Business Valuation: Mastering Changes in Key Standards Teleconference

May 6, 2008

Neil J. Beaton, Grant Thornton, LLP

Neil.beaton@gt.com

I. USPAP Standards In Litigation Testimony

Standard 9 applies to ALL engagements.

Standard 10 applies STANDARD 10 addresses the content and level of information required in a report that communicates the results of an appraisal of an interest in a business enterprise or intangible asset developed under STANDARD 9.

STANDARD 10 does not dictate the form, format, or style of business or intangible asset appraisal reports, which are functions of the needs of intended users and appraisers. The substantive content of a report determines its compliance.

A. Application of the Jurisdictional Exception Rule

1. The JURISDICTIONAL EXCEPTION RULE exempts appraisers from the part or parts of USPAP that are contrary to the law or public policy of a particular jurisdiction. The Rule applies anytime there is a conflict between the requirements of USPAP and the applicable law or public policy requirements of a jurisdiction. Appraisers using the JURISDICTIONAL EXCEPTION RULE must properly disclose the legal authority justifying the exemption of part or parts of USPAP that are contrary to law.

2. The jurisdictional exception rule includes language that helps appraisers recognize "law," "public policy," and "jurisdiction." However, in every case, it is ultimately the responsibility of the appraiser, and not the client or other intended users, to determine whether the use of the jurisdictional exception rule is appropriate.

B. The <u>Confidentiality</u> section of the ETHICS RULE states:

> *An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.*
>
> *An appraiser must not disclose confidential information . . . . to anyone other than the client and persons specifically authorized by the client . . .*

Confidential information is defined in USPAP as: information that is either

- *Identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or*
- *Classified as confidential or private by applicable law or regulation*

In the absence of such an agreement between the client and the appraiser, the appraiser should consider the presence of confidential information. The knowledge of confidential information may prevent the appraiser from accepting the second assignment. The appraiser must decline the second assignment if:

1. The appraiser used confidential information in performing the first assignment;
2. That information would not be available from any other source; and
3. Credible results cannot be derived without the use of this confidential information.

However, the appraiser may accept the second assignment, making sure to not disclose any confidential information from the original assignment to the second client, if

1. The information is available from another source (meaning it is not *confidential information*, as defined); or
2. The *confidential information* is not material to deriving credible assignment results.

However, the appraiser must ensure that confidential information is not disclosed, even if it has no impact on the assignment results (such as the litigation strategy of attorneys representing the first client).

II. NACVA Standards

MEMBER SERVICES

2.1 Valuation Services. When valuing a business, business ownership interest, security or intangible asset, a member may express either a Conclusion of Value or Calculated Value. When performing such valuation services, members shall comply with the Development Standards and the Reporting Standards, in addition to all other standards promulgated by NACVA. Valuation services are:

A. Valuation Engagement. A Valuation Engagement requires that a member apply valuation approaches or methods deemed in the member's professional judgment to be appropriate under the circumstances and results in a Conclusion of Value; or

B. Calculation Engagement. 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.

2.2 Other Services. A member may perform other services, such as consulting, fraud and damage determinations, and other non-valuation services. When performing such services all standards promulgated by NACVA shall apply to the member's work except for the Development and Reporting Standards.