

# Business Valuation of Healthcare Enterprises and Services (and Interests Therein)

## *Supplemental Material*

*Thursday, August 21, 2014  
1 to 3 PM EDT*

The “*Four Pillars*”

# KEY REGULATORY CONCERNS



**Healthcare Special Interest Group**

# Key Regulatory Concerns

## Tax Regulations

- **501(c)(3) Tax Exempt Organizations** – *“Three-Legged Stool”*
  - *“Charitable purpose”* and community benefit
  - Prohibition against excess benefit transactions & *“inurement of private benefit”*
  - Charitable purpose & community benefit must be legally permissible
- **Bona Fide Employees vs. Form 1099 Independent Contractors**
- **Provider Taxes** - Funneled back to providers in increased Medicaid reimbursement rates
- **Ad Valorem Taxes** - Fixed or calculated proportion of property's value *“as assessed or appraised on a regular basis”* by state & local authorities
- **Excise, Sales, & Use Taxes** - 40% excise tax imposed on employees with *high-cost health coverage* (beginning in 2018)

# Key Regulatory Concerns

## Fraud and Abuse Regulations

- **Federal and State Fraud and Abuse Laws**
- **The Anti-kickback Statute** - A felony for any person to *“knowingly and willfully”* solicit or receive, or to offer or pay, any *“remuneration”*, directly or indirectly, in exchange for the referral of a patient for a healthcare service paid for by a federal healthcare program
  - Civil & criminal charges
- **Stark Law** - Federal prohibition against physician self-referral
  - Civil charges
- **False Claims Act (FCA)** - When one *“knowingly presents, or causes to be presented...a false or fraudulent claim for payment or approval, e.g., upcoding”*
  - Civil & criminal charges

# Key Regulatory Concerns

## Competition

- **Antitrust Regulations**
  - Sherman Act
  - Clayton Act
- **Certificate of Need (CON)** – Restricts where, when, and how capital expenditures will be made for public healthcare facilities, services, and major equipment
- **Any Willing Provider Statutes** - Require health insurance plans to accept any provider into their network that is willing to agree to the plan's terms & conditions, including reimbursement rates
- **Covenants Not to Compete**

# Key Regulatory Concerns

## Privacy Laws

- **Health Insurance Portability & Accountability Act (HIPAA)** - Safeguarding privacy of *Protected Health Information* (PHI)
- **Red Flags Rule** - Requires many businesses and organizations to implement written Identity Theft Prevention Program
- **Health Information Technology for Economic & Clinical Health (HITECH) Act** - Intended to promote widespread adoption of health IT
- **Patient Safety & Quality Improvement Act (PSQIA) of 2005** - Voluntary reporting system for medical errors
- **Custodial Rights to Patient Charts** - Patients have rights to patient information & data recorded, and providers have right to custody of medical charts and records, and patient recall lists

# Key Regulatory Concerns

## Safety Regulations

- **Clinical Laboratory Improvement Amendments (CLIA)** – Goal is to improve the *accuracy, reliability, & timeliness* of laboratory test results
- **Occupational Safety and Health Act (OSHA) of 1970** – Establishes standards for occupational health & safety
- **United States Nuclear Regulatory Commission** – Ensures safe use of radioactive material for civilian purposes
- **Environmental Laws** – Deal with hazardous waste disposal
- **Food and Drug Administration (FDA)** - Regulates food, dietary supplements, pharmaceuticals, vaccines, blood products and other biologics, medical devices, electronic products, cosmetics, veterinary products, and tobacco products



# Key Regulatory Concerns

## Licensure, Certification, & Accreditation

- State laws
  - Typically control the licensure, certification and accreditation of healthcare facilities and healthcare providers under the state's police powers
- State licensing requirements
  - Specify minimum level of qualification needed for healthcare facilities to operate and healthcare services to be delivered
- Licensure of Healthcare Facilities
- Licensure of Healthcare Professionals
- Licensure of Health Insurance Plans

