

From: Tekleberhan, Karen - OCFO

Sent: Monday, January 05, 2015 5:21 PM

To: FASAB

Cc: Payne, Wendolyn M; Brown, Kevin L - OCFO; Balin, Robert - OCFO; Jones, Jerri N - OCFO; Simpson, Cynthia - OCFO

Subject: US DOL/OCFO Comments on FASAB ED, "Public-Private Partnerships Disclosure Requirements"

Importance: High

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

Dear Ms. Payne:

Below please find comments from the U.S. Department of Labor (DOL), Office of the Chief Financial Officer (OCFO), on the Federal Accounting Standards Advisory Board Exposure Draft (ED), "Public-Private Partnerships Disclosure Requirements." In addition to answering the ED questions, DOL/OCFO provided comments on other matters not specifically addressed. Thank you for the opportunity to provide comments on the ED. The contact at DOL/OCFO is Mr. Kevin Brown, Director, Office of Financial Reporting, Office of the Chief Financial Officer, at (202) 693-6800 or Brown.Kevin.L@dol.gov.

Regards,

Karen Tekleberhan, CPA
Deputy Chief Financial Officer
U. S. Department of Labor

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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.

Response 1: The U.S. Department of Labor (DOL), Office of the Chief Financial Officer, disagrees that the public-private partnership definition proposed at paragraph 17 captures the most widely identified features of public-private partnerships. DOL/OCFO believes that an Agency may have specific legislation that provides the authority to undertake such arrangements. Furthermore, the legislative authority may limit the relationship between the Government and the non-government party. The Board should include a policy which recognizes the inconsistency that may occur between what is required in the legislation and/or regulations and what is required by the accounting standard.

Without specific legislative authority to undertake such arrangements, US DOL/OCFO believes that there is potential for a violation of the Anti-Deficiency Act.

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).

©1. 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.

Response 2a: DOL/OCFO disagrees that the definition of public-private partnerships helps identify risk-sharing arrangements or transactions that could possess significant risk. DOL/OCFO believes that an Agency's disclosures with regard to (a) significant accounting policies (in the descriptions of the programs and funds) and (b) material concentrations of risk may already identify risk-sharing arrangements or transactions that could possess significant risks. Disclosures of material concentrations of risk may already be required as part of management's written representations to the auditor.

©2. 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.

Response 2b: DOL/OCFO disagrees that the definition of public-private partnerships excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as public-private partnerships for other purposes. DOL/OCFO believes that the accounting standard should specifically exclude grants or other arrangements that are regulated under 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

©3. 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.

Response 2c: Refer to Response 1, Response 2a and Response 2b.

©4. 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.

Response 2d: DOL/OCFO believes that the Board should more clearly distinguish between those arrangements or transaction that are formal versus informal. Furthermore, DOL/OCFO believes that Agency activities accomplish multiple goals concurrently and activities solely designed to achieve the goals such as those listed in question 2d would be rare.

Q5. 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.

Response 2e: DOL/OCFO agrees with the one member's concern that the definition of public-private partnerships is not confined solely to those arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard.

DOL/OCFO agrees with the one member's concern that the risks are not confined to those risks which have the potential to result in contingent losses. DOL/OCFO believes that the contingent losses associated with the other party's default (or another party's default to whom the activity has been delegated) on the arrangement should be the focus. DOL/OCFO agrees with the one member's concern that risks should not include general business risks and DOL/OCFO believes that the risks should not include programmatic or performance-related risks. Furthermore, remote risks associated with highly unlikely, but also highly detrimental events, should be excluded.

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered^[1] 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.

Response 3a: DOL/OCFO disagrees that public-private partnership arrangements should be eliminated from disclosure because they do not possess significant fiscal exposure. Certain arrangements may be qualitatively material (for example, those that involve funding through the Recovery Act) although they may not be quantitatively material. However, disclosure should involve only those arrangements that may result in a contingent loss, even though the amount of loss may not be quantitatively material.

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.

Response 3b: Please refer to response 3a. Other arrangements or transactions besides public-private partnerships that may result in contingent losses are those arrangements that would be disclosed in a financial statement note for material concentrations of risk.

^[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.

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.

Response 3c. DOL/OCFO has no comment at this time.

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.

Response 4: DOL/OCFO believes that an additional conclusive characteristic should be added: "The principal arrangement or transaction is exempt from the requirements of 2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, and 230 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

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.

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.

Response 5: DOL/OCFO believes that it would be more appropriate to report the information as required supplementary information. If the information was reported as basic, DOL/OCFO believes that less information would be provided than if the information was reported as RSI. Reporting the information as basic would increase the time and resources required for the audit and decrease the information provided. Furthermore, DOL/OCFO believes that the standards should address circumstances where partners subcontract to others, subsequent events, and going concern issues.

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.

Response 6a: DOL/OCFO disagrees with the Board’s position as stated above. DOL/OCFO believes that remote risks should not be reported as basic or RSI disclosures. DOL/OCFO believes that in the very unlikely event that such a loss were to

occur, then it would be disclosed as a subsequent event (if the event occurred between the balance sheet date and the date that the financial statements were issued) or with a presentation and disclosure that would emphasize its importance to the reader of the financial statements (an example of the presentation and disclosure may be a treatment similar to the treatment of an extraordinary loss in the FASB standards).

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.

Response 6b. DOL/OCFO agrees with the one member's concerns. DOL/OCFO believes that disclosures of remote risks would increase the volume of the disclosures and would overwhelm the reader.

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.

Response 7: DOL/OCFO agrees that entities should be permitted to aggregate or group disclosures, but the disclosures should be reported as RSI. The standard should be flexible about the methods and/or presentation for aggregating or grouping the public-private partnerships.

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.

Response 8: With regard to implementation in paragraph 25, DOL/OCFO believes that early adoption should be permitted only if the disclosures are reported as RSI.

Other matters not specifically addressed:

- a. DOL/OCFO noted the use of “etc.” in the questions and throughout the proposed accounting standard and believes the use of “etc.” should be avoided in an accounting standard.
- b. Avoid using the acronym “P3.” At DOL, the P3 acronym is used to describe the program “Performance Partnership Pilot for Disconnected Youth.”

Edits:

DOL made note of the following edits:

- i. Page 4, in the table of contents, “Identification of P3’s Requiring Disclosure” is misspelled.
- ii. Page 24, in paragraph A5a, use either “the” or “a” at the end of the sentence.
- iii. Page 29, in footnote 17, at the end of the footnote, use “adversely” instead of “adverse.”