

**From:** Erik Dorman (BC)

**Sent:** Monday, January 05, 2015 2:59 PM

**To:** FASAB

**Cc:** Priscilla Sampson - BCA

**Subject:** FASAB ED - Public-Private Partnerships (P3s): Disclosure Requirements

Dear FASAB Director,

Attached in the email are GSA's comments on Federal Accounting Standards Advisory Board (FASAB) Exposure Draft issued October 1, 2014 on Public-Private Partnerships (P3s): Disclosure Requirements. Thank you for the opportunity to provide comments and please let me know if you have any questions.

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Thank you,

Erik Dorman, CPA, CISA, CIA

Director, Financial Policy and Analysis (BCA)

GSA, Office of the Chief Financial Officer

## GSA Consolidated Comments and Recommendations

Question	Para No.	SUBJECT/TITLE (FASAB Exposure Draft on Public-Private Partnerships (P3s): Disclosure Requirements)	Yes	No	RECOMMENDATIONS/COMMENTS	Name of Commenter	Office	Email Address/Phone
		General Comments						
1		<p>The Board proposes defining the term —public-private partnerships   as:            "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)."</p> <p><b>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.</b></p>		X	<p>The first sentence of the definition seems appropriate. However, the reviewer believes that the first three of the four items regarding evidence of the sharing of risks and rewards are redundant and sufficient coverage of these first three items are already adequately provided in existing FASAB accounting standards; particularly standards for the accounting of contracts and leases and standards that exist for the recognition of assets and liabilities and income and expense (e.g., SFFAS 5 accounting for liabilities and contingencies of the federal government). The prescribed standards in this ED should only apply in the case of special purpose vehicles (SPV's) such as Trusts or Limited Partnerships that are specifically authorized by law. Outside of such SPV's or contractual agreements, the reviewer does not understand how P3's could exist under the law without representing an augmentation of appropriations or, potentially, anti-deficiency act violations.</p>	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> <a href="tel:202.501.4568">(202.501.4568)</a> or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> <a href="tel:703.605.5442">(703.605.5442)</a>

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2	<p>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).</p>		No comment			
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2a		<b>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.</b>	X	Yes, but only with respect to the first part of the definition. It is the reviewers opinion that the second part of the definition outlining conditions for the sharing of risks and rewards only confuses the issue and should be limited to those types of special purpose vehicles specifically authorized by law. Existing FASAB standards are felt to be sufficient to cover all arrangements other than specifically authorized public-private partnerships. The reviewer does share concerns that expansion of current reporting to include disclosures related to remote risks could overwhelm or mislead users and delves into the subjective areas of business risks which should be beyond the scope of accounting standards.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
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2b		<b>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.</b>	X	There is agreement with the statement that the definition as stated excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes because of the statement about the sharing of risks and rewards, but the reviewer again believes that the second part of the definition concerning conditions for the sharing of the risks and rewards is too subjective. It is the reviewer's belief that as long as financial compensation is involved in the provision of goods or services by either or both parties, there is a contractual relationship that should not be considered to involve the sharing of risks and rewards and the contract should not be classified or identified as a P3 unless specifically structured that way as authorized by law. This goes back to the response in Question 1 above as to why the reviewer believes the first three of the four items of evidence of P3's should be excluded.	John B. Wotring	BF	<a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
2c		<b>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.</b>	X	Contrary to identifying additional features that would assist entities in identifying risk sharing arrangements, the reviewer believes that the features identified are too broad. Reference the previous comments made for additional information.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)

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2d		<b>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.</b>	X	It is believed that existing FASAB standards regarding liabilities and contingencies are more than sufficient to cover any additional risks in such arrangements.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
2e		<b>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.</b>	X	The reviewer is also concerned that entities may expend undue resources developing and implementing processes to identify contracts and agreements that are not truly P3's and that the definition may significantly expand disclosure requirements for contingent liabilities beyond the requirements of SFFAS 5. This is why the reviewer has made a suggestion in response to Question 1 to limit the definition of P3's to special purpose vehicles (SPV's) such as Trusts or Limited Partnerships that are specifically authorized by law. Outside of such SPV's or authorized agreements, the reviewer fails to see how P3's could exist under the law.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)

