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January 14, 2011

Mr. J. Carl Schultz, Jr., Chair
Appraisal Standards Board
The Appraisal Foundation
1155 15th Street, NW, Suite 1111
Washington, DC 20005

RE: Comments on the Fourth Exposure Draft of Proposed Changes for the 2012-13 edition of the *Uniform Standards of Professional Appraisal Practice*

Dear Mr. Schultz:

On behalf of the Appraisal Institute, the Appraisal Standards Committee ("ASC") submits these comments on the Fourth Exposure Draft of Proposed Changes for the 2012-13 edition of the *Uniform Standards of Professional Appraisal Practice.* We appreciate the Appraisal Standards Board's ongoing efforts to promote a high level of public trust in appraisal practice.

Section 1: Proposed Revisions to Definitions of "Client", "Extraordinary Assumption" and "Hypothetical Condition"

We are satisfied with the proposed revisions to the definition of "client." However, we have a concern about the proposed changes to the definitions of both "extraordinary assumption" and "hypothetical condition." In the case of "hypothetical condition," it is unclear whether the *knowledge* of the condition is as of the effective date, or the condition itself (that which *exists*) is as of the effective date. The same issue exists for extraordinary assumptions.

Therefore, the proposed edits do not improve clarity. Rather, they create more confusion regarding a point that did not appear problematic in these two definitions historically.

Section 2: Proposed Required Labeling of "Hypothetical Conditions"

We are pleased to see that in this exposure draft the ASB is no longer proposing to require the labeling of extraordinary assumptions. We believe the same rationale should be applied to the remaining proposal to require the labeling of hypothetical conditions.

The proposed labeling requirement violates a fundamental concept that USPAP gives us regarding reporting – namely that report content should be driven by intended users. Many clients for appraisal services do not use the term "hypothetical condition" and are confused by it. Appraisers should not be forced to use labels that intended users might not understand.

We have found there are circumstances in which the technical difference between a hypothetical condition and an extraordinary assumption is so minor that the argument could go on endlessly as to which it is. In the end, as long as the assignment condition is clearly and conspicuously disclosed and the statement is made that its use might have affected the assignment results, what does it matter?

For example, in the application of a discounted cash flow analysis to value a property for which a change in permitted use is eminent, that change in use would be reflected in the time period in which it is anticipated to occur. Some might argue that the presumed change in use is an extraordinary assumption because it is anticipated as of a future date, while others might argue that it is a hypothetical condition

because the presumption of a change in allowable use is reflected in the value indicated by the DCF analysis as of the current date. But if the assignment condition is clearly and conspicuously disclosed, and its impact on value is made obvious, why does it matter which it is?

Further, we are concerned that many times appraisers fall into the habit of relying on a short phrase or single word (a label) to convey information when a full discussion is needed. In the example just presented above, the client/intended users would be better served by a discussion of the assignment condition than they would by the label "hypothetical condition" or "extraordinary assumption." Requiring labels thus does not improve the understandability of appraiser's reports.

Nothing is to be gained by the proposed requirement to label hypothetical conditions. Such requirement would cause a simple labeling error to rise in the enforcement process to the level of a USPAP violation, leading to unnecessary disciplinary actions based on non-substantive matters. We believe enforcement bodies' focus would be better applied to substantive matters. Further, we would hate to see appraisers working in litigation settings subject to accusations by the opposing side that they violated USPAP because of a labeling error.

Section 3: Proposed Revisions Requiring Disclosure of Exposure Time:

We oppose the proposed requirement to disclose exposure time. In fact, we believe that the existing requirement in Standard 1 to develop an opinion of exposure time linked to the market value opinion should be removed. It addresses appraisal methodology, not standards. Further, exposure time is but one element of a market value definition, and there is no reason to emphasize it above others (e.g., knowledgeable parties acting in their best interests, no undue stimulus, typical buyer/seller motivations.)

We find that users of appraisal reports regularly misunderstand what is meant by "exposure time", often confusing it with "marketing time." The inclusion of exposure time in appraisal reports has as an unfortunate consequence the misapplication of appraisal information in clients' decision-making processes. This does not enhance public trust.

When the value opinion is market value, the exposure time associated with it is always whatever is typical or reasonable for that property type in that market area. The mental check the appraiser must perform is not so much about *how long* in months, days or years that would be; rather, it is about considering *whether the market value opined would indeed have been achieved after a normal exposure time*, as opposed to requiring an abnormally long or short exposure on the market to bring a sale (because if that were the case, the value would not be a "market value.") A requirement to state exposure time focuses the attention too much on the time span (as stated in months, days, etc.) rather than the principle involved. Also, stating the specific time span tends to cause client/intended users to associate that time span with what is actually *marketing time*, not exposure time.

