



TO: All Interested Parties

FROM: Sandra Guilfoil, Chair
Appraisal Standards Board

RE: **First Exposure Draft of proposed changes for the 2012-13 edition of the *Uniform Standards of Professional Appraisal Practice* and Request for Public Comment**

DATE: January 5, 2010

The goal of USPAP is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. With this goal in mind, the ASB regularly solicits and receives comments and suggestions for improving USPAP. Proposed changes are intended to improve USPAP understanding and enforcement, and thereby achieve the goal of promoting and maintaining public trust in appraisal practice.

The Appraisal Standards Board (ASB) is currently considering changes to the reporting requirements for the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

Background

Since the adoption of the SCOPE OF WORK RULE in July 2006, the ASB has recognized that while the requirements for the manner in which appraisal, appraisal review, and appraisal consulting assignments are *developed* had been improved, there remained a need to review and clarify the *reporting* requirements.

Between July 2006 and August 2009, the ASB issued two Concept Papers asking for specific feedback on existing reporting requirements. Additional Requests for Comment were also published that represented a broader outreach effort to appraisers, users of appraisal services, regulators, educators, and others, where the ASB was seeking to determine how well USPAP was serving the public overall.

The ASB received over 3,000 written and oral comments regarding USPAP's overall strengths and weaknesses plus additional specific feedback on reporting issues. This information aided the ASB in making the changes that were adopted for the 2010-11 edition of USPAP, which is currently available and became effective on January 1, 2010. It also gave direction to the ASB on what should

be addressed when looking to the 2012-13 edition of USPAP, especially in the area of communicating in appraisal practice.

This *First Exposure Draft of proposed changes to the 2012-13 edition of USPAP* focuses only on a single overriding component; the fundamentals of communication in appraisal practice. A second exposure draft will incorporate public feedback from this current process and address additional, more detailed changes to the reporting Standards.

The intent of this exposure draft is to obtain comments regarding these ASB proposals. We are requesting comments from appraisers, professional appraisal organizations, users of appraisal services, educators, regulators, state enforcement agencies and the general public. **All interested parties are encouraged to comment in writing to the Appraisal Standards Board (ASB) by February 15, 2010.**

Written comments on this exposure draft can be submitted by mail, e-mail and facsimile.

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

E-mail: comments@appraisalfoundation.org

Facsimile: (202) 347-7727

IMPORTANT NOTE:

All written comments will be posted for public viewing, exactly as submitted, on the website of The Appraisal Foundation. Names may be redacted upon request.

The Appraisal Foundation reserves the right not to post written comments that contain offensive or inappropriate statements.

If you have any questions regarding the attached exposure draft, please contact The Appraisal Foundation at (202) 347-7722.

**First Exposure Draft of
Proposed Changes Related to the Communication of Appraisal Practice
2012-13 edition of the *Uniform Standards of Professional Appraisal Practice***

**Issued: January 5, 2009
Comment Deadline: February 15, 2010**

Each section of this exposure draft begins with a rationale for the proposed changes to USPAP. The rationale is identified as such and does not have line numbering. Where proposed changes to USPAP are noted, the exposure draft contains line numbers. This difference is intended to clarify for the reader those parts that explain the changes to USPAP from the proposed changes themselves.

When commenting on various aspects of the exposure draft, it is very helpful to reference the line numbers, fully explain the reasons for concern or support, provide examples or illustrations, and suggest any alternatives or additional issues that the ASB should consider.

Please note that where text is to be deleted from USPAP, that text is shown as ~~strikeout~~. For example: ~~This is strikeout text proposed for deletion.~~ Text that will be added to existing portions of USPAP is underlined. For example: This is text proposed for insertion.

Where proposed changes represent totally new language or sections, the ~~strikeout~~ method mentioned above is not used. In these cases the proposed text is noted as new (New) and provided just as it would appear in USPAP if formally adopted by the ASB.

For ease in identifying the various issues being addressed, the exposure draft is presented in sections.

