



Ms. Wendy M. Payne, Executive Director  
Federal Accounting Standards Advisory Board  
Mailstop 6H19  
441 G Street, NW, Suite 6814  
Washington, DC 20548

Dear Ms. Payne:

The Department of Health and Human Services (HHS) appreciates the opportunity to provide comments on the Federal Accounting Standards Advisory Board's (FASAB) Exposure Draft (ED) that sets forth the proposed Statement of Federal Financial Accounting Standards (SFFAS), "*Public-Private Partnerships Disclosure Requirements*."

HHS is concerned that the proposed public-private partnership definition provided in the ED is overly broad and will require extensive disclosure on a wide variety of service, management, operating, and research and development arrangements and transactions that are beyond the intended scope of this ED. This expanded disclosure could dramatically increase the cost of the financial statement preparation and the related audit costs. To promote transparency, FASAB should prepare and share its cost benefit analysis quantifying the projected costs. HHS strongly endorses the Alternative View and supports narrowing the scope of the definition and reducing the disclosure requirements.

Responses to specific questions are enclosed. If you have additional questions, please contact Yianting Lee, Director, Division of Financial Statements and Audit. She can be reached at [Yianting.Lee@hhs.gov](mailto:Yianting.Lee@hhs.gov) or 202-690-6441.

Sincerely,

A handwritten signature in black ink that reads "David C. Horn for".

Sheila Conley  
Deputy Assistant Secretary of Finance

Enclosure:  
As Stated

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.**

**We agree that the definition provides features of federal P3 arrangements. We are concerned that this definition is so broad that it may include agreements beyond the intended scope of this disclosure requirement. Using the definition provided, we do not understand how to limit of all the possibilities that could be included as P3s. Could FASAB provide concrete examples of current P3 arrangements and other items that seem to meet the definition but are not included?**

**The definition refers to conveyance or transfer of real property, personal property, or multi-sector skills and expertise. We are not sure how transfer of multi-sector skills and expertise will be evaluated.**

**For example, how would joint research projects be treated?**

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.**

**We agree the definition helps to identify potential risk-sharing arrangements and transactions that could possess significant risk.**



However, it appears to include too many arrangements and transactions—many more than an agency would have time to evaluate.

- 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.

No, we believe the proposed definition could apply to a wide variety of agreements, including some that are fairly routine, such as contracts not covered by the FAR.

- 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.

The P3 definition provided describes P3s based on their most widely identified features. The conclusive and suggestive characteristics seem to broaden the possibilities.

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.

We agree these types of transactions should be excluded from disclosure if they do not share risks and rewards; however many of the arrangements or transactions listed could share some risks and rewards.

- d. 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.

We agree with the alternative view. The definition may not be sufficiently narrow to confine the scope of arrangements and transactions solely to P3s. The expansion of current reporting to include disclosure relating to certain remote risks and risks relating to entity operations or performance that do not necessarily result in contingent losses, could easily overwhelm or mislead users with extensive information relating to risks that have only a slight chance of occurrence and business risks that do not necessarily affect the financial statements. The application of this ED could result in a significant expansion of disclosures. This could potentially result in expenditure of significant resources



**developing and implementing processes to identify contracts and agreements that may meet the definition, but are not true P3s.**

Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered<sup>1</sup> 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.

**The purpose of this standard is to report on significant risks posed by public private partnerships. At this time, we do not have much experience in identifying these risks. The definition is intentionally broad. The conclusive and suggestive characteristics do not really seem to narrow the number of agreements that could be disclosed. It appears that only materiality considerations will really limit the number of P3s requiring 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.

**At this time, we are not aware of other arrangements or transactions other than the P3s for which the risk-based characteristics are present. Alternatively, it appears that all the arrangement or transactions with the described risk-based characteristics become, by definition, P3s the way the standard is written.**

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.

**Yes, based on the proposed definition and the conclusive and suggestive characteristics we will have P3s to disclose.**

**The risk based characteristics provided do not provide enough clarity and could include contracts that are not traditionally considered P3s or arrangements and transactions that do not necessarily result in contingent losses to the entity.**

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

<sup>1</sup> 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.



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.**

**The risk-based characteristics are too broad and complicated. The characteristics could refer to a wide variety of service, management, operating and research and development arrangements, or transactions. This could result in disclosure of transactions that are either beyond the intent of this ED, or may require duplication of disclosure or inconsistent application.**

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-compliance 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.**

**Based on the broad and subjective definition, HHS has many programs that could potentially be identified as P3 agreements. Providing this amount of information for each program may not be helpful to the reader.**

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.**

**No, we do not agree with the Board's position. We agree with the concerns listed in the alternate view.**

- 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.

**Yes, we agree with the alternative view. The disclosure threshold of “significant exposure” does not provide a clearly defined conceptual threshold to facilitate appropriate and consistent disclosures of risk related to P3 contractual arrangements and transactions.**

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.**

**We agree that entities should be permitted to aggregate their disclosures. The disclosure components, along with the proposed P3 definition, would be too lengthy to disclose individually. We are concerned that even with consolidation, the proposed disclosure would be lengthy and could overwhelm or mislead the reader.**

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.**

**We are concerned that the proposed P3 definition is so broad that it will require disclosure on a wide variety of service, management, operating, and research and development arrangements or transactions. The number of HHS agreements that could potentially fall in the P3 category is so large, that the disclosure may not be useful to the reader. If the P3 disclosure becomes a requirement, there needs to be more focused guidance for identifying applicable programs.**

**The proposed P3 disclosure will require significant time and resources to implement effectively. Each project and agreement currently in place will need to be reviewed for possible disclosure. Beyond the initial effort, given the broad definition, it could become a substantial burden to track and reconcile the information in this disclosure. In addition**

to the time and resources required for preparing the disclosure, much of the definition is subjective and could become an issue during audit.

It is clear that FASAB is attempting to increase the disclosure requirements to include more risk based agreements either through the P3 project or the Risk Assumed project. There seems to be a significant amount of overlap between the two projects. Instead of adding additional disclosure requirements, we feel that there should be an increased focus on making the current financial reports and notes more useful with better defined information. We are interested in keeping the reader engaged and are concerned that adding a disclosure of this length could discourage individuals from reading our agency financial report.