



## Greater Washington Society of CPAs and GWSCPA Educational Foundation

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January 9, 2015

Wendy Payne, Executive Director  
Federal Accounting Standards Advisory Board  
Mail Stop 6K17V  
441 G Street, NW – Suite 6814  
Washington, DC 20548

Dear Ms. Payne:

The Greater Washington Society of Certified Public Accountants (GWSCPA) Federal Issues and Standards Committee (FISC) appreciates the opportunity to provide comments on the Federal Accounting Standards Advisory Board's (FASAB) Exposure Draft (ED) on the proposed Statement of Federal Financial Accounting Standards (SFFAS), *Public-Private Partnerships Disclosure Requirements*.

The GWSCPA consists of approximately 3,300 members, and the FISC includes 27 GWSCPA members who are active in accounting and auditing in the Federal sector. This comment letter represents the consensus comments of our members.

We applaud the Board's research to date, and believe that further work to understand the implications of the various methods and structures that the Federal government can use in executing its responsibilities, their impact on risks, and their financial reporting implications, can lead to better financial reporting.

Although feedback from our members was mixed, a view strongly shared by several members was that the FASAB's existing conceptual framework is sufficiently robust to address the operational, business, and financial risks associated with public-private partnerships (P3s). If the conceptual framework is not viewed as sufficient to address the identified risks of P3s, then the Board should consider advancing the priority of the conceptual framework as a potential project on the Board's Three-Year Plan. Such study is preferable to adopting a Standard for the limited government activities affected by the ED without further discussing the conceptual implications of such a Standard.

Our response to the ED questions follow.

Q1. The Board proposes defining the term "public-private partnerships" as shown below:

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

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

- A1. Similar to the Alternative View, the FISC members expressed concerns that the definition of P3s in paragraph 17 may not be sufficiently narrow to limit the application of the definition to only P3s. The definition could be improved by:
1. Clarifying that P3s are a subset of the various contractual arrangements or transactions between public and private sector entities that are described in paragraph 17, and that other contractual arrangements or transactions that share risks and rewards between public and private sector entities may not be considered P3s.
  2. Describing the types of financing mechanisms provided in whole or shared in part by the private partner that meet this definition, or providing examples of the Board's intentions of these financing mechanisms.
  3. Defining the types or providing examples of multi-sector skills and expertise that are referenced in the definition in paragraph 17.
  4. Clarifying the types of organizations that are considered "private" for purposes of applying this definition.
- Q2. The Board's proposed definition at paragraph 17 is intended to help identify risk-sharing arrangements or transactions that possess significant risk (that is, fiscal exposure) to the entity. Such arrangements or transactions are commonly referred to as Public-Private Partnerships (P3s) but may also be referred to as Alternative Financing Arrangements or Privatization Initiatives. For example, informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc., would generally be exempt from applying this Statement. One member has an alternative view that expresses concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View).
- a. Do you agree or disagree that the P3 definition helps identify risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.
  - b. Do you agree or disagree that the P3 definition, while capturing P3s based on their most widely identified features, excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes (refer to paragraphs 17, 18, A7- A9, and A10 – A12 for related comments)? Please provide the rationale for your answer.
  - c. Are there any features other than those identified in the proposed P3 definition that would assist entities in identifying risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.
  - d. The scope of the ED excludes those informal arrangements or transactions that do not share risks or rewards and for example, are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc. Do you agree with the exclusion? Is it clear what would be excluded by this provision? If not,

- what features, if any, differentiate them from those arrangements or transactions that do possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, A10 – A12, and A13 – A14 for related comments)? Please provide the rationale for your answer.
- e. Do you agree or disagree with the one member’s concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.
- A2. As noted in our response to question 1, the FISC provided recommendations to the Board on the proposed P3 definition. We support the Alternative View that the definition of P3s in paragraph 17 may not be sufficiently narrow to limit the application of the definition to only P3s.

We suggest that the Board add to the final Standard the exemption included in this question. Specifically, the phrase “informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc., would generally be exempt from applying this Statement” would be beneficial in the final Standard.

- Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered for disclosure (refer to paragraphs A1 – A6 for related comments). The characteristics apply to all types of P3’s; construction, housing, utilities, military depots, etc. These characteristics may eliminate the need to disclose P3 arrangements/transactions that do not possess significant fiscal exposure(s).
- a. Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics (that is, conclusive or suggestive characteristics) should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A13 – A14 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
- b. Do you believe that there are other arrangements or transactions besides P3s for which the risk-based characteristics are present and therefore disclosure should be required? Please provide the rationale for your answer.
- c. Do you believe that when the final Statement becomes effective, the entities with which you are associated have P3s that are subject to disclosure pursuant to the proposed requirements (refer to paragraphs A1, A4, A6(a), A10 – A12 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
- A3. The FISC supports the inclusion of risk-based characteristics.

