



April 11, 2014

Memorandum

To: Members of the Board

From: Domenic N. Savini, Assistant Director

Through: Wendy M. Payne, Executive Director

Subject: **Draft Exposure Draft: *Public-Private Partnerships: Disclosure Requirements.* – Tab G¹**

MEETING OBJECTIVE

The objective for the April 2014 meeting is to **review a draft Exposure Draft document** prepared based upon guidance received from members during the March 2014 meeting **so that staff can either (1) begin pre-balloting procedures or (2) obtain further direction** for incorporation into the next revision of the draft Exposure Draft document.

BRIEFING MATERIALS

1. **Attachment 1 - Track Changes Version** of draft Exposure Draft on *Public-Private Partnerships: Disclosure Requirements.*

¹ The staff prepares board meeting materials to facilitate discussion of issues at the board meeting. This material is presented for discussion purposes only; it is not intended to reflect authoritative views of the FASAB or its staff. Official positions of the FASAB are determined only after extensive due process and deliberations.

NEXT STEPS

NEXT STEPS

April – May 2014: Finalize Exposure Draft

- Revise Exposure Draft and identify changes
 - ✓ By April 30th email pre-ballot draft for “final comments”
 - Final comments will be due 5 working days after distribution
 - ✓ In early May, email ballot draft
 - Ballot drafts will be due 5 working days after distribution

May – August 2014: Issue Exposure Draft

- Proceed with exposure draft for 90-day comment period upon receipt of five affirmative ballots

August - October 2014: Finalize Standards for disclosures

- Proceed with a final ballot and finalize Standards upon receipt of six affirmative ballots

January 2015 – September 2017: Begin next Phase of project

- Address recognition, measurement and reporting issues as appropriate.
 - ✓ Develop implementation guidance and/or standards in concert with leases and reporting entity projects.

BACKGROUND

BACKGROUND

At the March 2014 Board meeting some Board members were concerned that the P3 definition was so broad and the conclusive characteristics so easy to meet that many contracts the Board would not want included in the scope, such as contracts for the acquisition of almost any large capital asset, would be included. Staff was requested to draft language that would exclude more contracts and/or adding a question to respondents about the breadth of the scope.

The Board also considered the Conclusive and Suggestive characteristics. Staff noted that the requirements are written such that if an arrangement first meets the definition of a P3 and has any one of the four Conclusive characteristics, disclosures are required. However, if none of the four Conclusive characteristics are met, then the Suggestive characteristics are applied and if an arrangement has one or more of these, there is discretion as to whether disclosure would be presented.

A Board member was concerned with how probability is considered in conjunction with the Conclusive characteristics suggesting that disclosures should not be required for P3s for which the risks of loss are remote. However, others expressed the view that considering the materiality of the risk would address that concern. Others questioned whether there was a sufficiently clear boundary around the population of risks that should be disclosed. Staff noted that circumstances in which the risk of loss is remote would fail to meet the definition of P3s, which discusses the sharing of presumably significant or material risks. Staff was advised that the language that filters-out remote risks should be improved if possible.

The Board then discussed the proposed disclosures. Although members seemed generally satisfied with the proposed disclosures, some Board members questioned the need for the disclosure of amounts expected to be paid and received over the life of the P3 and whether that helps explain the risks of the P3. However, others believed that this was needed because (1) some P3 arrangements are not required to be reported as liabilities and (2) commitments, as represented by payments are fixed.

Lastly a Board member questioned whether early exit (e.g., termination) costs were required to be disclosed as part of any of the proposed disclosures. Staff was requested to consider alternatives for this item.

If you require additional information or wish to suggest another alternative not considered in the staff paper, please contact me as soon as possible. If you have any questions or comments, please contact me by telephone at 202.512.6841 or by e-mail at savinid@fasab.gov.

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Questions for the Board

Questions for the Board

Question 1 – Staff has written an Introduction to precede the definition so that appropriate context and background can be provided to preparers when referring to the draft P3 Definition. Pursuant to the March meeting, staff has re-worked this section (paragraphs 1 thru 13) in its entirety and in order to achieve reading-ease, the Track-changes feature has been disabled. Please note that the Introduction, unless specifically incorporated into the Standard, is non-authoritative and is used in this ED primarily as background for contextual purposes. The following 5 topical areas have been incorporated into the Introduction:

1. General scope of P3's,
2. General purpose of federal P3s,
3. General nature of federal P3s,
4. Risks associated with federal P3s, and
5. Importance of quantitative and qualitative information.

**Question 1 - Refer to Attachment 1, paragraphs 1 through 13:
Does the Board believe that the Introduction adequately (1) addresses each of the 5 topical areas and (2) satisfactorily addresses the Board's intent concerning the appropriate context and background that should precede the P3 definition?**

Question 2 - At the March meeting some Board members were concerned that the P3 definition was so broad and the conclusive characteristics so easy to meet that many contracts the Board would not want included in the scope, such as contracts for the acquisition of almost any large capital asset, would be included. Staff was requested to draft language that would exclude more contracts and/or adding a question to respondents about the breadth of the scope.

As a result, staff has added an additional paragraph (refer to paragraph 17) to the Scope section of the Statement that establishes two conditions, either one of which should exist in order for the Statement to apply. Specifically, only those P3s that possess (1) long-lived asset or long-term financing liability recognition or de-recognition concerns including reclassifications or (2) fiscal exposure (risk) that could lead to a liability would be subject to this Statement. For example, P3s that are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc., would be exempt from applying this Statement unless one of the above conditions exist.

Questions for the Board

Question 2 - Refer to Attachment 1, paragraph 17:

Does the Board believe that the suggested language (that is, establishing the two conditions) helps accomplish the goal of excluding those arrangements or transaction that the Board does not believe should be subject to this Statement?

Question 3 - Staff recommends that these standards become effective for periods beginning after September 30, 2015. Earlier implementation is encouraged.

Question 3 – Refer to Attachment 1, paragraph 25:

Does the Board agree with proposed implementation date? If not, what period would the Board prefer establishing?

Question 4 – The draft ED solicits answers to the following 7 questions:

1. Do you agree or disagree that the P3 definition proposed at paragraph 18 captures the most widely identified features of federal P3s (refer to paragraphs A7 – A9 and Appendix B for a detailed discussion and related explanations)? Please provide the rationale for your answer.
2. Do you agree or disagree that the P3 definition, while capturing P3s based on their most widely identified features, does not also capture contracts or other arrangements that are routine in nature and not generally identified as P3s for other purposes (refer to paragraphs 17, 18, A7- A9, A10 and A15 – A22 for related comments)? Please provide the rationale for your answer.
3. Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics (that is, Conclusive and Suggestive Characteristics) should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A11 – A12 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
4. Do you agree or disagree with the risk-based characteristics and their related classification as either Conclusive or Suggestive characteristics proposed at paragraphs 19 and 20 (refer to paragraphs A13 – A14 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Questions for the Board

5. Do you agree or disagree with the component entity report disclosures proposed at paragraph 23 (refer to paragraphs A23 – A25 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
6. Do you agree or disagree that entities should be permitted to aggregate or group disclosures by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, etc. as proposed at paragraph 21 (refer to paragraphs A26 – A27 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
7. 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.

Question 4 - Refer to Attachment 1, pages 5 - 7:

Does the Board generally agree with each of the questions being asked? If not, please identify the question along with changes you would like to see made. Are there any other questions that the Board would like to ask of the community? If so, please explain why and feel free to suggest appropriate language.

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Attachment 1 – Draft ED: Track Changes Version of *Public-Private Partnerships: Disclosure Requirements*.

Attachment 1 – Draft ED: Track Changes Version of *Public-Private Partnerships: Disclosure Requirements*.

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Federal Accounting Standards Advisory Board

**PUBLIC-PRIVATE PARTNERSHIPS
DISCLOSURE REQUIREMENTS**

Statement of Federal Financial Accounting Standards

Exposure Draft

Written comments are requested by August **TBD**, 2014

May **TBD**, 2014

Working Draft – Comments Are Not Requested on This Draft

THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

The Secretary of the Treasury, the Director of the Office of Management and Budget (OMB), and the Comptroller General, established the Federal Accounting Standards Advisory Board (FASAB or "the Board") in October 1990. FASAB is responsible for promulgating accounting standards for the United States Government. These standards are recognized as generally accepted accounting principles (GAAP) for the federal government.

An accounting standard is typically formulated initially as a proposal after considering the financial and budgetary information needs of citizens (including the news media, state and local legislators, analysts from private firms, academe, and elsewhere), Congress, federal executives, federal program managers, and other users of federal financial information. The proposed standards are published in an Exposure Draft for public comment. In some cases, a discussion memorandum, invitation for comment, or preliminary views document may be published before an exposure draft is published on a specific topic. A public hearing is sometimes held to receive oral comments in addition to written comments. The Board considers comments and decides whether to adopt the proposed standard with or without modification. After review by the three officials who sponsor FASAB, the Board publishes adopted standards in a Statement of Federal Financial Accounting Standards. The Board follows a similar process for Statements of Federal Financial Accounting Concepts, which guide the Board in developing accounting standards and formulating the framework for federal accounting and reporting.

Additional background information is available from the FASAB or its website:

- ["Memorandum of Understanding among the Government Accountability Office, the Department of the Treasury, and the Office of Management and Budget, on Federal Government Accounting Standards and a Federal Accounting Standards Advisory Board."](#)
- ["Mission Statement: Federal Accounting Standards Advisory Board"](#), [exposure drafts](#), [Statements of Federal Financial Accounting Standards and Concepts](#), [FASAB newsletters](#), and other items of interest are posted on FASAB's website at: www.fasab.gov.

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Washington, DC 20548
Telephone 202-512-7350
FAX – 202-512-7366
www.fasab.gov



Federal Accounting Standards Advisory Board

1 May TBD, 2014

2
3 TO: ALL WHO USE, PREPARE, AND AUDIT FEDERAL FINANCIAL INFORMATION
4 Your comments on the exposure draft of a proposed Statement of Federal Financial Accounting
5 Standards, entitled *Public-Private Partnerships: Disclosure Requirements*, are requested.
6 Specific questions for your consideration appear on page 5 but you are welcome to comment on
7 any aspect of this proposal. If you do not agree with the proposed approach, your response
8 would be more helpful to the Board if you explain the reasons for your position and any
9 alternative you propose. Responses are requested by August TBD, 2014.

10 All comments received by the FASAB are considered public information. Those comments may
11 be posted to the FASAB's website and will be included in the project's public record.

12 Mail delivery is delayed by screening procedures. Therefore, please provide your comments in
13 electronic form by e-mail to fasab@fasab.gov. If you are unable to e-mail your responses, we
14 encourage you to fax the comments to (202) 512-7366. Alternatively, you may mail your
15 comments to:

16 Wendy M. Payne, Executive Director
17 Federal Accounting Standards Advisory Board
18 Mailstop H19
19 441 G Street, NW, Suite 6814
20 Washington, DC 20548
21

22 We will confirm receipt of your comments. If you do not receive confirmation, please contact our
23 office at 202.512.7350 to determine if your comments were received.