# Key Regulatory Concerns

## Other Federal Regulations

- **Corporate Practice of Medicine Doctrine** - Bans unlicensed individuals/entities from engaging in the practice of medicine by restricting them from employing licensed physicians
- **False Advertising** - Increased scrutiny by FTC regarding how healthcare goods, services, & procedures are advertised or labeled
- **Employment Retirement Income Security Act (ERISA)** - Protects individuals who participate in health benefit plans through private sector employers
- **Consolidated Omnibus Budget Reconciliation Act (COBRA)** - Requires employers who employ 20+ workers to offer continued healthcare insurance for a period after a "*qualifying event*"

# Key Regulatory Concerns

## The Affordable Care Act (ACA)

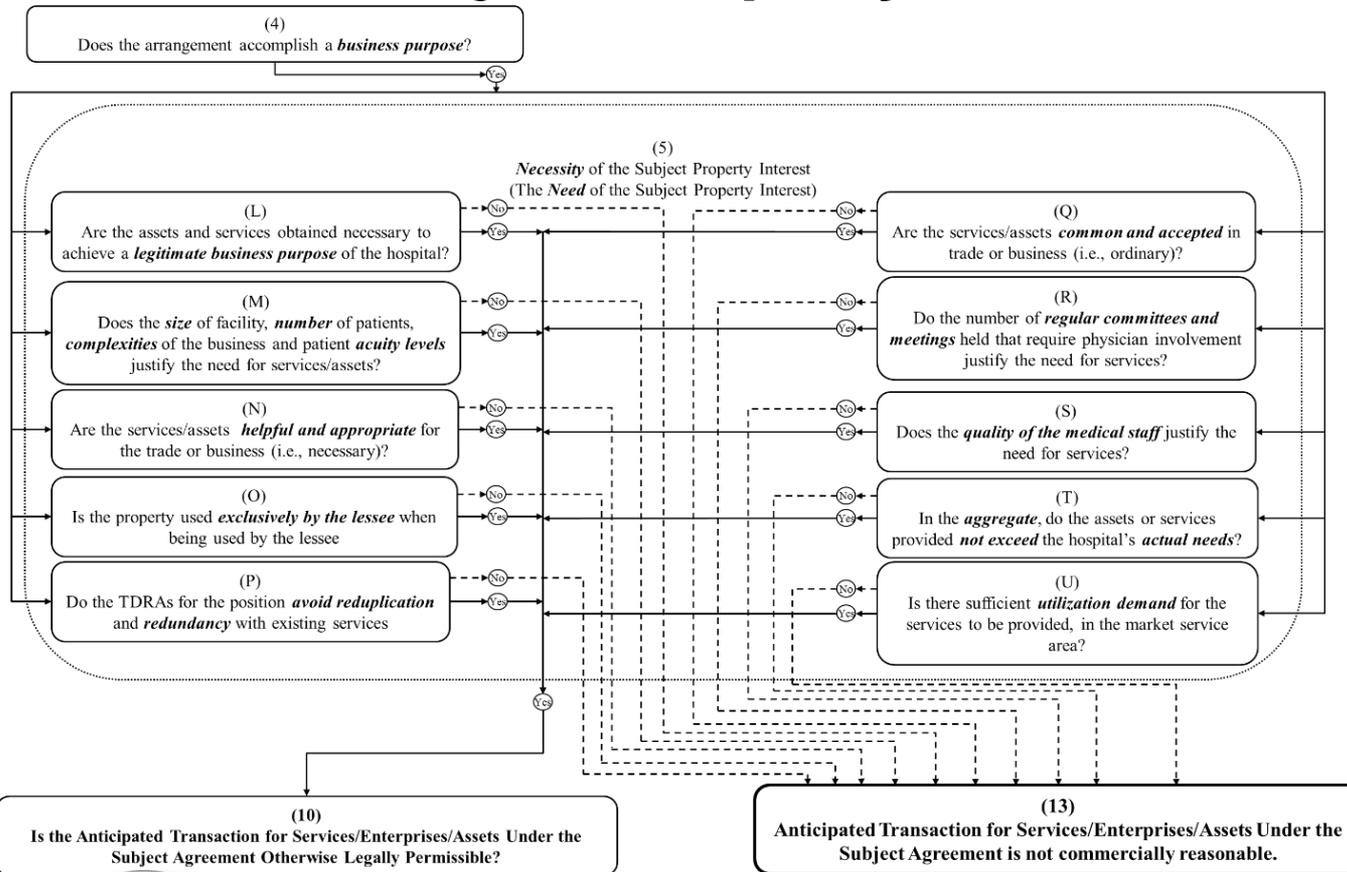
- Individual Mandate
- Employer Mandate
- Health Insurance Exchanges
- Small Business Healthcare Affordability Tax Credits
- Small Business Health Options Program (SHOP)
- No Denial Based on Pre-Existing Conditions
- Medical Loss Ratio (MLR)
- ACA Impact on Medicare
- Medicaid Expansion
- Medicare Shared Savings Program (MSSP)