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Section 1: Basic Premise of the Proposed COMMUNICATION RULE

The most important issue that has arisen over the past several years is the need for clearer expectations of an appraiser's responsibilities when communicating *in all parts of appraisal practice*.

For the 2012-2013 edition of USPAP it is the ASB's intent to clarify, in the Standards, what should or should not be required in a report. But prior to this there is a clear need to address the diverse communications that appraisers commonly provide their clients, prospective clients and users of appraisal services, that fall outside final assignment results. This has been referred to as "fundamentals" of communication. The ASB agrees that this clarification of fundamental communication responsibilities within appraisal practice must be addressed before any additional conceptual or structural changes to the reporting requirements in the Standards can be considered.

Therefore, just as the SCOPE OF WORK RULE was created to provide clarity in how to determine and disclose the array of services that appraisers provide for their clients, the ASB believes it will be valuable to have a similar Rule that provides clarity in how to address and disclose the diverse levels of communication that clients request or require.

The COMMUNICATION RULE is proposed for placement following the SCOPE OF WORK RULE. It begins with recognition of the primary expectation of the PREAMBLE that "it is essential that appraisers...communicate...to intended users of their services in a manner that is meaningful and not misleading." It also clearly places responsibilities on appraisers to serve the public trust during communications *at all stages of any service provided as part of appraisal practice*.

The Rule covers appraisers' responsibilities through all their activities, including everything from initial contact with potential clients to interactions with a client, intended users or other relevant parties following completion of an assignment. The Rule does not, however, include or address business-related communication such as completion dates, the timeframe for inspection of the property, or similar activities that are best classified separately as general business practices. Nor is this Rule intended to regulate internal communications among appraisers and others who are working together in an assignment.

In order to establish the best possible format for receipt of constructive comments, the ASB chose to draft and expose for comment two alternatives of a proposed COMMUNICATION RULE.

Both alternatives have similarities:

- The definition of Report has been revised.
- The Rule adds clarification to when an appraisal assignment is complete.
- The Rule identifies minimum information that must be included in the communication of results for assignments *other than those* already specified in USPAP for appraisal, appraisal review and appraisal consulting assignments.

The two alternatives differ in their position on how to address draft or preliminary communication of all, or part, of an appraiser's analyses, opinions and conclusions in an assignment.

Draft communications in many forms are often requested by clients and provided by appraisers. They are a common occurrence in the marketplace and there are many valid reasons for these requests. A client may want to be assured that the subject property data used by an appraiser is accurate, or that the appraiser's assumptions are reasonable. Other clients may want to know if the assignment results will support their cause or interest early in the assignment process. In those cases, the client may want the option of telling the appraiser to stop the assignment.

Others view these draft communications as a potential avenue for abuse, such as an opportunity for the client to attempt to influence the assignment results. Their position is that USPAP should continue to require any communication of assignment results, regardless of the label used or the timing of the communication, to be subject to the current (or possibly revised) reporting Standards.

Currently, to meet client needs and requests for these draft or preliminary communications, appraisers and clients have had to reconcile or rationalize their actions based on the current definition of *Report* in USPAP. Some appraisers have claimed that communication of analyses, opinions and conclusions transmitted *prior to the completion of an assignment* is acceptable because it is not, by definition, a report. In worst case scenarios, appraisers have attempted to avoid responsibility for communications of all or part of the assignment results by claiming that the communication is a draft and should not be subject to enforcement. Such avoidance of responsibility is clearly contrary to public trust.

The ASB's basic premise is that in the interest of public trust, all communication related to appraisal practice should be addressed in USPAP. The practice of appraisers providing all or part of their analyses, opinions and conclusions outside of USPAP is not in the best interest of the public or appraisers. In other words, the ASB does not believe that the current business activity of providing draft communications of assignment results should be ignored by USPAP.

The question that must be resolved is whether it is better to require communication of all or part of assignment results to include core elements, such as those that are currently required in the reporting Standards, or to formally recognize and establish lesser requirements for preliminary or draft reports. It is this difference that is represented by the two alternative versions of the COMMUNICATION RULE.

