

# THE APPRAISAL FOUNDATION

## APPRAISAL STANDARDS BOARD

### 2010 – 2011 USPAP CHANGES

**Presentation for:** American Society of Appraisers  
San Diego Chapter

**January 20, 2010**

**John S. Brennan**

**Director of Research and Technical Issues**



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# Appraisal Standards Board

## Mission of the ASB

**To establish standards that promote  
and maintain a high level of public  
trust in appraisal practice**



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# Appraisal Standards Board

## ASB Organization

- Currently six (6) members
- Appointed for one to three-year terms
- Maximum of eight (8) years of service
- Appointed by The Appraisal Foundation's Board of Trustees



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# Appraisal Standards Board

## Current ASB Members

- Sandra Guilfoil – Chair  
Federal Way, WA
- J. Carl Schultz, Jr. – Vice Chair  
Atlanta, GA
- Richard Borges, II  
Seymour, IN
- Jay Fishman  
Bala Cynwyd, PA
- Richard Knitter  
Chicago, IL
- Barry Shea  
Gilford, NH



# Appraisal Standards Board

## ASB “Tools”

- Rules, Standards, and Statements
- Advisory Opinions
- USPAP FAQ/Q&A

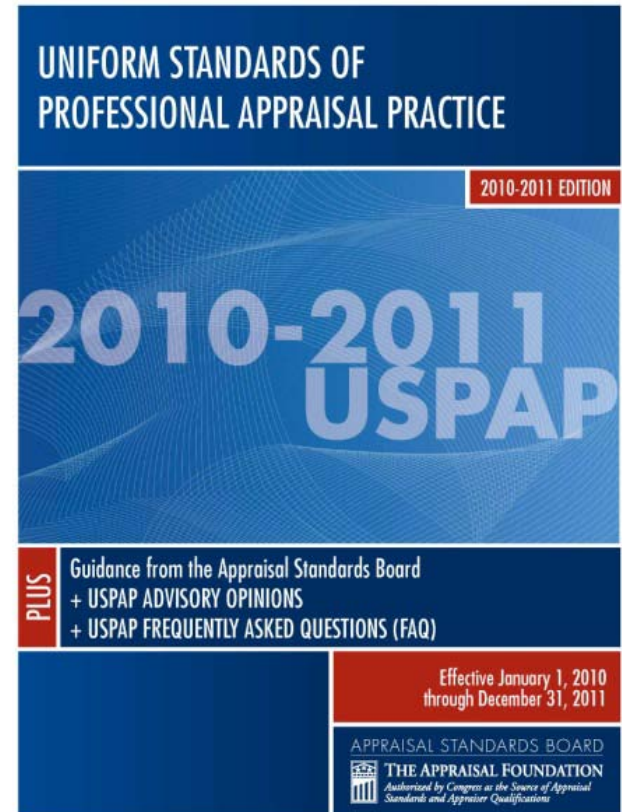


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## 2009 Actions

- 2010-11 edition of USPAP:
  - **Adopted on April 3, 2009**
  - **Effective on January 1, 2010**
  - **New USPAP publication and USPAP courses are available from The Appraisal Foundation**



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## 2010 - 2011 Work Plan

- For the 2012 - 2013 edition of USPAP:
  - **Reporting Requirements (First Exposure Draft Issued on January 5, 2010)**
  - **STANDARDS 7 and 8: Personal Property Appraisal, Development and Reporting**
  - **TBD**



# Appraisal Standards Board

## 2009 Actions

- Changes for the 2010-11 edition of USPAP:
  - Revised **DEFINITIONS** of “Assignment,” “Signature” and “Jurisdictional Exception”
  - Revised **ETHICS RULE, COMPETENCY RULE, JURISDICTIONAL EXCEPTION RULE**
  - Rewritten **STANDARD 3: *Appraisal Review, Development and Reporting***



# Appraisal Standards Board

## 2010-11 revisions to DEFINITIONS

### ASSIGNMENT:

**1) An agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement.**



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## 2010-11 revisions to DEFINITIONS

### JURISDICTIONAL EXCEPTION:

**an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.**



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## 2010-11 revisions to DEFINITIONS

### SIGNATURE:

**personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in the report.**



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# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### **Added disclosure requirements to the Conduct section:**

**If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in the subsequent report certification:**

- any current or prospective interest in the subject property or parties involved; and**



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# Appraisal Standards Board

2010-11 Revisions to the ETHICS RULE

**Added disclosure requirements to the Conduct section:**

**If known . . . :**

- **any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.**



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## 2010-11 Revisions to the ETHICS RULE

### Added disclosure requirements to the Conduct section:

#### If known . . . :

Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted except in the case when an appraiser has agreed with the client to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period.