The Threshold of  
**COMMERCIAL REASONABLENESS**

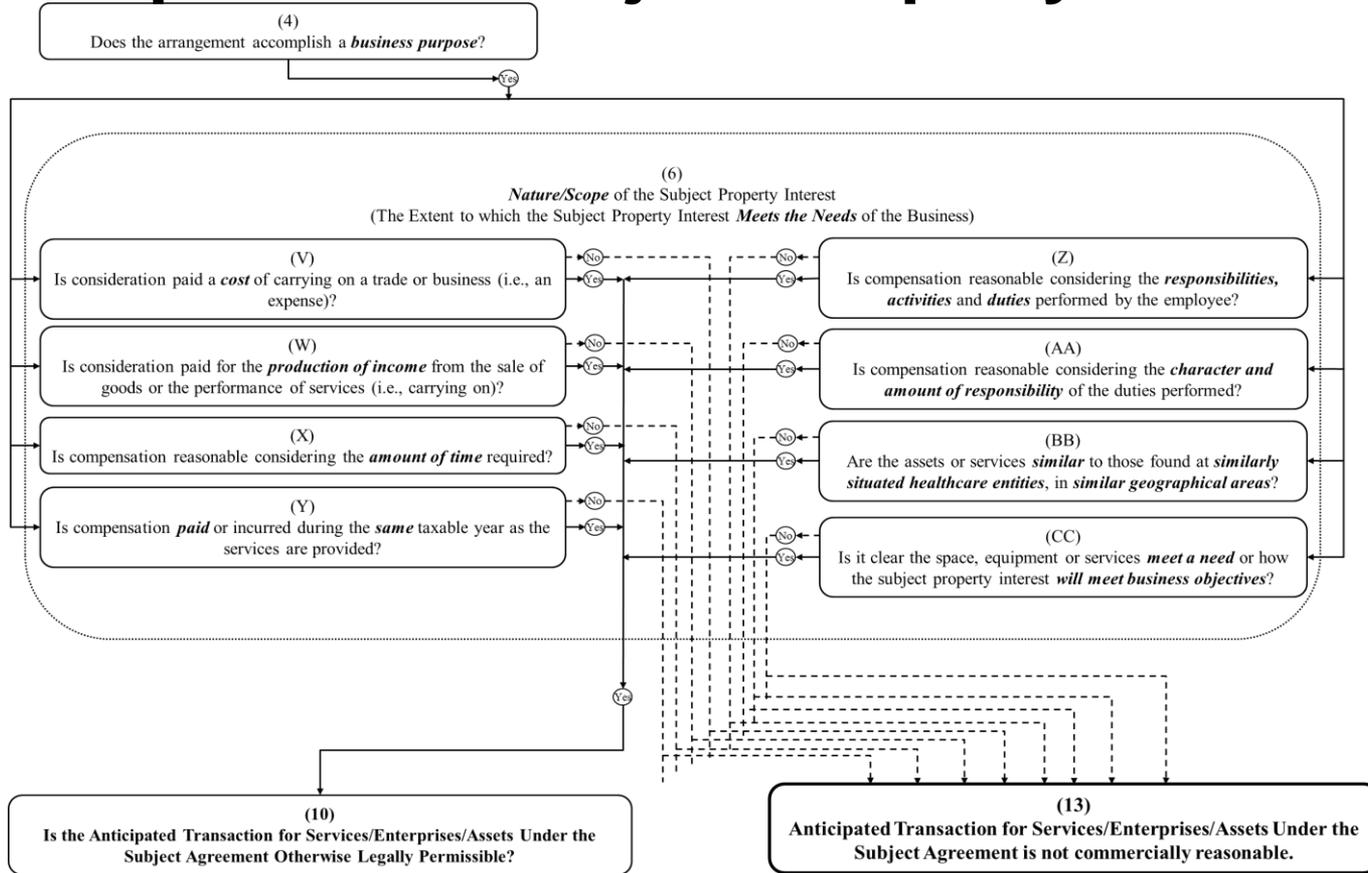


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