24 The Board's rules of procedure provide that it may hold one or more public hearings on any
25 exposure draft. No hearing has yet been scheduled for this exposure draft.

26 Notice of the date and location of any public hearing on this document will be published in the
27 Federal Register and in the FASAB's newsletter.

28

29 Sincerely,

30

31 Tom L. Allen

32 Chairman

EXECUTIVE SUMMARY

1

2 WHAT IS THE BOARD PROPOSING?

3 The Board will be providing implementation guidance to ensure that the full costs of Public-
4 Private Partnerships (P3s) are recognized in the reporting entity's general purpose federal
5 financial reports (GPFFRs). This proposal addresses disclosure requirements to aid users in
6 understanding the nature of P3s and related fiscal exposures. To that end, this proposed
7 Statement first establishes a definition of P3s and identifies risk-based characteristics that would
8 need to exist before considering the proposed disclosure requirements. The requirements
9 herein would not replace existing disclosure requirements in other statements of federal
10 financial accounting standards (SFFAS) for similar arrangements or transactions such as
11 leases. P3s are complex arrangements and an entity would apply all applicable standards to
12 report relevant information in the notes regarded as an integral part of the basic financial
13 statement.

14 HOW WOULD THIS PROPOSAL IMPROVE FEDERAL FINANCIAL 15 REPORTING AND CONTRIBUTE TO MEETING THE FEDERAL FINANCIAL 16 REPORTING OBJECTIVES?

17 Given the increasing use of P3s, the Board has identified a need for enhanced disclosures
18 regarding these complex agreements. By addressing disclosure issues as a first step, the Board
19 will ensure information regarding the nature of these complex agreements and their risks is
20 provided. The Board also believes there is a need for clarity in respect to the (full) costs of these
21 complex arrangements or transactions and will continue working with stakeholders to identify
22 measurement and recognition issues pertinent to these complex agreements. As such, future
23 proposals will address additional measurement and recognition guidance that may be needed
24 for certain types of P3 arrangements or transactions.

25 Of the four objectives outlined in Statement of Federal Financial Accounting Concepts (SFFAC)
26 1, *Objectives of Federal Financial Reporting*, the operating performance and budgetary integrity
27 objectives are identified as being most important for P3 reporting.¹ P3-Centric reporting is
28 important to meeting these objectives because the federal government is accountable to
29 citizens for the proper administration of its resources. Because P3s are a form of investment,
30 they should be adequately disclosed in order to assist report users in determining: (a) what and
31 where ~~are the important assets of the U.S. government~~ **the important assets of the U.S.**
32 **government are** and how effectively they are being managed and (b) the identification of the
33 risks (that is, fiscal exposure) associated with P3s.

Comment [DNS1]: 7 March – Staff edit.

¹ SFFAC 1, *Objectives of Federal Financial Reporting*, September 2, 1993, par. 9-10.

Executive Summary

Operating Performance Objective

Federal financial reporting should assist report users in evaluating the service efforts, costs, and accomplishments of the reporting entity; the manner in which these efforts and accomplishments have been financed; and the management of the entity's assets and liabilities. Federal financial reporting should provide information that helps the reader to determine:

- the costs of providing specific programs and activities and the composition of, and changes in, these costs;
- the efforts and accomplishments associated with federal programs and the changes over time and in relation to costs; and
- the efficiency and effectiveness of the government's management of its assets and liabilities.

Budgetary Integrity Objective

Federal financial reporting should assist in fulfilling the government's duty to be publicly accountable for monies raised through taxes and other means and for their expenditure in accordance with the appropriations laws that establish the government's budget for a particular fiscal year and related laws and regulations. Federal financial reporting should:

- provide information that helps the reader to determine how budgetary resources have been obtained and used and whether their acquisition and use were in accordance with the legal authorization,
- the status of budgetary resources, and
- how information on the use of budgetary resources relates to information on the costs of program operations and whether information on the status of budgetary resources is consistent with other accounting information on assets and liabilities.

Source: SFFAC 1

- 1 | The ultimate benefits of developing ~~additional this Statement disclosure principles~~ include but
2 | are not limited to:
- 3 | a. Developing ~~FASAB~~ terminology and guidance that is meaningful to federal agencies
4 | and users.
- 5 | b. Improving consistency in definitions so that information is comparable among
6 | agencies.
- 7 | c. Disclosing information helpful in meeting the reporting objectives.
8 |

Comment [WP2]: WP Edit – benefits are broader

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Questions for Respondents

1 QUESTIONS FOR RESPONDENTS

2

3 The Board encourages you to become familiar with all proposals in the Statement before
4 responding to the questions in this section. In addition to the questions below, the Board also
5 would welcome your comments on other aspects of the proposed Statement. Because the
6 proposals may be modified before a final Statement is issued, it is important that you comment
7 on proposals that you favor as well as any that you do not favor. Comments that include the
8 reasons for your views will be especially appreciated.

9 The Board believes that this proposal would improve federal financial reporting and contribute to
10 meeting the Federal financial reporting objectives. The Board has considered the perceived
11 costs associated with this proposal. In responding, please consider the expected benefits and
12 perceived costs and communicate any concerns that you may have in regard to implementing
13 this proposal.

14 The questions in this section are available in a Word file for your use at
15 www.fasab.gov/exposure.html. Your responses should be sent by e-mail to fasab@fasab.gov. If
16 you are unable to respond by e-mail, please fax your responses to (202) 512-7366.
17 Alternatively, you may mail your responses to:

18 Wendy M. Payne, Executive Director
19 Federal Accounting Standards Advisory Board
20 Mailstop 6H19
21 441 G Street, NW, Suite 6814
22 Washington, DC 20548
23

24 All responses are requested by August **TBD**, 2014.
25

Questions for Respondents

1
2 Q1. The Board proposes defining the term “public-private partnerships” as shown below:

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

14 **Do you agree or disagree that the P3 definition proposed at paragraph 18 captures the
15 most widely identified features of federal P3s (refer to paragraphs A7 – A9 and Appendix
16 B for a detailed discussion and related explanations)? Please provide the rationale for
17 your answer.**

18 Q2. The Board's scope and proposed definition at paragraph 18 is not intended to apply to
19 those arrangements or transactions that do not possess (1) long-lived asset or long-term
20 financing liability recognition or de-recognition concerns, to include reclassifications or (2) fiscal
21 exposure (risk) that could lead to a liability. For example, P3s that are solely designed to foster
22 goodwill, encourage economic development, promote research and innovation, coordinate and
23 integrate strategic initiatives, etc., would be exempt from applying this Statement unless one of
24 the above conditions exist.

25 **Do you agree or disagree that the P3 definition, while capturing P3s based on their most
26 widely identified features, does not also capture contracts or other arrangements that are
27 routine in nature and not generally identified as P3s for other purposes (refer to
28 paragraphs 17, 18, A7- A9, A10 and A15 – A22 for related comments)? Please provide the
29 rationale for your answer.**

30 Q3. The Board, in consultation with the P3 Task Force (refer to paragraphs A1 – A6 for related
31 comments) has developed P3 risk-based characteristics (that is, Conclusive and Suggestive
32 Characteristics) that an entity can use to ascertain what P3s, if any, should require disclosure.
33 The characteristics are intended to apply to all types of P3's; construction, housing, utilities,
34 military depots, etc. These characteristics may be used as an entity filter that would eliminate
35 disclosing P3 arrangements/transactions that pose little or no (1) financial recognition or de-
36 recognition concerns, to include reclassifications or (2) fiscal exposure (risk) that could lead to a
37 liability.

Comment [DNS3]: 6 March meeting –

Mr. Allen asked if we couldn't handle this matter simply by amending the question about the definition by adding a sentence asking the respondents if they believe that many arrangements not possessing P3 features will be picked up for disclosure. Then you could have a short sentence back in the basis of conclusion that the issue has been raised. If we could get feedback from people then we would know whether we need to rewrite the standard differently or not.

Questions for Respondents

1 **Do you agree or disagree that only those P3s (identified pursuant to the above definition)**
2 **possessing risk-based characteristics (that is, Conclusive and Suggestive**
3 **Characteristics) should be subject to the disclosure requirements proposed at**
4 **paragraphs 21 – 24 (refer to paragraphs A11 – A12 for a detailed discussion and related**
5 **explanations)? Please provide the rationale for your answer.**

6

7 Q4. The Board, in consultation with the P3 Task Force proposes that the P3 risk-based
8 characteristics be categorized as either: Conclusive characteristics - where answering "Yes" to
9 any 1 characteristic means the P3 arrangement or transaction ~~should be considered for~~ **must be**
10 ~~subject to~~ disclosures; or Suggestive characteristics - where answering "Yes" to any 1
11 characteristic suggests that the P3 arrangement or transaction may be subject to disclosures
12 but that this 1 Suggestive characteristic must be considered in the aggregate with all the other
13 Suggestive characteristics before reaching a final decision. Each conclusive characteristic is
14 meant to be definitive whereas each suggestive characteristic will require entity judgment as
15 each one is analyzed in connection with the other suggestive characteristics. The conclusive
16 and suggestive characteristics are presented at paragraphs 19 to 20 and more fully discussed
17 at paragraphs A13 – A14.

18 **Do you agree or disagree with the risk-based characteristics and their related**
19 **classification as either Conclusive or Suggestive characteristics proposed at paragraphs**
20 **19 and 20 (refer to paragraphs A13 – A14 for a detailed discussion and related**
21 **explanations)? Please provide the rationale for your answer.**

22

23 Q5. The Board proposes disclosures that would reveal:

- 24 a. The purpose or objective for the P3 arrangement or transaction should include
25 the relative benefits/revenues being received in exchange for all of the
26 government's consideration, monetary and non-monetary.
- 27 b. The decision criteria for selecting a P3 arrangement or transaction should include
28 the entity's statutory authority for entering into the P3.
- 29 c. Type of funding, federal or otherwise used to meet mission requirements and
30 service delivery needs to support the P3; for example, appropriated, non-
31 appropriated, private capital or investment.
- 32 d. The operational and financial structure of the P3 including the entity's rights and
33 responsibilities and amounts the government can be reasonably expected to
34 incur/pay over the life of the P3 arrangement or transaction.
- 35 e. Contractual provisions for termination (default) payments and related exit
36 amounts.
- 37 f. Identification of the significant risks the P3 partners are undertaking.

Comment [DNS4]: 6 March Meeting –
Addressing Mr. Dacey 's concern that
materiality/probability should be factored in
before automatically going to disclosure.

Questions for Respondents

- 1 g. As applicable:
- 2 i. Violations of legal and contractual provisions governing the P3
3 arrangement or transaction.
- 4 ii. Whether the private partner(s), including any SPV, have borrowed or
5 invested capital contingent upon the entity's promise to pay whether
6 implied or explicit.
- 7 iii. Describe events of termination or default.