The essential difference between Alternatives A and B of the COMMUNICATION RULE are these:

- The allowance of only those reports that comply with reporting Standards, versus the inclusion of additional, allowable forms of communication and additional definitions.
- How communication of all or part of an appraiser's analyses, opinions and conclusions of assignment results must be reported under USPAP.

Section 2: Introduction to Two Alternatives for a COMMUNICATION RULE

As an introduction, the proposed COMMUNICATION RULE alternatives have been summarized below:

COMMUNICATION RULE – Alternative A

Alternative A relies on a single, revised definition of *Report*. Alternative A does not recognize or make allowances for draft or preliminary reports or communications. It requires the appraiser to submit a report to the client and provides specific instruction that any subsequent revisions to a report submitted to a client must be identified, explained, dated, and included in the workfile for the assignment.

Alternative A assumes that if the purpose of preliminary communication is simply to verify data or assumptions, this could be accomplished without the inclusion of analyses, opinions and conclusions. In this case, the communication would not meet the proposed revised definition of *Report*.

Under Alternative A the communication of analyses, opinions and conclusions provided to the client in advance of completion of the assignment would be allowable ONLY if they meet all appropriate, existing development and reporting Standards for the particular assignment.

COMMUNICATION RULE – Alternative B

Alternative B formally recognizes preliminary or draft communication as a permissible option within appraisal practice. This proposal includes two new definitions for USPAP, *Final Report* and *Preliminary Report*, with the definition of a *Preliminary Report* providing instructions on acceptable but managed use of draft or preliminary communications of all or portions of the appraiser's analyses, opinions and conclusions of assignment results. A *Preliminary Report* would have these four requirements:

1. be clearly and conspicuously labeled as a Preliminary Report;
2. clearly and conspicuously state that the information is being provided only for the use of the client;
3. include the date of the analyses, opinions and conclusions and the date of the Preliminary Report; and
4. not include a certification.

Both alternatives of the COMMUNICATION RULE include the same requirement that any communication of complete or partial analyses, opinions and conclusions must always be based upon appropriate development, and must be subject to record keeping requirements.

Neither alternative allows the communication of any unsupported analyses, opinions or conclusions.

- The SCOPE OF WORK RULE requires that the appraiser complete the process of problem identification in order to determine an appropriate scope of work in an appraisal, appraisal

review or appraisal consulting assignment. This includes identifying the assignment elements. When providing a report at the completion of an assignment all scope of work components will have been identified and completed. If USPAP is revised to specifically address preliminary reports that communicate partial assignment results, a scope of work commensurate with providing credible assignment results would still be required; *and*

- The Record Keeping section of the ETHICS RULE currently requires a workfile for each appraisal, appraisal review and appraisal consulting assignment. According to the Record Keeping section of the ETHICS RULE, each workfile must include “all other data, information, and documentation necessary to support the appraiser’s opinions and conclusions and to show compliance with USPAP, or references to the location(s) of such other documentation.” This would include assignment elements identified as required in the SCOPE OF WORK RULE. This requirement would not change if the concept of preliminary reports were added to USPAP. Supporting documentation for whatever parts of analyses, opinions and conclusions that are being provided to the client, by the appraiser, would be required.

Examples of possible client requests of the appraiser, within a particular assignment, are listed below to show the different applications that would be required under the two alternatives:

<u>Scenarios</u>	<u>Report Requirements</u>	
	<u>Alternative A</u>	<u>Alternative B</u>
Send the client an email, prior to completion of the assignment, with an opinion of value for personal property	All STANDARD 8 appraisal report requirements	The four preliminary report requirements
Send an email to an attorney providing preliminary results of an appraisal review	All Standards Rules 3-4 through 3-6 appraisal review report requirements	The four preliminary report requirements
Provide only a discounted cash flow analysis to a client as a separate step in a staged real property valuation assignment	All STANDARD 2 appraisal report requirements	The four preliminary report requirements
Provide only rent comparables and/or a market rent estimate as a separate step in a staged real property valuation assignment	All STANDARD 2 appraisal report requirements	The four preliminary report requirements
Provide a draft report in a business valuation assignment for a client to review.	All STANDARD 10 appraisal report requirements	The four preliminary report requirements
Provide a final report to the client.	All current report requirements	All current report requirements