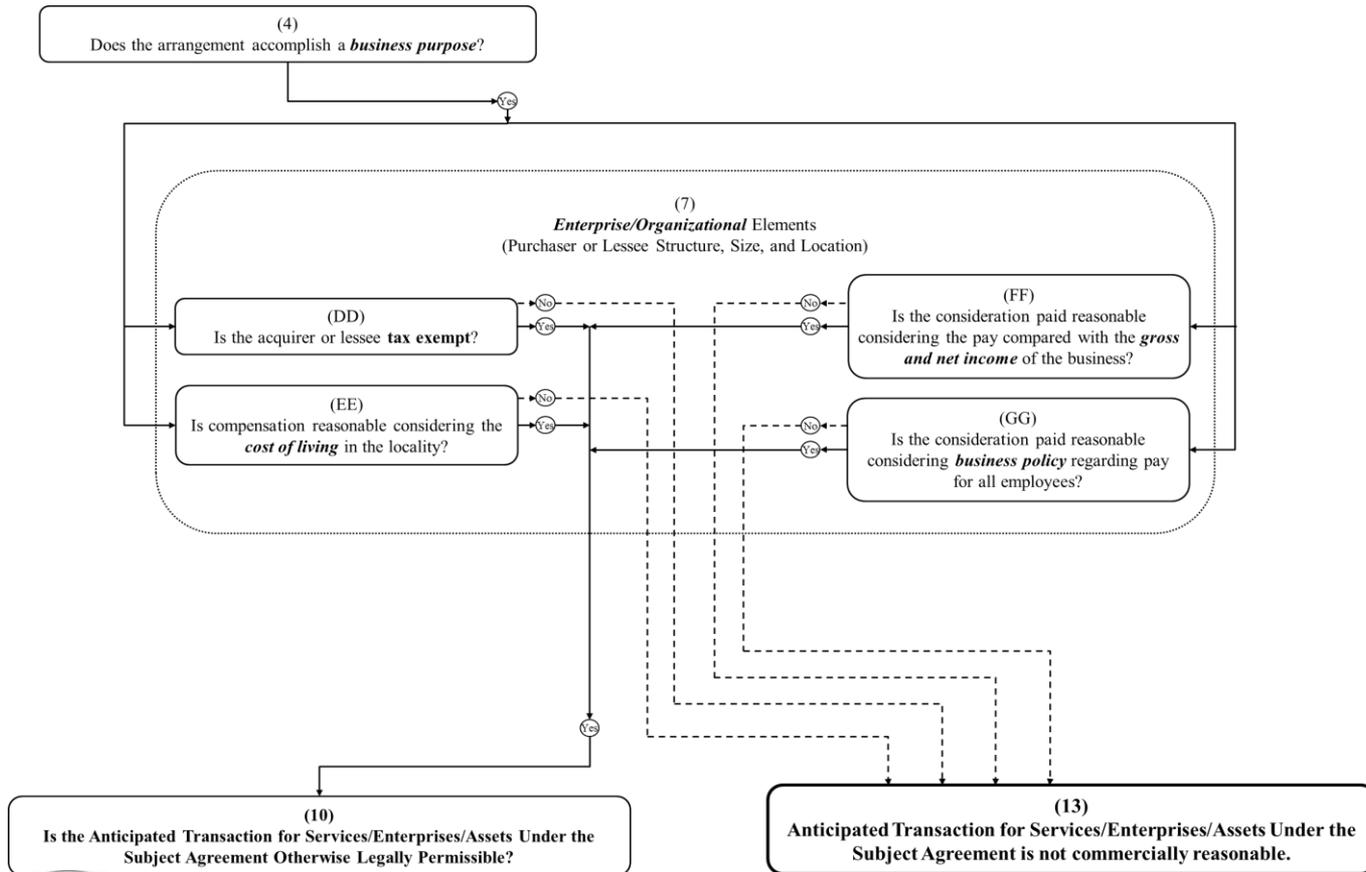
# Analytical Process for Assessing the Necessity of the Subject Property Interest



