advocacy is generally not an issue.

As the legal matter proceeds, it is not unusual for the appraiser’s role to be expanded to independent expert in the same case. Strict compliance with the example illustrated in the Exposure Draft on Lines 296 through 298 would prevent the appraiser from accepting this independent role.

Given the implications of this directive, NACVA suggests and recommends that the wording noted above, “in the same case,” be changed to “at the same time.” In this manner, the decision is left to appraiser/valuator to make the very personal decision as to whether he or she is free of conflict and able to proceed in the new role as independent expert.

Section 1 (*continued*)

c. Examples

We commend the ASB for the development of the examples set forth on Page 12, Line 204 through Line 344. While those examples are helpful in interpreting certain factual situations, we respectfully request comment on the following specific fact patterns related



to those examples beginning on Line 299, *Assignments with Services Other Than Appraisal or Appraisal Review*.

Additional Example 1

Line 345 (proposed)

John Doe, an appraiser, accepts an assignment to assist a private business client's Board of Directors in calculating the client's current "per equity unit" value. The calculation is made following specific valuation methods and selected procedures agreed to by the appraiser and the client. The calculated unit value is to be presented by the Board at the annual meeting of the client's unit holders for approval of the calculated value for buy-sell agreement purposes.

What are those provisions of USPAP that apply to this assignment?

Additional Example 2

Chris Filo, an appraiser, accepts an engagement to assist a private business client in calculating an asking price for the client's business. The calculation is made following specific valuation methods and selected procedures agreed to by the appraiser and the client. The calculated asking price is to be used by the client for listing purposes and the calculation details will not be shared with third parties.

What are those provisions of USPAP that apply to this assignment?

Additional Example 3

John Doe, an appraiser, accepts an assignment to assist a private business client's Board of Directors determine the fairness of a proposed acquisition/disposition transaction. In the course of the assignment, the appraiser will review all aspects of the proposed transaction and will provide a report opining on the fairness of the proposed transaction, but he will not apply those methods and procedures required in an appraisal assignment, and he will provide no value or calculated value in the assignment. The resulting fairness opinion will be used by the Board of Directors to promote or discourage the proposed transaction to the entire equity unit holder group.

What are those provisions of USPAP that apply to this assignment?

Additional Example 4

John Doe, an appraiser, accepts an assignment to assist a private business client's Board of Directors determine the fairness of a proposed acquisition/disposition transaction. In the



course of the assignment, the appraiser will review all aspects of the proposed transaction and will provide a report opining on the fairness of the proposed transaction. In arriving at his conclusion, the appraiser will apply many of those methods and procedures required in an appraisal assignment, and he will provide a value or calculated value in the assignment. The resulting fairness opinion will be used by the Board of Directors to promote or discourage the proposed transaction to the entire equity unit holder group.

What are those provisions of USPAP that apply to this assignment? Does the Appraisal Standards Board view Examples 3 and 4 differently in the application of USPAP?

We respectfully request that the ASB address these circumstances to confirm the Board's interpretation of the applicability of the USPAP standards in such cases.

2. Section 2

We offer no comment.

3. Section 3

We offer no comment.

4. Section 4

We respectfully offer the following comment regarding Report Options:

The exposure draft proposes that two written report options be instituted under USPAP for the 2014-15 edition. Those two options are: (1) Appraisal Report, which requires summary of the appraiser's analysis and the rationale for the conclusion of value; and (2) Restricted Appraisal Report, which might not include sufficient information for the client (no other users being permitted) to understand either the appraiser's analysis or rationale for the appraiser's conclusion of value.

In many instances, there are business valuation services engagements and assignments that call for a calculated value, or something less than an appraisal or an appraisal review. The marketplace and user community has confirmed the need for such services.

In these assignments, the appraiser and the client agree on those valuation methods and procedures that will be applied and performed in the course of the calculation engagement. In many instances, the agreed-upon methods and procedures will be more limited than those undertaken in the course of providing an appraisal or appraisal review. In the course of conducting the calculation engagement, the appraiser will limit his or her procedures to those agreed with the client.



Often, such assignments are used in divorce or other litigation proceedings for mediation purposes, where the calculation report is provided to the other parties to the litigation and their legal representatives. The calculation report will often not incorporate the appraiser's analysis or rationale for determination of the calculated value, but will provide meaningful information for the possible settlement of a case. In fact, there are many instances when the only report provided to the client is one or more exhibits providing calculations that arrive at calculated values. Such assignments are often performed to keep costs at a lower level for clients requiring indications of value for purpose of settling litigation.

The proposed exposure draft does not appear to provide a reporting option for such valuation services.

We respectfully request that the ASB consider the promotion of an alternative report to allow for engagement results reporting as noted in the above-noted circumstance, or alternatively, allow the restricted appraisal report to cover such engagements.

5. Sections 5 through 9

We offer no comments.

On behalf of the membership of the National Association of Certified Valuers and Analysts as well as the Standards Committee of that organization, we thank you for allowing us the opportunity to submit our comments and observations for consideration by the Appraisal Standards Board.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Parnell Black".

Parnell Black
Chief Executive Officer

A handwritten signature in cursive script that reads "Robert J. Grossman".

Robert J. Grossman
Chair-Standards Committee