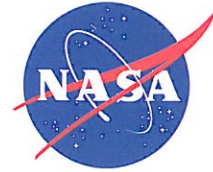


National Aeronautics and Space Administration

Headquarters

Washington, DC 20546-0001



January 2, 2015

Reply to Attn of: Office of the Chief Financial Officer

Wendy M. Payne, Executive Director
Federal Accounting Standards, Advisory Board
Mailstop 6H19
441 G. Street, NW, Suite 6814
Washington, DC 20548

Dear Ms. Payne:

Enclosed are our comments on the exposure draft for the proposed Statement of Federal Financial Accounting Standards, *Public-Private Partnerships: Disclosure Requirements*, dated October 1, 2014.

Thank you for the opportunity to provide comments on the exposure draft. If you have questions concerning our comments, please contact Mr. Kevin Buford, Director of Policy, NASA OCFO, at (202) 358-0405, or by email at Kevin.Buford@nasa.gov.


Kevin Buford
Director of Policy, NASA OCFO

Questions for Respondents – NASA Responses

Q1. The Board proposes defining the term “public-private partnerships” as shown below:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to provide a service or an asset for either government or general public use where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions. Sharing of risks and rewards is evidenced by conditions such as (1) agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years, (2) financing provided in whole or shared in part by the private partner, (3) conveyance or transfer of real property, personal property, or multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPVs).

Do you agree or disagree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s (refer to paragraphs A7 – A9 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

R1. We disagree with the definition, and share the concerns raised by the member's alternative view in A.32 - A.34. We are concerned that the definition is too broad and does not adequately exclude arrangements that are not traditionally thought of as P3 in the federal sense. Although the definition uses the term “contractual,” the standard appears to include arrangements/agreements that are non-binding to the federal government (a key aspect of whether the federal government would have risk). The standard also appears to include arrangements that have standard clauses or other language to minimize the risk to the government and to the general public, as well as arrangements that are properly reported/disclosed through other standards, e.g., SFFAS 5 and 6.

We are also concerned that the definition lacks clarity about the term “private sector.” For example, will this include what are generally classified as quasi-governmental or sponsored entities (e.g., state owned/sponsored entities, FFRDCs), non-profit, other sovereign entities, and international entities. The issue arises in part because P3 are so broadly defined. Left unchanged, this could lead to varying degrees of interpretation and implementation rather than a consistent application.

Q2. The Board’s proposed definition at paragraph 17 is intended to help identify risk-sharing arrangements or transactions that possess significant risk (that is, fiscal exposure) to the entity. Such arrangements or transactions are commonly referred to as *Public-Private Partnerships* (P3s) but may also be referred to as *Alternative Financing Arrangements* or *Privatization Initiatives*. For example, informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc., would generally be exempt from applying this Statement. One member has an alternative view that expresses concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View).

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Questions for Respondents – NASA Responses

- a. **Do you agree or disagree that the P3 definition helps identify risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.**

R2.a. We do not agree that the definition helps to identify risk-sharing arrangements or transactions, but rather concur with member's alternative view in A.35. - A.36. The definition is very broad. The definition itself does not focus on the level of risk and is applied to both the federal government and the general public. This expands a P3 focus and is only narrowed for disclosure through the conclusive and suggestive characteristics.

- b. **Do you agree or disagree that the P3 definition, while capturing P3s based on their most widely identified features, excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes (refer to paragraphs 17, 18, A7- A9, and A10 – A12 for related comments)? Please provide the rationale for your answer.**

R2.b. We do not agree that the P3 definition excludes contracts/other arrangements, but concur with member's alternative view in A34. We are concerned that contradictory language exists between the scope, definition, and characteristics. For example, while the P3 ED scope excludes certain simplified FAR acquisitions, it does not exclude FAR acquisitions. The conclusive characteristics includes those arrangements that are exempt from FAR, but this does not exclude FAR transactions. R&D is only mentioned within the FAR simplified acquisition exclusion; these should be addressed along with FAR contracts.

- c. **Are there any features other than those identified in the proposed P3 definition that would assist entities in identifying risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.**

R2.c. Yes, the standard should assist in identifying the arrangements that are excluded in the P3 definition. For example, where a standard process exists to ensure that minimal negative impact may be incurred by the federal government or the public or where recourse is outlined, by way of clauses or other language, the arrangements should be excluded from disclosure. Non-binding arrangements should be excluded, as these by their nature, have minimal risk (see Q2.d. response). The requirement of "remote" risk should be removed here and SFFAS 5 requirements applied.

- d. **The scope of the ED excludes those informal arrangements or transactions that do not share risks or rewards and for example, are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc. Do you agree with the exclusion? Is it clear what would be excluded by this provision? If not, what features, if any, differentiate them from those arrangements or transactions that do possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, A10 – A12, and A13 – A14 for related comments)? Please provide the rationale for your answer.**

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R2.d. We agree that informal arrangements should be excluded, but do not believe this is evident the way the ED is currently written (only in the question posed, which is not part of the standard). The terminology should be changed to exclude non-binding arrangements, or other clearly recognized terminology used in appropriations law and contracts law.