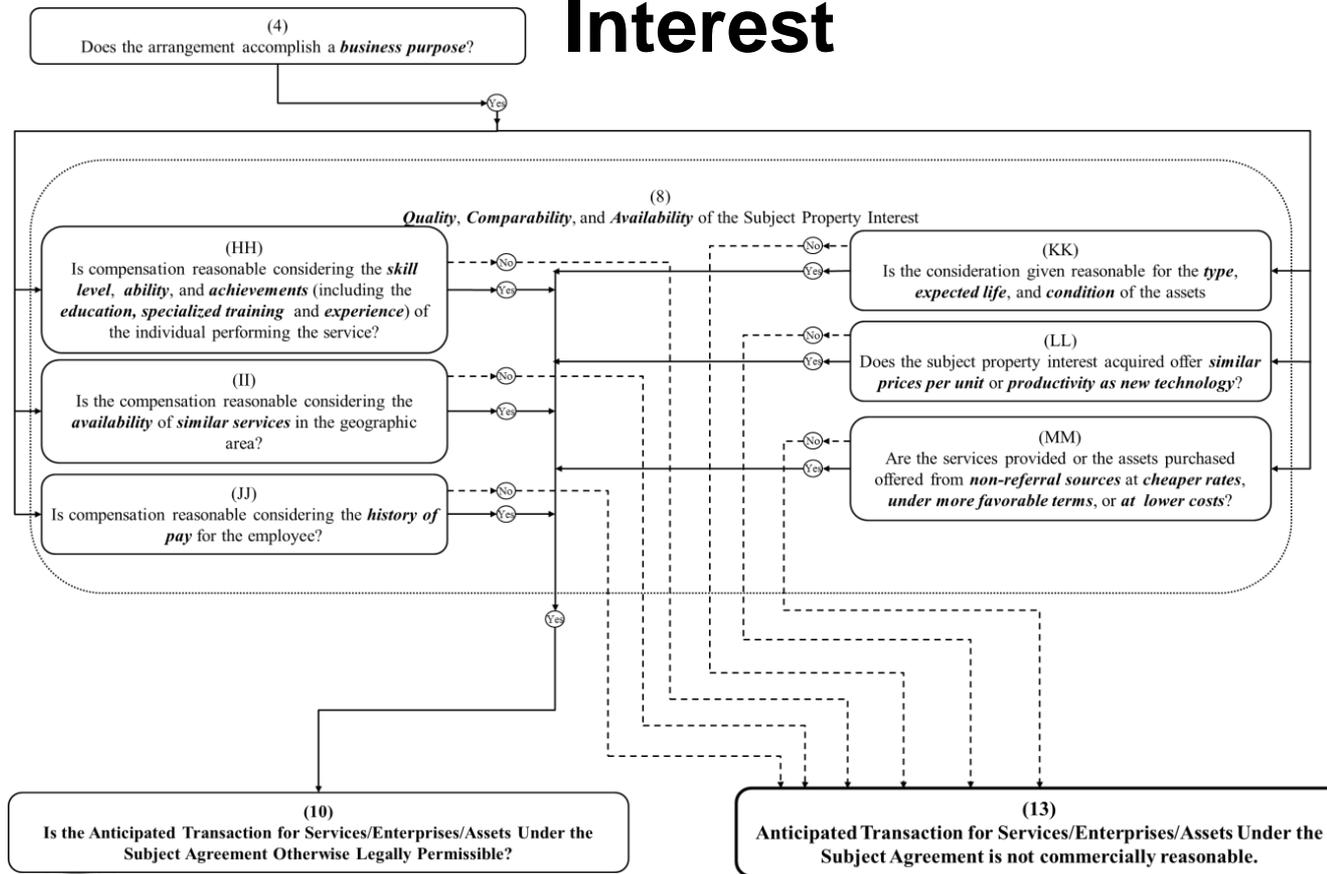
# Analytical Processes for Assessing the Nature and Scope of the Subject Property Interest