Section 3: Rationale for Proposed COMMUNICATION RULE – *Alternative A*

RATIONALE

If an appraiser provides communication that includes analyses, opinions and conclusions, Alternative A would require that the appraiser prepare and transmit a report that meets the requirements for the assignment

The ASB recognizes that in many cases, even when a report has been submitted at the completion of an assignment, the appraiser may need to make changes or corrections. These changes could be relatively minor such as a corrected zip code or a typographical error. On the other hand, the changes could involve more significant items such as correcting a math error that impacts the value conclusion. In other cases a new assignment may result, such as a revised scope of work or the need for additional analyses.

Under Alternative A, these would be revised reports and, regardless of the significance or scope of the revisions, would result in additional record keeping requirements. All changes would need to be documented, explained, dated and placed in the workfile. The workfile must also include true copies of all reports issued in an assignment.

Section 4: COMMUNICATION RULE – *Alternative A*

This alternative of the COMMUNICATION RULE includes a revision to the definition of *Report*:

DEFINITIONS

1 **REPORT:** ~~any communication to a client of an appraiser's analyses, opinions and conclusions~~
2 ~~related to written or oral, of an appraisal, appraisal review, or appraisal consulting service that~~
3 ~~is transmitted to the client upon completion of an assignment.~~

(New)

4 **COMMUNICATION RULE**

5 **When communicating with clients, other intended users, or any other party or entity related to**
6 **appraisal practice, an appraiser must do so in a manner that is meaningful and not misleading.**
7 **This COMMUNICATION RULE applies to communications by an appraiser throughout all**
8 **stages of a service provided as part of appraisal practice, including, but not limited to:**

- 9 • **communication such as representation of the appraiser's qualifications, and**
10 **disclosures required to comply with all other obligations of the ETHICS RULE and**
11 **the COMPETENCY RULE;**
- 12 • **communication necessary to establish assignment elements and identify the problem**
13 **to be solved; and**
- 14 • **communication of an appraiser's analyses, opinions and conclusions to a client, other**
15 **intended users, and all other parties related to an assignment.**

16 **Comment: This Rule does not apply to communications regarding business or**
17 **administrative issues outside of appraisal practice, such as expected completion dates,**
18 **the timeframe for inspection of the property, or the manner in which reports are to be**
19 **submitted.**

20 **All revisions to a report submitted to a client subsequent to communication of assignment**
21 **results must be documented, explained, dated, and included in the workfile.**

22 **An assignment is complete when an appraiser has performed the agreed-upon services for the**
23 **client.**

24 **Comment: Submission of a report does not constitute completion of an assignment when**
25 **an appraiser has agreed to provide additional services as part of appraisal practice.**

26 **An appraiser must comply with applicable Standards for all appraisal, appraisal review, or**
27 **real property appraisal consulting assignment reports.**

28 **Reports for other assignments under appraisal practice, must, at a minimum:**

- 29 • **state the identity of the client and any other intended users by name or type;**

- 30 • state the intended use of the assignment results;
- 31 • state the identity of the subject of the assignment, if any;
- 32 • state any research and analysis performed in the assignment;
- 33 • state the effective date of the assignment results and the date of the report;
- 34 • state all extraordinary assumptions and hypothetical conditions and state that
- 35 their use might have affected the assignment results; and
- 36 • include, for personal property and business valuation appraisal consulting
- 37 assignments, a signed and dated certification similar in content to the
- 38 certification required in Standards Rule 5-3.

Section 5: Rationale for Proposed COMMUNICATION RULE – *Alternative B*

RATIONALE

Many clients request communication of either part or all of an appraiser's analyses, opinions and conclusions prior to completion of an assignment. These requests might be due to time constraints, the need to confirm accuracy of complex information such as lease terms for a discounted cash flow analysis, applicability of extraordinary assumptions or hypothetical conditions, agreement on the standard of value used, components of the asset under consideration, and other appropriate reasons.