8 **Do you agree or disagree with the component entity report disclosures proposed at**
9 **paragraph 23 (refer to paragraphs A23 – A25 for a detailed discussion and related**
10 **explanations)? Please provide the rationale for your answer.**

11 Q6. The Board proposes that due to the relative complexity and potentially large number of
12 P3s that an entity might be party to, the proposed disclosures would permit entities to provide
13 broad and summarized information instead of unique or discrete arrangement or transaction
14 detail. For example, disclosures of P3 arrangements or transactions could be grouped by an
15 entity's strategic objectives, departmental or bureau categorizations, program budget
16 classifications, etc. In this way users are presented with information that is comprehensive and
17 material to an entity's financial statements without placing an undue burden on preparers to
18 provide P3 specific or granular level information.

19 **Do you agree or disagree that entities should be permitted to aggregate or group**
20 **disclosures by an entity's strategic objectives, departmental or bureau categorizations,**
21 **program budget classifications, etc. as proposed at paragraph 21 (refer to paragraphs**
22 **A26 – A27 for a detailed discussion and related explanations)? Please provide the**
23 **rationale for your answer.**

24 Q7. The Board encourages respondents to not only provide input concerning any and all
25 aspects of the proposed changes thus far discussed, but also other changes, points, issues
26 and/or considerations which may not have been specifically addressed in this exposure draft. In
27 addition, the basis for conclusions explains the Board's goals for this project (see comments
28 beginning at paragraph A1) and also discusses other issues raised by Task Force members as
29 well as experts and practitioners both within and external to government (as an example, see
30 paragraphs A4 through A6).

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

34

Introduction

INTRODUCTION

PURPOSE

1. The requirements for government continue to expand despite shrinking or limited funding, human capital skill sets, and other resources. To meet that challenge, government is increasingly establishing risk-sharing structural arrangements or transactions with the private sector to deliver infrastructure, facilities, goods, and services in a less costly and more operationally efficient manner. From the point of view of the entity, entering into these arrangements or transactions may be seen as beneficial and in some cases essential for a variety of reasons. To that end, entities may employ risk-sharing as a way of delivering public value that might otherwise not be achieved.
2. These risk-sharing structural arrangements or transactions are commonly referred to as **Public-Private Partnerships (P3s)**² but also include Alternative Financing Arrangements, and Privatization Initiatives, some of which are extremely complex. For example, P3s may involve the use and mix of appropriated funds, non-appropriated funds, third-party financing, or significant amounts of private capital or investment. Furthermore, P3s can (1) be so long-term in nature that costs may not be distributed equitably across generations, (2) exclude contractual protections afforded the government by the Federal Acquisition Regulation (FAR) such as, but not limited to: termination rights and obligations, contract by negotiation, cost accounting administration, and contract cost allowability, and (3) require the government to provide resources or absorb losses greater than other alternative procurement methods or competing in-house³ performance. Lastly, P3s may involve the transfer of government assets, including intellectual property, into private hands for extended periods of time.
3. As a result, the Board recognizes that the accounting and reporting issues related to risk-sharing can also be extremely complex, involving a wide array of assets and liabilities. P3s by their very design transfer or share various forms of risk between the P3 partners. Such risk allocation strategies are in essence the very incentives that serve as the foundation or building blocks for P3s. Therefore, an entity must understand how much (total) risk resides in an arrangement or transaction and how much of that risk has been (1) transferred to the private partner, (2) shared with the private partner, and (3) retained by the entity (that is, government sponsor). Such an analysis relies on a thorough understanding of the underlying contractual agreements, guarantees, insurance and indemnification strategies as well as the existence and nature of any underlying capital buffer that might exist; that is, debt and equity investors' participation.
4. It is important to note that entities can execute P3s via **structural arrangements** through the use of **special purpose vehicles (SPV's)** and/or directly as **program**

² Terms defined in the Glossary are shown in bold-face the first time they appear.

³ In-house refers to using Government facilities and personnel as opposed to relying on commercial sources to supply the products and services the Government needs.

Comment [DNS5]: 7 March - Staff has reworked this section (paragraphs 1 thru 13) in its entirety and in order to achieve reading-ease, the Track-changes feature has been disabled. Please note that the Introduction, unless specifically incorporated into the Standard, is non-authoritative and is used in this ED primarily as background for contextual purposes.

Introduction

- 1 **transactional arrangements.** Furthermore, many P3s are either discrete (long-
2 term) leases or involve aspects of leasing.
- 3 5. Because the Board has previously addressed various types of long-term
4 arrangements in which the government participates (for example, leases,
5 guarantees, etc.), existing accounting standards provide for recognition and
6 measurement of assets/liabilities and revenues/expenses as well as disclosures of
7 certain risks in these long-standing types of arrangements or transactions.
8 Therefore, the Board believes that the immediate need is for disclosure
9 requirements specific to these risk-sharing structural arrangements or transactions.
- 10 6. To that end, the Board notes that there are specific risks associated with P3s. For
11 example, risks include that (1) actual costs will be greater than those
12 corresponding costs contained in the federal budget, (2) the entity may have to
13 absorb part or all of the project's private debt, (3) the entity will not achieve
14 expected returns on its investments in limited partnerships, (4) ~~political pressures~~
15 will conditions may lead to a government-acknowledged event where an entity
16 assumes financial responsibility for the event, and (5) the public purpose or public
17 value will not be fulfilled or achieved. Because of the risks involved in entering into
18 such long term agreements, some of which involve government assets, specific
19 disclosures regarding P3s are needed to foster accountability and sound
20 accounting while disclosing associated risks (that is, fiscal exposure). Such
21 disclosures should generally accompany the related asset and/or liability display
22 contained within the financial statements.
- 23 7. A contingency is an existing condition, situation, or set of circumstances involving
24 uncertainty as to possible gain or loss to an entity. Some risks associated with P3s
25 may result in the incurrence of losses and applying Statement of Federal Financial
26 Accounting Standards 5 (SFFAS 5): *Accounting for Liabilities of the Federal*
27 *Government* would be appropriate. For recognition of losses, SFFAS 5 requires
28 that a past event have occurred for which a future outflow or other sacrifice of
29 resources is probable and measurable. Disclosure is required for reasonably
30 possible losses.
- 31 8. Due to their very nature, P3s can also possess risks that do not necessarily meet
32 the SFFAS 5 threshold for recognition or disclosure but are nonetheless
33 reasonably possible and significant. For example, excluding contractual protections
34 afforded the government by the Federal Acquisition Regulation (FAR) inherently
35 increases the entity's risk as does a relationship with an industry or private partner
36 that may require the government to provide resources or absorb losses beyond
37 what was contemplated. It is the Board's opinion that such risks should be
38 disclosed, subject to materiality, even though it is uncertain that a past event
39 indicates that a loss may have been incurred. Therefore, consideration should be
40 given to those risks that management does not expect to be likely yet represent a
41 significant exposure. With this being said, the Board also notes that certain remote
42 risks may have a reasonably high materiality threshold. As such, remote risks that
43 are not contingent in nature should not be dismissed from disclosure without
44 further consideration of user needs, qualitative and quantitative assessments, and
45 materiality.

Comment [DNS6]: Per Messrs M. Granof and B. Dacey 6 March Board meeting.

Comment [DNS7]: Per M. Reger 6 March Board meeting.

Introduction

- 1 9. It is important to note that disclosures comprise quantitative and qualitative
2 information and that not all P3 risks lead to fiscal exposure or can be readily or
3 sufficiently measured. However, federal financial reports are most likely to meet
4 reporting objectives and, therefore, user's needs when entity financial statements
5 help readers understand complex arrangements and the associated risk. To this
6 end, qualitative disclosures are as important as quantitative disclosures. Further,
7 both quantitative and qualitative factors should be considered in assessing
8 materiality as well as the nature and content of information to be disclosed.
- 9 10. Because the Board has identified the need for clarity in respect to questions that
10 arise concerning the full costs, including risk (that is, fiscal exposure) of these
11 complex arrangements or transactions, this Statement is a first step to developing
12 principles-based guidance, and identifying potential gaps in existing guidance. The
13 Board is working, and will continue to work, closely with stakeholders interested in
14 improving the accounting and reporting of these complex arrangements or
15 transactions. By addressing disclosure issues as a first step, the Board will
16 facilitate continued cooperation and greater interest in identifying areas requiring
17 attention while minimizing preparer burden. It should be noted that the Board also
18 plans to address measurement, recognition and reporting issues through continued
19 consultation with stakeholders. This could lead to the issuance of additional
20 guidance and/or standards.
- 21 11. This proposal does not alter financial measurement and recognition requirements
22 but may result in changes in practice due to the establishment of the proposed P3
23 definition focusing attention on P3s.
- 24 12. This proposed Statement addresses P3s and this term is used to refer to a wide
25 variety of service, management, operating, and ~~research and development~~
26 arrangements or transactions. ~~Such arrangements and transactions may~~ include
27 ~~ing contracts, grants~~, alternative financing arrangements, ~~and~~ privatization
28 initiatives ~~and other arrangements~~.
- 29 13. The objective of this proposed Statement is to improve federal financial reporting
30 by addressing issues related to federal P3s. This Statement will improve
31 consistency in reporting these types of arrangements or transactions, thereby
32 enhancing the comparability of the accounting and financial reporting of such
33 arrangements among federal entities.

Comment [DNS8]: 24 March staff edit to ensure that we don't exclude grants from P3 reporting.

Please note that as per G. Marchand consultation, a grant typically contemplates that the government will provide funds without expecting something in return. In other words, what makes it a "grant" and not a "contract" is that there is no consideration.

34 MATERIALITY

- 35 14. The provisions of this Statement need not be applied to immaterial items. The
36 determination of whether an item is material depends on the degree to which
37 omitting or misstating information about the item makes it probable that the judgment
38 of a reasonable person relying on the information would have been changed or
39 influenced by the omission or the misstatement.

Proposed Standards

PROPOSED STANDARDS

SCOPE

15. This Statement applies to federal entities that present general purpose federal financial reports, including the consolidated financial report of the U.S. Government (CFR), in conformance with generally accepted accounting principles, as defined by paragraphs 5 through 8 of Statement of Federal Financial Accounting Standards (SFFAS) 34, *The Hierarchy of Generally Accepted Accounting Principles*, Including the Application of Standards Issued by the Financial Accounting Standards Board.
16. The Statement provides a general definition of P3s and related disclosure criteria. The arrangements or transactions that fall within the scope of this Statement should be assessed against the Conclusive and Suggestive characteristics to identify those subject to the disclosure requirements. These characteristics along with materiality considerations would eliminate reporting certain P3 arrangements/transactions.
17. This Statement applies only to those P3s that possess (1) long-lived asset or long-term financing liability recognition or de-recognition concerns including reclassifications or (2) fiscal exposure (risk) that could lead to a liability. For example, P3s that are solely designed to foster goodwill, promote research and innovation, or coordinate and integrate strategic initiatives would not apply this Statement unless one of the above conditions exists. In addition, the P3 definition below refers to a wide variety of service, management, operating, and research and development arrangements or transactions. Such arrangements and transactions may, include contracts, grants, alternative financing arrangements, and privatization initiatives and other arrangements.