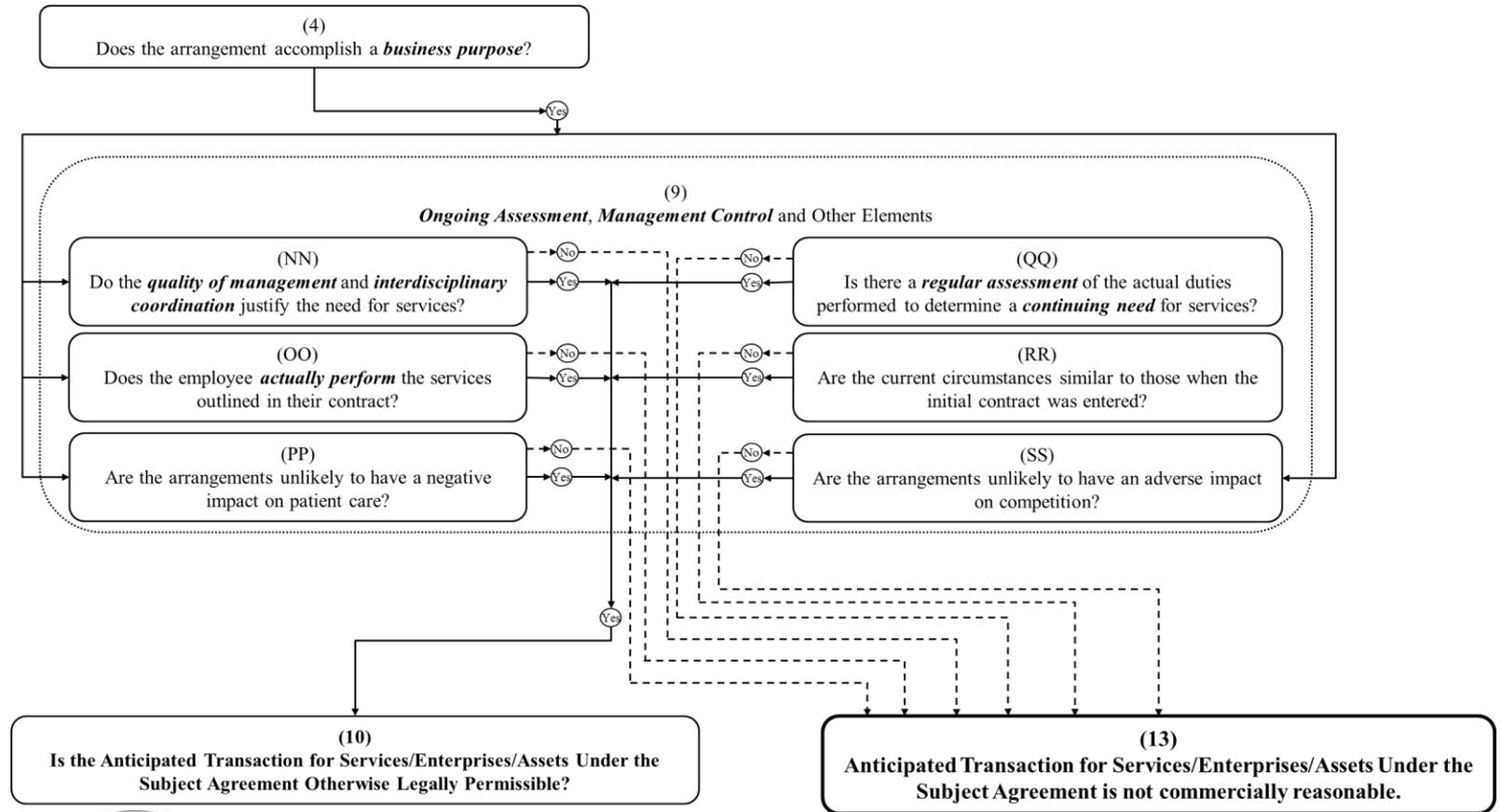
# Analytical Processes for Assessing the Enterprise and Organizational Elements



# Analytical Processes for Assessing *Quality, Comparability, & Availability* of Subject Property Interest



# Analytical Processes for Assessing the *Ongoing Assessment, Management Control, & Other Elements*



# Analytical Process for the Quantitative Analysis