There was discussion among FISC members that Suggestive Characteristic #4 (“The focus is more on collaboration and information, real-time, resolution processes than on formal, contractual, administrative processes”) was not a situation that members had encountered with P3s. Rather, the experience of our members was that P3 agreements typically have sections within the agreement for the resolution of disputes, and that these disputes are often addressed through a structured resolution process. We suggest that additional examples or language be included in the final Standard related to this suggestive characteristic.

- Q4. The Board proposes that the P3 risk-based characteristics be categorized as either: conclusive characteristics - where answering “Yes” to any one characteristic means the P3 arrangement or

transaction should be considered for disclosure; or suggestive characteristics - where answering "Yes" to any one suggestive characteristic suggests that the P3 arrangement or transaction may be subject to disclosure but that preparers consider suggestive characteristics in the aggregate before reaching a final decision. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic will require entity judgment as each one is analyzed in connection with the other suggestive characteristics. The conclusive and suggestive characteristics are presented at paragraphs 19 to 20 and more fully discussed at paragraphs A15 – A16.

Do you agree or disagree with the risk-based characteristics, their related classification as either conclusive or suggestive, and their proposed application at paragraphs 19 and 20 (refer to paragraphs A15 – A16 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

A4. The FISC supports the inclusion of risk-based characteristics. In our response to question 3, we have provided a suggestion on Suggestive Characteristic #4.

Q5. The Board proposes the following component reporting entity disclosures:

- a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary, and the entity's statutory authority for entering into the P3.
- b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.
- c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:
  - i. A description of the contractual terms governing payments to and from the government over the life of the P3 arrangement or transaction to include:
    1. in-kind contributions/services and donations,
    2. the time periods payments are expected to occur, and
    3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.
  - ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid during each of the succeeding five years and in aggregate over the life of the P3.
- d. Identification of the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including a description of (1) the risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, renewal options, etc.).
- e. As applicable:
  - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items.

- ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.
- iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.
- iv. Description of events of termination or default.

Do you agree or disagree with the component entity report disclosures proposed at paragraph 23 (refer to paragraphs A25 – A27 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

- A5. As stated in the Alternative View, the FISC suggests that remote risks and contingencies need not be required for disclosure. Some of our members suggested that the final Standard require the inclusion of whether those identified, significant contractual risks are monitored or enforced by one or both parties. If one party is principally responsible for monitoring or enforcing a significant contractual risk, then that party should be named in the disclosure.
- Q6. The Board believes that significant P3 risks, including those that may be deemed remote should be disclosed. One member has an alternative view that expresses concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of “significant exposure” is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View). The Board’s position is as follows:

Consideration should be given to those risks that management does not expect to be likely, but represent a significant exposure to the government if they were to occur. With this being said, the Board also notes that such remote risks may have a reasonably high materiality threshold. As such, remote risks should not be dismissed from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.

- a. Do you agree or disagree with the Board’s position as stated above and included at paragraph A24 (refer to paragraphs A22 – A24 for a detailed discussion and related explanations)? Please provide the rationale for your answer.
  - b. Do you agree or disagree with the one member’s concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of “significant exposure” is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.
- A6. As stated in the Alternative View, the FISC suggests that remote risks and contingencies need not be required for disclosure. We also concur with the Alternative View that the term “significant exposure” could be more thoroughly defined.
- Q7. The Board proposes that due to the relative complexity and potentially large number of P3s that an entity might be party to, the proposed disclosures would permit entities to provide broad summarized information instead of individual arrangement or transaction detail. For example, disclosures of P3 arrangements or transactions could be grouped by an entity’s strategic objectives, departmental or bureau categorizations, program budget classifications, etc. In this way, users are presented with

information that is comprehensive and material to an entity's financial statements without placing an undue burden on preparers to provide P3 specific or granular level information.

Do you agree or disagree that entities should be permitted to aggregate or group disclosures as proposed at paragraph 21 (refer to paragraphs A28 – A29 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

- A7. The FISC supports the guidance provided in the ED that summarized information should be permitted in certain circumstances.
- Q8. The Board encourages respondents to not only provide input concerning any and all aspects of the proposed changes, including whether concepts are sufficiently clear and the proposed effective date, but also other matters which may not have been specifically addressed in this exposure draft. In addition, the basis for conclusions explains the Board's goals for this project (see comments beginning at paragraph A1) and also discusses other issues raised by task force members as well as experts and practitioners both within and external to government (as an example, see paragraphs A4 through A6). Respondents are asked to particularly note the Alternative View beginning at Paragraph A31.

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

- A8. The FISC members observed that P3s are often defined or grouped by the nature of the P3 relationship (e.g., "design build", "design build operate maintain", "design build finance", "long-term lease concession", etc.). The final Standard could be improved if similar terminology was used throughout the Standard to highlight the likely applicability of risk-based characteristics to the different types of P3 relationships.

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This comment letter was reviewed by the members of FISC, and represents the consensus views of our members.

Very truly yours,



Andrew C. Lewis  
FISC Chair