DEFINITION

18. 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 arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPVs). The above definition captures the most widely identified features of federal P3s. P3s should be assessed against the Conclusive and Suggestive characteristics presented below to identify those subject to the disclosure requirements.

IDENTIFICATION OF P3'S REQUIRING DISCLSoure

Comment [DNS9]: 6 March Meeting –

Mr. Dacey said that he agreed spending time in either the intro or scope paragraphs because there are certain arrangements that we all agree do not need to be captured or disclosed.

Mr. Reger said I think our intent was always to identify, I'll use the bad words, material, relevant, large things that had a significant impact in doing this, and not the copy machines, unless it's all of the copy machines. I'm a little concerned that because a copy contract for more than five years will require disclosure.

Ms. Payne said maybe we should create some sort of exclusion. So any P3s that don't cover a significant portion of the economic life and more than five years would be excluded also where there's not third-party financing and conveyance or transfer of real or personal property, multi-sector skills and expertise would also be excluded. So anything that didn't have all three of those things would be excluded from coverage before you get to the conclusive characteristics. This is an approach where there's a stronger filter there from the general P3 definition before you get to the conclusive.

Staff: Following Ms. Payne's advice, I suggest we focus on the 2 criteria identified. That is, if a P3 doesn't involve a LLA or LTFI or have fiscal exposure, it would be exempt. Conversely, a P3 selected for disclosure must have at least one of the 2. I think this would help rule-out a wide swath of P3s that are inherently low-risk.

Comment [DNS10]: 9 April – As per G. Marchand consultation. The Scope paragraph should include those type of arrangements the Board foresees this Statement applying to; that is, the Scope paragraph is authoritative whereas the Introduction is not.

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19. If any one of the following Conclusive Characteristics is met, the P3 arrangement or transaction should ~~disclose the information at paragraph 23 be considered for disclosure.~~ P3 arrangements or transactions identified for disclosure should be further evaluated in light of the entity's materiality considerations; for example, qualitative and quantitative thresholds.

DRAFT

Comment [DNS11]: 6 March meeting –

Mr. Dacey began by stating that he continued to have some significant concerns. Specifically, as he looked at the conclusive characteristics, an entity upon meeting any one of these will automatically have to go to disclosure. His concern is the interrelationship of this with the existing framework in SFFAS 5 or the risk disclosure framework discussed in December because we're not seemingly taking probability into this consideration.

Staff: I suggest the use of some conditional language to avoid a mechanistic approach jumping directly into disclosures. Some possible suggestions:

1. "...the P3 should be considered for....."
2. "...the P3 is eligible for....."
3. "...the P3 may be subject to"
- 4.. "...the P3 could require....."

Staff suggests Number 1. Consideration infers that additional analysis must take place; that is, a materiality assessment.

Also, please see added language in the last sentence concerning materiality.

Comment [DNS12]: Staff notes that materiality was emphasized at paragraph 19 prior to the Board meeting. More importantly, the newly expanded BFC should help preparers identify those P3's we are most concerned with.

Proposed Standards

Conclusive Characteristics	Fiscal Exposure (Risk) Rationale Implication
<p>1. The arrangement resulted in the conveyance or creation of a long-lived asset or long-term financing liability.</p>	<p>Not all P3s result in the conveyance or construction of an asset. However, in those that do, the government's risk may be significantly increased because of costs that often accompany asset ownership or control. Further, some private partners may incur substantial liabilities in preparation for delivering services even if an asset is not created.</p>
<p>2. The federal entity participates in, helps sponsor, or is party to an SPV, partnership, trust, etc.</p>	<p>Entities such as SPVs, partnerships, trusts, etc., can be established for a variety of strategic and/or tactical reasons. Generally speaking, they are commonly considered risk-containment vehicles and are more often than not, purposefully kept off of budgets and balance sheets. P3s can be or most often become borrowing arrangements or alternative financing mechanisms. Therefore, the risk rests in the fact that because the established entity (for example, SPV) facilitates funding, an agency's explicit or implicit long-term debt or promise to pay the established entity is not appropriately recognized.</p>
<p>3. The term of the procurement or contract arrangement is longer than 5 years.</p>	<p>Those P3 procurement or contract arrangements greater than 5 years pose greater risk to the federal entity because there is often no re-procurement or re-negotiation opportunity for the agency. As a result, changed conditions that could warrant a fair and reasonable re-negotiation or re-competition cannot be exercised and increased costs that would otherwise be avoided are incurred for the duration of the arrangement.</p>
<p>4. The principal arrangement is exempt from the Federal Acquisition Regulation (FAR) or other comparable laws, regulations or provisions preserving and protecting the government's rights.</p>	<p>The FAR is the primary regulation that governs the administrative framework that includes procurement and legal requirements to help safeguard and protect taxpayer dollars. Therefore, those P3s exempt from FAR are at an increased-risk because well-established safeguards and contract resolution mechanisms are abandoned in favor of substitute contract terms and conditions and/or alternate contract dispute resolution venues. As a result,</p>

Conclusive Characteristics	Fiscal Exposure (Risk) Rationale Implication
	the increased exposure arising from the loss of such contractual protections are not appropriately recognized or disclosed.

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20. While meeting one of the Suggestive Characteristics implies there is some persuasive evidence that a P3 may need to ~~should~~ disclose the information at paragraph 23, each characteristic must be considered in the aggregate with the other Suggestive characteristics before a final decision is reached. Each Conclusive characteristic is definitive whereas each Suggestive characteristic will require entity judgment as each one is analyzed in connection with the other Suggestive characteristics. P3 arrangements or transactions identified for disclosure should be further evaluated in light of the entity's materiality considerations; for example, qualitative and quantitative thresholds.

Comment [DNS13]: Staff notes that materiality was emphasized at paragraph 20 prior to the Board meeting. More importantly, the newly expanded BFC should help preparers identify those P3's we are most concerned with.

DRAFT

Proposed Standards

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
1. A Value for Money ⁴ analysis is performed.	The term VfM is almost always used in connection with P3 arrangements or transactions. VfM analyses are broader in scope emphasizing qualitative factors as opposed to the more traditional quantitatively based cost-benefit analyses most often performed. If an entity conducts a VfM analysis it is likely that the project in question is a P3. VfM's are typically more subjective than traditional cost-benefit analyses and are sometimes done ex-post facto thus increasing potential risk to the agency.
2. The principal arrangement is not managed by an Administrative Contracting Officer (ACO) and/or Procurement Contracting Officer (PCO).	Typically, when a contract is awarded under the FAR, the procuring organization has an independent administrative contracting officer administer and manage aspects of the contract to ensure contract compliance. This activity can be either assigned to an Administrative Contracting Officer (ACO) who is usually external to the procuring organization or delegated internally to a Procurement Contracting Officer (PCO). In some cases dual-administration will occur. However, if an entity does not delegate administration responsibility to any contracting officer and retains administration internally, there may be less objectivity and independence in ensuring that contract

⁴ The National Council of Public Private Partnerships has adopted the United Kingdom's, Her Majesty's Treasury Value for Money definition as contained in Her Majesty's Value Assessment Guide:

"VfM is defined as the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user's requirement. VfM is not the choice of goods and services based on the lowest cost bid. To undertake a well-managed procurement, it is necessary to consider upfront, and at the earliest stage of procurement, what the key drivers of VfM in the procurement process will be".

Said another way, VfM is a much broader concept than typical cost-benefit analysis because it emphasizes "value" in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project's Internal Rate of Return (IRR) to help determine project acceptability. The VfM concept has drawn criticisms not only because of its subjectivity and lack of rigor in application, but because in some cases (1) cash flows can be easily managed to meet desired expectations and (2) VfM results are used as ex-post facto justifications for qualitatively made project and/or award decisions. It is important to note that the same criticisms can be made of the more traditional cost-benefit analyses used in management decision making.

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
	requirements are adhered to leading to potentially adverse financial ramifications for the agency.
3. The consideration or items given up in an arrangement or their value are not readily apparent.	Generally under common law, consideration from both parties is required in order to have what constitutes a binding contract. Some courts have ruled that in those cases where the exchange appears excessively one sided, no quid-pro-quo exists and the contract may be void by law. Therefore, in those cases where consideration or its value from either party is not readily apparent, such cases could lead to recourse or remedies that have adverse financial ramifications to the agency.
4. Significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.	As federal entities face under-utilization and skill retention issues, with Congressional approval, some entities are entering into P3 arrangements/transactions to put both infrastructure and government personnel to heightened work. However, there is a concern that the analyses used to justify these arrangements often exclude government personnel costs including legacy costs (for example, pensions, OPEB's, etc.). Therefore, increased risk exists in those cases where such costs are excluded because the government (1) is left absorbing these costs with no related activity base, (2) is exposed to potential liabilities arising from union and/or employee litigation and (3) may lose governmental skill-sets that would lead to costlier contracting-out procurement options.
5. The focus is more on collaboration and informal, real-time, resolution processes as opposed to formal, contractual, administrative processes.	Due to their very nature, P3 arrangements/transactions involve risk-sharing and in some cases, issues such as contract disputes are resolved informally. However, such informal resolution processes could lead to potential liability when contracting, procurement, or legal personnel are not involved. Therefore, the risk rests in the potential liability arising from informal resolution of what otherwise would require more formal contractual

Proposed Standards

Suggestive Characteristics	Fiscal Exposure (Risk) Rationale Implication
	administrative processes.
<p>6. The government relies on either the private sector partner's or a third party's determination of a P3's performance or return on investment/equity, without performing its own verification of performance/return on investment/equity.</p>	<p>Agencies often rely on 3rd party experts to assist in performing VfM and/or cost- benefit analyses, return-on-equity calculations, asset appraisals, risk-transfer analyses, etc. However, it has been noted both at the federal and state level that conflicts of interest often exist because there are only a few firms who practice in this highly sophisticated area. As a result, some firms have benefitted on both ends of the P3 arrangement/transaction by providing advisory services to both the private partner and government sponsor. In addition, fees are often based on the dollar volume of the arrangement creating what some believe are self-serving incentives. Therefore, the risk in those P3 arrangements/transactions rests where an agency does not or cannot perform its own independent analysis thus relying solely on either the private partner or a third party determination of a P3's performance or return on investment/equity without performing its own verification. Such analyses may belie the actual risk or fiscal exposure the government has or will incur.</p>

1 **DISCLOSURE REQUIREMENTS**

2 **COMPONENT REPORTING ENTITY DISCLOSURES**

3 21. The P3 disclosures at paragraph 23 below specify the inclusion of qualitative and
4 quantitative information and may be aggregated or grouped by an entity's strategic
5 objectives, departmental or bureau categorizations, program budget classifications,
6 etc.

7 22. Disclosures are required for the initial period and all annual periods thereafter where
8 an entity is party to a P3 arrangement/transaction.