As defined in Alternative B of this COMMUNICATION RULE, the reason for such preliminary communications must not preclude the impartiality, objectivity, and independence of the appraiser's analyses, opinions and conclusions. As required by the ETHICS RULE of USPAP, an appraiser must always remain impartial, objective, and independent, without accommodation of personal interest.

Alternative B includes two new concepts for USPAP, *Final Report* and *Preliminary Report*. Both would be included in the DEFINITIONS.

The COMMUNICATION RULE under Alternative B lists specific requirements for Preliminary Reports. This is to ensure that there can be no misunderstanding by any individual or entity about what a Preliminary Report represents.

- A Preliminary Report may communicate all or parts of assignment results.
- A Preliminary Report may be submitted **only** to the client.
- A Preliminary Report must be clearly and conspicuously labeled as a Preliminary Report. Any other similar term such as, but not limited to, "draft," "interim," or "partial" **is not permitted**.
- A Preliminary Report must include the date of the analyses, opinions and conclusions and the effective date of the Preliminary Report
- A Preliminary Report must state that the information provided is only for use by the client.
- A Preliminary Report **must not** include a certification.

Even though a Final Report need not necessarily be labeled as such, the new definition proposed in conjunction with Alternative B of the COMMUNICATION RULE makes it clear that a Final Report is submitted to a client only upon an appraiser's completion of the development of the assignment results. Any report not specifically labeled as a Preliminary Report is therefore a Final Report.

Section 6: Proposed COMMUNICATION RULE – *Alternative B*

This alternative of the COMMUNICATION RULE includes a revision to the definition of Report, and adds two new definitions:

DEFINITIONS

39 **REPORT:** ~~any communication to a client of an appraiser’s analyses, opinions and conclusions~~
40 ~~related to written or oral, of an appraisal, appraisal review, or appraisal consulting service that~~
41 ~~is transmitted to the client upon completion of an assignment.~~

(New)

42 **PRELIMINARY REPORT:** a report submitted to a client prior to an appraiser’s completion
43 of the development of assignment results, which includes all or part of an appraiser’s analyses,
44 opinions and conclusions.

45 **Comment:** All analyses, opinions and conclusions communicated in a Preliminary
46 Report must be developed in accordance with all applicable development Standards and
47 Rules.

(New)

48 **FINAL REPORT:** a report submitted to a client upon an appraiser’s completion of the
49 development of the assignment results.

(New)

50 **COMMUNICATION RULE**

51 When communicating with clients, other intended users, or any other party or entity related to
52 appraisal practice, an appraiser must do so in a manner that is meaningful and not misleading.
53 This COMMUNICATION RULE applies to communications by an appraiser throughout all
54 stages of a service provided as part of appraisal practice, including, but not limited to:

- 55 • communication such as representation of the appraiser’s qualifications, and
56 disclosures required to comply with all other obligations of the ETHICS RULE
57 and the COMPETENCY RULE;
- 58 • communication necessary to establish assignment elements and identify the
59 problem to be solved; and
- 60 • communication of an appraiser’s analyses, opinions or conclusions to a client,
61 other intended users, and all other parties related to an assignment.

62 **Comment:** This Rule does not apply to communications related to issues outside of
63 appraisal practice, such as expected completion dates, the timeframe for inspection of
64 the property, or the manner in which reports are to be submitted.

65 Preliminary Reports may be submitted only to the client, and must:

- 66 • be clearly and conspicuously labeled as a Preliminary Report;
- 67 • clearly and conspicuously state that the information is being provided only
- 68 for the use of the client;
- 69 • include the effective date of the analyses, opinions and conclusions and the
- 70 date of the Preliminary Report, and
- 71 • not include a certification.

72 **Comment:** Labeling a Preliminary Report with any other alternative term, such as
73 “draft,” “interim,” or “partial,” is not permitted.

74 **All revisions to a Preliminary or Final Report submitted to a client subsequent to**
75 **communication of assignment results must be documented, explained, dated, and included in**
76 **the workfile.**

77 **An assignment is complete when an appraiser has performed the agreed-upon services for the**
78 **client.**

79 **Comment:** Submission of a Final Report does not constitute completion of an
80 assignment when an appraiser has agreed to provide additional services as part of
81 appraisal practice.