- e. **Do you agree or disagree with the one member's concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.**

R2.e. We agree with the member's concerns. The definition itself does not exclude FAR based arrangements, other binding arrangements that provide for protections to the government and the public, research and development, and non-binding arrangements. See responses to the above questions.

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered¹ for disclosure (refer to paragraphs A1 – A6 for related comments). The characteristics apply to all types of P3's; construction, housing, utilities, military depots, etc. These characteristics may eliminate the need to disclose P3 arrangements/transactions that do not possess significant fiscal exposure(s).

- a. **Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics (that is, conclusive or suggestive characteristics) should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A13 – A14 for a detailed discussion and related explanations)? Please provide the rationale for your answer.**

R3.a. We agree that only P3s possessing risk should be subject to the disclosure requirements. However, we do not believe that the risk should be different than what is in SFFAS 5, measurable and probable. Until a risk becomes probable, it does not meaningfully add to the financial statements, especially for the federal government. In addition, redefining risk could result in premature reporting of a remote risk that could put a partner in a compromised financial position, which could ultimately impact their ability to perform in accordance with the arrangement. This could be of even higher consequence when dealing with international and other quasi-governmental entities (non-federal).

- b. **Do you believe that there are other arrangements or transactions besides P3s for which the risk-based characteristics are present and therefore disclosure should be required? Please provide the rationale for your answer.**

R3.b. No, the standard is so broadly written that it would encompass arrangements/transactions that are actually better served by another standard for

¹ Considering for disclosure would include further evaluation as stated in the referenced paragraphs and be made in light of the entity's materiality considerations; including qualitative and quantitative thresholds.

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disclosure/recognition/reporting, e.g., SFFAS 5 and 6. Because the Board has proposed this as supplemental disclosure/reporting, it is highly likely that an agency could have duplicative, but differing information in various notes. As an example, a lease that would not be disclosed as a contingent liability under SFFAS 5, could possibly be disclosed as a remote risk under this ED. This would be confusing to both the preparers and readers of financial statements.

- c. Do you believe that when the final Statement becomes effective, the entities with which you are associated have P3s that are subject to disclosure pursuant to the proposed requirements (refer to paragraphs A1, A4, A6(a), A10 – A12 for a detailed discussion and related explanations)? Please provide the rationale for your answer.**

R3.c. Yes, NASA enters into binding partnerships/agreements that use a range of authorities to lease, acquire, and fund assets and other activity, including international and R&D activities that may be subject to the proposed standard. NASA has developed standard language used in partnerships/agreements to mitigate the risk to the Federal government or public if a remote risk in a partnership/agreement occurs.

Q4. The Board proposes that the P3 risk-based characteristics be categorized as either: conclusive characteristics - where answering "Yes" to any one characteristic means the P3 arrangement or transaction should be considered for disclosure; or suggestive characteristics - where answering "Yes" to any one suggestive characteristic suggests that the P3 arrangement or transaction may be subject to disclosure but that preparers consider suggestive characteristics in the aggregate before reaching a final decision. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic will require entity judgment as each one is analyzed in connection with the other suggestive characteristics. The conclusive and suggestive characteristics are presented at paragraphs 19 to 20 and more fully discussed at paragraphs A15 – A16.

Do you agree or disagree with the risk-based characteristics, their related classification as either conclusive or suggestive, and their proposed application at paragraphs 19 and 20 (refer to paragraphs A15 – A16 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

R4. We agree with the majority of the characteristics. However, we do not fully agree with #3 and #4 under the Conclusive Characteristics for the following reasons:

- #3: We do not agree with conclusive item 3 as years is not a good indicator for conclusive characteristic, although it could possibly be a suggestive one. Suggest a longer term, such as 10 years, or where language isn't based upon a number of years, but whether the federal government has any recourse during the term, e.g., to terminate prior to the end of the lease or to make modifications to the lease.

- #4: We agree that item 4 should be a conclusive characteristic. However, where arrangements are reflective of the FAR standards in protections to the agency, those should also be excluded from disclosure. This item is contradictory to what is listed in the scope of the standard, ¶15. This item infers exclusions for FAR based acquisitions, not just FAR simplified acquisitions.

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Also, P3s containing standard language/clauses that mitigate the risk to the federal government/general public, as applicable, should be excluded.

Q5. The Board proposes the following component reporting entity disclosures:

- a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary, and the entity's statutory authority for entering into the P3.
- b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.
- c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:
 - i. A description of the contractual terms governing payments to and from the government over the life of the P3 arrangement or transaction to include:
 1. in-kind contributions/services and donations,
 2. the time periods payments are expected to occur, and
 3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.
 - ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid during each of the succeeding five years and in aggregate over the life of the P3.
- d. Identification of the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including a description of (1) the risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, renewal options, etc.).
- e. As applicable:
 - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items.
 - ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.
 - iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.
 - iv. Description of events of termination or default.