9 23. ~~At a minimum~~ The following information should be disclosed:

Comment [DNS14]: Per T. Allen at 6 March Board meeting.

10 a. The purpose or objective for the P3 arrangement or transaction should include
11 the relative benefits/revenues being received in exchange for all of the
12 government's consideration, monetary and non-monetary.

13 b. The decision criteria for selecting a P3 arrangement or transaction should include
14 the entity's statutory authority for entering into the P3.

15 c. Type of funding, federal or otherwise used to meet mission requirements and
16 service delivery needs to support the P3; for example, appropriated, non-
17 appropriated, private capital or investment.

18 d. The operational and financial structure of the P3 including the entity's rights and
19 responsibilities and amounts the government can be reasonably expected to
20 incur/pay over the life of the P3 arrangement or transaction.

Comment [DNS15]: 6 March meeting –
Mr. Smith stated that the only item he sees open are the exit liabilities that P3s have in the event of an early exit. These happen to be huge payments and I think that they should be disclosed so that a person would understand what those liabilities are. I think that you could get to it by saying well that's the risk or exposure, but I'm not sure that people would necessarily pick that up unless we specifically identify it.
Staff: Please see suggested addition at 25e. and 25g. (iii).
The World Bank considers this to be a recommended best-practices disclosure.

21 e. Contractual provisions for termination (default) payments and related exit
22 amounts.

23 e.f. Identification of the significant risks the P3 partners are undertaking.

24 f.g. As applicable:

25 i. Violations of legal and contractual provisions governing the P3
26 arrangement or transaction.

27 ii. Whether the private partner(s), including any SPV, have borrowed or
28 invested capital contingent upon the entity's promise to pay whether
29 implied or explicit.

Comment [DNS16]: 6 March meeting –
Mr. Showalter said if we look at paragraphs 23e and 23g those are applicable only to the extent they're applied. So we've got to be clearer here so we don't get government sponsors saying I don't have violations. If you're requiring the disclosure, then they preparers are going to want to say something about them. You only say something about them when they're applicable, not in their absence. I would just try to make the clearer by noting that we only need to talk about them if they are applicable.
Staff: Edits made at the Board table.

30 iii. Describe events of termination or default.

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Proposed Standards

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2 FINANCIAL REPORT OF THE US GOVERNMENT DISCLOSURES

3 24. The U.S. government-wide financial statements should disclose the following
4 information:

5 a. general description of ~~material~~ P3 arrangements or transactions,

6 b. the consolidated amounts the government can be reasonably expected to incur/pay
7 over the life of the P3 arrangements or transactions, and

8 c. reference(s) to component entity report(s) for additional information.

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10 EFFECTIVE DATE

11 25. The requirements of this Statement are effective for reporting periods beginning after
12 September 30, 2015.

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

Comment [DNS17]: 9 April Staff edit – use of “material” is redundant.

APPENDIX A: BASIS FOR CONCLUSIONS

This appendix discusses some factors considered significant by Board members in reaching the conclusions in this Statement. It includes the reasons for accepting certain approaches and rejecting others. Individual members gave greater weight to some factors than to others. The standards enunciated in this Statement—not the material in this appendix—should govern the accounting for specific transactions, events, or conditions.

PROJECT HISTORY

- A1. As part of FASAB's technical agenda-setting process this project was added to the April 2012 agenda because federal agencies have increasingly turned to public-private partnerships to accomplish goals and in light of budget pressures are likely to further increase their use. Although federal *Generally Accepted Accounting Principles* are fairly robust, the Board noted that due to the complex nature of P3s, significant study would be required in this area regarding a host of issues dealing with the definition, measurement and recognition of P3s. In December 2012 the project plan was adopted with the overall goal of recognizing the full costs of public-private partnerships in the financial statements. In addition, the formation of a P3 Task Force began and its inaugural meeting was held in February 2013.
- A2. Active work on this project began in FY2013 with final standards or guidance expected following a two to three year effort. Specific project objectives included:
- a. Defining terms
 - b. Providing guidance (that is, identifying gaps) for the recognition and measurement of:
 - i. assets and liabilities,
 - ii. revenues and expenses, and
 - iii. establishing disclosure requirements.
 - c. Considering guidance for other arrangements related to P3s (for example, sale-leaseback or other long-term arrangements)
- A3. Early on its deliberations the Board was clear that forthcoming guidance must be consistently applied and grounded or covered by an overarching principle(s). Specifically, the Board noted that it should look to establish uniform, principles-based guidance to enhance comparability among agencies, identify gaps in existing guidance, and avoid duplicating guidance or creating standards-overload. The Board noted its concern with the risks to which the government is exposed and related disclosures. As a result, members decided that because P3s often involve novel operational and complicated accounting practices, accompanied by sophisticated financing agreements, these complexities necessitate the establishment of disclosure requirements as a first step to (1) developing uniform, principles-based guidance, and (2) identifying potential gaps in existing guidance.

Appendix A: Basis for Conclusions

- 1 To that end, the Board decided that a broad P3 definition accompanied by risk-
2 based characteristics should be pursued.
- 3 A4. P3 Task Force meetings for this phase of the Project were held between February
4 2013 and February 2014. All meetings were well attended with representation
5 from federal agencies, commercial sector, and citizen-centric points of view.
6 Participants came from diverse disciplines such as accounting, auditing, facilities
7 management, financial reporting, housing, information technology (IT),
8 commercial and investment banking, procurement, and program management.
9 The majority of participants agreed that there is significant interest in P3s across
10 the diverse disciplines represented. It was noted that conditions such as current
11 budget constraints and capacity (that is, contingency) planning are driving some
12 agencies to look at various types of P3 models to accomplish mission.
13 Interestingly, both federal and private participants agreed that there is strong
14 pressure against the use of P3s noting that this probably arises from the “off
15 balance sheet” or “off budget spending” stigma associated with these
16 arrangements or transactions. To counter the stigma associated with the term
17 *Public-Private Partnerships*, some entities have begun re-labeling their P3
18 initiatives as *Alternative Financing* and/or *Privatization Initiatives*. A citizen
19 viewpoint that was raised stated that absent empirical evidence supporting the
20 notion that P3s in fact work, a citizen’s concern is that the government is
21 assuming more risk than it would otherwise and in light of the fact that many
22 private companies are flush with cash, while agency budgets are tight, seems to
23 suggest that this be an area of careful consideration calling for transparency and
24 robust disclosure.
- 25 A5. To best meet the project goal and objectives, in addition to task force discussions,
26 staff initiated fact-finding meetings with experts and practitioners both within and
27 external to government. Staff met with federal agency representatives, public
28 policy experts, consultants, private equity participants and a private
29 IT/Cloud/Software development firm. Please refer to Tables 1.0 and 2.0
30 respectively, for listings of the federal agencies visited or considered and the
31 professionals or disciplines consulted. The goal of the fact-finding meetings was
32 to refine the project’s scope by:
- 33 • Identifying the types of arrangements/transactions where part of the agency’s
34 risk profile has been transferred to (or shared with) the private partner,
 - 35 • Noting current P3 issues being faced by the participant(s),
 - 36 • Soliciting input/suggestions on potential P3-Centric financial reporting
37 characteristics/criteria, and
 - 38 • Analyzing arrangements for potential accounting policy issues.
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TABLE 1.0
Fact-Finding Agencies Visited or Considered

Executive Agency*
Agency for International Development
Department of Commerce *
Department of Defense
Department of State
Department of Transportation/FHWA
Department of the Treasury
National Aeronautics and Space Administration
National Science Foundation
Veterans Affairs

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* = Department of Commerce - no visit was made. GAO Congressional analysts provided information concerning a Department of Commerce P3 that was currently under audit.

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TABLE 2.0
Professionals/Disciplines Consulted

	Profession/Organization/ Discipline	Federal	Non-Federal
1.	International Business & Finance Consultants		2X
2.	Procurement Professionals		2X
3.	Public Service Employee Union		X
4.	World Bank Finance Director		X
5.	P3 Attorney-Consultants		2X
6.	IT/Cloud Program Manager		X
7.	Agency Inspector General	X	
8.	Agency Policy Accountants	2X	
9.	Agency RP/Utility Directors	2X	
10.	Agency Deputy CFO	X	
11.	Agency Risk Manager	X	
12.	GAO Congressional Analysts	X	
13.	Agency P3 Program Manager	X	

Table 2.0 Note: An “X” signifies a single interview whereas as “2X” signifies that two persons usually from different organization were interviewed.

Common Themes and Other Matters

- A6. Generally, the most common themes arising from task force and fact finding meetings that were considered in developing the Statement include:
- As a minimum, participants expect continued use if not growth in P3s.
 - Government employee legacy & relocation costs are not presently considered in VfM⁵ analyses.

⁵ The National Council of Public Private Partnerships has adopted the United Kingdom’s, Her Majesty’s Treasury Value for Money definition as contained in Her Majesty’s Value Assessment Guide:

VfM is defined as the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirement. VfM is not the choice of goods and services based on the lowest cost bid. To undertake a well-managed procurement, it is necessary to consider upfront, and at the earliest stage of procurement, what the key drivers of VfM in the procurement process will be.

Said another way, VfM is a much broader concept than typical cost-benefit analysis because it emphasizes “value” in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project’s Internal Rate of Return (IRR) to help determine project acceptability. The VfM concept has drawn criticisms not only because of its subjectivity and lack of rigor in application, but because in some cases (1) cash flows can be easily managed to meet desired expectations and (2) VfM results are used as ex-post facto justifications for qualitatively made project and/or award decisions. It is important to note

Appendix A: Basis for Conclusions

- 1 • Long-term nature of P3s is accepted, but concerns include
 - 2 ○ Lack of transparency in the solicitation and award processes along
 - 3 with the lack of competition hinders accountability and fair and
 - 4 reasonable pricing,
 - 5 ○ Not applying the *Federal Acquisition Regulation*⁶ (FAR) increases
 - 6 government risk, and
 - 7 ○ Some P3s circumvent procurement administration.
- 8 • In-Kind contributions are difficult to value or are overvalued and not always
- 9 reported.
- 10 • P3-Centric financial reporting is generally supported but agencies and
- 11 participants vary in the what, how and where.
 - 12 ▪ for example, relative to significant and material P3 arrangements, some
 - 13 believe that property, plant, and equipment (PP&E) note disclosure would
 - 14 be sufficient whereas others believe that MD&A discussion is more
 - 15 appropriate because of SFFAS 15, *Management's Discussion and*
 - 16 *Analysis*, requirement to address the future effects of existing, currently-
 - 17 known demands, risks, uncertainties, events, conditions and trends, while
 - 18 others suggest reporting in both locations.