82 **An appraiser must comply with applicable Standards for all appraisal, appraisal review, or**
83 **real property appraisal consulting assignment reports.**

84 **Reports for other assignments under appraisal practice, must, at a minimum:**

- 85 • state the identity of the client and any other intended users by name or type;
- 86 • state the intended use of the assignment results;
- 87 • state the identity of the subject of the assignment, if any;
- 88 • state any research and analysis performed in the assignment;
- 89 • state the effective date of the assignment results and the date of the report;
- 90 • state all extraordinary assumptions and hypothetical conditions and state that
- 91 their use might have affected the assignment results; and
- 92 • include, for personal property and business valuation appraisal consulting
- 93 assignments, a signed and dated certification similar in content to the
- 94 certification required in Standards Rule 5-3.

Section 7: Proposed changes to Record Keeping in the ETHICS RULE

RATIONALE

Within both alternatives of the proposed COMMUNICATION RULE there are specific requirements for what communications must be included in the workfile. The specific requirements would need to be included as revisions to the Record Keeping section of the ETHICS RULE.

95 **Record Keeping**

96 **An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal**
97 **consulting assignment. A workfile must be in existence prior to the issuance of ~~a written or oral~~**
98 **any report. A written summary of an oral report must be added to the workfile within a**
99 **reasonable time after the issuance of the oral report.**

100 **The workfile must include:**

- 101 • **the name of the client and the identity, by name or type, of any other intended users;**
- 102 • **true copies of ~~any~~ all written reports, documented on any type of media. If multiple**
103 **reports are provided to the client, the workfile must include a true copy of each report.**
104 **(A true copy is a replica of the report transmitted to the client. A photocopy or an**
105 **electronic copy of the entire-report transmitted to the client satisfies the requirement of**
106 **a true copy.);**
- 107 • **summaries of ~~any~~ all oral reports or testimony, or a transcript of testimony, including**
108 **the appraiser's signed and dated certification;**
- 109 • **all other data, information, and documentation necessary to support the appraiser's**
110 **opinions and conclusions and to show compliance with USPAP, or references to the**
111 **location(s) of such other documentation; and**
- 112 • **a workfile in support of a Restricted Use Appraisal Report must be sufficient for the**
113 **appraiser to produce a Summary Appraisal Report (for assignments under**
114 **STANDARDS 2 and 8) or an Appraisal Report (for assignments under STANDARD 10)**

115 **An appraiser must retain the workfile for a period of at least five years after preparation or at**
116 **least two years after final disposition of any judicial proceeding in which the appraiser**
117 **provided testimony related to the assignment, whichever period expires last.**

118 **An appraiser must have custody of ~~his or her~~ the workfile, or make appropriate workfile**
119 **retention, access, and retrieval arrangements with the party having custody of the workfile.**
120 **This includes ensuring that a workfile is stored in a medium that is retrievable by the appraiser**
121 **throughout the prescribed record retention period.**

122 **An appraiser having custody of a workfile must allow other appraisers with workfile**
123 **obligations related to an assignment appropriate access and retrieval for the purpose of:**

- 124 • submission to state appraiser regulatory agencies;
125 • compliance with due process of law;
126 • submission to a duly authorized professional peer review committee; or
127 • compliance with retrieval arrangements.

128 **Comment: ~~Care should be exercised in the selection of the form, style, and type of~~**
129 **~~medium for records to ensure that they are retrievable by the appraiser throughout the~~**
130 **~~prescribed record retention period~~**

131 **A workfile must be made available by the appraiser when required by a state appraiser**
132 **regulatory agency or due process of law.**

133 **~~A workfile in the support of a Restricted Use Appraisal Report must be sufficient for the~~**
134 **~~appraiser to produce a Summary Appraisal Report (for assignments under~~**
135 **~~STANDARDS 2 and 8) or an Appraisal Report (for assignments under STANDARD 10).~~**