



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer and**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

DEC 23 2014

Wendy M. Payne  
Executive Director  
Federal Accounting Standards Advisory Board  
Washington, DC

Dear Ms. Payne:

The Department of Commerce has reviewed the Exposure Draft – Statement of Federal Financial Accounting Standards, *Public-Private Partnerships Disclosure Requirements*, dated October 1, 2014.

Please find enclosed answers to the questions that were asked of respondents. If you have any questions, please contact me at (202) 482-1207 or [galston@doc.gov](mailto:galston@doc.gov) or Bruce Henshel at (202) 482-0646 or [bhenshel@doc.gov](mailto:bhenshel@doc.gov).

Sincerely,

Gordon T. Alston  
Director of Financial Reporting and Internal Controls

Enclosure

cc: Lisa Casias  
Diane Marston  
Atisha Burks  
Bruce Henshel

**Department of Commerce FASAB Exposure Draft Response**  
**Exposure Draft (October 1, 2014)— *Public-Private Partnerships Disclosure Requirements***

**Prepared By: Department of Commerce, Office of Financial Management**

**Date Prepared: December 23, 2014**

**Questions for Respondents**

1. 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.**

***Department of Commerce Response:***

- *The Department believes that “sharing of resources” as included in the proposed definition is not self-evident as to what is meant and that further elaboration should be included in the definition in order to capture the most widely identified features of federal P3s. It appears that “sharing of resources” may be discussed in Appendix A, Basis for Conclusions, paragraph A9 (e.g. possibly “shared or transferred financing,” “shared skills and expertise”).*
- *Paragraph 13 identifies arrangements (e.g. alternative financing arrangements, privatization initiatives, research and development arrangements) that are referred to as P3s per paragraph 13. These arrangements, however, may not be considered contractual arrangements or are not contractual arrangements per the proposed definition. Accordingly, the proposed definition which states “contractual arrangements” appears to be in conflict with the discussion in paragraph 13. We recommend that FASAB resolve this apparent conflict between paragraph 13 and the definition.*
- *The Department believes that the discussion of “Sharing of risks and rewards” in the definition sufficiently describes the primary features of federal P3 with respect to sharing of risks and rewards.*

2. 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).
- 2a. 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.

***Department of Commerce Response:***

*The Department agrees that the definition, by including as elaboration four widely identified features of federal P3s evidencing the sharing of risks and rewards, helps identify risk-sharing arrangement or transactions that could possess significant fiscal exposure.*

- 2b. 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.

***Department of Commerce Response:***

- The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes. We recommend, for example, that FASAB consider if the definition should additionally set forth the specific exclusions to the standard (exclusions currently proposed are those discussed in Appendix A, paragraph A12, which are (1) acquisitions made using Simplified Acquisition Procedures (FAR Part 13); and 2) leases meeting certain conditions).*

- *The Department agrees with the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard procurements of capital assets under the Federal Acquisition Regulation (FAR). The Department believes that standard procurements of capital assets under FAR should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard procurements of capital assets in the scope of the standard. The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard procurements of capital assets under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard procurements of capital assets under FAR are not generally considered federal P3s for other purposes.*
- *The Department similarly observes, as partially discussed in the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard leasing arrangements under FAR that are not using GSA-delegated authority. Paragraph 15 indicates that leases that are not bundled and that are entered into using GSA-delegated authority are excluded from the provisions of the standard. The Department, however, believes that standard non-bundled and bundled leasing arrangements under FAR though that are not under GSA-delegated authority should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard leasing arrangements under FAR. The Department does not believe that standard leasing arrangements under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard leasing arrangements under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard leasing arrangements under FAR as not generally considered federal P3s for other purposes.*

2c. 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.

**Department of Commerce Response:**

*The Department is not readily aware of any additional risk-sharing arrangements or transactions that would assist entities in identifying risk-sharing arrangements or transactions could possess significant fiscal exposure to the entity.*

- 2d. 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.

*Department of Commerce Response:*

- *The Department agrees with an exclusion for 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.*
- *The Department recommends that such an exclusion be specifically included in the Exclusions section of the standard, since this proposed exclusion is stated only in the Questions for Respondents section of the Exposure Draft.*
- *Similarly, shouldn't formal arrangements 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. also be excluded from the scope of the standard? We recommend that consideration be given to also including "formal" arrangements 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.*
- *The Department believes that the exclusion is reasonably clear as to what would be excluded. Possible future implementation guidance that may be developed by FASAB after the issuance of the standard could go into more detail on this and other standard provisions that entities may need further assistance with the implementation of.*

- 2e. 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.

***Department of Commerce Response:***

*As stated in the Department's answer to Question 2b above, the Department agrees with the Alternative View with respect to the following:*

- The Department believes that the definition can be significantly improved by adding that the definition excludes contracts or other arrangement or transactions that are routine in nature and not generally identified as P3s for other purposes. We recommend, for example, that FASAB consider if the definition should additionally set forth the specific exclusions to the standard (exclusions currently proposed are those discussed in Appendix A, paragraph A12, which are (1) acquisitions made using Simplified Acquisition Procedures (FAR Part 13); and 2) leases meeting certain conditions).*
- The Department agrees with the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard procurements of capital assets under the Federal Acquisition Regulation (FAR). The Department believes that standard procurements of capital assets under FAR should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard procurements of capital assets in the scope of the standard. The Department does not believe that standard procurements of capital assets under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard procurements of capital assets under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard procurements of capital assets under FAR are not generally considered federal P3s for other purposes.*

