

From: Lee, Sherry
Sent: Tuesday, January 27, 2015 12:49 PM
To: FASAB
Cc: Paul Mcenrue; Teresa Taber; Douglas Glenn
Subject: Comments on the Exposure Draft: Public-Private Partnerships Disclosure Requirements

Ms. Wendy Payne:

Thank you for the opportunity to comment on the exposure draft of the proposed Statement of the Federal Accounting Standards, Public-Private Partnership: Disclosure Requirements. Attached is the Department of the Interior's consolidated response to the exposure draft. Please let us know if you have any questions. Thank you.

Sherry Lee
Staff Accountant
Financial Reporting Division
Office of Financial Management

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

DOI Response: We disagree because we agree with Mr. Dacey comments in paragraph A32 for the same reasons. The definition is too broad and should be narrowed. The terms “public and private sector entities” and the relationship between the “partners” are not clearly defined. There is no mention of “significant risk” in the definition; no mention of the exclusions including FAR transactions; routine in nature, etc. The exclusions only become known when reading the Standard and/or the ED questions. Many readers will only quote the definition and will not read additional paragraphs to fully understand the depth and breadth of the definition and its application.

When the board defines “private sector entities” or “industry or private partners”, DOI proposes the following exclusion to the definition to ensure the required reporting does not compromise the efficiency and effectiveness of DOI’s management of its assets and liabilities by inadvertently including a group of entities that operate to serve the public good and have accountability to ensure the proper administration of public assets:

Definition: Public bodies or cooperatives. The term “public body”, or “public bodies”, means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof such as public water districts, water conservancy districts, joint power authorities, etc. The term “cooperative”, or “cooperatives”, means any form of non-profit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost irrespective of a 501 (c) (3) status. As the relationships with between specific federal agencies and these entities are prescribed in various Congressional project authorizations, they are not considered “private sector entities” or “industry or private partners” within the context of the Federal Financial Accounting Standards and are excluded from the meaning of “private sector entities” or “industry or private partners” in the Public Private Partnership Disclosure Requirements.

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In addition, DOI proposes the following definition which is a slightly modified version of a definition used by the National Council for Public-Private Partnerships:

A federal public-private partnership, sometimes referred to as a public-private venture, is a contractual arrangement between a federal and a private sector entity. These cost and risk shared ventures typically involve a government agency contracting with a private partner to renovate, construct, operate, maintain, and/or manage a facility or system, in whole or in part, that provides a public service.

Under these ventures, the federal entity may retain ownership of the facility or system, but the private party generally invests its own capital to design and develop the properties. Typically, each partner shares in income and risks resulting from the partnership. Such a venture, although a contractual arrangement, differs from typical service contracting in that the private-sector partner usually makes a substantial cash, at-risk, equity investment in the project, and the federal entity gains access to new revenue or service delivery capacity without having to pay the private-sector partner.

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.**

DOI Response: Disagree. There is no mention of "significant risk" in the P3 definition. As currently written there is no indication that the reporting covers "significant risk" and "significant risk" is not well-defined. We also think that determining and summarizing what type of agreements or arrangements pose significant risks in terms of calculating risk ratings to use for financial reporting purposes will be a major challenge from a consistency, reporting, and disclosure perspective (see Q3.b below).

- 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**

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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.

DOI Response: We disagree. The P3 definition is not clear enough to help ensure routine mission related type contracts/arrangements/transactions that are already disclosed should be excluded. In this regard, paragraph 13 in the scope seems to imply the inclusion of routine contracts/arrangements or other arrangements or transactions that are routine in nature....Therefore, we think clarification should be added (perhaps in terms of inserting more emphasis and/or a providing few examples) to help readers better understand what should be included and what should be excluded as it relates to routine examples. As written, we did not necessarily get the differences you were trying to make throughout the Exposure Draft including the Scope in both the body and the appendix.

- 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.**

DOI Response: Any agency program risk assessments that identify significant risks and how does significant program risk align with financial reporting risk (cost-sharing, private entity funding, etc.).

- 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.**

DOI Response: While many entities engage in activities to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, the word “informal” should be removed and/or defined. Does informal mean that there’s no written agreement covering the relationship? When partnerships are formed, entities are encouraged to put the agreement in writing using a Memorandum of Understanding (MOU), Cooperative Agreement, etc. – in most instances, it is a preferred practice to have something in writing to assist with the understanding between the parties. In addition, the scope does not sufficiently exclude the types of informal arrangements that are identified in the question above. In this regard, Reclamation has cost share agreements, grants, and other types of financial assistance agreements with public and private parties that may qualify as P3s. However, many formal agreements have been established to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives (GPRA). One example is the Multi Species Conservation Program (MSCP). The MSCP agreement covers a term of fifty years and will include

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expenditures totaling about \$626M, 50 percent coming from Reclamation and 50 percent coming from the multiple other shareholders.