Other Matters

- 21 • **Increased Risk to Citizens.** A few participants noted that P3s erode (1) the
- 22 notion of public service (for example, what is inherently governmental) and (2) in
- 23 many cases, belief in good government. This increased risk is evidenced by
- 24 those entities that:
 - 25 ▪ purposefully avoid capital acquisition budgeting requirements
 - 26 ▪ absorb "availability" risk absent sufficient private partner consideration
 - 27 ▪ lose control of assets
 - 28 ▪ lock into long-term arrangements that cannot be re-competed or re-
 - 29 negotiated
 - 30 ▪ are constrained by contract modification restrictions
 - 31 ▪ are constrained by proximity and/or right-to-compete restrictions
 - 32 ▪ ignore government employee personnel (legacy) costs

that the same criticisms can be made of the more traditional cost-benefit analyses used in management decision making.

⁶ The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

- **Financing costs.** To enable private financing to work, P3's must be longer-term in nature to allow for sufficient time to liquidate debt and achieve Return on Investment targets. This is significantly different than traditional procurement contract periods that are typically 5 years or less.
- **Performance Metrics.** Financial reporting would be enhanced by incorporating performance metrics that could point to both risks and potential liabilities as they arise.

Definition – Public Private Partnerships

A7. The Board believes that a definition should be established in order to best assist the preparer community with the accounting for and reporting of P3s. The Board desires establishing a definition that (1) reflects actual federal P3 practices, (2) covers the wide breadth and diverse scope of federal assets, and (3) focuses on the risk-sharing or risk transfer strategies that are the very essence of these complicated arrangements or transactions. The definition is intended for general application to be applied uniformly across the federal government.

A8. In reviewing the P3 definitions of other standard-setters, the Board notes that their guidance is focused on service concession arrangements (that is, a sub-set of P3s) that directly benefit the general public. The definition contained in this Exposure Draft is much broader primarily as a result of actual federal P3 practices reflecting the wide breadth and diverse scope of federal assets being managed. It is important to note that (1) federal preparers and auditors have identified accounting issues that extend beyond those typically found in service concession arrangements/transactions; for example, excess and/or underutilized infrastructure and facilities, in-kind consideration, non-monetary exchanges, and fair value, (2) oversight entities such as the Congressional Budget Office (CBO), Government Accountability Office (GAO), and Inspectors General have defined and identified P3 arrangements or transactions to be more than just service concessions, and (3) service concession accounting guidance primarily reflects economic development initiatives such as new roads, toll roads, highways, airports, railways, hospitals, etc., whereas federal initiatives extend well beyond economic development such as the common defense and general welfare of the nation thus necessitating corresponding accounting guidance to best fit these federal initiatives.

A9. In developing the definition, the Board relied on the Task Force's review of existing definitions from several authoritative sources. The Task Force identified the more common characteristics of P3s which are believed to exist in the federal government. Some of the more common P3 characteristics identified include: existence of very long term contractual agreements (for example, anywhere from 5 to 99 years), shared or transferred financing, agreements covering a significant portion of the project's or asset's life, shared risks, shared rewards, shared skills and expertise, conveyance or creation of real and personal property, and the use of special purpose vehicles (SPV's). The definition follows:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private

Appendix A: Basis for Conclusions

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 arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPVs).

Scope and Applicability

A10. The Board recognizes that establishing a definition reflecting the breadth and diverse scope of federal assets being used in P3 arrangements or transactions might be interpreted in a manner that captures activities that do not possess (1) long-lived asset or long-term financing liability recognition or de-recognition concerns, to include reclassifications or (2) fiscal exposure (risk) that could lead to a liability. To help ensure achievement of the federal reporting objectives while minimizing disclosure of those P3 arrangements or transactions that do warrant disclosure, the Board has established filters at several decision points to aid preparers in this regard. The filters are categorized as follow:

- a. Overarching Disclosure Principles – The Board only intends disclosure of those P3s possessing (1) long-lived asset or long-term financing liability recognition or de-recognition concerns, to include reclassifications or (2) fiscal exposure (risk) that could lead to a liability. Therefore, if a P3 arrangement or transaction does not have either one of these conditions present, it would not be subject to the requirements of this Statement.
- b. Definitional Features Indicative of Fiscal Exposure (Risk) – After careful study, the Board has identified four major features of federal P3 arrangements or transactions that are embodied in the proposed definition. These features are (1) agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years, (2) financing arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPV's). Therefore, only those P3s possessing any one or more of the four features should be subject to the requirements of this Statement.
- c. Risk-based Characteristics – More thoroughly discussed below, the Board has identified certain key characteristics that reflect varying degrees of risk that exist in federal P3s. Therefore, should these characteristics be absent in a P3, the disclosure requirements of this Statement would not apply.
- d. Materiality – As is the custom with all Statements issued by the Board, only those P3s that are material (qualitatively and quantitatively) in nature, more thoroughly discussed below, should be subject to the requirements of this Statement. The Board notes that because materiality assessments require

Comment [DNS18]: 6 March meeting –

Mr. Dacey said because there are certain arrangements that need to be disclosed, his concern is about avoiding over-inclusiveness of items, and whether there's any way that we can make it clear that without excluding the wrong thing, what we're talking about. Again, if I read this literally and look down the requirements it seems I've got a very broad pool and would by necessity capture a lot of contracts that don't necessarily present these unique risks that need to be disclosed.

Staff: I suggest that we highlight all the filters we have and lay them out in a manner that makes clear our intent and also helps preparers through the P3 identification process.

1 both qualitative and quantitative judgments, specific guidance limiting
2 preparer and auditor considerations of information would not be appropriate.

3 **Risk-based Characteristics**

4 A11. Although federal P3s are varied and complex, the Board believes that there are
5 some common characteristics that can be used to identify those P3s that create
6 fiscal exposure (risk) such that information would be disclosed. Because the
7 Board is well aware of the administrative burdens that agencies face day-to-day
8 and that some P3 portfolios might be voluminous, in addition to identifying those
9 P3s that create fiscal exposure, the proposed risk-based characteristics can also
10 be applied to assist a federal entity in determining which P3 arrangements or
11 transactions do not require disclosure.

12 A12. The risk-based characteristics have been developed, refined and categorized by
13 the P3 Task Force from an initial comprehensive list of characteristics that
14 distinguishes federal P3s from traditional procurement actions. The Task Force
15 further analyzed and then selected those risk-based characteristics which in their
16 opinion represent heightened indicators of P3 risk or fiscal exposure. These risk-
17 based characteristics are intended to apply to all types of P3s: construction,
18 housing, utilities, military depots, etc. These risk-based characteristics are
19 intended to assist a federal entity in ascertaining which P3 arrangements or
20 transactions require disclosure. Once a P3 is identified for disclosure, such
21 arrangements or transactions would then be evaluated in light of the entity's
22 materiality considerations, for example, quantitative and qualitative threshold(s).

23 **Conclusive and Suggestive Characteristics**

24 A13. The Board proposes establishing two categories for the following risk-based
25 characteristics; that is, Conclusive and Suggestive. Conclusive characteristics are
26 those that by answering "Yes" to any one characteristic means the P3
27 arrangement or transaction should be considered for disclosure whereas
28 answering "Yes" to any one of the suggestive characteristic implies that there is
29 some persuasive evidence that the P3 arrangement or transaction may need to
30 be disclosed but that this one characteristic must be considered in the aggregate
31 with all the other suggestive characteristics before a final decision is made. Each
32 conclusive characteristic is meant to be definitive whereas each suggestive
33 characteristic will require entity judgment as each one is analyzed in connection
34 with the other suggestive characteristics.

35 A14. If a P3 arrangement or transaction is identified for disclosure it should be further
36 evaluated in light of materiality considerations that include both qualitative and
37 quantitative assessments in determining the information that should be presented
38 regarding P3 arrangements or transactions.

Appendix A: Basis for Conclusions

Materiality

Considering User Needs

A15. As the standards-setting body for the federal government, the Board has stated that there are two fundamental values that provide the foundation for governmental accounting and financial reporting: “accountability” and its corollary, “decision usefulness.”⁷ —We have explained that “Because a democratic government should be accountable for its integrity, performance, and stewardship, it follows that the government must provide information useful to assess that accountability.” The Board believes that P3 disclosures are an essential element in establishing accountability.

A16. In applying the concept of materiality, the needs of the users of the annual financial report should be considered. Specific to P3s for example, users are interested in: (1) assessing the costs and related risks (that is fiscal exposure) of entering into such long-term agreements; (2) assessing the efficiency and effectiveness of these risk-sharing agreements as well as the government’s management of its assets and liabilities; and (3) determining how financial resources, budgetary or otherwise, have been obtained and used and whether their acquisition and use were in accordance with the entity’s legal authorization. As a result, the Board believes that the P3 disclosures contained in the body of this Statement help answer these questions while achieving the associated reporting objectives.

Qualitative and Quantitative Assessments Require Judgment

A17. “Materiality” has not been strictly defined in the accounting community; rather, it has been a matter of judgment on the part of preparers of financial statements and the auditors who attest to them. The determination of whether an item is material:

- a. requires the exercise of considerable judgment, based on consideration of specific facts and circumstances and,
- b. depends on the degree to which omitting or misstating information about this item makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or the misstatement.

The Board notes that while a P3 arrangement or transaction might not be considered material from a quantitative standpoint, it may be considered qualitatively material and subject to this Statement’s disclosure requirements if the disclosures would influence or change the judgment of the financial statement user. Exclusive reliance on certain quantitative benchmarks or thresholds to assess materiality should be avoided.

Comment [DNS19]: 6 March Meeting - Mr. Dacey began by stating that he continued to have some significant concerns. Specifically, as he looked at the conclusive characteristics, an entity upon meeting any one of these will automatically have to go to disclosure. His concern is the interrelationship of this with the existing framework in SFFAS 5 or the risk disclosure framework discussed in December because we’re not seemingly taking probability into this consideration.

Comment [DNS20]: 6 March meeting - In reply Mr. Allen said that yes, as Mr. Showalter has indicated you marry probability with materiality. Therefore, say a risk is remote or SFFAS 5 doesn’t require you to disclose it, however, materiality considerations may require you to disclose the risk even if it’s remote.

Mr. Showalter stated that while he did not disagree with the Chairman, he wondered if people are going to go through that process or are they just going to check the box in a perfunctory manner? We may want to handle this through a basis for conclusion explanation. His concern is the unintended consequence of people saying if I meet one of these characteristics the P3 must be disclosed. Otherwise, I agree exactly with what the Chairman has said.

Mr. Reger agreed and suggested that we could say this even in the introduction but the point is that it must be said.

⁷ SFFAC 1, par. 105 states, “The federal government derives its just powers from the consent of the governed. It therefore has a special responsibility to report on its actions and the results of those actions. ...Providing this information to the public, the news media, and elected officials is an essential part of accountability in government.”

1
2 **Materiality Includes Probability Assessments**

3 A18. Decisions whether to recognize or in the case of this Statement, disclose a P3
4 arrangement or transaction may take into account considerations that include
5 uncertainties. These considerations are measurement of an appropriate attribute
6 (for example, historical cost, fair value, expected value, or some other attribute),
7 which may include an assessment of the probability of future flows of economic
8 benefits or services, and assessments of the materiality of the item and the
9 benefit versus the cost of recognizing it.

