

From: Gould, James
Sent: Monday, January 05, 2015 12:05 PM
To: Payne, Wendolyn M
Cc: Nelson, Amanda E (US/DPP)
Subject: KPMG Comment Letter - Public Private Partnerships

Wendy:

We appreciate the opportunity to provide comments on the Federal Accounting Standards Advisory Board (FASAB) Exposure Draft (ED) on the Statement of Federal Financial Accounting Standards (SFFAS), *Public Private Partnerships Disclosure Requirements*. Attached is our response with comments to the subject exposure draft.

If you have any questions concerning our comments or would like additional information, please contact Amanda Nelson or myself.

Thanks,

James

James P. Gould

KPMG LLP

Department of Professional Practice

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January 5, 2015

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

RE: Proposed Statement of Federal Financial Accounting Standards, *Public-Private Partnerships Disclosure Requirements* – the exposure draft (ED)

Dear Ms. Payne:

We appreciate the opportunity to respond to the proposed Statement of Federal Accounting Standards, *Public-Private Partnerships Disclosure Requirements* – the exposure draft (ED). We support the Board's efforts to address Public-Private Partnerships (P3) since they are becoming more significant to governmental operations. The ED states that the Board anticipates providing guidance on P3 through a two-phase approach. Phase 1 is addressed through this ED, which relates to the identification and disclosure of P3s. Phase 2 of the approach will address the measurement and recognition of P3s. To support a clear and comprehensive standard, we believe that measurement and recognition should be developed jointly with the disclosure requirements. Instead of developing two standards to address P3s, we believe the Board should consider more extensive outreach to determine the significance of P3s. For example, through a Preliminary Views document, the Board could request input regarding the prevalence of P3s based upon a stated definition/characteristics. The Board could use the responses to this request to develop one comprehensive ED addressing measurement, recognition, and disclosure requirements for P3s.

However, if the Board continues to believe the two-phase approach is warranted, we provide the following comments.

We agree with some of the concerns expressed in the Alternative Views of the ED because:

- The definition (paragraph 17) of P3s does not confine the scope of contractual agreements solely to P3s and the vagueness of the definition will not allow for the consistent application of the standard. Further, confusion is created by the lack of linkage between the P3 definition and the P3 characteristics (Conclusive – Paragraph 19; Suggestive – Paragraph 20). As a result, we support the views provided in paragraph A34 regarding the definition of P3s.
- The requirement to disclose certain remote risks is not consistent with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, *Accounting for Liabilities of the Federal Government*, which states that matters that are considered remote need not be reported (disclosed). In addition, this disclosure requirement expands the reporting of risks to operational matters that may have limited or no financial significance. As a result, we support the views provided in paragraphs A35-A36.

- Significant contractual risks (required disclosure contained in paragraph 23d) is lacking a clear definition. This terminology is not clearly linked to the concept of materiality introduced in paragraph 11. As a result, we support the views provided in paragraphs A37-A38.
- Audit challenges exist related to the disclosure of remote risks and other operational and contractual risks. While these risks may be important for some users of the financial statements, such information is not directly related to the amounts presented in the financial statements. We believe this information is similar in nature to the “risk assumed” information that SFFAS No. 5 requires to be presented as required supplementary information (RSI). Therefore, if the Board believes that disclosures related to these risks are important to the users of the financial statements, such information should be presented as RSI. As a result, we support the views provided in paragraphs A40.

In addition, to our support of some of the concerns expressed in the Alternative Views, we provide the following additional comments for the Board’s consideration:

- Paragraph 16 of the ED states that the standard does not change financial measurement and recognition requirements but could result in a change in practice. It is unclear whether the phrase “change in practice” refers to a change in operations or a change in the measurement and recognition of past financial events. If the Board was referring to a change in measurement and recognition, we question why a change would occur considering that the ED does not address the measurement and recognition requirements of P3s.
- Paragraph 11 provides guidance regarding the concept of materiality that is not consistent with how materiality is addressed in the current SFFASs. Each SFFAS contains the following guidance related to materiality:

The provisions of this Statement need not be applied to immaterial items.

Paragraph 11 goes beyond this standard guidance and includes additional information that does not exist in the current SFFASs. As a result, if the ED becomes a standard, as currently written, the standard will have a different definition of materiality from all other SFFASs. Therefore, we recommend that paragraph 11 be changed to match the other standards. Further, the additional information contained in paragraph 11 should be moved after the table in paragraph 19 to provide further guidance on the application of the P3 characteristics.

- Paragraph 19 states that if any of the conclusive characteristics are met, the P3 arrangement should be considered for disclosure. We were unclear what was meant by the phrase “should be considered.” We found it confusing that a relationship/agreement that met a “conclusive characteristic” may not require disclosure. Based upon discussion with Board staff, we learned that this phrase is meant to reinforce the consideration of materiality that is described in paragraph 11. Because preparers and auditors should already consider materiality based on paragraph 11, we believe the phrase “should be considered” will not be consistently applied and therefore, should be deleted.
- The conclusive characteristics in paragraph 19 indicate the existence of a P3 arrangement. A preparer would evaluate each characteristic independently. Considering each conclusive

characteristic independently we identified certain relationships/agreements that we believe would be potential P3 arrangements. The following table summarizes these examples. If it was not the Board's intention for these types of relationships/agreements to be disclosed as P3s, we recommend that the Board reconsider the characteristic.

Conclusive Characteristic	Potential P3 Arrangement
The arrangement or transaction results in the conveyance or creation of a long-lived asset or long-term financing liability.	A reporting entity's (such as the Department of Health and Human Services) funding of a university research facility.
The federal entity participates in, helps sponsor, or is party to a Special Purpose Vehicle (SPV), partnership, trust, etc.	A reporting entity charters/sponsors a not-for-profit organization.
The term of the procurement or contract is longer than 5 years.	A software lease agreement that is bundled with a maintenance agreement that is longer than 5 years.
The principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).	A grant or contract agreement under the Uniform Guidance.

- It is unclear if the conclusive characteristics contained in paragraph 19 should be considered in conjunction with the P3 definition provided in paragraph 17. As a result, our evaluation of the conclusive characteristics, summarized above, did not consider the definition provided in paragraph 17. If this was not the Board's intention, we recommend adding a clear linkage within paragraph 19 to the definition provided in paragraph 17.
- Paragraph 23e.ii requires the disclosure of significant instances of non-compliance with legal and contractual provisions governing the P3. However, the ED does not define "significant instances". Further, requiring a disclosure of significant instances of non-compliance would require the auditor to evaluate the completeness of this disclosure, which could be viewed as an opinion on compliance with the legal and contractual provisions governing the P3. Such an opinion would require the auditor to adhere to the requirements of AU-C Section 935, *Compliance Audits*, or AT Section 601, *Compliance Attestation*, which requires suitable and available criteria to evaluate compliance. We question whether suitable and available criteria could be defined for the compliance with legal and contractual provisions governing a P3. As a result of these matters, we recommend removing this disclosure requirement.

If you have questions about our response, please contact Ms. Amanda Nelson at 202-533-5560 or aenelson@kpmg.com.

Sincerely,

KPMG LLP