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3		The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered <sup>3</sup> 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).			No comment			
3a		<b>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.</b>	X		The reviewer agrees with the requirement for disclosures only for those P3s possessing risk-based characteristics.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
3b		<b>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.</b>		X	It is the opinion of the reviewer that current FASAB accounting standards are sufficient in scope to account for all possible arrangements and transactions without the need for additional guidance beyond what has been described herein.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
3c		<b>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.</b>		X	The reviewer can think of no activity, agreement, or other type of legally authorized special purpose vehicle that this standard would apply to within GSA's Federal Acquisition Service (FAS) under the terms and conditions as stated.	Erik Dorman or John B. Wotring	BF	<a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)

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4	<p>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.</p> <p><b>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</b></p>	X	<p>The reviewer is of the opinion that only items' 2 and 4 under the Conclusive Characteristics should apply. Items' 1 and 3 under Conclusive Characteristics are believed to be too vague and otherwise are appropriate for coverage under other FASAB standards such as accounting requirements for leasing and asset recognition. No additional comments are made regarding the suggestive characteristics.</p>	Erik Dorman or John B. Wotring	BF	<p><a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)</p>
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5	<p>The Board proposes the following component reporting entity disclosures:</p> <p>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.</p> <p>b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.</p> <p>c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:</p> <p>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:</p> <p>1. in-kind contributions/services and donations,</p> <p>2. the time periods payments are expected to occur, and</p> <p>3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.</p> <p>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.</p>		No comment			
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5		<p>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.).</p> <p>e. As applicable:</p> <p>i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items.</p> <p>ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.</p> <p>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.</p> <p>iv. Description of events of termination or default.</p> <p><b>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.</b></p>	X	<p>The reviewer agrees with the disclosure requirements in general, but only for entities identified as P3's through SPV's, Trusts, or Partnerships, as specifically authorized by law - not for contracts or leases that the reviewer does not believe constitute P3's by definition as per the other comments herein. The reviewer is in definite agreement with the emphasis on the entity's statutory authority for entering into the P3 and why the government entity selected a P3 model to conduct business. Reference the additional comments provided in the response to Question 7 below.</p>			
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6	<p>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</p>		No comment			
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6a		<b>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.</b>	X	The reviewer believes that it is impossible to disclose all inherent risks in the operation of a business or government entity. Businesses in fact exist based on there willingness to incur risk for potential future rewards. The ED as written seems to be moving across that fine line where known quantifiable risks exist as contingent liabilities that should be disclosed and stepping into the realm of business risks that are practically impossible to identify or quantify. To this end, the reviewer believes that current FASAB accounting standards for contingent liabilities are sufficient for full accounting disclosures in all areas and that the ED should only apply to disclosures for SPV's such as Trusts or Limited Partnerships that are specifically defined and authorized by law.	John B. Wotring	BF	<a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)
6b		<b>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.</b>	X	Based on all of the comments noted previously, the reviewers' comments tend to side on the member's concern about how, based on the ED as written, remote contingencies will expand the requirements of FASAB accounting standards for disclosure and that disclosure policies are moving too far toward identification of risks inherent in any business or operation and away from good accounting principles. The reviewer does not believe that the new standards are advisable from a cost/benefit perspective. FASAB accounting standards constitute a form of regulation and redundancies in regulation need to be minimized.			

7		<p>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.</p> <p><b>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.</b></p>	X	<p>As a point of order, the reviewer, as a taxpaying citizen, has concerns about the viability of or need for public-private partnerships. The very existence of such partnerships blur the lines distinction between inherently governmental versus commercial responsibilities and creates the appearance of a conflict of interest between the Federal government and the larger corporations and consultants who partner with them, often with private industry benefiting from the profits of such relationships when they are successful but not sharing in the risks of loss or being subsidized when problems occur. However, to the extent that such partnerships do exist under law, it would seem that existing accounting standards for liabilities and contingencies should suffice, so to the extent that additional requirements are being made, the reviewer concurs that aggregation of such agreements for purposes of disclosure is appropriate.</p>	Erik Dorman or John B. Wotring	BF	<p><a href="mailto:Erik.Dorman@gsa.gov">Erik.Dorman@gsa.gov</a> (202.501.4568) or <a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> (703.605.5442)</p>
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8	<p>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.</p> <p><b>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.</b></p>			All comments or suggestions regarding the goals for this project or other issues identified and the basis for conclusions are addressed in the specific comments to the individual questions above.	John B. Wotring	BF	<a href="mailto:John.Wotring@gsa.gov">John.Wotring@gsa.gov</a> <a href="tel:703.605.5442">(703.605.5442)</a>
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