10 A19. Statement of Federal Financial Accounting Standards 5 (SFFAS 5), *Accounting*
11 *for Liabilities of the Federal Government*, states that “probable” refers to that
12 which

- 13 a. can reasonably be expected or,
14 b. is believed to be more likely than not on the basis of available evidence or
15 logic with the exception of pending or threatened litigation and unasserted
16 claims.

17 The Board notes that the concept of probability is imprecise and may be difficult
18 to apply with respect to certain P3 activities such as economic stabilization
19 payments, in addition to other matters that could arise during the life of the P3
20 arrangement or transaction. However, the “more likely than not” phrase in
21 SFFAS 5 accommodates the assessment of those uncertainties that are often
22 associated with most P3s that arise from their long-term nature and project
23 variability.

24 **Risks that are Deemed Remote**

25 A20. SFFAS 5 provides that contingencies deemed remote (that is, the chance that a
26 loss has been incurred is slight) are not recognized as a contingent liability or
27 disclosed.⁸ SFFAS 5 requires that a contingent liability should be disclosed if any
28 of the conditions for liability recognition are not met and there is at least a
29 reasonable possibility that a loss or an additional loss may have been incurred.

30 A21. The Board believes that some risks associated with P3s may be contingencies
31 that arise because of an existing condition, situation, or set of circumstances
32 involving uncertainty as to possible gain or loss to an entity. It is this uncertainty,
33 or risk in other words, that prompts entities to seek private partners who can best

⁸ Per SFFAS 5, paragraph 38, a contingent liability should be recognized when all of these three conditions are met:

- A past event or exchange transaction has occurred (for example, a federal entity has breached a contract with a nonfederal entity).
- A future outflow or other sacrifice of resources is probable (for example, the nonfederal entity has filed a legal claim against a federal entity for breach of contract and the federal entity’s management believes the claim is likely to be settled in favor of the claimant).
- The future outflow or sacrifice of resources is measurable (for example, the federal entity’s management determines an estimated settlement amount).

Comment [DNS21]: 6 March meeting –

Mr. Dacey noted that we’re not seemingly taking probability into this consideration.

Mr. Allen said that you marry probability with materiality. Therefore, materiality is a merger of both of those concepts together.

In response to Mr. Allen’s observation, Mr. Showalter stated that this was similar to what he was thinking however, he had two comments that are going to be totally opposite, one of which is an audit concern. To the Chairman’s point, if you look at this issue from a risk management perspective there would be likelihood/probability and magnitude to play together, which is Mr. Allen’s point. However, if we only have probability as Mr. Dacey notes, I’d be concerned about some really big things not getting disclosed that need to be disclosed. We need to tease this out.

Comment [DNS22]: 6 March Meeting –

Mr. Dacey noted that the risks are out there across a wide variety and SFFAS 5 accommodates them with the probability association. So, if the probability is such that it results in a risk that also relates to a loss, then disclosure comes into the picture. Admittedly, there are risks present all the time but I see a nexus between this project and SFFAS 5 because we’ve laid out there at least what our concerns are and what type of information we want to see when we have those risks. Specifically, are those risks probable or possible of coming to fruition?

Comment [DNS23]: 6 March meeting –

To Mr. Dacey’s point that he sees a nexus to SFFAS 5.

Appendix A: Basis for Conclusions

1 manage and/or contain the effects of the uncertainty that could ultimately lead to
2 fiscal exposure. Although SFFAS 5 states that in some cases contingencies may
3 be identified for which the degree of uncertainty is so great that no reporting (that
4 is, recognition or disclosure) is necessary, the Board notes that reporting such
5 contingencies is not prohibited. In the case of P3s, the Board believes entities
6 should consider disclosing such contingencies by taking into consideration user
7 needs, qualitative and quantitative assessments, and materiality.

- 8 A22. However, due to their very nature, P3s can also possess risks that do not
9 necessarily arise because of an existing condition, situation, or set of
10 circumstances. For example, excluding contractual protections afforded the
11 government by the Federal Acquisition Regulation (FAR) inherently increases the
12 entity's risk as does a relationship with an industry or private partner that may
13 require the government to provide resources or absorb losses beyond what was
14 contemplated. It is the Board's opinion that such risks should be disclosed,
15 subject to materiality, even though they may be deemed remote. The Board
16 further notes that enterprise risk management frameworks focus on remote risks
17 because of the magnitude of any potential adverse effects that might arise.
18 Therefore, consideration should be given to those risks that management does
19 not expect to be likely, but represent a significant exposure. With this being said,
20 the Board also notes that certain remote risks may have a reasonably high
21 materiality threshold. As such, remote risks that are not contingent in nature
22 should not be dismissed from disclosure without further consideration of user
23 needs, qualitative and quantitative assessments, and materiality.

24 Disclosure Requirements of P3s

- 25 A23. The Task Force conducted research and uncovered examples of some of the
26 more important disclosures surrounding P3s that have been developed from a
27 variety of international and national authoritative sources which address P3
28 information needs for different types of users and audiences. Additionally, the
29 Task Force considered the results from fact-finding meetings with public and
30 private representatives regarding the type of information that diverse users
31 believe are important. As a result, the Task Force overwhelmingly agreed with
32 requiring disclosures concerning (1) why the government selects a P3 model to
33 conduct business, (2) the solicitation and procurement processes used, (3) how
34 the P3 is structured, (4) the expected benefits and (5) the total amounts expected
35 to be paid. Although it was noted that requiring a description of the solicitation and
36 procurement processes is fairly unusual in financial reporting, the Task Force
37 reached that conclusion because P3s fall outside the routine way governments
38 procure services such disclosures reveal the potential fiscal exposure or risk that
39 governments assume that can ultimately lead to liability recognition.
- 40 A24. In analyzing the Task Force's recommendations the Board considered the federal
41 financial reporting objectives. Of the four objectives outlined in Statement of
42 Federal Financial Accounting Concepts (SFFAC) 1, *Objectives of Federal
43 Financial Reporting*, the operating performance and budgetary integrity objectives
44 are identified as being most important for P3 reporting. The Board agreed that P3-
45 Centric reporting is important to meeting these objectives because the federal
46 government is accountable to citizens for the proper administration of its
47 resources. As such, the Board agreed with the majority of the Task Force's

Comment [DNS24]: 6 March meeting –

Mr. Showalter went on to say that he wouldn't want not disclosed something that management would say is not likely but represents a significant or big exposure. We should make sure that gets disclosed.

Mr. Showalter noted that enterprise risk mismanagement frameworks focus on the remote by not dismissing such risks merely because they are remote. They are worried about the magnitude. As such, maybe a little more teasing in this area is warranted.

Staff: Have I teased enough? I know, I know, back to the drawing board!

Comment [DNS25]: 6 March meeting –

Mr. Dacey - If certain risks are remote maybe there's a reasonably high threshold for materiality that needs to be crossed to disclose it.

1 recommendations. However, requiring disclosure of an entity's solicitation and
2 procurement processes falls outside the realm of financial reporting. Furthermore,
3 the Board questioned the informational value of such a disclosure and opined that
4 its cost also exceeded any potential benefit identified by the Task Force.

5 A25. Because P3s are a form of investment, they should be adequately disclosed in
6 order to assist report users in determining: (a) what are the important assets of
7 the U.S. government and how effectively they are being managed and (b) did the
8 government's financial position improve or deteriorate over the period of the P3.
9 The Board is of the opinion that because P3s often involve novel operational and
10 complicated accounting practices, accompanied by sophisticated financing
11 agreements, these complexities necessitate the establishment of disclosure
12 principles as a first step to (1) developing uniform, principles-based guidance, and
13 (2) identifying potential gaps in existing guidance. As a result of considering the
14 overall financial reporting objectives, the Board further developed and refined the
15 Task Force's recommendation to include the following disclosures:

16 a. The purpose or objective for the P3 arrangement or transaction should
17 include the relative benefits/revenues being received in exchange for all of
18 the government's consideration, monetary and non-monetary.

19 b. The decision criteria for selecting a P3 arrangement or transaction should
20 include the entity's statutory authority for entering into the P3.

21 c. Type of funding, federal or otherwise used to meet mission requirements
22 and service delivery needs to support the P3; for example, appropriated, non-
23 appropriated, private capital or investment.

24 d. The operational and financial structure of the P3 including the entity's
25 rights and responsibilities and amounts the government can be reasonably
26 expected to incur/pay over the life of the P3 arrangement or transaction.

27 e. Contractual provisions for termination (default) payments and related exit
28 amounts.

29 f. Identification of the significant risks the P3 partners are undertaking.

30 g. As applicable:

31 i. Violations of legal and contractual provisions governing the P3
32 arrangement or transaction.

33 ii. Whether the private partner(s), including any SPV, have borrowed or
34 invested capital contingent upon the entity's promise to pay whether
35 implied or explicit.

36 iii. Describe events of termination or default.

37 **Aggregation**

38 A26. Due to the relative complexity and potential voluminous nature of P3s that an
39 entity might be party to, the Statement permits entities to aggregate disclosures
40 by providing broad and summarized information instead of unique or discrete
41 arrangement or transaction detail. However, entities would be permitted to
42 disclose information related to individually significant P3 arrangements/transaction

Appendix A: Basis for Conclusions

1 separately if entity management believed that such disclosure would better meet
2 user needs.

3 A27. For example, disclosures of P3 arrangements or transactions could be
4 aggregated by an entity's strategic objectives, departmental or bureau
5 categorizations, program budget classifications, etc. In this way users are
6 presented with information that is comprehensive and material to an entity's
7 financial statements without placing an undue burden on preparers to provide P3
8 specific or granular level information.

9 **Reporting Period**

10 A28. Disclosures are required for the initial period and all annual periods thereafter
11 where an entity is party to a material P3 arrangement/transaction.

12 **ALTERNATIVE VIEWS**

13 A29. Individual members sometimes choose to express an alternative view when they
14 disagree with the Board's majority position on one or more points in a Statement.
15 The alternative view would discuss the precise point or points of disagreement
16 with the majority position and the reasons therefore. The ideas, opinions, and
17 statements presented in the alternative view are those of the individual member
18 alone. However, the individual member's view may contain general or other
19 statements that may not conflict with the majority position, and in fact may be
20 shared by other members. The material following was prepared by [insert name or
21 names] and is presented as an alternative view.