- 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.**

DOI Response: We agree with Mr. Dacey for the reasons referred to in paragraphs A31-A41. Disagreements often occur with the auditors related to the interpretation of the Standards; especially newly issued ones. Whatever can be done to narrow the definition and reduce the variation in interpretation is appreciated.

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered¹ 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.**

DOI Response: We agree with the use of conclusive characteristics to guide which P3 arrangements should be considered for disclosure. However, we disagree with the characteristics as currently worded. We would recommend refining the conclusive characteristics as follows:

- Conclusive Characteristic #1 – quantify long-lived and long-term and build in a reference to being exempt from FAR so that the Characteristic reads “The contractual arrangement is exempt from the Federal Acquisition Regulation (FAR) and results in the conveyance or creation of a long-lived (over 5 years) asset or long-term (over 5 years) financing liability.”
- Conclusive Characteristic #3 – build in reference to FAR so that the Characteristic reads “The procurement or contract is exempt from the FAR and has a term exceeding 5 years.”
- Conclusive Characteristic #4 – delete current wording as FAR provisions are incorporated in Characteristics 1 and 3 as recommended immediately above;

¹ Considering for disclosure would include further evaluation as stated in the referenced paragraphs and be made in light of the entity's materiality considerations; including qualitative and quantitative thresholds.

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deleting current wording also eliminates problem of indicating that any action that is exempt from FAR should be reported. Provide a new Conclusive Characteristic #4 that speaks to materiality and level of financial risk by providing a dollar threshold. Suggested language: "The project is exempt from the FAR and has a total federal cost exceeding \$10 million." (side note: the \$10 million threshold recommended here parallels the \$10 million threshold for reporting construction projects to OMB under CPIC processes)

In addition, Suggestive Characteristic Number 4 seems to discourage informal resolution processes, which can be equally effective and less costly than formal, contractual, administrative processes. In addition, the definition/conclusive characteristics seem to imply all P3 must be considered for disclosure.

- 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.**

DOI Response: Possibly, however, just about every Federal Government entity faces a variety of internal and external risks that may affect an agency's ability to achieve program, financial, and mission related objectives. Risks are events, activities, transactions, or circumstances that can adversely impact an organization. Some possible types of arrangements, transaction or risk categories that can pose significant risks to an entity besides and/or including P3s are Safety, Environmental, Budget, Contractual (as indicated below) and IT (Security and not using and leveraging the right type of IT technology to get the job done) etc....

With that being said, the real challenge is 1) what is the best way to perform program and financial related risk assessments in terms of computing a risk rating or determining the level of significant program risks and 2) then what is the best way to leverage and use significant program risk assessments to identify the quantitative aspects of program related risks that will best align with financial reporting and disclosure requirements.

From an accounting and management perspective, this is very important and significant to understand because simply put at the end of the day, significant risks need to be prioritized and managed from a quantitative and qualitative perspective (i.e., after risks are identified, rated and/or determined, risks from a management perspective need to either be accepted, mitigated, addressed, and/or transferred) and when applicable, management needs to focus on significant risks as a call for action. Therefore, the standard needs to be specific enough to accomplish all this and to bridge the risk gap that currently exists between program and financial reporting to address risks and P3 requirements for disclosure.

- 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.**

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DOI Response: Due to the nature of DOI's missions, programs, and various types of agreements, DOI will probably be reporting P3s. The extent of the disclosure will depend on the final definition and scope of the Statement and the final application sections of the standard.

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.

DOI Response: We disagree. The definition/characteristics are too vague and confusing.

Comments re: Conclusive Characteristics – A "Yes" answer to any one of the Conclusive Characteristics means that disclosure is required. However, DOI bureaus have arrangements that fit the description of the Conclusive Characteristics but are considered routine business which is not required to disclose in this ED.

Comments re: Suggestive Characteristic 3 Rationale – Please explain what OPEB's are. It appears that the issue relates to the way the analysis is performed that led to the arrangement (included vs. excluded costs) in the first place. It is doubtful that the Standard will resolve that. Quantification will be an issue in the disclosure.

Comments re: Suggestive Characteristic 5 – The government is not always in a position to have in-house expertise; therefore, analyses performed by third parties should be expected. In fact, auditors often prefer external experts' opinions to those developed by federal employees as they discount and/or question the credibility and credentials of those internal subject matter experts.