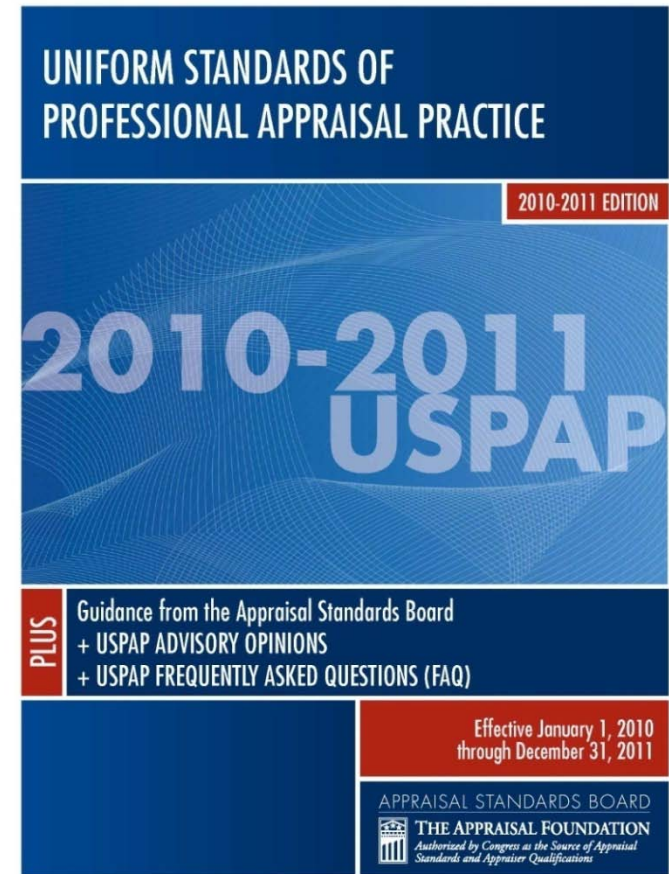


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## Frequently Asked Questions

- USPAP Q&A are compiled and added to *Frequently Asked Questions* (FAQs) with each new edition of USPAP
- Existing FAQs are reviewed and updated, if necessary, to reflect current changes to USPAP
- Any FAQs deemed no longer relevant may be deleted



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# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 1:

I heard about the changes to the Conduct section of the ETHICS RULE and I am concerned. Is it true that I will not be able to reappraise a property for three years after a prior appraisal?

#### Response 1:

No. The revised ETHICS RULE that goes into effect on January 1, 2010, will require appraisers to disclose any services regarding the subject property provided as an appraiser or in any other capacity during the three years prior to the new assignment. It does not include any prohibition against reappraising a property.



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 2:

I occasionally receive requests to appraise a property that I have appraised in the past. With the changes to the ETHICS RULE, I will be required to disclose any assignments that I performed within the three years prior to the date of acceptance of the assignment. Is such a disclosure not a violation of an appraiser's responsibility under the Confidentiality section of the ETHICS RULE?

#### Response 2:

Generally, no. The Confidentiality section of the ETHICS RULE prohibits, with some exceptions, the disclosure of "confidential information or assignment results prepared for a client." The mere fact that an appraiser appraised a property is not confidential information as defined in USPAP. However, the appraiser must be careful not to disclose confidential information from a previous assignment in the new assignment.



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 3:

I am concerned that when I tell a prospective client that I have previously provided a service related to a property, it will lead to questions that I cannot answer without violating the Confidentiality section of the ETHICS RULE. I am sure the new client will want to know when I appraised it, and what my value conclusion had been. How can I address these questions and comply with USPAP?

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# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Response 3:

It is likely that many potential clients will ask such questions. However, without authorization from the original client, the appraiser cannot disclose the results of the previous appraisal or any other confidential information. One way to address this problem would be to explain that as an appraiser, you are subject to confidentiality requirements and cannot disclose that information. You could go on to explain that the confidentiality requirements are in place to protect clients, including the one who is engaging you for the new assignment.

Those parties who regularly order appraisals will become accustomed to the new disclosure requirements, and will likely stop asking after a relatively short time.



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2010-11 Revisions to the ETHICS RULE

**April 2009 USPAP Q&A's:**

**Question 4:**

Updated (See December 2009 Q&A)



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 5:

Most of my assignments are completed using common residential appraisal report forms. I am concerned that my clients will not allow changes to the certification on the report forms. The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property in the certification. Does this mean that I will not be allowed to appraise a property for these clients if I had performed a service regarding that property in the previous three years?