Appendix B: Illustrations

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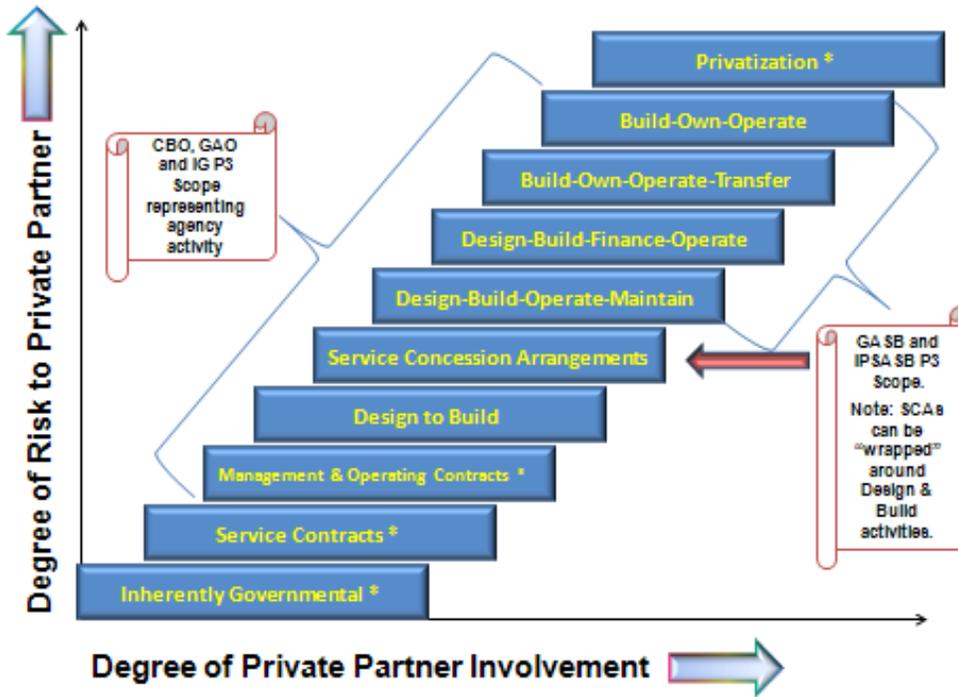
APPENDIX B: ILLUSTRATIONS

3 This appendix illustrates the application of the provisions of this Statement to assist in clarifying
4 their meaning. The facts assumed in these examples are illustrative only and are not intended to
5 modify or limit the requirements of this Statement or to indicate the Board's endorsement of the
6 situations or methods illustrated. Additionally, these illustrations are not intended to provide
7 guidance on determining the application of materiality. Application of the provisions of this
8 Statement may require assessing facts and circumstances other than those illustrated here and
9 require reference to other applicable Statements.

10

DRAFT

1 **Appendix B: Illustration 1: Hierarchy of P3s**



2
3 * = Definitions follow:

4 Privatization - A federal agency decision to change a government-owned and government-
5 operated commercial activity or enterprise to private sector control and ownership. When
6 privatizing, the agency eliminates associated assets and resources (manpower for and
7 funding of the requirement). Since there is no government ownership and control, no
8 service contract or fee-for-service agreement exists between the agency and the private
9 sector after an agency privatizes a commercial activity or enterprise. Moving work from
10 agency performance with government personnel to private sector performance where the
11 agency still funds the activity is not privatization. *OMB Circular A-76 (REVISED), Performance of*
12 *Commercial Activities; May 29, 2003.*

13 Management and operating contract - means an agreement under which the Government
14 contracts for the operation, maintenance, or support, on its behalf, of a Government owned
15 or -controlled research, development, special production, or testing establishment wholly or
16 principally devoted to one or more major programs of the contracting Federal agency.
17 *Federal Acquisition Regulation (March 2005), Subpart 17.6 - Management and Operating Contracts.*

18 Service contract - means a contract that directly engages the time and effort of a contractor
19 whose primary purpose is to perform an identifiable task rather than to furnish an end item
20 of supply. A service contract may be either a non-personal or personal contract. It can also
21 cover services performed by either professional or nonprofessional personnel whether on

Appendix B: Illustrations

1 an individual or organizational basis. Some of the areas in which service contracts are
2 found include the following:

- 3 (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or
4 modification of supplies, systems, or equipment.
- 5 (2) Routine recurring maintenance of real property.
- 6 (3) Housekeeping and base services.
- 7 (4) Advisory and assistance services.
- 8 (5) Operation of Government-owned equipment, real property, and systems.
- 9 (6) Communications services.
- 10 (7) Architect-Engineering (see Subpart 36.6).
- 11 (8) Transportation and related services (see Part 47).
- 12 (9) Research and development (see Part 35).

13 *Federal Acquisition Regulation (March 2005), Subpart 37.1 - Service Contracts – General.*

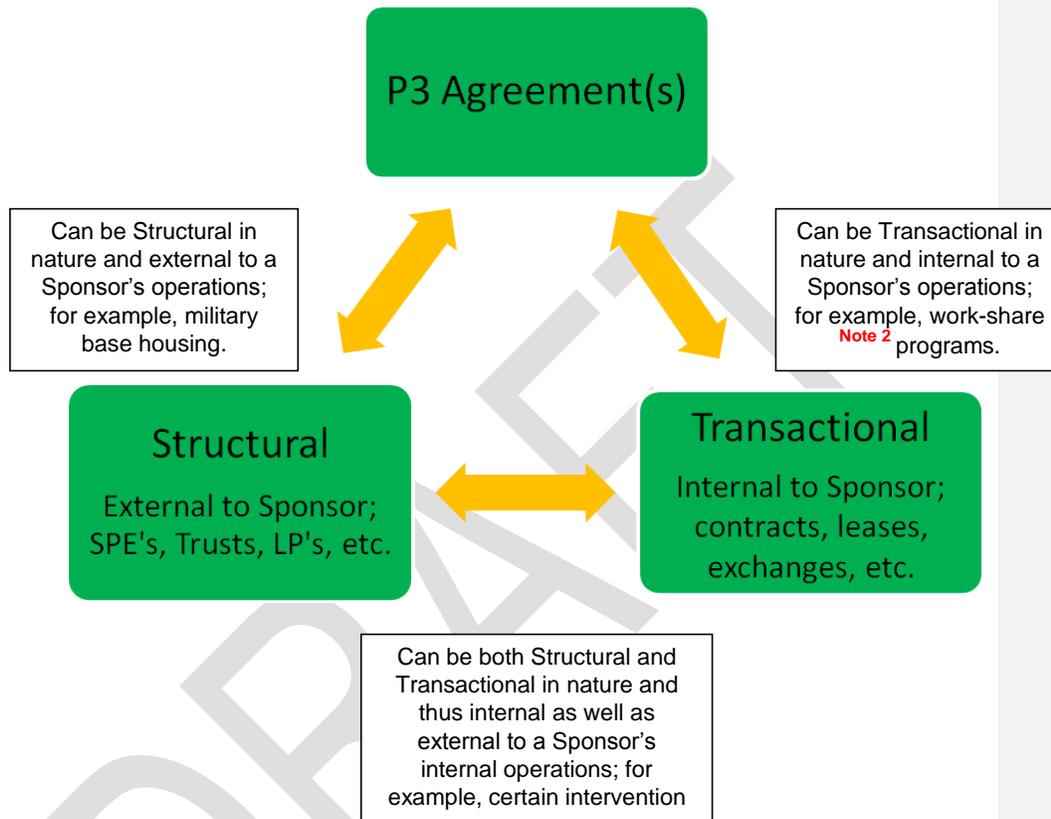
14 Inherently governmental - an inherently governmental activity is an activity that is so
15 intimately related to the public interest as to mandate performance by government
16 personnel. These activities require the exercise of substantial discretion in applying
17 government authority and/or in making decisions for the government. Inherently
18 governmental activities normally fall into two categories: the exercise of sovereign
19 government authority or the establishment of procedures and processes related to the
20 oversight of monetary transactions or entitlements. An inherently governmental activity
21 involves:

- 22 (1) Binding the United States to take or not to take some action by contract, policy,
23 regulation, authorization, order, or otherwise;
- 24 (2) Determining, protecting, and advancing economic, political, territorial, property, or
25 other interests by military or diplomatic action, civil or criminal judicial proceedings,
26 contract management, or otherwise;
- 27 (3) Significantly affecting the life, liberty, or property of private persons; or
- 28 (4) Exerting ultimate control over the acquisition, use, or disposition of United States
29 property (real or personal, tangible or intangible), including establishing policies or
30 procedures for the collection, control, or disbursement of appropriated and other federal
31 funds.

32 *OMB Circular A-76 (REVISED), Performance of Commercial Activities; May 29, 2003.*

33

1 **Appendix B: Illustration 2: P3s – Structural and/or Transactional**



21 **Note 2: Work-share Programs** - A partnership in which a government buying activity, in
22 collaboration with a contractor and an organic product support activity determines the best mix
23 of work capitalizing on each partner's capabilities. The workload is then shared between the
24 contractor and the organic activity. The contractor is funded through a contract and the organic
25 activity is funded through a project or work order. The partnering agreement between the
26 contractor and organic activity focuses on the roles and responsibilities of each partner where
27 they work jointly to accomplish the overall requirement. Funding is not exchanged between the
28 partners under a work-share agreement; therefore, work-shares do not require specific legal
29 authority.

APPENDIX C: ABBREVIATIONS

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3	CFR	Consolidated financial report of the U.S. government
4	ED	Exposure draft
5	FASAB	Federal Accounting Standards Advisory Board
6	FASB	Financial Accounting Standards Board
7	GAAP	Generally Accepted Accounting Principles
8	GAO	Government Accountability Office
9	GASB	Governmental Accounting Standards Board
10	IPSASB	International Public Sector Accounting Standards Board
11	OMB	Office of Management and Budget
12	SFAS	Statement of Financial Accounting Standards (FASB)
13	SFFAC	Statement of Federal Financial Accounting Concepts
14	SFFAS	Statement of Federal Financial Accounting Standards
15	VfM	Value for Money

APPENDIX D: GLOSSARY

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Public-private partnerships - 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 arranged by the private partner, (3) conveyance or transfer of real and personal property, multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPVs).

P3 Structural Arrangement - P3s that are external to the government sponsor's or entity's operations and often involve the creation of an SPV, Trust, or LP, etc. For example, military base housing. Refer to Appendix B, Illustration 2.

P3 Transactional Arrangement - P3s that are internal to the government sponsor's or entity's operations. For example, work-share programs not involving the creation of a SPV, Trust, or LP, etc. Refer to Appendix B, Illustration 2.

Special Purpose Vehicles (SPVs) - also commonly called Special Purpose Entities (SPEs), are entities created for a specific, limited and normally temporary purpose. An SPV can be a corporation, trust, partnership, limited-liability company or some type of Variable Interest Entity (VIE). They are often an integral part of public private partnerships because of their risk-containment nature of isolating participating entities from financial risk.

Value for Money (VfM) - VfM is a much broader concept than typical cost-benefit analysis because it emphasizes "value" in more of a qualitative than quantitative manner. Quantitatively, some VfM models use a project's Internal Rate of Return (IRR) to help determine project acceptability. The VfM concept has drawn criticisms not only because of its subjectivity and lack of rigor in application, but because in some cases (1) cash flows can be easily managed to meet desired expectations and (2) VfM results are used as ex-post facto justifications for qualitatively made project and/or award decisions. It is important to note that the same criticisms can be made of the more traditional cost-benefit analyses used in management decision making.

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