Section 4: Proposed Revisions to Standards Rules 2-3, 3-6, 6-9, 8-3 and 10-3:

The proposed new certification statement adds to a requirement to disclose prior services that was added to USPAP with the 2010 edition. This requirement has proven to be unworkable in practice and should be removed entirely from USPAP. Residential appraisers, litigation appraisers, and others are encountering questions and problems with their clients relative to this requirement. This requirement does not enhance public trust; conversely it causes confusion and mistrust in the market. Clients do not understand why this disclosure must be made especially when the prior service was recently provided for the same client. Furthermore, there is a tendency for clients to believe that since disclosure has been made, the fact that the appraiser provided prior services is inherently a problem. This flies in the face of the most

fundamental tenet in USPAP: That the appraiser must remain independent, impartial and unbiased. If that is the case, why should prior services have anything to do with the current service? We exhort the Board to reconsider this requirement altogether, and we strongly encourage its removal from the 2012 edition of USPAP.

Section 5: Proposed Retirement of STANDARDS 4 and 5

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

However, we recommend issuance of an Advisory Opinion addressing what is now referred to as real property appraisal consulting assignments. Such an Advisory Opinion would address requirements for an appraisal within an assignment that has an overall objective other than a value opinion. The material provided in the Rationale for this section in the third exposure draft could be used as a starting point for such guidance. (We note this material was not reprinted with the fourth exposure draft, and we are concerned that it will become lost. It was excellent and should be issued in a more permanent form.)

However, we note that this Rationale missed another potential scenario: One in which the consulting appraiser incorporates via an extraordinary assumption a value opinion of another appraiser, whereby the consulting appraiser lacks the competency (generally this would be competency with regard to the market area, geographic area or property type) to form either an appraisal opinion about that property or a review opinion about the appraisal of that property. This scenario is addressed in the 2010 USPAP at lines 1288-1291. It is an important concept; it occurs not infrequently in practice, and we would not like to see the concept get lost.

Section 6: Proposed RECORD KEEPING RULE and related edits to the <u>Conduct</u> Section of the ETHICS RULE

We do not support this proposed change. Contrary to what is stated in the Rationale ("Record keeping does not correspond to any of the other rules in USPAP"), we believe that keeping records is an ethical obligation of appraisers, is rightfully part of the ETHICS RULE and that the existing structure of USPAP ought to be preserved.

The obligation on a professional to retain "evidence of compliance" with standards is a fundamental ethical obligation; deliberate non-compliance with these requirements is, in fact an ethical failure and not an administrative error. USPAP instructors have been carefully educated in the structure of USPAP, and appraisers have been taught this structure in USPAP classes for the last several years.

We understand and appreciate that this change is motivated by enforcement issues. We also understand that misuse of the phrase "ethics violation" is rampant. The ETHICS RULE is part of USPAP. Any violation of the ETHICS RULE should be referred to as a violation of USPAP, not an "ethics violation," which is an emotive phrase that carries a great deal of stigma. It is unfortunate that this circumstance is leading to a proposed change in USPAP.

We offer some comments on specific language in the Exposure Draft, by line number reference:

Line 158: For enhanced clarity and specificity, change to read: A workfile must be in existence prior to the issuance of any written or oral report. (Retain written or oral as these words provide needed emphasis.)

Lines 173-176: This is a comment, not a rule. The rule itself (i.e., what must be in the workfile) is covered in the fourth bullet at lines 170-172. Lines 173-176 should be moved back to the <u>Comment</u>.

Lines 181-183: This sentence is presumably replacing lines proposed for deletion just prior to lines 190-191. However, the proposed new language at lines 181-183 fails to include the concepts of "form, style, and type." We believe it is important to retain these.

Section 7: Proposed Revisions to Advisory Opinion 21, *USPAP Compliance*

We support the Board's proposal to replace the Liz Ross illustration with the Robert Agent and Avery Baker illustrations. However, we have found there has been a considerable amount of confusion over the Marie Vaughn example and ask the Board to reconsider this one also. It is difficult to reconcile how Marie could have a "diverse appraisal practice" (line 272 in the 2010 edition) and yet provide "litigation services as an advocate" (lines 289-293.) The example requires clarification if it is to be maintained.

Line 292 of the exposure draft has a clerical error: the word "to" needs to be inserted between "in addition" and "their appraiser role."

Section 8: Proposed Revisions to STANDARD 7 & 8, Personal Property Appraisal, Development:

We have no comments on the proposed changes to these Standards, as we are not commenting on personal property standards.

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,

Bonnie Roerig (submitted electronically)

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