

**Department of Energy**

Washington, DC 20585

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MEMORANDUM FOR THE FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD**FROM**

Jared Martin

Acting Director, Office of Finance and Accounting

SUBJECTComments on the Federal Accounting Standards Advisory Board's
Exposure Draft: Public-Private Partnerships Disclosure Requirements

The Department of Energy (DOE) appreciates the opportunity to comment on Exposure Draft: *Public-Private Partnerships Disclosure Requirements*. Much of the required information that would be disclosed under the proposed standard on Federal public-private partnership agreements (P3s) is already reported and disclosed in other sections of the financial statement and corresponding notes. We believe, however, the standard is overly broad, and the definition of P3s is not sufficiently clear to identify the agreements or transactions to be disclosed. An objective, quantitative definition should be established, and the paragraph 8 proposal to disclose "significant remote risks" should be dropped.

As requested, our responses to the questions in the exposure draft are as follows:

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

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

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

Response: We disagree with the proposed definition. The definition should establish objective, quantitative criteria, including materiality. There also should be a clarification or reference that a P3 only needs to be disclosed if it is capitalized or is material to the financial position of an agency.

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.

Response: We do not agree that the proposed definition would help identify transactions that result in a significant risk to an agency. See response to Q1.

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.

Response: We disagree because there is no threshold in the definition which would exclude those items that are not material or are routine in nature. See response to Q1.

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.

Response: Yes. See response to Q1. There should be a quantitative component to the definition and a reference to indicate that P3s only include items that are capital or material to the financial position of the agency.

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.

Response: Yes, we agree with the intended exclusion of the ED; see the response to Q1. A numeric definition would allow for the inclusion of any ED that met a certain threshold or posed a significant risk to an agency.

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.

Response: Yes, we agree with the member's concern that the P3 disclosure threshold of "significant exposure" is not clearly defined to facilitate appropriate and consistent disclosures of risk. See response to Q1.

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered³ for disclosure (refer to paragraphs A1 – A6 for related comments). The characteristics apply to all types of P3's; construction, housing, utilities, military depots, etc. These characteristics may eliminate the need to disclose P3 arrangements/transactions that do not possess significant fiscal exposure(s).

a. Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics (that is, conclusive or suggestive characteristics) should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A13 – A14 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Response: We disagree that there is a need for P3 risk-based characteristics. If the definition is more clearly expanded and includes a manner in which to quantify the P3, these characteristics will be unnecessary. See response to Q1.

b. Do you believe that there are other arrangements or transactions besides P3s for which the risk-based characteristics are present and therefore disclosure should be required? Please provide the rationale for your answer.

Response: We are not aware of transactions or arrangements with inadequate disclosure of financial risk.

c. Do you believe that when the final Statement becomes effective, the entities with which you are associated have P3s that are subject to disclosure pursuant to the proposed requirements (refer to paragraphs A1, A4, A6(a), A10 – A12 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Response: We would have to review the final Statement before we could answer the question. We believe we are currently disclosing all material P3 arrangements that would impact the agency's financial position.

Q4. The Board proposes that the P3 risk-based characteristics be categorized as either: conclusive characteristics - where answering —Yes! to any one characteristic means the P3 arrangement or transaction should be considered for disclosure; or suggestive characteristics - where answering "Yes" to any one suggestive characteristic suggests that the P3 arrangement or transaction may be subject to disclosure but that preparers consider suggestive characteristics in the aggregate before reaching a final decision. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic will require entity judgment as each one is analyzed in connection with the other suggestive characteristics. The conclusive and suggestive characteristics are presented at paragraphs 19 to 20 and more fully discussed at paragraphs A15 – A16.

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

Response: We do not agree that there is a need for risk-based characteristics if the definition is more clearly written. See responses to Q1 and Q3a.

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

a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary, and the entity's statutory authority for entering into the P3.

b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.

c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:

i. A description of the contractual terms governing payments to and from the government over the life of the P3 arrangement or transaction to include:

1. in-kind contributions/services and donations,

2. the time periods payments are expected to occur, and

3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.

ii. *The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid during each of the succeeding five years and in aggregate over the life of the P3.*

d. *Identification of the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including a description of (1) the risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, renewal options, etc.).*

e. *As applicable:*

i. *Associated amounts recognized in the financial statements such as gains or losses and capitalized items.*

ii. *Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.*

iii. *Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.*

iv. *Description of events of termination or default.*

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

Response: We disagree with the component entity report disclosures as proposed. The proposed disclosures are too detailed to be relevant for a financial statement disclosure. The disclosures should be simplified to include only significant and relevant items to the financial position of the agency (e.g., liabilities for early termination of the P3 or associated P3 amounts capitalized and recognized in the financial statements.)

Q6. *The Board believes that significant P3 risks, including those that may be deemed remote, should be disclosed. One member has an alternative view that expresses concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of —significant exposure is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View). The Board's position is as follows:*

Consideration should be given to those risks that management does not expect to be likely, but represent a significant exposure to the government if they were to occur. With this being said, the Board also notes that such remote risks may have a reasonably high materiality threshold. As such, remote risks should not be dismissed

from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.

a. Do you agree or disagree with the Board's position as stated above and included at paragraph A24 (refer to paragraphs A22 – A24 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Response: The Department disagrees with the Board's position and recommends reliance on guidance provided by SFFAS 5 for contingent liability recognition criteria that are adequate, clear, and provide clarity in reporting. The disclosure of "remote" risks would be highly speculative, would misrepresent the agency's overall financial risk, and would be difficult to define and are too open-ended. If the P3 risk is remote or immaterial, there would be no need for the disclosure.

b. Do you agree or disagree with the one member's concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of "significant exposure" is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.

Response: We agree with the member's concern as expressed in paragraphs A31-A41. The proposed standard as written would not result in the objective disclosure of agency financial risk, but rather would misleadingly disclose speculative information on financial and business risk.

Q7. The Board proposes that due to the relative complexity and potentially large number of P3s that an entity might be party to, the proposed disclosures would permit entities to provide broad summarized information instead of individual arrangement or transaction detail. For example, disclosures of P3 arrangements or transactions could be grouped by an entity's strategic objectives, departmental or bureau categorizations, program budget classifications, etc. In this way, users are presented with information that is comprehensive and material to an entity's financial statements without placing an undue burden on preparers to provide P3 specific or granular level information.

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

Response: As the draft is currently written, aggregation is essential to reduce the administrative burden of the required reporting. We, however, believe that the definition of P3 agreements needs to be more narrowly drafted with a clear and objective materiality standard which would limit the disclosure requirement to those transactions that present real, quantifiable, and substantial financial risk to the government. A narrower and quantitative P3 definition would eliminate the need for aggregate reporting.

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.

Response: We recommend a comprehensive revision to the proposed standard so that (1) the definition of a public-private partnership does not encompass normal business transactions and (2) the standard does not require the disclosure of speculative, and therefore, misleading information in the agency's financial statements.