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Do you agree or disagree with the component entity report disclosures proposed at paragraph 23 (refer to paragraphs A25 – A27 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

R5. We do not agree with the proposed disclosure requirements, but agree with the member's concerns raised in alternative view, A.35 through A.38. We believe the disclosure requirements are too extensive and beyond that needed by users of the financial statements to understand the agency's fiscal exposure from P3s. Additionally, we are concerned that some of this information may be considered proprietary by a private sector partner and including it in a public document may subject the agency to legal liabilities. Also note a concern in Q.7 that this could impact a partner's ability to perform in accordance with the arrangement. We recommend that disclosure information be at a higher, summary level. Because the Board has proposed this as supplemental disclosure/reporting, it is likely that an agency could have duplicative, but differing information in various notes. As an example, a lease that would not be disclosed as a contingent liability under SFFAS 5, could possibly be disclosed as a remote risk under this ED. This would prove confusing to both the preparers and readers of financial statements.

Q6. The Board believes that significant P3 risks, including those that may be deemed remote should be disclosed. One member has an alternative view that expresses concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of "significant exposure" is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View). The Board's position is as follows:

Consideration should be given to those risks that management does not expect to be likely, but represent a significant exposure to the government if they were to occur. With this being said, the Board also notes that such remote risks may have a reasonably high materiality threshold. As such, remote risks should not be dismissed from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.

- a. Do you agree or disagree with the Board's position as stated above and included at paragraph A24 (refer to paragraphs A22 – A24 for a detailed discussion and related explanations)? Please provide the rationale for your answer.**

R6.a. We do not agree with the Board's position related to paragraph A24, but concur with the member's alternative view in A.36 through A.40. Applying a different standard for the requirements outlined in SFFAS 5 would add confusion to the preparers and users of the financial statements, and this should not be risked absent evidence of strong meaningful benefit to the readers and management (which has not yet been shown).

- b. Do you agree or disagree with the one member's concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of "significant exposure" is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.**

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R6.b. We agree with the alternative view. There is potentially contradictory language between the scope, definition, and characteristics; and the disclosure requirements is contrary to SFFAS 5. See responses in the questions above.

Q7. The Board proposes that due to the relative complexity and potentially large number of P3s that an entity might be party to, the proposed disclosures would permit entities to provide broad summarized information instead of individual arrangement or transaction detail. For example, disclosures of P3 arrangements or transactions could be grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, etc. In this way, users are presented with information that is comprehensive and material to an entity's financial statements without placing an undue burden on preparers to provide P3 specific or granular level information.

Do you agree or disagree that entities should be permitted to aggregate or group disclosures as proposed at paragraph 21 (refer to paragraphs A28 – A29 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

R7. We agree with aggregating P3s under a more tailored definition. Aggregating P3s is preferable to detailed disclosure. There could be proprietary impacts from publishing specific P3 information that is a private entities business and should be their responsibility to disclose. There is also a possibility that publicly detailed remote risk disclosures may also be used against private entities seeking to bid/compete on arrangements. The remote risk is an agency's interpretation that does not require vetting prior to publication. Refer to the responses in Q.5.

Q8. The Board encourages respondents to not only provide input concerning any and all aspects of the proposed changes, including whether concepts are sufficiently clear and the proposed effective date, but also other matters which may not have been specifically addressed in this exposure draft. In addition, the basis for conclusions explains the Board's goals for this project (see comments beginning at paragraph A1) and also discusses other issues raised by task force members as well as experts and practitioners both within and external to government (as an example, see paragraphs A4 through A6). Respondents are asked to particularly note the Alternative View beginning at Paragraph A31.

Please provide any comments or suggestions you have regarding the goals for this project, other issues identified in the basis for conclusions, or areas which have not been addressed.

R8. We agree that P3s have become more common, however, there needs to be more rigor around the definition, clarifying "private sector," and how risk is disclosed/reported. The broad interpretation of P3s (by the definition and conclusive/suggestive characteristics) and remote risk, could result in much confusion by the agency and the readers of the financial statements. Because this is to be considered "supplemental" to existing SFFAS, it has the possibility of leading to assets being disclosed in multiple notes and reported differently. For example, a lease under SFFAS 6 (already disclosed in a note), could also be a P3 (disclosed under a different note) with a different measurement for risk, remote vs. measurable and probable. This could also be a significant undertaking by relatively small agencies/administrations that are relying more on P3s to maintain facilities that have a future need. There is also a possibility that public detailed remote risk disclosures may also be used against private entities seeking to bid/compete on arrangements, with the risk for premature chilling effects against beneficial

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arrangements (particularly in those with less predictable outcomes like R&D efforts). The remote risk is an agency's interpretation that does not require vetting prior to publication.