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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Response 5:

USPAP compliance is the appraiser's responsibility and adding this information to the certification will be a requirement beginning January 1, 2010. While deletion or modification of client-imposed certifications are generally not allowed, most clients will likely allow additional certifications that do not constitute material alterations to the appraisal report. It is not uncommon for appraisers to add supplemental certifications and this may be necessary in some cases until commonly-used appraisal forms are revised to reflect the changes to USPAP.



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 6:

The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property provided within the three years prior to acceptance of an assignment. I am appraising a residential property on which I acted as the general contractor when it was built four years ago. Since this service was more than three years ago, am I correct in not disclosing that to a new client?

#### Response 6:

USPAP establishes a minimum standard of three years, and that is what you are required to disclose. However, the overriding goal of USPAP is to promote and maintain public trust in appraisal practice. Therefore, when an appraiser believes that having provided a previous service that occurred prior to the three years may be relevant to the client, it would be important that the appraiser disclose the information.

# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 7:

If the firm that employs me as an appraiser has provided leasing or property management services in the past three years for the subject property, must this be disclosed?

#### Response 7:

Not necessarily. The ETHICS RULE requires disclosure of services “provided by the appraiser.” However, if an appraiser believes that the provision of a service by the appraiser’s firm or other related entity may be relevant, he or she should disclose that information to a potential client.



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 8:

If I will be conducting an auction of the subject property after the appraisal, does this have to be disclosed?

#### Response 8:

Yes. This is an example of a “current or prospective interest in the subject property.” USPAP currently requires that such an interest be disclosed in the certification, but not necessarily prior to accepting the assignment. Under the 2010 requirements, the appraiser must also disclose this prior to acceptance of an assignment or upon discovery during the assignment.



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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Question 9:

May the disclosure that must be made at the time of acceptance be oral? May it be made in an email to the client?

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## 2010-11 Revisions to the ETHICS RULE

### April 2009 USPAP Q&A's:

#### Response 9:

USPAP does not specify how the disclosure upon acceptance or discovery must be made. It may be appropriate in some cases to provide an initial oral disclosure. If the client decides to proceed, it may be appropriate that the appraiser's disclosure be restated in writing. One way to accomplish this is by including it in a letter of engagement. In other cases an email would be appropriate.

The Record Keeping section of the ETHICS RULE requires that the appraiser's workfile include "all data, information, and documentation necessary to...show compliance with this Rule..." So, the disclosure prior to acceptance or upon discovery must be documented in the appraiser's workfile.



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## 2010-11 Revisions to the ETHICS RULE

### December 2009 USPAP Q&A:

#### Question 4:

Some of my best clients require me to keep all information regarding any assignments that I perform for them confidential. The Comment states, in part, “If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three-year period.” Will this prevent me from appraising a property for a different client during that three-year period?



# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### December 2009 USPAP Q&A:

#### Response 4:

Perhaps. The new requirement states, in part, “...an appraiser must disclose...any services...performed by the appraiser...” The appraiser is not required to disclose specific details beyond noting the *type* of service. For example, the disclosure, both prior to accepting the assignment and in the report’s certification, could include a statement similar to one of the following:

- “I have performed (note type of service(s)) regarding the subject property within the three years prior to this assignment”; or
- “I have previously appraised this property in the three years prior to this assignment.”

But, if an appraiser cannot make such a statement without violating an agreement with a previous client, the appraiser must not accept the new assignment. Appraisers should review their client agreements to specifically determine what information they have agreed to keep confidential.

# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-01:

#### Question:

If I have appraised a property multiple times within the previous three years, do I have to disclose the *number of appraisal services?* (e.g., “*I have appraised the subject property three times during the previous three years.*”)



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-01:

#### Response:

Yes. Each prior service must be disclosed to the client and included in the report certification. This disclosure is similar to when an appraiser has any current or prospective interest in the subject property or the parties involved, which requires that *each interest be specified. Therefore, each service must be disclosed to the client and appear in the certification. (See lines 231-241 in the 2010-11 edition of USPAP)*



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-02:

#### **Question:**

If I have performed a service other than appraisal practice, such as acting as a general contractor within the prior three years, do I have to describe the specific service or merely state a service was performed?