- *The Department similarly observes, as partially discussed in the Alternative View discussion in Appendix A, paragraph A34, that the definition as currently proposed, without a specific stated exclusion, would include standard leasing arrangements under FAR that are not using GSA-delegated authority. Paragraph 15 indicates that leases that are not bundled and that are entered into using GSA-delegated authority are excluded from the provisions of the standard. The Department, however, believes that standard non-bundled and bundled leasing arrangements under FAR though that are not under GSA-delegated authority should also be specifically excluded from the provisions of the standard, and the Department believes that the costs to entities of complying with the standard without a specific exclusion for this would significantly outweigh the potential benefits of including standard leasing arrangements under FAR. The Department does not believe that standard leasing arrangements under FAR should be considered federal P3s, as the Department believes that the definition of federal P3s should capture items outside of normal procurement vehicles and methods. Standard leasing arrangements under FAR is a normal procurement vehicle and method. Furthermore, the Department believes that standard leasing arrangements under FAR as not generally considered federal P3s for other purposes.*
3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered 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).
- 3a. 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.

***Department of Commerce Response:***

*The Department agrees that only those P3s (identified pursuant to the proposed definition) possessing risk-based characteristics that indicate significant fiscal exposure should be subject to the proposed disclosure requirements.*

- 3b. 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.

*The Department is not readily aware of any additional arrangements or transactions besides P3s for which the risk-based characteristics are present and indicate significant fiscal exposure and therefore disclosure should be required.*

- 3c. 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.

***Department of Commerce Response:***

*The Department has not yet performed an evaluation to determine if the Department is associated with P3s that are subject to disclosure in accordance with the proposed requirements.*

4. 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.**

***Department of Commerce Response:***

*The Department agrees with the risk-based characteristics described in paragraphs 19, and further offers the following comment:*

*Characteristic 1 refers to "long-lived asset" and "long-term financing liability." We recommend that these terms be further defined and/or elaborated on so that entities are able to understand and successfully analyze and apply Characteristic 1.*



5. 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.**

***Department of Commerce Response:***

- *The Department believes that the individual required disclosures are much too extensive and require much more information than is reasonably needed for a user to reasonably gather more information and understand to a reasonable level an entity's federal P3s that have significant fiscal exposures. The Department believes that the costs of preparing such information would significantly outweigh the potential benefits to users of such extensive data and information. For this reason, the Department concurs with the provisions in Appendix A, paragraphs A28 and A29, that permits entities to aggregate disclosures by providing broad and summarized information.*

*We recommend that FASAB significantly reduce the required individual disclosures by deleting the below individual disclosure requirements that the Department believes is unnecessary for a fair and complete disclosure of significant fiscal exposures for federal P3s, and for providing the user of the financial statements an understanding of the significant fiscal exposures for a federal P3:*

- *The entity's statutory authority for entering into the P3.*
- *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.*
- *Associated amounts recognized in the financial statements such as gains or losses and capitalized items.*
- *Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.*

6. 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.*

- 6a. 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.

***Department of Commerce Response:***

- *The Department disagrees that federal P3s possessing risks that are considered remote but significant should be disclosed. Remote risks may include far too many financial and nonfinancial risks, and because the risks are considered remote, the Department believes that they should not be disclosed. The Department believes that a risk threshold higher than "remote" should exist before disclosure is required, similar to existing disclosure requirements for contingencies.*
- *The Department very much shares in the Alternative View concerns described in Appendix A, paragraph 35 that the proposed standard could expand the disclosure requirements for contingent liabilities that are provided under SFFAS 5, Accounting for Liabilities of the Federal Government, by extending disclosure requirements to certain remote contingencies (para 8) and expanding disclosures to include business risks (e.g., comparative costs, skill transfers to the private sector, etc.). The Department agrees with the Alternative View that indicates that such additional disclosures could overwhelm or mislead users with extensive information related to (1) risks that have only a slight chance of occurrence and (2) business risks that do not necessarily affect the financial statements.*

- 6b. 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.

*Department of Commerce Response:*

- *Item 1:*

*The Department shares with the Alternative View concern that disclosure of federal P3 remote contingencies would not be limited to contractual arrangements. The Department agrees with the Alternative View discussion in Appendix A, paragraph 35, that indicates that the disclosure of remote federal P3 risks would also include risk's related to the entity's operations or performance. Paragraph 24 discusses, for example, the risk of a relationship with an industry or private partner that may require the government to provide resources or absorb losses beyond what was contemplated. The Department is concerned that that disclosures of expanded risks, for example what the Alternative View referred to as business risks, is a significant expansion of financial reporting requirements that may not be appropriate for disclosures that support the entity's financial statements.*

- *Item 2:*

*The Department believes that the concept of "significant exposure" is reasonably clear as to providing guidance to entities. Possible future implementation guidance that may be developed by FASAB after the issuance of the standard could go into more detail on this and other standard provisions that entities may need further assistance with the implementation of.*

- *Item 3:*

*As discussed in the Department's response to Item 1 above, the Department agrees with the member's concerns, stated in the Alternative View, that risk's related to the entity's operations or performance would be included in the disclosures of P3s risks, and that this would be a significant expansion of financial reporting requirements that may not be appropriate for disclosures that support the entity's financial statements.*

7. 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.**

***Department of Commerce Response:***

***The Department agrees with the provisions, set forth in Appendix A, paragraphs A28 and A29, that permit entities to aggregate disclosures by providing broad and summarized information instead of unique or discrete arrangement or transaction detail. The Department believes this is appropriate because of the extensiveness of potential federal P3 disclosure text that would be required under the proposed disclosure requirements, and because of the sensitive nature of the proposed disclosure requirements, broader summarization would often be appropriate.***

8. 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.

***Department of Commerce Response:***

***The Department does not have any additional comments.***