

First, we apologize for not fully answering your question with our previous response. We hope that this response is more comprehensive.

Second, in reviewing the fact pattern you have set forth, it appears that there are different meanings for some of the titles you mention, depending on the state. Therefore, we would like to answer your question in terms of the role or function performed by the CPA—instead of in terms of the state-specific title of the CPA’s assignment.

Third, if a CPA is acting as a finder of fact or a trier of fact (e.g., an arbitrator or, effectively, a judge) whereby the CPA (1) does not develop his/her own evidence for a conclusion of value but instead (2) relies on and interprets the evidence presented to him or her, then SSVS No. 1 would not apply. In that instance, the CPA has been assigned or appointed by the court (or retained by both parties in the dispute) to perform this function and the SSVS jurisdictional exception would apply (Paragraph 10 on page 9 of SSVS No. 1).

As a relevant aside, members of the valuation standards subcommittee (the “subcommittee”) have often served as finders of fact in litigation matters. This includes service through AAA, JAMS, and other arbitration associations; through court appointments (whether titled master, grand master, court’s appraiser, etc.); and through binding agreements of the litigants. It is the expectation of the subcommittee that the SSVS exception will apply in virtually all finder of fact assignments.

This is because, in the subcommittee’s experience, the finder of fact either:

1. selects the result of one valuation over another,
2. selects one valuation but corrects the result for identified errors in data, mathematics, logic, or procedural application, or
3. creates a valuation conclusion by selecting some methods and data from one valuation and some methods and data from the other valuation.

In all of these instances, the CPA finder of fact is interpreting the valuation evidence already in front of him or her. Of course, this interpretation could include correcting erroneous valuation data inputs. And, the finder of fact’s value conclusion could be materially different from the value conclusion of either of the expert valuation analysts.

Nonetheless, in this typical situation, the finder of fact’s value conclusion can be traced back to the valuation analyses (with corrections, if needed) and the value conclusions (with corrections, if needed) of one or both of the expert valuation analyses. In this typical situation, the CPA finder of fact did not perform an independent valuation. And, SSVS No. 1 does not apply.

Fourth, on the other hand, if the CPA has been retained by the court to come up with an independent valuation, then SSVS No. 1 would apply. (Some states may call this assignment a court master or a court appointed expert.)

Alternatively, the SSVS No. 1 development provisions would also apply in the event that the CPA finder of fact (1) disregards both expert valuation analyst conclusions and (2) produces a de novo valuation. The subcommittee expects that this occurrence would be a rare event.

In such a situation, the CPA finder of fact would (1) select valuation approaches and methods, (2) collect and analyze data, (3) select valuation variables, (4) perform valuation analyses, and (5) reach an independent value conclusion. Certainly, the CPA finder of fact may decide to perform such a de novo

valuation in the instance where the CPA finds no redeeming qualities in either expert's valuation. Again, the subcommittee expects that this occurrence would be rare indeed.

However, in the event that the CPA finder of fact performs a de novo valuation, then the SSVS No. 1 valuation development provisions would apply.

Fifth, ultimately, SSVS No. 1 applies to a CPA who is engaged to estimate value for a business, business ownership interest, security, or intangible asset if (1) the analyst applies valuation approaches and uses professional judgment and (2) the engagement culminates in a conclusion of value (Paragraphs 1-4 on pages 7 and 8 of SSVS No. 1). However, the subcommittee believes that it is unlikely that these conditions will be met in the typical situation where the CPA is retained to serve as a finder of fact.

We hope that this response is helpful to you.