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-02:

#### **Response:**

You must disclose to the client the type of prior service you performed regarding the property and this must be included in the report certification. This disclosure is not limited to services provided as part of appraisal practice. *Therefore, each service must be disclosed to the client and appear in the certification.*



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-03:

#### Question:

The Comment to the Conduct section of the ETHICS RULE states, in part, “If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three-year period.” Does this really mean that the appraiser could not be engaged by this same client, on this property, within the three-year period?



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-03:

#### Response:

Yes. The agreement not to disclose that he or she has appraised the property is between an appraiser and the client. It is possible that a qualified legal opinion might conclude that a confidentiality agreement between an appraiser and a client does not preclude disclosure between the same parties. However, the ASB is not qualified to make such a determination. Without such a legal opinion, the requirement precludes an appraiser from disclosing the prior service and from appraising the property again during this three-year disclosure period.

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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-03:

#### Response (continued):

However, there is nothing that prohibits a client and an appraiser from modifying the prior agreement to allow disclosure. If the confidentiality agreement is amended, the disclosure could be made and an appraisal could be completed for the same client. It must be made clear that if a client releases an appraiser from such a confidentiality agreement, services performed within the previous three-year period *must be disclosed in the certification of the subsequent report, even if the client is the same for both assignments.*



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-04:

#### Question:

I am a staff appraiser for a company and only complete appraisals for my employer's (the company's) internal use. Am I required to inform the company that I have previously completed an appraisal within the three-year period when the company is already aware of it?



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-04:

#### Response:

If you consistently correspond with the same person in the company when completing subsequent assignments regarding the same property, the risk of misleading that person is probably minimal. However, your prior services must still be disclosed. When you are working with the same person and they understand your professional responsibilities, it is unlikely this will be a problem.

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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-04:

#### **Response (continued):**

It is also possible that the specific person you deal with from one instance to the next may change. In this case, the new contact must certainly be informed if you have performed services regarding the subject property within the last three years.

While it is not included in your question, there is also the possibility that you may have performed services regarding that property for a different client within the three-year period, or performed another type of service.



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2010-11 Revisions to the ETHICS RULE

## 2010 USPAP Q&A 2010-05:

### Question:

I am aware of the new disclosure requirements in the Conduct section of the ETHICS RULE for the 2010-11 edition of USPAP that requires me to disclose any services I performed regarding the subject property within the prior three years. If I have *not performed any such services, am I required to make that disclosure as well?*



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## 2010-11 Revisions to the ETHICS RULE

### 2010 USPAP Q&A 2010-05:

#### **Response:**

No. USPAP does not specifically require disclosure when no prior services were performed by the appraiser within the last three years.

# Appraisal Standards Board

## 2010-11 Revisions to the ETHICS RULE

### Revisions to the Record Keeping section:

- ❑ Deleted requirement to allow client access to appraiser's workfile when a Restricted Use Appraisal Report has been provided.
- ❑ Corresponding conforming edits were made to the Standards Rules for Restricted Use Appraisal Reports



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## 2010-11 Revisions to the ETHICS RULE

### Revisions to the Record Keeping section:

- **Clarified appraiser's requirement to provide workfile access to other appraisers who participated in an assignment**



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## 2010-11 Revisions to the COMPETENCY RULE

**The COMPETENCY RULE has been reformatted to enhance clarity.**

**The basic requirements for competency have not changed.**



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# Appraisal Standards Board

2010-11 Revision to the JURISDICTIONAL EXCEPTION RULE

**If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment.**

Comment: When compliance with USPAP is required by federal law or regulation, no part of USPAP can be voided by a law or regulation of a state or local jurisdiction.



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# Appraisal Standards Board

## 2010-11 Revision to the JURISDICTIONAL EXCEPTION RULE

**In an assignment involving a jurisdictional exception, an appraiser must:**

- 1. identify the law or regulation that precludes compliance with USPAP;**
- 2. comply with that law or regulation;**
- 3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and**
- 4. cite in the report the law or regulation requiring this exception to USPAP compliance.**



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## 2010-11 Revision to the JURISDICTIONAL EXCEPTION RULE

Comment: The JURISDICTIONAL EXCEPTION RULE provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP.

Law includes constitutions, legislative and court-made law, and administrative rules and ordinances. Regulations include rules or orders having legal force, issued by an administrative agency. Instructions from a client or attorney do not establish a jurisdictional exception.



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## 2010-11 Revisions to STANDARD 3

- STANDARD 3, “*Appraisal Review, Development and Reporting,*” has been rewritten significantly:
  - **No intention to change practice**
  - **Requirements more fully elaborated**



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# The Appraisal Standards Board

**And now, your questions**



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# The Appraisal Foundation

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