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.

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- 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.

DOI Response: We disagree. There are too many required disclosures that will be difficult to succinctly and relevantly capture. If all elements are required disclosures, there are likely more than 35 data points to capture for each and every P3 agreement and many require narrative information not easily captured without reviewing each and every agreement to determine the appropriate disclosures. This level of detail is not presently captured in the financial system. In addition, some of this data is going to be very difficult, if not impossible to determine such as

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23.d. What are the costs/benefits of gathering and reporting this data and what value does it provide to the reader (paragraphs 23.a. through c and e.)?

In addition, component reporting entity level disclosures will be extremely difficult to gather at the transaction level and this will make it, extremely difficult, if not impossible, to aggregate how different types of significant risks and in-kind payment situations will need to be summarized for accounting purposes and then rolled up for reporting and disclosure purposes. With that being said, there appears to be a fundamental gap or lack of “how to accounting guidance” relating how in-kind services from a full cost perspective should be reported. Specifically, how will all this information be provided by stakeholders and be monitored by the Government and what SGL accounts and/or attributes will need to be used on a government-wide basis to fully account for the full costs of in kind services that may include donated services to the agency, reimbursed funding back to the agency, and/or matched funding provided by various parties to the agreements? To further complicate all this accounting, budgeting reporting and financial reporting, reimbursement and offsetting collection accounting transactions are occurring. Therefore, we suggest that the second phase provide detailed accounting guidance and direction to fully address the accounting and the reporting associated with the full costs of P3s.

Finally, due to the complexity of implementing the P3 standard and the systems modification required to capture the necessary information for reporting, this should be in MD&A or OAI until the reporting process gets settled.

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.

DOI Response: We disagree that “remote” risks should be disclosed. The effort to gather this data on something that is remote or not likely to occur is not cost effective or appropriate to report. Besides, disclosing significant P3 risks that are “remote” will open doors to potential expansion of the disclosure requirements in SFFAS 5. The P3 disclosure requirements should be **consistent** with existing standards.

- b. Do you agree or disagree with the one member’s concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of “significant exposure” is not sufficiently clear to result in

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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.

DOI Response: We agree with Mr. Dacey's assessment for the reasons stated. We will support a narrower definition of P3 arrangements and removing the requirements to address business risks. The reporting should be more streamlined and simplified.

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.

DOI Response: While aggregation would assist with financial statement presentation, in order to aggregate the information an entity must have sufficient information at the individual or transaction level before it can be aggregated; therefore, preparers still have the burden of collecting, analyzing, and aggregating the information that is specific and granular. This is especially difficult in decentralized organizations. Furthermore, there is concern that the audit will focus on every contractual arrangement or transaction that might meet the definitional requirements of P3 reporting and the entity will be required to implement and maintain systems/databases and related documents in a centralized location to effectively and efficiently manage the audit process. The auditors are likely to sample the population to assist with determining the mix and amount of funding, federal and non-federal. The audit will likely also focus on providing documentation for those agreements that were excluded from P3 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.

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.

DOI Response: It would be helpful to have the Board elaborate on what "perceived costs associated with this proposal" were considered. When additional reporting requirements are implemented, many entities incur substantial implementation costs that may be overlooked in

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the Board's analysis. Based on past audit experience, it would seem that entities will have to perform a complete analysis of all non-FAR agreements to determine if they meet the P3 reporting requirements. It is likely that the information being requested does not presently reside in a centralized location or is readily available without reviewing each and every non-FAR agreement/transaction. New policies and procedures will need to be developed and implemented for each entity. With resources already constrained and becoming ever more so, it is difficult to understand how the Board determined that the benefit of reporting outweighed the cost of reporting. When additional reporting requirements are implemented, the entity faces increased audit costs; many times these costs are substantial and will come from already limited budgets. The Board should consider a project that quantifies implementation costs to assist with the cost-benefit analysis. If the terms and conditions of the P3 agreements don't address all the required disclosures, how does an entity meet the reporting requirements without an audit finding that the entity is not in compliance with the Standard? Audit experience is that the auditors interpret the standards very literally. If the Board does not intend for something to be included, recommend that it should be explicitly stated within the Standard; not in the Appendix.

Footnote 4 – Please define “work-share programs.” Do they exist without specific legal authority? If so, wouldn't they be exempt because there's no supporting statutory authority?

Implementation Date – recommend a later implementation date based on when the Standard is issued; periods after September 30, 2017 may not be realistic.